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OFFICIAL REPORT
OF THE
DEBATES AND PROCEEDINGS,
IN
THE STATE CONVENTION,
ASSEMBLED
May 4th, 1853,
TO
REVISE AND AMEND THE CONSTITUTION
OF THE
Commonwealth of Massachusetts.
VOLUME SECOND.



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DEBATES AND PROCEEDINGS

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May 31, 1893

REVIEW AND AMEND THE CONSTITUTION

Constitution of the State of New York

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OFFICIAL REPORT

OF THE

DEBATES AND PROCEEDINGS

OF THE

CONVENTION OF 1853.

VOLUME II.

Monday,]

THE MILITIA, &c.—EAMES—HALL—THOMPSON—CUSHMAN—OLIVER.

[June 27th.

MONDAY, June 27, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President, at ten o'clock, A. M.

Prayer by the Chaplain.

The Journal of Saturday was read.

Presentation of a Petition.

Mr. EAMES, of Washington, presented the petition of Josiah Francis and one hundred and ten others, citizens of Pittsfield, in favor of the system of town representation, which was referred to a Committee of the Whole, and ordered to be printed.

Limitation of Term of Office.

Mr. HALL, of Haverhill, submitted the following Report from a Committee:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 27th, 1853.

The Committee on so much of the Constitution as relates to secretary, treasurer, &c., to whom was referred an order of June 11th, 1853, have considered the same, and report the following resolution.

For the Committee,

CHARLES B. HALL.

Resolved, That it is inexpedient so to amend the Constitution as to require that "every person holding an office in or under the State government, shall retire therefrom at the expiration of six years' service."

The Report was referred to a Committee of the Whole, and ordered to be printed.

Further time granted to a Committee to Report.

Mr. HALL, of Haverhill, from the Committee on the subject of the secretary, treasurer, &c., asked further time for the consideration of the subject of electing justices of the peace by the people.

Further time was granted.

Plan of Representation.

Mr. THOMPSON, of Charlestown. Accompanying the plan which I had the honor to submit to the Convention on Saturday last, on the subject of the House of Representatives, was a table showing the result to be produced by the basis proposed in that plan. Since that time, however, I have examined the subject more carefully and critically, and I find that there is an error in a statement, arising from the fact that five small towns, incorporated since the year 1850, were separated from the rest, and placed by themselves in the table, when they should properly have been allowed to remain with the towns from which they were taken. I have also, since that period, worked out a table showing the results of my plan, and the basis of representation under it in the several counties, together with the number of representatives to which each county will be entitled, from the smallest fraction as well as the largest number. My object in rising, is to ask that the table be printed as a part of the plan which I submitted on Saturday, and that the old table be dispensed with.

The PRESIDENT. The table will be substituted in the place of the one proposed by the gentleman, on Saturday, and printed, as he desires.

Compensation of Officers of the Convention.

Mr. CUSHMAN, of Bernardston, submitted the following order:—

Ordered, That the Committee on the Pay Roll be requested to report a resolve for the payment of the Chaplain and other officers of the Convention.

Mr. LIVERMORE, of Cambridge. I think that the order should be made to state the compensation which is to be allowed the various officers of the Convention.

Mr. CUSHMAN. It is true that the order makes no provision for the amount of compensation to be allowed, but I thought it would be better to leave it to the Committee to decide the amount that shall be right and proper.

The question being taken on the adoption of the order, it was decided in the affirmative. So the order was adopted.

Orders of the Day.

Mr. LIVERMORE, of Cambridge, moved that the Convention proceed to the consideration of the Orders of the Day.

The motion was agreed to.

The Convention accordingly proceeded to the consideration of the first item upon the calendar, in the Orders of the Day, it being the motion of Mr. BEACH, of Springfield, to discharge the Committee of the Whole from the further consideration of the subject of the House of Representatives, and that the same be referred to a select committee of the Convention, pending which question a motion had been made and superseded by the adjournment, to lay the proposition upon the table.

Mr. THOMPSON, of Charlestown. As I had the honor to submit the motion to lay the proposition of the gentleman from Springfield upon the table, I will state, that the same reasons exist at present which existed when I made that motion. I therefore hope that the motion of the gentleman from Springfield may be laid upon the table for the present.

The latter motion prevailed and the motion of the gentleman from Springfield was laid upon the table.

Upon motion, by Mr. HALL, of Haverhill, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Huntington, of Northampton, in the Chair, for the consideration of the Report of the Committee on the subject of

The Militia,

That it is inexpedient to act upon the subject of an order of June 15th, providing for the registration of citizens as a police force.

Mr. OLIVER, of Lawrence. The order which induced that Report was submitted to the Com-

Monday,]

THE MILITIA. — OLIVER — WHITNEY.

[June 27th.]

mittee without any details whatever on the part of the gentleman who presented it. And it will be perceived at once, I think, if gentlemen will look at it, that its adoption would devolve a great amount of labor upon somebody,—not upon the Committee, indeed, who have reported upon the subject,—but upon those who would have the labor of carrying its provisions into effect if it were incorporated in the Constitution. It would, in my opinion, also involve a very considerable amount of legislation, perhaps more than would be expended upon the subject of a limited militia itself. It will be perceived that the order provides for the organization of “all able-bodied citizens between the ages of twenty-one and fifty, as a standing police of the Commonwealth,” to render such assistance as may at any time be necessary for the preservation of the peace and the faithful and efficient execution of the laws of the Commonwealth. It is, however, a covert attack on the militia. Let us, for a moment, look at the number of persons between these two ages. By the reports of the adjutant-general upon the subject of the militia, we find that the number of persons between the ages of eighteen and forty-five, formerly only about ninety thousand, has been greatly increased—whether from greater accuracy on the part of the officers who perform the duties of registration, or from an actual increase of population, I am unable to say. It now amounts to nearly one hundred and twenty thousand. This may be considered as about the number of persons between the ages proposed in the order,—for the numbers between eighteen and forty-five, given in the report of the adjutant-general, cannot differ widely from the numbers between twenty-one and fifty,—and the proposition is that these one hundred and twenty thousand citizens shall be enrolled, and rendered fit for duty as a standing police force.

Let us consider, for a moment, the objections to this proposition. The first difficulty is that of enrolment. To accomplish this end no system is proposed, though one must certainly be devised. I can see but a single method, and that is by imposing upon some officer or officers, recognized by the laws of the Commonwealth—say assessors or selectmen—the duty of going through the various cities and towns of the State, and performing the laborious process of taking the names of all these able-bodied citizens. Certain documents must then be drawn up to show who these persons are, and then follows the necessity of organizing the force into sub-divisions—say of companies, battalions, and brigades—for this course is necessary in order to ensure systematic order and action in so large a body of persons.

Then comes the business of arming this great police force, because they must be armed in some way, that they may be in a condition to meet whatever emergencies of danger may arise in the community. And here the question occurs, what sort of arms is most appropriate for such a body; whether it be the arms with which nature has already supplied them, their fists and their feet; or whether it is best they should have clubs or batons, such as are usually furnished to our present police force, or the more deadly and certain musket and rifle. After all this has been settled, and arms are supplied, this huge body must be fitted for duty, drilled and regulated in order to render it serviceable, for it is perfectly apparent that unless they should be instructed to work in concert,

to act together, and as one man, when called upon in case of any outbreak, they would be of but little use, and I submit that it would be no small labor to teach them to do this.

Besides this, and what is a very essential point, I think it safe to say that a large amount of money would probably be expended to keep this immense force in readiness for instant action and to pay for any actual service. No doubt, many persons—as for instance my friend from Walpole—would be quite willing and ready to serve without pay; but when you attempt permanently to establish a force of this character, but few will be found willing to act without being remunerated in some degree for their services. It would also be perfectly natural to expect, if a broken head or a broken leg were the result, or perchance, if a life should be lost in some skirmish, that the State would make provision for the widow and fatherless children, and that a hospital would be provided for the wounded and disabled. If, for instance, they should have a mob in the town of Walpole—

Mr. BIRD, of Walpole. I would like to inform the gentleman from Lawrence, that we do not have mobs in our town.

Mr. OLIVER. I am very glad to hear the gentleman make that remark, for I think it offers a great inducement to settle down in some pleasant homestead there, and to live among the tuneless birds that flourish and sing their matin songs in the trees of that neighborhood. Seriously, however, I submit, whether we have not already—say even in two forms, our engine men and our militia—what the gentleman who introduced that order calls for, and in a far less cumbersome system. I submit whether our present engine organizations might not answer the very purpose contemplated by the order, or if anything could be more desirable for the suppression of a mob, than a vigorous operation of their machines? What more effectual way can there be devised to disperse a mob, than to squirt it out of existence by a well directed stream of water, unless it be a stream of fire? But, really, Mr. Chairman, to be serious, I am of the opinion, that our present military organization is large enough, and is well enough and sufficient for all this purpose, and is what we want, rather than any general system of police, such as is contemplated on so magnificent a scale, by the gentleman who introduced the order. And here let me incidentally add, that very frequent allusions have been here made to the early fathers of the country, and much has been said about the wisdom of our ancestors in regard to the several measures adopted by them in all matters pertaining to government. With permission of the Committee, I should like to read an extract or two, taken from the ancient records of the colonies, going to show what their prudent judgment and forecast deemed necessary for their preservation against “foes from within, and foes from without.”

In 1628, (February 26,) it was ordered that “arms for one hundred men should be prepared forthwith, and that every town within the patent should take special care that every person, as well servants as others, within the town should be furnished with good and sufficient arms allowable by the captain.”

It was at this time that “musket bullets were a currency of circulation, one bullet being equiva-

lent to one farthing,” and I submit that this currency would be a most useful circulating medium in the management of a mob.

In 1636, it was ordered “that all military men in the jurisdiction should be ranked into three regiments,” two comprising those in Boston and its vicinity, of which John Winthrop and John Haynes were the respective colonels, and one comprising those in Salem and its vicinity, of which John Endicott was the colonel, and each of these three regiments under these three Johns, was to be trained by a muster-master, who was to have a yearly maintenance from the treasury. In 1638, the Ancient and Honorable Artillery was formed and comprised the leading men of the colony.

In 1643, I find it recorded, that “the regiments and military affairs were to be so ordered, that upon any sudden exigent or assault upon any place, there may be lawful authority to make resistance,”—and now mark what follows,—“for as piety cannot be maintained without church ordinance, nor officers of justice without laws and magistracy, no more can our safety and peace be preserved without military orders and officers.”

From that time down to the present, the military force has always been relied upon, not only in the exigencies of war, but in the emergencies which have arisen from insurrections and riots among the people. It was the opinion of the Committee that our present militia force was amply sufficient for all the purposes contemplated by this order, and that as the matter was already provided for, it was unnecessary to take any further action in regard to it. These are the reasons in brief, which induced their Report, and I only add, that I believe, that in all time of danger you may rely both upon their promptness to rally and their firmness and courage to act. It is true policy to avoid all necessity of a standing army, by keeping up a knowledge of the military art among the people. Unite the soldier and the citizen in one and the same person, seeing to it that the citizen predominates over the soldier—to-day in arms, to-morrow pursuing the vocations of peaceful business. By so doing, you are safe against the peril of a standing army growing up among us, to eat out our substance and to endanger our liberties. Be sure that you resist every semblance of a standing army, distinct from the citizens, and with interests wholly separate from them.

In that day of slow approach, but of earnest desire, when the pruning-hook and the ploughshare shall be found where violent men and the sword hold bloody sway, when the promise of the prophet shall be crowned in fulfilment, then—and I very much fear, Mr. President, not till then—all forceful appliances will be unnecessary, and all knowledge of that dreadful art which teaches perfect methods of slaying and destroying, will be wholly useless. God speed the good time!

Mr. WHITNEY, of Boylston. I should like to say a word upon this subject before the question upon concurring in the Report of the Committee is taken. I think, with the chairman of the Committee, that the subject has been already acted upon by the adoption of the Reports upon the subject of the militia, but I desire to express my views as to the manner in which I conceive this matter can be most easily settled. I offered the order as an indication of the course I wished should be pursued in an absolute peace govern-

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QUALIFICATION OF VOTERS, &c. — LOTHROP — MARVIN — PHELPS.

[June 27th.

ment; and I think, that if all the legal voters between the ages of twenty-one and fifty years were allowed to execute their own laws through the ballot-box, they would be able to do it without the aid either of muskets, cannon, or the other implements of war. If it were necessary, however, for the State to arm a police force, I believe it could be done in a very short time, and without incurring a great expense. Every town might be compelled to furnish the State with a list of the legal voters within its limits, and the necessary arms and munitions could be sent them in accordance with this statement. Thus the whole difficulty, as regards this point, could be settled with but little trouble.

The gentleman from Lawrence has alluded to the laws of our forefathers, but I may be permitted to say, without intending any unjust reflection upon their memory, that I do not think the spirit which they manifested, and the inclination which they seemed to possess of exterminating from their dominions the poor savage, is a very commendable quality. Had they followed the noble example set them by William Penn in their sister colony, they would have been wiser law-givers than they showed themselves to be; and we should do well, ourselves, to follow the precept and precedent which was set by that good man, not of carrying on a government by appealing to the life-taking power, but of governing mankind without the use of fire and the sword. Without prolonging these remarks, I hope the Report of the Committee will be adopted, as the subject has been already acted upon by the Committee on another occasion.

Mr. HALL, of Haverhill, moved that the Committee rise and report to the Convention, that the Report of the Standing Committee on Militia ought to be adopted.

The motion was agreed to.

The Committee accordingly rose, and by their Chairman, Mr. Huntington, reported to

THE CONVENTION,

That they had had under consideration the Report of the Standing Committee on the subject of enrolling the citizens as a police force, and that they had concurred therein, and recommended that the Report be adopted by the Convention.

The question was taken, and the Report was accordingly adopted.

On motion of Mr. WILSON, of Natick, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Griswold, for Erving, in the Chair, upon the Report from the Committee on

Qualifications of Voters,

That it is inexpedient to act upon the subject requiring that voters shall have the ability to read and write.

The Report was read by the Secretary as follows:—

The Committee on Qualifications of Voters, to whom was referred the Order of the 30th May, in relation to the expediency of providing that "ability to read and write shall be an indispensable requisite for the exercise of the elective franchise;" and also another Order of same date, in relation to a forfeiture of the right to vote in case of voluntary neglect to exercise that right, have duly considered the subjects set forth in said Orders, and report that it is inexpedient for

this Convention to take any action in regard to the same.

Mr. LOTHROP. The Orders upon which the Committee have made this Report were introduced into this Convention by myself, and I regret that the Committee have not found it expedient, in their judgment, to report in favor of the adoption of at least one of them. I would therefore move to amend the Report of the Committee by striking out all after the word "resolve," and insert in lieu thereof the following words:—

That in every election, every voter born in this Commonwealth shall be able to read the printed ballots out of which he selects one to deposit as his vote.

I do not propose to make any extended remarks in favor of the amendment. The general principles upon which it is based must be obvious to the mind of every gentleman present. Intelligence and general education throughout the whole people is the basis of republican government, and its only security. We know there are a great many men who, from their intercourse with the world, acquire a very large degree of general intelligence, and are men of sense and judgment, and perfectly competent to exercise the elective franchise judiciously and wisely, and yet it is perfectly obvious, that these men, when they go the polls, not being able to read, are entirely at the mercy of everybody who chooses to impose upon them, and may be made to vote, they know not for whom or for what. Much might be said upon the importance of education and intellectual culture, to the interests, security, and prosperity of a republican government. But I will not enlarge upon that subject.

My original order would undoubtedly have cut off a great many of our foreign citizens who come to this country and become naturalized, and invested with all the rights which belong to citizenship; and it has been suggested to me by some members of the Convention that it would be impossible to carry through this body, a resolution or principle which should operate to cut off so many of this class of persons. I have therefore altered my resolution and confined its operation to citizens born within the limits of this Commonwealth. It seems to me, if we provide a general system of education in every town, city, and district of the Commonwealth, by which every child, before he arrives at the age of manhood, can, free of all expense to himself, learn to read, we are justified in requiring that every such child, when he becomes a citizen and claims a right to vote, shall so far have availed himself of those privileges of education, as to be able to read, especially as the ability to read is the only security for the intelligent exercise of that right and trust.

I look to the prospective influence of this principle, rather than to its present operation. Gentlemen say it will be impossible to carry it out. They ask who is to judge, ascertain, and determine whether a man can read. There would be no great difficulty in arranging that matter. But I believe, if the principle is incorporated into the Constitution, but very few years would elapse before we should arrive at such a state of things that no case would occur of a person arriving at the age of majority without becoming able to read. Now, a great many of our native-born citizens are not able to read and write.

Since I offered the original resolution upon which the Committee have reported, I have made it an object to institute inquiries upon the subject, and have sought information from citizens in every class of life, and I have found within this city fourteen native born citizens of this Commonwealth, who are very respectable, useful, and intelligent men, but who are not able to read or write. Those men, as will be said, from their intelligence, and their intercourse with the world, have a great deal of knowledge, and can form a sound judgment upon most public matters. That may be true, and yet, when they come to the polls they are at the mercy of the men who give them their votes. Now those persons have the opportunity, at the present day, in this city, and throughout the large towns of the Commonwealth, of learning to read and write. We have in this city, every winter, four or five adult evening schools, where hundreds are taught these branches of education. Therefore these men, though deprived for the present of the right to vote, could soon qualify themselves so as to be entitled to the privilege. If, in this country, we recognize any qualification for voters, it seems to me that the highest and most important is that of being able to read, in order that a man may vote understandingly, and not be at the mercy of others. I hope, Sir, that the amendment will prevail, though I confess I have not much hope that it will.

Mr. MARVIN, of Winchendon. I desire that we may defer the consideration of this matter for the present. There has been an order, referred to a Committee, which is similar in its nature with that which we are now considering. That Committee has not yet reported, and it is not known what they will report. The order which is referred to them, is to inquire into the expediency of requiring of voters, after the year 1856, that they shall be able to read the Constitution of the Commonwealth, printed in the English language. I hope, therefore, that the consideration of this matter will be put off, so that it will not be necessary to take up the time of the Convention in the consideration of the same thing, at two different times, upon two several reports. I move that the Committee rise, report progress, and ask leave to sit again.

Mr. CHURCHILL. If the gentleman will withdraw his motion, I should like to move a slight amendment to the amendment offered by the gentleman from Boston.

Mr. MARVIN. I have no objection to that course, and I withdraw the motion.

Mr. CHURCHILL. I move to amend the amendment, so that it shall read as follows:—

That in every election every voter born in this Commonwealth after the adoption of this Constitution, shall be able to read the printed ballots out of which he selects one to deposit as his vote.

Mr. LOTHROP. I accept the amendment.

Mr. MARVIN. I now move that the Committee rise, report progress, and ask leave to sit again.

The motion was disagreed to, and the Committee refused to rise.

Mr. PHELPS, of Monroe. I hope that the amendment will not prevail. The gentleman from Boston says, that because persons cannot read they should not have the right to vote. Now I cannot agree with him in that opinion. I know

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a very intelligent gentleman who is not able to read, and yet he constantly exercises the privilege of voting, and does it with as much discretion as any one. He could neither read or write, except his name, and although he found some trouble in picking out his vote, I am not aware that he was ever made, through his own mistake, or through the dishonesty of others, to vote contrary to his opinions and wishes. And there are many similar cases.

I think the effect of this amendment would be bad. How are we to determine who can read? Shall we, when a voter comes to the polls, ask him whether he can read, and if he answers in the affirmative allow him to vote, although it may be the fact that he cannot either read or write? There is much difficulty in carrying such a provision into effect. The gentleman is willing, in forming the basis of representation, that these persons shall be counted in to swell up the number, but when they come to vote he would say to them—"You cannot read, and you shall not vote." I think the principle is wrong, and therefore hope the amendment will not prevail.

Mr. MARVIN. I have some things to say upon this subject, but I shall not present my views until we have the Report of the other Committee to which I have before referred. I hope that gentlemen will not look upon this as an unimportant matter, because I think it is a subject which deserves serious consideration.

The question was then taken upon the adoption of the amendment proposed by the gentleman from Boston, (Mr. Lothrop,) and it was decided in the negative.

The Report of the Committee was then adopted.

Mr. WILSON moved that the Committee rise and report the resolve to the Convention, with a recommendation that it be adopted.

The motion was agreed to, and the Committee accordingly rose.

IN CONVENTION.

The chairman of the Committee, (Mr. Griswold, for Erving,) reported that the Committee had had under consideration the resolve referred to them, and had instructed him to report it to the Convention with a recommendation that it be adopted.

The Convention concurred with the Committee of the Whole, and the resolve was then ordered to a second reading.

On motion of Mr. WILSON, of Natick, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Upon the Report from the Committee on

The Qualification of Voters,

To whom was referred an order relating to "a voting list, or registry."

The resolve reported by the Committee was read by the Secretary, as follows:—

Resolved, That the Constitution be so amended as to require a Voting List, or Registry, and to protect presiding officers in adhering thereto.

Mr. ADAMS, of Lowell, moved that the Committee rise, and report the resolve to the Convention, with a recommendation that it do pass.

The motion was agreed to, and the Committee accordingly rose, and the chairman of the Committee, (Mr. Stetson, of Braintree,) reported to

THE CONVENTION,

That the Committee had had under consideration the resolve referred to it, and had instructed him to report the same to the Convention, with a recommendation that it do pass.

The Report was accepted, and the resolve was ordered to a second reading.

General Laws for Corporations.

On motion of Mr. CUSHMAN, of Bernards-ton, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Keyes, for Abington, in the Chair, upon the Report of the Committee appointed to consider the expediency of making a constitutional provision requiring that corporations shall not be created by special act, except for municipal purposes, and in cases where the object cannot be attained under general laws, to which Report an amendment had been offered by the gentleman from Braintree, (Mr. Stetson,) and an amendment to that amendment offered by the gentleman from Cheshire, (Mr. Cole).

The CHAIRMAN announced the question to be upon the adoption of the amendment of the gentleman from Braintree, (Mr. Stetson,) which was as follows:—

Strike out of the resolve the words, "banking or" so that, as amended, it would read as follows:—

Resolved, That it is expedient to incorporate into the Constitution a provision, that Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, or where the object of the incorporation shall not be attainable under general laws.

Mr. STETSON, of Braintree. This Report was laid over the other day by the consent of the Convention, on account of a Report which was expected from the Committee which had under consideration the subject of Banking Corporations. That Report has not, to my knowledge, yet been made, although I suppose probably it may be made sometime in the course of the day.

My opinion is, that if any action is to be taken upon the Report upon the subject of banking corporations, this Report should not be acted upon until we have that Report before us, unless this provision, which makes the resolution specially except banking corporations, be stricken out. If the Report, which may come in hereafter, shall provide—as I understand from the chairman of that Committee, it may provide—for placing the banks under general laws, then it will be unnecessary to make any exception in this Report. At any rate, that Report will open the whole discussion again in relation to banks. I am not, therefore, prepared at this time to go into the discussion of this matter, when in the course of a few days we shall have to go over the whole ground again in the consideration of another Report. My impression is, that to save time and to save discussion, these two questions being blended so intimately together as they are, had better both be considered at the same time, and that we had better now rise, report progress, and ask leave to sit again. I now make that motion.

Mr. WHITNEY, of Conway. I ask the gentleman to withdraw his motion for a single moment.

Mr. STETSON. I will withdraw the motion, if the gentleman desires to speak upon the subject.

Mr. WHITNEY. I wish to say a single word. There seems to be a lack of business upon which the Convention feel disposed to act at this time, and I see no reason, myself, why we should not proceed to dispose of the resolution before us. If the gentleman from Braintree (Mr. Stetson), will withdraw his amendment, I think the resolution will give rise to little or no discussion, and I presume the principles of this resolution will not conflict with the principles to be reported by the Committee on Banking. And, again, it is possible that this resolution, containing this provision, might pass the Convention when a similar resolution, reported by the Committee on Banking, relating exclusively to that subject, might not pass. I think, therefore, there is propriety in considering this subject now, and if the gentleman from Braintree would withdraw his amendment, so that the whole question of banking should not become involved in it, I think, as I said before, that the resolution might pass without much discussion. If the gentleman does not see fit to withdraw his amendment, I hope the Committee will vote it down, and proceed to dispose of the resolution at this time. I hope, therefore, that the Committee will not rise, report progress, and ask leave to sit again, upon this subject.

The question was taken, and the amendment of the gentleman from Braintree, (Mr. Stetson,) was disagreed to.

The question then recurred upon the amendment of the gentleman from Cheshire, (Mr. Cole,) to strike out the following words, "or where the object of the incorporation shall not be attainable under general laws," so that, as amended, the resolution would read as follows:—

Resolved, That it is expedient to incorporate into the Constitution a provision, that corporations may be formed under general laws, but shall not be created by special act, except for banking or municipal purposes.

Mr. FRENCH, of Berkley. I wish somebody would tell us why "banking and municipal purposes" should be made exceptions to the provisions of this resolution. I do not see why they cannot be incorporated under general laws as well as any other corporations. It seems to me the Report is a little contradictory. It provides that "it is expedient to incorporate into the Constitution a provision that corporations may be formed under general laws, but shall not be created by special act." That is all very proper, and very easily understood; but why should banking or municipal corporations be exempted from this rule? I wish some gentleman would tell us why it is not possible or practicable that the objects of these corporations, as well as those of any others, may not be attainable under general laws.

Mr. COLE, of Cheshire. I had but one object in view in moving the amendment under consideration, and I will state that object. I believe there are many in our community who are opposed to passing any general laws for purposes of incorporation. They believe that there are many corporations which can never be reached by general laws. It occurred to me, that this class of persons would come up to the legislature every session, with petitions for acts of incorporation, and claim a hearing under the latter clause of this

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provision, upon the ground that their objects could not be attained by general laws. I think this provision is not clearly enough defined, to become a constitutional provision. I think every constitutional provision should be clearly defined, so that there can be but one meaning with regard to it. Now, if I am correct in saying that there are a great many talented and influential men who are opposed to general laws for objects of incorporation, that class of men will claim all they can possibly get under this latter clause. I think it will lead to a great deal of difficulty and misunderstanding in the legislature, and for that reason I move to strike out this latter clause.

The question naturally arises, who would be the judge in any particular case of application for incorporation, whether the objects of that corporation could be attainable under general law, or whether it would require a special act of the legislature. That is a question which, of course, must be decided by the legislature itself. Again, it may so happen that hereafter we may have a legislature a majority of which shall be opposed to these general acts for incorporation, and under this latter clause they may then proceed to pass as many special acts as they do now.

These are all the remarks which I have to make, and they are the reasons which induced me to move the amendment.

Mr. HUNTINGTON, of Northampton. If nobody else makes any answer to the remarks of the gentleman from Cheshire, (Mr. Cole,) I feel bound to say a word upon that subject. It seems to me, that the amendment proposed by that gentleman will accomplish too much. It seems to me, that there are a species of corporations which ought not to be cut off from the benefit of special acts. I allude to corporations for charitable, literary, and educational purposes. Many of the objects of these corporations cannot be attained by general laws, and I can see no objection to their being made the subjects of special acts. I would suggest, therefore, to the gentleman from Cheshire whether it would not operate injuriously upon institutions of this character unless they were made exceptions in his amendment. I have in my mind a corporation in my own county, which goes by the name of the "Smith Charities," involving hundreds of thousands of dollars, which are disposed of by will. The donor authorized, in his will, the trustees to obtain a general act for the purpose of carrying into effect the objects for which the property was left. The trustees very soon found it necessary, in the management of the property, to obtain such an act. They applied to the general court for it, and they were very willing to grant a special act for the management of these funds. There are many cases of that sort upon which the amendment of my friend from Cheshire would operate injuriously. I shall therefore vote against that amendment, believing the resolution better as it now stands.

In regard to the other class of exceptions for banking and municipal purposes, I agree that the Report should not be adopted as it now stands, without some explanation from the chairman of that Committee; for, without some such explanation, it will not be generally understood, and will be liable to misconception. As it now stands, any one would be led to suppose that the object of the Committee was to place banking and municipal corporations under general laws.

But I understand that such is not the intention, at least, as far as the banking institutions are concerned. I understand the object of this exception to be, merely to place the subject of banking corporations where it can be considered under a separate resolution hereafter. This is the reason, if I am not mistaken, for making these exceptions.

With regard to the amendment of the gentleman from Cheshire, (Mr. Cole,) I shall be compelled to vote against it for the reasons I have stated, unless some modification can be made, excepting these literary and charitable corporations. I am in favor of placing our general business corporations, however, under general law.

Mr. COLE, of Cheshire. I will then so modify my amendment as to except these literary and charitable institutions. The resolution as modified, would then read:—

Resolved, That it is expedient to incorporate into the Constitution a provision, that corporations may be formed under general laws, but shall not be created by special act, except for banking or municipal purposes, or where the object of the incorporations shall be for literary or charitable purposes.

My only object in moving this amendment was, so that business corporations should not be made subject to special acts, and I think the modification I have now made will meet the argument of the gentleman from Northampton, (Mr. Huntington).

Mr. FROTHINGHAM, of Charlestown. I rather regret that this subject has come before the Convention at this time, for the reason that the Report of the Committee who have the subject of banking in charge has been agreed upon in substance but not in form. The Report will be presented to the Convention in a short time, and this subject being connected in the manner in which it is with the other proposition, I think it would be more proper to consider the subjects together. In the next place, sometime ago an order was offered for obtaining certain information in relation to this whole matter of corporations. That information has been obtained, and it has long been in the hands of the printer, and it is expected every day that it will be printed and circulated among the members; but as yet the Convention have not had it in their possession. Under these circumstances, it seems to me that it might be better for us, to say the least, to consider this subject at once. Then again, there is before the Convention the great subject of representation. This matter in relation to general laws for corporations, and more particularly in relation to the great question of the currency, is a matter certainly of great importance. Is it well for the Convention to have so many great and important subjects under consideration at the same time? For one, I am in favor rather of taking up subjects one at a time, working our way through them, and settling them the best way we can. In that way, it seems to me, that we shall come to a more satisfactory conclusion than we shall by having so many subjects before us at one and the same time.

I am opposed to the amendment offered by the gentleman from Cheshire, (Mr. Cole,) because it is necessary to give the legislature that latitude in relation to the creation of incorporations which has been alluded to by the gentleman from Northampton, (Mr. Huntington). In this matter it

may be well, perhaps, to resort to experience. There is in the New York Constitution the same restriction as to the creation of special acts of incorporation, and there the article reads:—

"Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be obtained under general laws. All general laws and special acts passed pursuant to this section, may be altered from time to time or repealed."

It may excite some surprise to learn the extent to which this general system of legislation has been carried in New York. There, anybody can have a bank, but those that want facilities of this kind must comply with certain rules. Take the case of railroads. Any town or village in the great State of New York can have a railroad by applying for it. But those who want railroads must comply with certain severe rules and conditions as to taking land. I am informed by gentlemen who are competent to pass judgment in relation to that matter, and who have had occasion to examine the legislation of New York in reference to railroads, that the system adopted there in relation to that matter, both as it respects the great public, as it respects individual rights, and as it respects stockholders in corporations, is safer, and more generally satisfactory than that which has prevailed in Massachusetts. Still, there may be cases where it may not be practicable to accomplish the object desired without the aid of special charters, and therefore it is that I am opposed to the amendment offered by the gentleman from Cheshire, (Mr. Cole). Still, I did not rise for the purpose of discussing this matter of general legislation at length, and I hope now, that the subject may be allowed to rest until the information in relation to banks, which is already in the hands of the printer, shall be laid before the Convention.

Mr. STETSON, of Braintree. It strikes me that the Committee are not now prepared to enter upon a discussion of the general subject of incorporation, and as I said before, I think it would be better for the Committee to agree that discussion shall be had upon both these matters at the same time, and take up our regular business at this time. I therefore move that the Committee rise, report progress and ask leave to sit again.

The question was taken upon Mr. Stetson's motion, and a count being had, there were—ayes, 20; noes, 81.

Mr. BRADFORD, of Essex. It seems to me, that the amendment offered by the gentleman from Cheshire does not quite cover the whole ground. It may be necessary to make some exceptions where a general law should not apply. For instance, there may be some cases created by the administration of special trusts, which are not strictly literary and charitable, and for which it may be necessary to make provision. The expression made use of here in this Report is used in many other States where such a provision is adopted. Wisconsin was the first State that adopted a provision of this kind, and this was in 1846. The provision reads as follows:—

"Corporations, without banking powers or privileges, may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the

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corporation cannot be attained under general laws. All general laws or special acts enacted under the provisions of this section, may be altered or repealed by the legislature at any time after their passage."

A similar provision is adopted in New York, Maryland, and several other States, and the exception is made in the same form of words.

Mr. WHITNEY, of Conway. I apprehend that the gentleman from Northampton, (Mr. Huntington,) and the gentleman from Cheshire, (Mr. Cole,) have not reflected with their usual deliberation upon the amendments which they have severally offered. The gentleman from Northampton instances corporations for charitable purposes. I cannot see any reason, if a man should bequeath a large property upon certain conditions, why a general law may not be as easily, as readily and fairly made for such a case as a special law. If gentlemen will reflect but a moment, they will see that there is no necessity in limiting the application to an act in relation to charities, even in that particular case. I am afraid that gentlemen have not reflected sufficiently upon this subject. If they will but bring their minds to bear upon this matter, they will see every principle of equality and justice demands that in every such case, the law should be a general and not a special one. You may make your general law and insert in it a clause, that citizens all over the Commonwealth, under like circumstances, may be incorporated with like privileges, and you do not injure to any body. The amendments offered here I believe to be altogether unnecessary, and I think that the gentlemen who have offered them will come to that conclusion. To my mind this matter appears so plain, that I do not deem it important or necessary to discuss the question. While I am up, I might say a word in relation to another matter. I suppose, if the provision in relation to banking and currency should become a part of the Constitution, that your Committee on Engrossment might incorporate the two resolutions into one. I see no loss of time or loss of principle in striking out the matter relating to banking, inasmuch as it was not in the hands of this Committee. I advocate a general law in relation to the subject of banking. If that is adopted then your Committee on Engrossment will take the two resolutions and embody them in a proper constitutional form, and therefore I think the matter now before us may be considered without prejudice to the other.

Mr. HUNTINGTON, of Northampton. I perceive that the gentleman from Conway, (Mr. Whitney,) did not understand me at all, when I had the floor before, or he would not have said that I had not given the subject sufficient reflection. I had given the subject sufficient reflection to be perfectly satisfied with his Report and resolve. I did not make a motion to strike out any part of it. The member from Cheshire, (Mr. Cole,) proposed to strike out a part of it, and I suggested to him, if he was intending to follow up his amendment, that he ought to improve it. I take it it is perfectly legitimate when an amendment is offered, to improve it, and then vote against it afterwards, if you choose to do so. I wish to say, that I do not intend to vote for the amendment offered by the gentleman from Cheshire, as I am inclined to believe the matter stands well enough as it is now. I think that some wisdom will survive this body, and that the

general court hereafter will be better able to determine what subjects come within general laws and what subjects only come within special laws. I am willing to leave it to the wisdom of legislative bodies hereafter to settle this question, and I therefore shall support the resolution as it stands.

Mr. BARTLETT, of Boston. I am afraid that this topic requires a little more deliberation, than it is likely to receive. Applied to manufacturing and trading corporations, it is possible that a system of general laws may work advantageously. When applied to other corporations, I should have some doubt of the advantage of such a system. I will take a single class of corporations, and I will ask members of this Committee if they are willing that they shall be regulated by general law. Take the railroad corporations of this Commonwealth. What are the powers necessarily conceded to that class of corporations? They have a right of exercising the eminent domain of the State, and take any man's property at their will, and pay him a compensation, to be fixed by the county commissioners. How does the law guard that matter as it now stands? It provides for a special method of notice, for profiles and plans, and everything which can guard the rights of the private individual with the utmost care and scrutiny. Where is that power to be placed hereafter? Are gentlemen of this Convention willing that that power should be placed, under a general law, in the power of any body of men who choose to organize themselves for laying out railroads, traversing every portion of the Commonwealth, and taking private property for their use?

Mr. BUTLER. Will the gentleman allow me to ask, whether all this matter of plans and profiles is not settled now by general law?

Mr. BARTLETT. I wish that it were. It stands upon general law, but the general law is waived at each session of the legislature, in each particular case, and the law is modified to meet the case.

Mr. BUTLER. Could not the legislature do it, if we put this clause in the Constitution?

Mr. BARTLETT. What I object to is putting the power into the hands of private speculators. I should feel safer to have the power with the legislature than with private persons. I fear to confide to a general law a power of that description, for I know not what cases it may reach. I hope the subject will be postponed, or disposed of in some way so as to receive further consideration.

Mr. BIRD, of Walpole. I understand the chairman of the Committee to take the ground, that even institutions for charitable or educational purposes may be organized under a general law.

Mr. WHITNEY. They can.

Mr. BIRD. If they can, then what is the necessity for that last clause of the resolution, "or where the object shall not be attainable under general laws?" This is a permission to the legislature to grant incorporations for special purposes, which, in their judgment, are required, and it opens a door for the whole question, and gives the legislature precisely the same power to grant special acts which they have now.

The legislature of the State of New York, now in session, has granted an act of incorporation to a private company for mere purposes of specula-

tion, a ferry or a dry dock company, or something of the kind. The democratic papers in New York, argue that it is a violation of the Constitution, but a majority of the papers say, that they consider that the object could not be accomplished by a general law, and inasmuch as it is left for the legislature to determine, the charter is a good one. Here the clause is: "in cases where the objects of the corporation cannot be obtained under general laws." It is true the Committee have not put in the words, "in the judgment of the legislature;" but they are to decide whether the objects are obtainable under a general law. I think it is proper that this subject should be considered when the subject of banking is considered, and I hope that, at some time or other, the last clause will be struck out, for it leaves it in the power of the legislature to grant charters to whom they please.

One word as to railroad charters under general laws. Has there been a charter for a railroad asked for, which has been refused, for the last five years, when there was anything like a respectable case made out, unless a strong opposition has come from some rival company, who were afraid their own profits would be interfered with? I undertake to say, then, that for the last five years there has not been a case where there has been a *bona fide* subscription to the amount of fifty per cent. made, where the charter has been refused, unless there was strong opposition by some other corporation whose interests were likely to be interfered with. So it will be hereafter. It appears to me there is no more injury to result from extending it to railroads than to other corporations.

There is an idea that land is more sacred than any other description of property. I do not know why it is any more so than other property. The general law is framed with regard to private property; and I do not know why land is any more sacred than money, which represents land, or which will always buy it. But with regard to this last clause, I hope the gentleman, the chairman of the Committee, will give some reason for opening that loop-hole, through which the legislature will surely escape, and make as many charters as they please, for special purposes.

Mr. WHITNEY. The gentleman calls upon me for information. In my opening remarks to the Convention, I gave the reasons why the Committee inserted this resolution. I cannot do better than to adopt the language of the gentleman from Northampton, (Mr. Huntington). The Committee did not believe that all wisdom was to depart from this Commonwealth when this Convention was dissolved. I do not believe the legislature of Massachusetts are ever to create a corporation by a special act, where the objects are attainable under a general law. But if they should, the courts may pronounce the law unconstitutional. The gentleman says the legislature of New York have recently passed a special act. If he will go farther back into the legislation of New York, he will find that the New York legislature have passed three several acts at the same time, and that the courts have pronounced each of them unconstitutional. So the same thing has taken place in Ohio, and so it will be in this State. Our Constitution is finally to be interpreted by the Supreme Court. Our statutes are to be interpreted by that tribunal; and if the legislature should presume to go against the spirit and intention of that provision of the Constitution, or

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should proceed to incorporate a company where the objects are attainable by a general law, I have no doubt that the supreme court would pronounce it a violation of the Constitution and send it back to the legislature, and the objects would be reached by a general law. There can be no doubt about that.

I do not think there is any danger from the insertion of this clause. I think if it was stricken out there would be no danger, and that we could reach all the objects necessary to be reached for incorporating companies by a general law. I think there should be a provision by which all citizens under like circumstances may enjoy like privileges. These are the reasons, in brief, which operated upon the Committee. I could go further into the argument, but it appears to me it is evident to every man who reflects, that no future legislature will depart from the general spirit and tone, or even the letter of the Constitution. If I thought otherwise, I would make the restriction more close than this resolve will do it.

Mr. WILSON, of Natick. I rise, Mr. Chairman, for the purpose of throwing out a very few suggestions in relation to this proposition. I will say, in the first place, to the friends of constitutional reform, that, in my judgment, this is a delicate question to deal with. We have more than four hundred millions of incorporated wealth in Massachusetts, and whatever we may think to the contrary, it has its influence in this hall and out of it. A great many men who control these corporations think "their hand feeds us," and a great many in this State admit that "their hand feeds us." Now, Sir, I am in favor of this proposition as reported by the Committee, with the single exception that I would not include railway companies. I am opposed to the amendment proposed by my friend from Cheshire, (Mr. Cole,) I think that all he and I wish to see accomplished, can be accomplished by the resolution, as reported by the chairman of the Committee; and that it will be safe to trust to future legislatures to create corporations, whenever, in the judgment of those legislatures, the object cannot be attained by general laws. Now, Sir, I agree with the gentleman from Boston, (Mr. Bartlett,) who has thrown out a suggestion in relation to railway corporations. With some forty or fifty millions of railway capital incorporated in this State, I am rather inclined to the opinion, that a great many persons who control these corporations, and a great many stockholders in them, would be alarmed by placing a provision of this kind into the Constitution. We give to railway corporations the power of eminent domain, and it will be in the power of any man, or of any set of men, if they choose to do so, to traverse this Commonwealth, and say to the farmers that this amended Constitution has a provision in it authorizing mammoth corporations to take their land, their homesteads, their dwellings, their castles, and to run their railroads through them, and they have no remedy whatever.

Mr. WHITNEY. If the gentleman will give way for a moment, I would suggest that that depends entirely upon the law. If a general law is made, the legislature will not give the right of eminent domain unless they choose. They will provide as they have done in New Hampshire, that the property of no individual shall be taken until it is settled for by an agreement. We do not settle the details in this matter; that depends

upon general law. The railway law does not necessarily give the right of eminent domain.

Mr. WILSON. Mr. Chairman, I will say to my friend from Conway, it is competent for the legislature to pass a general law now, without any alteration in the Constitution. If in the legislature, I should be willing to vote for a law to prevent any railway corporation from taking a foot of land until they had settled for it. But what I object to is, that this being placed in the Constitution may be used to prejudice a portion of the people against the amended Constitution. Now, Sir, I think it would be so, I may be mistaken; that gentleman may understand the public sentiment better than I understand it.

Then we are told they have a general railway law in New York. I am aware of it and I think it works well. The gentleman from Conway says, that when the Constitution is amended the legislature can, under the Constitution, make the right kind of a general railway law, I admit it, but what security has he that the legislature will do so? That is the question. I think, Sir, we have no security whatever. When we can carry such a law through the legislature, I think we can stand upon it before the people. But if you put into the Constitution a provision of this character, which simply provides that we shall have general laws upon the subject of railways, and trust to future legislatures, I think that it will array against the Constitution a strong opposition. If, Sir, you can go and show the people that you have protected their rights, then they will be satisfied.

I remember that after that accident on the railway in Connecticut, which shocked the whole country, of hearing an eminent merchant in Boston say, that he had \$100,000 in railroad corporations, but that he was in favor of a law which would compel every such corporation to pay a fine of \$25,000 for every passenger killed, and that as a stockholder he would vote for it. I remember, also, telling that gentleman on that occasion, that if men like him would go before the legislature, we might possibly get such a law. But according to my experience there has been no time in the last eight years when it was in the power of the legislature to pass a law of such a character. A proposition was instantly introduced after the accident I have referred to, into the House of Representatives by a gentleman from Boston, and the House started off in hot haste, but the whole thing broke down and exploded, just as every man knew it would. A gentleman near me suggests that it broke down in consequence of the railway influence. I do not believe there has been a legislature during the last six years, aye, ten years, through which we could carry any proposition against the railway influence and power. When a law is proposed that will put all railway corporations under general laws, and protect and secure the people against all harm thereby, I will go for it; but I am not willing to put a proposition of this character into the Constitution of this State, and then trust to future legislation to guard and protect the rights of the people.

I shall move, before I sit down, to insert the word "railway," so that it will read, "except for railway, banking and municipal purposes."

Now, in relation to business corporations, for religious and literary purposes, and for insurance corporations, I have no doubt that general laws

should be passed, and that these laws can be made to accomplish all the purposes that special acts now accomplish.

The last legislature incorporated, or increased, the capital of corporations to the amount of \$25,500,000. One hundred and fifty-eight special corporation acts were passed by the last legislature. I am told that business corporations, formed under the general law, introduced by my friend from Conway (Mr. Whitney), in 1851, came here at the last session of the legislature, and obtained special acts of incorporation.

Now, Sir, all this should be provided for by general acts of legislation. I would provide for it for another purpose. We have already provided that our legislative sessions shall close at the expiration of one hundred days; and therefore we must take away, if we can, by general acts, the special legislative questions, which have, during the past ten years, consumed at least one-third of the time of our legislatures.

There is another reason, and the greatest of all reasons, indeed; and that is, that it will preserve the purity of the legislature of this Commonwealth to have general acts of legislation for corporations. We talk a great deal about the purity of a large House of Representatives, but I have witnessed scenes here in this State House, which show the influence of this system of special legislation. We have annually here around the State House, while the legislature is in session, numbers of men who come here as the agents of these corporations, either to accomplish something for themselves, or to defeat somebody else. I have seen sitting in that Senate chamber, nine legal gentlemen, engaged in one case, all endeavoring to obtain special privileges; and there are gentlemen now within the hearing of my voice, who have received one, two or three thousand dollars here, for their services in advocating the granting of these special acts.

Mr. BIRD, (in his seat). I would like to inquire of the gentleman if all these special acts were not for railway purposes?

Mr. WILSON. Not all of them. I have seen some there who were agents to procure the passage of acts for other purposes besides railways,—for banking, insurance, and business purposes. I have been here more or less for twelve years, and a great part of these acts during that time, I admit, were for railroads. I will say here that I am in favor of a general railroad act, but I am not in favor of putting that act into our Constitution. I want some security, if we can get it; but I do not believe that it is in the power of the legislature to pass such an act as we need. I think if any legislation was ever demanded, legislation is demanded to protect the people of this Commonwealth who travel upon our railroads; but I do not believe that it is in the power of any body of men assembled here, to pass such laws against the combined power and influence of the fifty millions of dollars of railway capital. I hope, therefore, that my friend from Conway, (Mr. Whitney,) will consent to this amendment, that we shall leave out railway and banking corporations, and let those come up by themselves. My friend from Charlestown, (Mr. Frothingham,) the author of the banking law of 1851, and a gentleman who stood by it through good report and through evil report—through victory and defeat—has the banking question under his care, and I think that my friend from Cheshire, (Mr. Cole,) will not press

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his amendment. I think we had better leave something to the judgment of the legislature; and besides all that, I candidly believe, that if this is not stricken out, if we undertake to pass these through as they are, it will bring against this amended Constitution more power and strength than any other amendment which has been proposed. I think we have from four to five hundred millions of dollars of incorporated wealth in this State. I would not insert anything unnecessarily into the Constitution that might excite that influence into combined hostility against it. I think we shall have to labor hard enough, especially unless we settle the question with regard to the House of Representatives satisfactorily all around, to carry the Constitution, without doing anything that is not essential. Under the present Constitution we can pass general banking laws, general railroad laws, general insurance laws, and general laws relating to all business corporations, as well as to those for literary and charitable purposes. I am inclined to think, therefore, that we had better not include railway corporations in this proposition.

MR. LORD, of Salem. Bing so nearly in agreement with the gentleman from Natick, I am very strongly tempted by that circumstance to take the floor, in order to express that agreement. I agree with him, that if you desire to defeat everything which has been done by this Convention, or what they may do, the best way to do that will be to array every individual's interest against it. To say that all men are equal, and that every man in this Commonwealth has a right to run a locomotive over his neighbor's farm, and take his land away, is a pretty certain way to lose a good many votes for your amended Constitution. I agree with the gentleman from Boston, that this great exigency, which must arrive before any private property ought to be taken for the public use, should be determined by the legislature, and not by any other tribunal. I agree with the gentleman from Natick, that the railroad interest is now too strong for even the legislature; and when it gets to be too strong for the legislature, everything else is as a mere rope of sand. A law was enacted here a few years ago that no railroad track should cross a travelled road upon the same grade with such road; but we put in another section, by the force and influence of the railroad interest, against my wish, and against my protest, that when the exigency of the case should require it, the county commissioners of the respective counties might permit a crossing upon the same grade. Well, Sir, in the great number of railroad crossings that have been made since that time, they have gone on in entire disregard of that law, and made their plans, surveys, and profiles, and actually begun the construction upon the same grade with the travelled road; and after that they have gone to the county commissioners, "Just see what a disadvantage and inconvenience it will be to us not to go upon the same grade; here are thousands, and perhaps hundreds of thousands of dollars already expended, and contracted to be expended, a great part of which will be lost if you do not permit us to go upon the same grade. We have already started upon this plan, and it will be the entire destruction of all that we have done, and a defeat of the road, unless we are allowed to cross at grades." What is the result of it? There has never been an instance, to my knowledge—and I have known fifty

at least, and a hundred, I should think—where the railroad has been permitted to cross upon the same grade with the travelled road, notwithstanding the prohibition, and I have never known an independent crossing to be made by reason of that law. There is no power except legislation that can cope at all with the railroad interest. Perhaps that cannot, but at any rate I will try a little while longer before I give up that it cannot. Now, if you undertake to say that we shall give all men equal rights—that any man may start a railroad at any point he pleases, without any restriction as to how many companies shall go upon the same track, or whether they shall go half a mile apart or a mile apart, will there be any tribunal to determine how this shall be regulated? I understand that you are going to leave nobody to determine these things, but it is all to be done under general laws. But if you do not put this into the hands of somebody to determine who shall go and who shall not go, how long can railroad enterprises be prosecuted? After one corporation has constructed a road, should another corporation have a right to locate their road, if not over the same rails, at any rate, closely parallel to them? How long would people go into railroad enterprises under regulations of that kind?

But that is not the only kind of corporations that I object to being formed under a general law. I can conceive it possible that a corporation should be made for land purposes. I have been a member of the legislature for a number of years, but it never was my fortune to become acquainted with any case in which it was proper. A corporation of that kind I have always opposed with all my ability; but the legislature has not unfrequently in its wisdom incorporated them. There have been such, and it is probable that we should have plenty of them if you make a general law. Will you consent, Sir, to make a law by which all shall be equal, if it gives everybody the privilege of making land corporations, and converting all the lands in the large towns—everything except the agricultural districts—into personal estate, to be hawked about the market in shares, depriving all real estate of the right of dower, and making it nothing but a mere personal commodity? Why, Sir, I understand that the object is, to make everybody equal with everybody else, and to give no special privileges at all; but you say that any association of men may form whatever corporation they please for the purpose of trading in land; and in this way you will have not "Fifty Associates," holding almost real estate enough to control its value in the market in a city like this, but you will have fifty times fifty associates. Monopolies of trading in real estate will be at once springing up, and instead of being regulated by the legislature as they ought to be, they will be regulated only by the interests of speculators.

The gentleman from Northampton, (Mr. Huntington,) in alluding to a class of corporations fit for special legislation, did not specify any considerable part of those corporations which might properly be enumerated as within the principle. But his remarks suggested to me the idea of a great many others. There is a large class of corporations in this Commonwealth which I think ought to be kept within the grasp of the legislature; and I am unwilling to say in the Constitution that it shall be the duty of the legislature to facil-

itate the forming of these corporations. I do not say that there should not be corporations, but I want their rights and their duties strictly defined, in each instance, by the legislature, and especially would I have the necessity for the corporation always determined by the legislature. I do not want to leave the matter open for every individual to determine for himself. I have not unfrequently found myself in the legislature standing almost alone in opposing corporations. I go for holding corporations to a very strict accountability, because, Sir, we give them great power under the general policy of the Commonwealth; and in every instance I think it proper that the legislature should pass upon the necessity of their creation. I have had an application, not a great while ago, professionally, to advise a mode in which a corporation could be formed under general law in this Commonwealth, to commence a prosecution of a piratical enterprise, against an existing and adjudicated patent right, to be carried on in such a manner that the proprietors could not be held to an individual responsibility under it. Before corporations are created, I want to know their purpose. I want to know their necessity, and I think it important that there should be some proper tribunal to determine these things, and to refuse corporate powers unless in the particular case, they are shown to be necessary.

I am opposed to the entire resolution for the reasons which I have stated, and for the further reason that it does not seem to me to be a proper subject to introduce into the fundamental law; and having already more than once expressed my views upon that subject, I refrain from any exposition of them now. I am opposed to this resolution in its present form; for, in my judgment, the latter clause renders the whole nugatory. It says that these corporations shall not be created by special act, except for banking or municipal purposes, or where the object of the incorporation shall not be attainable under general laws. Suppose there be difference of opinion whether the object of the incorporation be attainable under general laws or not, what is the legislature to do in that case? Who is to decide this question? I believe that the chairman of the Committee designs to have it understood that the supreme court is to be the judge whether it is attainable under general laws or not. I do not so understand it. I am dealing with a constitutional provision. The constitutional provision is; where these purposes are not attainable under general laws. Who is to determine that proposition? I think we must all agree that the legislature is to determine that. Now, Sir, suppose I am a member of the legislature,—which I trust I never shall be again till I am in a condition to be so with less personal sacrifice than it has heretofore cost me,—suppose I should be, I believe that the true objects of railway corporations cannot be attained by general laws, and I act upon that conviction. I believe the same thing with regard to many of the other objects of corporations, for which gentlemen want to pass general laws. I must vote for special laws, and perhaps the majority of the legislature are of my opinion, and special legislation is had. Perhaps, however, the very next year there is a legislature that accedes to this general proposition, and makes general laws upon all subjects upon which corporations can be formed; but before the session is through, or perhaps not until the next session, when the next legislature comes together, it is de-

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cided at once that these particular objects cannot be accomplished by general laws, and these persons are incorporated. Here, then, you have, upon precisely the same subject matter, one set of corporations going on under general laws, while another is going on under special laws, just exactly as they go on now, though I believe now corporations are pretty much under special law; for those who were organized under general laws to a considerable extent last winter, came to the legislature and obtained authority under special laws.

I am very happy to receive the concurrence of my friend from Boston, near me, (Mr. Bartlett,) who suggests to me again, the opinion, that the discretion is to be exercised by the legislature—it is for them to decide whether the object is attainable under general laws, or whether a special act is required; and they are accountable to no other branch for the mode in which they exercise that discretion. Entertaining these general views upon this subject, I think it will be unwise to undertake to make any provision at all with regard to the matter; or if we do make any provision in relation to the subject, I would simply say, that trading corporations, excepting such as deal in land, might be incorporated under general laws and not by special laws. I would have it go no further, because it seems to me, that for everything excepting merely trading corporations, the legislature should always intervene before a charter is granted. It is not a conclusive argument to tell me that the legislature has not always acted wisely. Public sentiment will control them. I think if the legislature has not acted wisely, that is no reason for putting this power into the hands of a tribunal that is not so likely to act wisely as the legislature is. It is one of the imperfections incident to human government, that the legislature shall sometimes act unwisely; but I think it is the safest tribunal with which to intrust a power of such vast magnitude as this with regard to the regulation of corporations.

Mr. COLE, of Cheshire. I would ask the gentleman from Natick, (Mr. Wilson,) whether he intended to be understood as saying, that he did not believe that the objects of railroad corporations could be obtained under general laws.

Mr. WILSON. I said I believed they could be.

Mr. COLE. I think by this time, and after listening to the discussion which has taken place, and to the arguments which have thus far been advanced, the Committee cannot fail to be deeply impressed with the impropriety of adopting the last clause of this resolve. I refer to that part of it which provides that special corporations may be granted "in cases where the objects of incorporation cannot be obtained under general laws."

It occurred to me in the first instance, that men acting upon the honest convictions of their minds, might differ in their opinions as to the possibility of the objects of a particular corporation being attainable under general laws. And, after hearing what has been the operation of a provision, similar to this, in the Constitution of another State, where the legislature, acting under the power conferred upon them by that provision, granted certain acts of incorporation, and the supreme court, subsequently decided those acts to be unconstitutional, and thus raised a conflict between the legislative and judicial authorities, I am more entirely satisfied of the impropriety of adopting such a provision. It proves to my mind, that, in forming a constitutional provision, we

ought to define particularly its operation, so that there can be no ground for a difference of opinion, no ground to lead to such results as have occurred in a neighboring State. I think in the first place, the resolve ought to define the very objects which should be embraced in the general laws, and leave the rest of the ground wholly undisturbed; or if the exceptions are made, they ought to be made so definitely that there can be no misunderstanding about them.

Now, the resolution goes upon the principle of restricting legislative action in relation to granting charters of incorporation. It begins by making exceptions, and defines some of the exceptions, for instance, corporations for banking, and for municipal purposes. And now, if I understand the motion of the gentleman from Natick, (Mr. Wilson,) it is to include another definite exception, that of railroad corporations. Then, in addition to these three specified exceptions, we bring in another clause of exception, quite general in its nature, and which covers the whole ground, and leaves future legislatures to decide what it includes. We know they will decide according to the honest convictions of their minds; but there is a class of men who do not believe that the objects of corporations can, under any circumstances, be obtained under general laws. To my mind it is perfectly evident, that in a few years, even under this provision, acts of incorporation will be passed by the legislature for almost any object. If that shall be the result, as I believe it will, this resolve ceases to be a restriction, and the object of it fails entirely.

Now I am not very particular, but I feel desirous that every provision which we incorporate into the organic, fundamental law of the Commonwealth shall be well defined, and so clear and definite as not to be susceptible of doubt as to its meaning, and they should be made definite either by defining particularly the subjects which should come under the operation of general laws, or by specifying the exceptions with equal definiteness.

Mr. STETSON, of Braintree. I intend to trouble the Committee with but a few remarks. I do not see any reason why this resolve should not stand as worded in the original Report, except that I should be in favor of the amendment spoken of by the gentleman from Natick, (Mr. Wilson). In that respect I think the resolve does not go far enough, for if there is to be any exception to the operation of the rule of general laws for corporations, the case of railroad corporations should be one of them; and the amendment proposed by the gentleman from Natick, will, if adopted, accomplish that end.

I do not agree with the gentleman who last addressed the Committee, (Mr. Cole,) in the opinion that the latter part of the resolve should be stricken out, for I do not think that we can specify, in any resolve, all the objects for which corporations may be necessary, or which the people of the Commonwealth may desire; nor can we foresee that all corporations which may be desired by the people, can be attained under general laws, and therefore there seems to be a necessity of such a general clause of exception. There can be no danger that corporations for manufacturing purposes, and others of a similar character, will be so misunderstood as to bring them under the operation of such a clause. Therefore, I trust the Convention will adopt, if it is offered, the amendment alluded to by the gen-

tleman from Natick, (Mr. Wilson,) and then that the resolve as it now stands, with that amendment, will be adopted.

Mr. NAYSON, of Amesbury. I take it for granted that the primary object of the Committee which reported the resolve, was to confer upon the legislature the power and authority to enact general laws in regard to the incorporations of companies. That, I suppose, is the principle object to be effected by the resolve, and if that be so, then, as a member of this Committee of the Whole, I desire to be able to give my vote understandingly, and also to vote consistently with the principles which I entertain upon this subject.

The resolve, as it now stands reported from the Committee, proposes to except from the operation of general laws corporations for banking, and for municipal purposes. Now, it appears to me, that if we are called upon to vote for the resolve precisely as submitted to the Convention by the Committee, it involves, to at least a portion of the Committee, a question of consistency to a considerable degree. It is known that we have upon the statute book, at the present time, a general banking law, and if I mistake not, the chairman of the Committee which reported this resolve, (Mr. Whitney, of Conway,) advocated before the legislature, and voted for that general banking law. Now, it became my duty, as a member of the legislature which terminated its session a few weeks since, to vote upon this very question of repealing or sustaining that law, and I voted to maintain it. Therein, the resolve involves an inconsistency, so far as my own act, and that of others, is concerned, in so far as we are called upon to exempt from the operation of this, or some other general law, the banking corporations of this Commonwealth. Such being the case, if I understand the matter correctly, as an advocate of a general banking law, I cannot give my vote for the resolve now under consideration. I desire to vote understandingly, and at the same time in entire consistency with my previous course.

I would suggest, therefore, with great deference, to the Committee which reported the resolve, that, if the main purpose be to confer upon the legislature the power of passing general laws for the incorporation of such institutions as may be needed, why is it necessary to make any limitation whatever? If the mere declaration of a principle, is all that is intended or desired, why not so express it, without any limitation or restriction, leaving to the legislature the right to apply, practically, those principles as may be deemed most expedient? Such being my view, in order to effect that object, I propose to amend the resolve, and I hope it will concur with the view of the chairman of the Committee. I propose to strike out all after the words "general laws" where it first occurs, and insert in lieu thereof the words, "in all cases where the object of such corporation is attainable under the same, and where provision is thus made by general laws that no corporation shall be formed by special act"—so that the resolve shall read:—

Resolved, That it is expedient to incorporate into the Constitution, a provision that corporations may be formed under general laws in all cases where the object of such corporation is attainable under the same; and where provision is thus made by general laws, no corporation shall be formed by special act.

It seems to me, taking for granted what I sup-

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pose to be the object sought to be attained here, viz.: a mere declaration of principle, that the legislature shall have general power in these cases, by adopting that amendment we shall do all that is desirable. I think it would be more safe to stop here, after making that declaration, than it would to undertake to make constitutional restrictions which time and experience might declare to be unnecessary and inexpedient. I therefore move to strike out all after the words, "general laws" and insert in lieu thereof, the words which I have read.

Mr. WHITNEY, of Conway. My friend from Amesbury, (Mr. Nayson,) is right in supposing that the resolve is designed to confer upon the legislature power to create corporations. But it goes further, and says they shall not be incorporated by special act, and therein lies the whole virtue of the resolution. If my friend had included that part of the resolution in his amendment, I would have agreed with him, for, to the exceptions in the original resolution, I have no particular attachment. The remarks of the gentleman from Salem, (Mr. Lord,) will suggest to my friend from Amesbury, (Mr. Nayson,) the necessity of the provision that these corporations should not be created by special act. Why? He says to you truly, that we have an act allowing parties to self-incorporate themselves for manufacturing purposes. It was an act prepared by the wisdom of the whole legislature, assembled from all parts of the Commonwealth, and therefore carefully prepared—an act which every member of the legislature felt would bear directly upon his own constituency, and therefore, they were careful in the preparation and passage of that act, as will be the case in reference to the passage of all general laws, where you bring to bear upon it the mind of every member of the legislature. It was a guarded law, and provided that stockholders should be liable for all labor performed within a certain period of time named, and for other things, and that the names of the stockholders should be recorded in the town clerk's book where the corporation was located, in order that every person might know who they were, whether they were sound or rotten men. It is a safe and a well guarded law, as any general law always will be. But how is it with special laws? Parties come into the legislature and ask for the passage of special laws, and why? That they may be able to avoid the provisions which the assembled wisdom of the legislature of the Commonwealth had incorporated into the general law. And how do they do it? They will send up interested parties to the legislature; they will procure a good lawyer, who can drive a shrewd bargain with the legislature, and when they come here they find one hundred or more, other men, upon the same errand of procuring from the legislature acts of a local and private nature, bestowing special privileges to advance their own private interests. Now, the application for the creation of a private corporation out in Washington might not particularly affect the constituents of the member from Cape Cod. It is a hundred and fifty miles away from him, and he pays little attention to it. Or perhaps Cape Cod wants a charter of special privileges, and that representative says: You vote for my proposition, and I will vote for yours. In this manner are these special and unequal privileges granted to the inhabitants of different parts of the Commonwealth. Honest

men will not seek these advantages over their fellow men. Men who are willing to stand upon an equal footing with their fellow citizens in all the relations of life, and depend upon their own energy and enterprise for success, will never come here for a charter under a special law, securing special and unequal privileges.

I did not design to go fully into the question, but I rose simply to say, that my friend is right in his supposition, inasmuch as this provision provides for the creation of corporations, but it also provides that they shall not be created by special act.

The gentleman from Salem, (Mr. Lord,) says: are you to go to the farmers of this Commonwealth, and tell them that corporations are to run railroads through any lands which they choose? Do you suppose that the farmers are so void of common sense as to believe that there is more danger when they send up their farmers here to make laws which affect equally every property holder, than when men come here to lobby through their special acts, in which all the people are not interested, and which are not founded upon the general sense and general interest of the Commonwealth? No, Sir; the danger all lies in special legislation, here, and safety is on the side of general laws.

Mr. LORD, of Salem. Does not the gentleman violate his general theory? He started with the proposition, that every man should have the same right that his neighbor has, and if one has a right to build a railroad between two points, another should have the same right. Does not he destroy that right in saying what he has?

Mr. WHITNEY. The gentleman is right in part and wrong in part. The law which says that a man may marry, is a general law, but that law does not say he may marry another man's wife. So, a law which says you may make a railroad, does not say that you may construct it over another railroad. There is no danger here that a law will be framed to authorize one railroad to be laid upon the top of another.

The gentleman has well said that the railroad corporations in this State constitute a power greater than any other in the State, and that power will be represented here with an influence which will ever prevent your legislative body from making too liberal a railroad law. The interests of the old corporations will be protected here. There will be no trouble about that. The trouble will be that your railroad laws will not be liberal enough, and you may provide that the stock shall all be paid in before the company shall go into operation, or some such restrictive provisions will be attempted. You will meet here all the influence of the existing corporations, the sixty-eight millions of capital now upon the statute book. There is no danger from general laws, for every man's interest is intermixed with every other man's interest, and they will be framed with all the care and deliberation which men use when they know that they must answer to the people of the Commonwealth for their actions, which affect the interests of all parties and all business.

Mr. ALLEY, of Lynn. I wish to say a word in explanation of my vote upon this question. I shall vote for the amendment offered by the gentleman from Cheshire, (Mr. Cole,) believing, that if the amendment should prevail, it will be more likely to secure the defeat of the whole resolve

than if it should be allowed to stand as it now is; and I hope the Report of the Committee will not be adopted, for the reason, not that I am opposed to general laws in reference to nearly all these questions, for as a member of the legislature I should vote in favor of general laws, but that I am entirely opposed to this resolve, because I believe that if it should be adopted it would endanger the Constitution before the people. I believe that if we array the whole railroad interest against the Constitution—and that would be the case if such a resolve as this should be passed—together with the whole farming interest of the Commonwealth; if, as has been remarked, you allow the people of the Commonwealth, or any corporation or company to exercise the right of eminent domain, and take any man's land and homestead when they pleased, it would raise such an opposition against the Constitution that it would be voted down by a large majority. Upon that ground, therefore, I should be opposed to the Constitution.

Another thing: if there is to be any exception in favor of any corporation, it does seem to me that railroad corporations, of all others, should be excepted. But as the resolution stands, there is one class of corporations which has already been provided for by general laws, and which is to be excepted, and it does seem to me that if any class of corporations in this Commonwealth should not be excepted it is that of banking corporations. But as that amendment, offered by the gentleman from Braintree, has been voted down, I for one, cannot give my vote for the resolution.

The question was taken upon the adoption of the amendment of the gentleman from Cheshire, (Mr. Cole,) and it was decided in the negative.

So the amendment was not adopted.

Mr. WILSON, of Natick, moved to insert after the word "municipal" the words "or railway."

The amendment was, upon a division—ayes, 91; noes, 32—adopted.

Mr. BIRD, of Walpole, moved to amend by inserting after the word "municipal" the word "manufacturing."

If this amendment were adopted, he said, the resolve, he thought, would be perfect.

The amendment was rejected.

Mr. NAYSON, of Amesbury, moved to amend, by striking out all after the word "laws," and inserting the following: "In all cases where the object of such corporations is attainable under the same, and where provision is thus made by general laws, no corporation shall be formed by special act."

Mr. DAVIS, of Worcester, offered the following as a substitute for the resolve reported by the Committee.

Resolved, That it is expedient to incorporate into the Constitution a provision, that corporations shall not be created by special act, when the object of the incorporation can be attained under general laws.

This, he remarked, was making no exception, but leaving it to the legislature to determine when the case comes up, if it can be done by a general law, to make a general law for it. If it cannot, then to pass a special act.

The CHAIRMAN ruled that the proposed substitute was not now in order, there being an amendment pending, with the view of perfecting

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the original resolve. The question being on the amendment offered by the gentleman from Amesbury,

Mr. BUTLER, of Lowell. I move, Sir, as the hour is now so near when we have to adjourn, in obedience to a standing order of this Convention, that the Committee rise, report progress, and ask leave to sit again.

The motion was agreed to, and the Committee accordingly rose, and the President having resumed the Chair of

THE CONVENTION,

The chairman of the Committee of the Whole reported progress, and leave was granted to the Committee to sit again.

On motion by Mr. WHITNEY, of Conway, the Convention adjourned until 3 o'clock, P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock.

Mr. ALLEN, of Worcester, from the Committee on the Frame of Government, submitted the following Reports, which were severally referred to the Committee of the Whole and ordered to be printed. First, in relation to

The Right of Married Women to hold Real Estate.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 27, 1853.

The Committee on so much of the Constitution as relates to the Frame of Government, &c., to whom was referred an order of June 3d, instructing them to consider the expediency of securing to women, by constitutional provision, their property, acquired by devise, inheritance, or otherwise, and an order of May 20th, on the same subject, report; that, in the opinion of the Committee, greater security than is now afforded by law, ought to be provided for the preservation to married women of the property acquired by them, through the kindness of parents and friends, or by their own industry and prudence. The Committee have seen, with much satisfaction, that, of late years, the course of legislation, and the decisions of enlightened judicial tribunals, have tended towards the alleviation of hardship and injustice resulting from the absolute control which the husband and his creditors have had over most of the property of the wife. Evils still exist which may be diminished or removed by legal enactment. But the Committee believe that the remedy can be most safely and beneficially applied by the action of the legislature, adjusting, in detail, the somewhat complicated relations which result from the marriage contract. They, therefore, report that it is inexpedient for the Convention to act thereon.

CHARLES ALLEN, *Chairman.*

Remuneration of Persons tried for Offences against the State, and acquitted.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 27, 1853.

The Committee on so much of the Constitution as relates to the Frame of Government, &c., upon an Order of June 9th, relative to the remuneration of persons tried for offences against the State and acquitted, report that it is inexpedient to act thereon.

By order of the Committee,

CHARLES ALLEN, *Chairman.*

Reference to the People of Legislative Acts.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 27, 1853.

The Committee on so much of the Constitution as relates to the Frame of Government, &c., upon an Order of May 17th, respecting the reference, by the legislature to the people, of legislative acts, for approval or rejection, report that it is inexpedient for the Convention to act thereon.

By order of the Committee,

CHARLES ALLEN, *Chairman.*

Census of the State.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 27, 1853.

The Committee on so much of the Constitution as relates to the Frame of Government, &c., upon an Order of May 26, report a resolve, as follows:

Resolved, That the Constitution be so amended as to require that a census of the State be taken in the year 1855, and on every tenth year from and after that period.

By order of the Committee.

CHARLES ALLEN, *Chairman.*

Petition of Silas Lamson and others.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 27, 1853.

The Committee on so much of the Constitution as relates to the Frame of Government, upon the petition of Silas Lamson and forty-four others, report that it is inexpedient to act thereon.

By order of the Committee,

CHARLES ALLEN, *Chairman.*

Plan of Representation.

Mr. BUTLER, of Lowell, submitted the following table to accompany his Plan of Representation, which was ordered to be printed for the use of the Convention, and was referred to the Committee of the Whole:—

Counties.	No. of Towns.	Population in 1850.	Votes on Lists 1850.	Votes given—1850.	No. of Representatives in Valuation year.	No. of Representatives by proposed Plan.	By proposed Plan—No. of Votes cast in 1850, to elect a Representative.	By present Basis—No. of Votes cast to elect a Representative.
Suffolk	3	145,788	22,654	9,833	47	31.5	212.4	206.1
Middlesex	30	151,710	24,242	20,312	20	6.3	232.7	208.2
Essex	10	58,120	10,312	4,312	10	6.3	112.7	108.2
Worcester	15	126,858	25,488	11,123	15	6.3	112.7	108.2
Hampshire	23	34,240	7,378	3,034	23	5.9	241	209.7
Hampden	10	50,224	9,565	6,610	10	5.9	259.7	207.6
Berkshire	10	48,287	9,714	7,384	10	5.9	259.7	207.6
Norfolk	23	77,411	13,865	7,034	23	5.9	259.7	207.6
Plymouth	13	74,079	13,241	7,984	13	5.9	259.7	207.6
Dorchester	12	54,609	12,409	7,680	12	5.9	259.7	207.6
Barnstable	1	1,017	1,017	386	1	5.9	187	128.6
Nantucket	1	8476	1,384	501	1	5.9	187	128.6
Total	301				301			

Remedy at Law.

Mr. MORTON, of Taunton, submitted the following Report from the Committee on the Judiciary, and, upon his motion, it was referred to the Committee of the Whole and ordered to be printed.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 27, 1853.

The Committee on the Judiciary, to whom was referred an Order of June 6th, relating to granting the subject "a certain remedy in law, prompt and without delay," and an Order of June 6, relating to the codification of the laws, have considered the same, and report that it is inexpedient to take further action upon the same.

MARCUS MORTON, *Chairman.*

Further time granted to a Committee to Report.

The Committee on the Frame of Government, upon motion by Mr. ALLEN, of Worcester, was granted further time to consider, and report upon the remaining subjects submitted to them.

On motion by Mr. BUTLER, of Lowell, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Wilson, of Natick, in the Chair, upon the subject of

The Basis of Representation.

The CHAIRMAN stated the pending question to be, upon the adoption of the amendment of the gentleman from Lowell, (Mr. Butler,) as modified by himself, and as amended by the Committee.

Mr. BOUTWELL, for Berlin. I am not disposed to trouble the Committee with any observations at this time, yet I am inclined to interfere now, rather than that the vote should be taken at this time upon the proposition now before the Committee, because it seems to me, that two things being settled, one by the Convention that the district system ought not to be adopted, and the other by the friends of the Majority Report, that some concession shall be made to the friends of the district system, and, inasmuch as the proposition of the gentleman from Lowell, (Mr. Butler,) is, after all, very near the result to which this Committee and the Convention will finally come. I am, therefore, disposed to favor a course of proceeding which shall allow each member of the Committee, having a proposition of his own, to submit it, and have it fairly considered before the Committee, with an opportunity to present his own views upon it, before the question is taken upon the amendment now under consideration. Each one of these propositions, as I understand them, is in the nature of a compromise, as is the proposition of the gentleman from Lowell, now before us. Therefore, believing as I do, that the proposition to which you, Mr. Chairman, just now directed the attention of the Committee, to contain many of the provisions which will ultimately be adopted by the Convention, I am of opinion that it will be preferable that the others shall be presented and disposed of first. If, then, there are gentlemen who have propositions, which they desire to bring before the Committee this afternoon, I think it will be well to consider them now, but if not, and if no one is disposed to continue the discussion, I think the Committee had better rise and ask leave to sit again.

I did not rise for the purpose of entering into this discussion this afternoon, but simply for the purpose, if gentlemen are not prepared now to go on with the discussion, to move that the Committee do now rise, report progress, and ask leave to sit again. If any gentleman, however, wishes

Mr. NAYSON. In offering that amendment, my object was, as I stated this morning, merely to embody, in a concise form, the declaration of principle which I supposed the Committee were desirous of engrafting upon the Constitution, a principle conferring upon the legislature general power to enact laws for the regulation of corporations. That is the object, as I understand, of the resolve in question, and such I understand to be the explanation of the chairman of the Committee who reported that resolve. In offering that amendment, I supposed I was doing what would receive the approbation of the chairman of the Committee. If I am mistaken in that supposition, and if the chairman of the Committee is desirous of obtaining a vote upon the resolve as it came from the Committee, I should feel it my duty to withdraw the amendment I have proposed.

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Mr. WHITNEY, of Conway. I should like to have the sense of the Committee upon the gentleman's amendment.

Mr. UPTON, of Boston. I did not think of saying a word upon this question before I came in here, and now shall trouble the Committee but a moment. It seems to me, if we adopt any provision upon this subject, it must be the amendment proposed by the gentleman from Amesbury, (Mr. Nayson). I confess I was astonished, this morning, to hear the remarks of gentlemen upon this subject who are familiar with legislation and the manner in which legislation is effected. It is proposed by the Report of the Committee that you shall have special laws, and special laws only, excepting for certain cases, and those cases to be specified. Suppose you put upon your statute books these special laws. I ask gentlemen of this Committee if they intend to apply the provision of this Report to the special legislation which has already taken place in Massachusetts in certain cases, and put these cases under general laws; because if you do, you not only array against them the whole of these corporations but every other corporation hereafter to be created; provided those laws are not liberal enough. It does seem to me, therefore, as a matter of safety, as they began under acts of incorporation, it is better to leave them as they are than to undertake to put a provision in your Constitution specifying and defining the acts which shall come under some general act. If we were about to commence *de novo*, it would be a very different question. Take, for instance, the railroad interest in this Commonwealth. You have established, and have already a number of special railroad acts incorporating private railroad companies. If you undertake to change the system of legislation in regard to them, of course you array all these companies against any good legislation. This rule will apply to the legislation which has taken place, and I think that there was wisdom and sagacity in the remark of the gentleman from Natick, (Mr. Wilson,) when he stated this morning, that this would be one of the most difficult questions to be considered by the people. As, for instance, in the case of the railroad act, if any existing arrangement with regard to railroads already established should be disturbed, it would produce very great difficulty indeed. We have railroads running from this city to Salem, to Lowell, and various other points. Do gentlemen propose to have any general act by which another railroad shall be established between this city and Lowell, or this city and Salem? All of these various questions may and will come up in a way in which you cannot meet them easily. If you insert in the Constitution a general provision, that no special act shall be granted where general acts do not apply, I confess, the question, to my mind, will go to the people of the Commonwealth in about as unsatisfactory shape as any question can be presented. I should say, that where general acts of incorporation would apply, that there should be no special acts, and if I understood the amendment of the gentleman from Amesbury, (Mr. Nayson,) it provides that there shall be no special acts where the legislature has made provision for meeting the case by the passage of a general act. I hope, therefore, that the amendment proposed by the gentleman from Amesbury, as it is an important one, may meet the views of the Committee and be adopted.

The question was then taken on Mr. Nayson's amendment, and a count being had, there were—ayes, 96; noes, 27.

So the amendment was agreed to.

Mr. MORTON, of Quincy. I move that the Committee rise and report to the Convention that the resolution ought not to pass.

The question was taken on Mr. Morton's motion and it was not agreed to—ayes, 61; noes, 119.

Mr. DAVIS, of Worcester. I do not understand precisely the condition of the question at this time. The amendment offered by the gentleman from Cheshire, (Mr. Cole,) being rejected by the Committee, I immediately arose, and, in my place, made a motion to substitute a new resolve in its place. That substitute was stated to the Committee of the Whole, but for some reason, another proposition is substituted in its place. I rise to ascertain how this matter stands.

The CHAIRMAN. All the various propositions offered have been considered in the light of independent propositions and not as amendments. The design was, to take the question upon each one in the order in which it was proposed. There was one failure to preserve that order. The gentleman from Walpole, (Mr. Bird,) introduced an amendment that the word "manufacturers" should be introduced in the proposition, and the question, by mistake, was taken upon it at the time, but in all other respects, the Chair, in taking the question, has followed the order in which the amendments were introduced. The gentleman from Cheshire, (Mr. Cole,) introduced the first amendment, which was rejected. The gentleman from Natick, (Mr. Wilson,) introduced the second, which was adopted. Then, before the gentleman from Worcester, (Mr. Davis,) presented this proposition, the gentleman from Amesbury, (Mr. Nayson,) introduced his amendment, and the question has now been taken upon it. Had that been rejected, then the proposition of the gentleman from Worcester, (Mr. Davis,) would have been considered. If the gentleman from Worcester wishes to offer his amendment as a substitute for that just adopted, he has opportunity now of doing so.

The resolve, as amended, is as follows:—

Resolved, That it is expedient to incorporate into the Constitution the provision, that corporations may be formed under general laws, in all cases, where the object of such corporations is obtainable under the same; and where provision is thus made by general laws no incorporation shall be formed by special act.

That is the form in which the resolution now stands before the Committee.

Mr. DAVIS, of Worcester, I would rather prefer to have the phraseology a little altered, but carrying out precisely the same principle. I do not know that, inasmuch as it is simply a proposition to go to the Engrossing Committee, it would be worth while to propose any change.

Mr. NAYSON. I have no manner of objection that the gentleman from Worcester should have an opportunity to introduce his proposition, so that it may have the action of the Committee. Deferring to the superior judgment of the gentleman from Worcester, I am not tenacious at all about having my proposition retained; and for the purpose of affording him an opportunity to introduce his, I will, if the gentleman desires it, move a reconsideration of the vote adopting my amendment. I think, however, they are very nearly precisely alike.

Mr. DAVIS. I do not desire to have the gentleman make the motion he proposes.

The question was then taken on the adoption of the resolve, as amended, and it was decided in the affirmative.

On motion by Mr. WILSON, the Committee then rose, reported the resolve, as amended, to

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With a recommendation that it do pass.

The question on concurring in the amendment made in Committee, was decided in the affirmative.

The question then recurred on ordering the resolve to a second reading.

Mr. BUTLER. On that question I ask for the yeas and nays.

There being a division, on the question of granting the yeas and nays on the question of ordering the resolve to a second reading, there were—ayes, 46; noes, 152.

So the yeas and nays were ordered, there being one-fifth voting in the affirmative.

Mr. LORD, of Salem. I do not precisely understand the phraseology of the amendment, whether the mover intended that if there should have been a general law passed, no special act shall be passed upon the subject. If that is not not what it means, then when there is a majority in favor of passing any special act, they must first repeal the general act. It does not seem to be worth while to put such a clause in the Constitution. That seems to me to be the whole of the proposition; that the same power that desires to create a special act shall not do it till they have repealed the general act. I do not know that I understand it.

Mr. NAYSON. I am not surprised that the gentleman from Salem does not understand the proposition, for those who know his course with regard to the general law on the subject of banking last winter, know that he is not in favor of such a law. But I suppose the gentleman will give me credit for understanding the amendment which I had the honor to submit to the Committee. As an illustration, take the general banking law of this State, and which the gentleman from Salem has had occasion to pass his opinion upon. We have had that law on our statute book for some time; and until it is repealed, if this provision is put into the Constitution, it will not be competent for the legislature to grant any special act so long as that general banking law is retained. That principle may apply with regard to many corporations. I take it that the gentleman from Salem understands that principle so well that he will not consider me so stupid as not to know what this Committee have accepted and adopted. It seems to me to be a very plain matter, and the banking law is a good illustration in point; and I presume that the gentleman from Salem will admit that to be the operation of the principle generally.

Mr. LORD. I have learned from the gentleman just what I desired, simply to know what was his understanding of the proposition. Now the gentleman did not quite do me justice when he said I had repeatedly expressed an opinion against the banking law. I was a member of the legislature last winter, and I expressed no opinion against it at that time, for I had no such opinion that I desired to express, and I found no occasion when I felt called upon to express any opinion

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on the subject. And let me tell him, that I do not think that that banking law could have stood with that legislature or any other legislature against any determination they might have had to make a special act; no, Sir, not for an hour. Therefore, you put into the Constitution a provision which the legislature could repeal at any moment. I think it is hardly worth while. Last year petitions came in for special acts in relation to banks, and the legislature were willing to grant them; but inasmuch as many desired the general law to stand, they were content that it should remain, in order that if any persons desired to avail themselves of its provisions they might do so. But suppose this provision had been in the Constitution, what must the legislature have done? They must first have repealed the general banking law, before they could have incorporated any bank under a special charter. Now, when we have adopted this provision in the Constitution, there will be nothing to prevent the legislature from passing as many special charters as they choose. If the legislature desires to pass a special act they will use the means necessary to accomplish their purpose; and if it be necessary, in order to do so, to repeal a general law, then that general law will, of course, be repealed. I am very happy to understand the designed operation of this amendment. I supposed that the gentleman must have meant, that whenever the legislature shall once have exercised the authority and made the law, that that law should be irrevocable by the legislature for the purpose of granting special charters; but that not being his purpose, it seems to me, it only requires the legislature, if the amendment be adopted, to do circuitously what they might otherwise do directly.

Mr. WHITNEY. I find that some gentlemen around me do not understand the resolution, as amended. We have ordered the yeas and nays on that resolution as amended, and as a friend of that resolution, I fear that many gentlemen will not vote understandingly upon it at present. I therefore would move, as it is now on its second reading, that we reconsider the vote ordering the yeas and nays, and order the resolve to be printed, so that when the question is taken, we may act understandingly. It seems to me, that there is an alteration of the language, which I must confess, that I do not fully comprehend myself. I would like to examine it in its printed form.

Mr. BUTLER. I would like to suggest in some form, that the object sought to be obtained by the gentleman from Conway, can be obtained if he will withdraw his motion.

Mr. WHITNEY. I will withdraw it.

Mr. BUTLER. My object is, that when the question shall be taken upon this resolution, it may be taken by yeas and nays. Now, as I understand, the resolve may be amended, altered or postponed; but that upon its final passage, when it is put into the form in which the Convention are desirous of having the question taken, then the yeas and nays are to be had. Therefore, the gentleman from Conway can obtain his object by moving to postpone the taking of the question till to-morrow. With his consent, I will make that motion, that it be postponed till to-morrow and that it be printed as amended.

Mr. DAVIS. Is it in order for me to offer an amendment.

The PRESIDENT. Not unless the pending motion is withdrawn.

Mr. BUTLER. I will withdraw it to accommodate the gentleman.

Mr. DAVIS. I then move the following substitute for the resolve.

Resolved, That it is expedient to incorporate into the Constitution a provision, that corporations shall not be created by special act, when the object of the corporation shall be attainable under general laws.

The question being then taken on the motion to postpone until to-morrow, it was agreed to.

Qualifications of Voters.

Mr. WILSON, of Natick, moved that the Convention resolve itself into Committee of the Whole, upon the resolves in relation to the loss of residence in consequence of absence on the business of the State or of the United States, and also respecting idiots, insane persons, and persons convicted of infamous crimes, which had been reported by the Committee on the Qualifications of Voters.

The motion was agreed to.

The Convention accordingly resolved itself into

COMMITTEE OF THE WHOLE.

Mr. Frothingham, of Charlestown, in the Chair, and proceeded to consider the said resolves. They were read as follows:—

Resolved, That the Constitution be so amended, as to provide that no person shall be deemed to have lost his residence in this Commonwealth by reason of his absence while on the business of this State or of the United States.

Resolved, That no idiot or insane person, or person convicted of a felony, unless pardoned and restored to the right of suffrage, shall be entitled to vote in any election.

Mr. HOOPER, of Fall River. I wish to inquire of the Committee who reported these resolves, what effect this special provision, that persons shall not lose their residence by reason of their absence on the business of the State or of the United States, will have upon other cases of absence. I believe that the general practice is now, that persons absent from the State upon their own business do not lose their residence. There are citizens in the section from which I come, comprising quite a large class, who follow the sea, and they are gone for years sometimes on fishing voyages. I wish to understand from the Committee who reported this resolve, whether this special provision, in regard to absence on public business, is intended to exclude those who may have been absent upon their own business, contrary to what has been the practice heretofore.

Mr. ALDRICH, of Barre. As I see that the chairman of this Committee is not present, and no other member of the Committee being disposed to answer the inquiry of the gentleman from Fall River, I will state what my views in regard to this matter are. I think the resolve is entirely unnecessary; for I suppose, that under the law as it now stands, a man would not lose his residence by absence from the Commonwealth on business for the State or, for the United States, any more than if he were absent on his own business. I suppose it would be determined whether he would or would not lose his residence by finding out what the intention was at the time of leaving his residence—whether he went away with the intention of returning or not. If he goes away, no

matter what may be his business, with the intention of returning, I presume he would not lose his residence. It seems to me, that the incorporation into the Constitution of a provision, that if a man was absent from the Commonwealth upon business of the State or of the United States, he should not be deemed to have lost his residence, might leave some doubt whether it was not to be inferred that he should so lose his residence in case of absence upon other business; but I suppose, as it now stands, it is perfectly clear.

Mr. MORTON, of Andover, moved that the Committee rise and report to the Convention that the resolves ought not to pass.

Mr. DURGIN, of Wilmington. Before the question is taken on the motion of my friend from Andover, I would like to offer an amendment by adding a resolve, if this be the proper time and place to do it, in the following words:—

Resolved, That no individual shall be deprived of the privilege of voting for State or United States officers in consequence of having changed his residence to any other portion of the State, or shall lose his residence for the above purpose in one place until he shall gain it in another.

The CHAIRMAN. The motion is in order. It takes precedence of the motion that the Committee rise.

Mr. BATES, of Plymouth. I rise for the purpose of making an inquiry. It is my impression that a resolve embodying the same idea, or substantially the same, with that of the one now offered by the gentleman from Wilmington, has been before submitted and disposed of, and is now either in the hands of the Convention or the Committee of the Whole. I wish to inquire if this be not the case, for if so, there is no necessity for acting upon the same subject again.

Mr. ALDRICH. I will state, for the information of the gentlemen, that if they will turn to document No. 55, they will find the resolve to which the gentleman from Plymouth alludes, in the following words:—

Resolved, That no person removing his domicile from one town or city within this Commonwealth to another, shall, by reason of such removal, be deemed to have lost his residence in the former for the purpose of voting for national and State officers, until six months after his removal.

Mr. DURGIN. I was not aware that the substance of my resolve had been acted upon, and I was anxious that it should be put into the Constitution somewhere. As the matter has been already disposed of, I withdraw the amendment.

The question being then taken on the motion of Mr. Morton, it was agreed to. The Committee accordingly rose, and the President having resumed the Chair of

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The Chairman, Mr. Frothingham, of Charlestown, reported to the Convention that the resolves ought not to pass.

Mr. HOOPER asked that the question might be taken separately upon the two resolves; and the question being taken on the first resolve, it was rejected.

The question then recurred upon the second resolve.

Mr. HASKELL, of Ipswich. There is one provision in the second resolve that I hope will be adopted, for it is not covered by existing laws,

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as I understand the subject. That is, that no person convicted of a felony, unless pardoned and restored to the right of suffrage, shall be permitted to vote in any election. It appears desirable that there should be some such penalty annexed to the commission of crime; and I hope that this, at least, will not be rejected.

Mr. HATHAWAY, of Freetown. I move to amend the second resolve by striking out the words "idiot or insane person," and inserting, instead thereof, the words "pauper, or person under guardianship." My difficulty in reference to this resolve is, that the only criterion that I know of, or that any one can know of, by which to settle this question of insanity or idocy, is the judgment of a tribunal that is fit to pass upon that matter. I would not, by any means, be willing to leave it to the selectmen, when the day for voting comes, to pass upon the question whether I was idiotic or insane. I should think that was a miserable tribunal to judge of this question, as regards myself, to say nothing about any other gentleman in reference to this matter; and hence, I would adopt the other provision which is contained in the third article of the amendments to the Constitution, and then I hope that the resolve will be agreed to, retaining, to suit the views of the gentleman from Ipswich, the provision in reference to persons convicted of felony, and who had not been restored to the right of suffrage by virtue of pardon.

Mr. BATES, of Plymouth. I would like to inquire of the gentleman from Freetown in what manner the restoration to the right of suffrage may be supposed to be obtained. By the laws of Massachusetts, a man who has been convicted of felony, and who has been punished in the State Prison, when he comes out of the State Prison, is a voter. When his time of imprisonment has expired, there is no provision of law that prevents him from being a voter. Now it is proposed to say in this resolve, that he shall not vote unless he is restored to the right of suffrage; and my inquiry is, in what manner is it proposed to restore him to the right of suffrage?

Mr. HATHAWAY. I cannot, of course, be expected to know what were the views of the Committee who reported this resolve; I am not responsible for it, not having been a member of that Committee. I suppose, however, that the Committee had in view certain persons who had been, or who might be hereafter convicted of felony, and who had not been restored to their civil rights by pardon. Now, a remission of the penalty or the judgment of the Court, as I understand it, is a very distinct matter from the restoration to civil rights; and I suppose that the Committee had in view the pardon of an individual and his restoration to his civil rights, no matter where he should stay. I suppose it was their intention, that a pardon should be necessary for a restoration to civil rights after the termination of the sentence which has been inflicted upon a person for the commission of felony. That is my idea with regard to the matter, although I have no authority to speak for the Committee.

Mr. BATES. With that understanding, and that explanation on behalf of the Committee, or rather, in the absence of the Committee, I certainly hope this resolve will not pass. The object of the resolve appears to be simply this: that when a man has been convicted of felony, and has been sentenced to the State Prison, and his

friends apply for pardon to the governor and council, they can grant a pardon and restore all his rights to the individual except his civil rights. By the laws of Massachusetts, hitherto, he has been entitled to vote, and I have never learned that any inconvenience has yet resulted from that vote; and now it is proposed to deprive that man of his right of suffrage until some future time when his civil rights shall be restored.

Mr. HOOD, of Lynn. I hope the resolution will not pass, and that we shall not incorporate into the Constitution a clause containing a provision that a man who has been convicted of a State prison offence, shall never be a voter, but that we shall leave the law as it now is in that respect. A man who is in the State Prison and comes out, does not forfeit his civil rights as a citizen, and I hope we shall not throw any obstacle in the way of the reformation of men who have been so unfortunate as to serve a term in the State Prison. There are many of them upon whose characters the punishment has had the effect which should be the end of all punishment—reformation; and many of them are just as well qualified to vote as the body of citizens with whom they live.

I object to this provision for another reason. This question must arise in town-meeting, and it will be a difficult matter to settle, to determine there whether a man has been convicted of a felony, and should thereby not be permitted to vote; or if convicted of a felony, whether he has been pardoned and restored to the right of citizenship. How is it to be decided there? It places the officers in an embarrassing situation. It is hardly to be expected that any one will be there prepared to produce the record to prove that a man has been convicted of a felony. And still, if the provision is to have any effect, the officers must receive the individual's vote, or else somebody must produce the record of conviction, as the only satisfactory evidence of the commission of the crime. They would not be justified in taking hearsay evidence, which, besides its unreliable nature, would open the door to great difficulties in the discharge of their duties. I hope we shall not adopt the resolve.

Mr. KEYES, for Abington. It seems to me, that the passage of this amendment would be somewhat inconsistent with votes already passed by the Convention. In the first place, in regard to the matter of the punishment of felony, it strikes me, that the purpose and intention of the courts, is to make it severe enough to meet the nature of the crime with which the criminal is charged, and therefore it appears to be rather out of place for this Convention, or for the people, in any other form, to add to the penalty already prescribed for the commission of crime. The judges are not backward, as far as my observation extends, in dealing out, within the limit of the statute, as great a penalty in each case as the crime deserves. Therefore, I oppose that part.

Then, in regard to that other part about paupers. It was said the other day, and the question was decided on that ground, that the right to vote was a natural and inalienable right. Now, I take it that we are too democratic to take away the inalienable rights of men because they happen to be poor. I did not expect to see such a proposition coming from such a quarter. The ground, that the right to vote is a natural and inalienable one, is not my faith, but it is the faith of this

Convention as expressed by their votes, a few days since. There we held out a temptation for persons to become public paupers in some respects, and now we propose to insert a provision, that if they do become paupers, they shall not vote.

It was maintained, that a man owes no particular duty to society in order to be entitled to claim the privilege of voting. That is a right which, it was argued, is forced upon man because he lives in society, and while he lives in society, it is not expected that he will forfeit his rights, because he fails to perform his duties. It was decided, also, that no man should be deprived, while he is permitted to live in society, of any of the rights and privileges which belong to all others. It seemed to me that it was settled in Convention, on that occasion, that a man's property was not the criterion of his rights, or the measure by which they were to be apportioned; and if that principle is correct, I do not know why we should not extend the right of voting to all paupers, because they have, I was going to say, more interest in the laws, and in the conduct of the administration of affairs, than any other class of persons, inasmuch as they are the children of the government, and affected in their food and their raiment by the laws which are passed, and therefore, of all people, they have the highest interest in voting.

They are not views which I entertain which make these amendments improper in my estimation, especially the one in reference to State paupers, but it is because of the votes already given by the Convention that I think it would be improper to adopt them. I agree with the gentleman from Monroe, (Mr. Phelps,) that no difficulty on this matter has arisen heretofore. It has generally been believed, and such has been the practice, that when a man has been sent to the State Prison he must come back to the governor and council and be pardoned, and undergo the formality of being restored to his civil rights in order to become a voter. But I understand there is no necessity for that, as a man is entitled to vote the very next day after he comes out of prison, if he chooses to exercise the privilege.

Mr. MORTON, of Andover. I simply wish to say, that it seems to me to be entirely useless to insert the provision in this resolution, inasmuch as it already exists in our present Constitution. Article Third of the amendment says: "Every male citizen of twenty-one years of age and upwards, (excepting paupers and persons under guardianship, &c.,) shall have the right to vote, &c," and I have yet to hear that there is any proposition before this Convention to alter or amend that portion of the Constitution. Therefore I submit that the amendment proposed by the gentleman from Freetown, (Mr. Hathaway,) is entirely useless.

Mr. HATHAWAY, of Freetown. I do not wish to be placed in an improper or false position, in reference to the amendment which I proposed, for be it known and understood that I am opposed to the resolution, even if the amendment shall be adopted. But I am disposed to make the original resolution as perfect as I can, and the gentleman over the way, (Mr. Haskell,) having expressed the wish to retain in it the class of persons who might be convicted of the crime of felony, I did not move to strike that out. But the Committee had reported that "insane persons" should not vote,

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and the reason why I wished to substitute for that "persons under guardianship" was, because I would not deprive any person of the right to vote upon the judgment of the selectmen, and because they might believe a person to be idiotic or insane who was not so, and the only evidence that they should consider as sufficient to deprive any voter of his rights was a solemn adjudication, by a competent tribunal of law or probate, that the person was so, and that he was incompetent to vote.

In reference to paupers, I know there is a provision in regard to them in the Constitution at the present time. And I do not know but that the Committee intended and meant to introduce the provision that persons who are paupers should have the right to vote. If such was the intention of the Committee, I differ entirely with them, and also with the gentleman from Abington, (Mr. Keyes,) in reference to the proposition that every individual has the natural, essential, and inalienable right to vote. If that gentleman intends that proposition as broadly as he stated it, then I inquire why any individual should be naturalized before he has the right to vote? I regard that matter in a very different light from what he does. Let me say, in reference to that matter, that foreign persons who come here, under our laws, if we choose so to provide by law, would have the right to vote the very day after they came here. I do not regard that proposition as he does.

Mr. KEYES. I wish the gentleman would state my views upon the subject.

Mr. HATHAWAY. I stated simply what the gentleman said, and if he says his opinions are different from what his words warrant, I do not understand them.

Mr. KEYES. I intended to say that I did not believe in the doctrine which I presumed the Convention sanctioned the other day, that everybody had a natural and inalienable right to vote.

Mr. HATHAWAY. Very well, I am happy to know that the gentleman and myself then agree upon that matter. The reason, then, why I moved to amend, was to make the resolution, in case it did pass, as perfect as I could, so that it should not be quite as bad as it was originally; but I intend to vote against the whole resolution, even if the amendment is adopted.

Mr. BUTLER, of Lowell. Here are some resolves reported by a Committee, the chairman of which, and I believe most of its other members are absent. They are now about to be passed finally upon, for if, as it seems to me to be the intention of the Convention, they reject them, that is a final disposition of them. I would inquire—without expression any opinion upon the resolves one way or the other—if some such courtesy is not due to the chairman of the Committee, by which at least we should postpone final action upon the matter, until he can be present here to explain to the Convention the reasons which induced them, a very laborious Committee of the Convention,—without intending to pay a compliment where it is not needed,—to report the resolves? I hope the Convention will give some time, and if it is in order, I would move to postpone the further consideration and action upon this subject until to-morrow.

Mr. MORTON, of Quincy. I hope the consideration of this matter will not be postponed, but that we shall proceed with it now, and reject

it. If we continue to postpone matter after matter, day after day, as we have done, we shall not get through our labors until winter. I hope the Convention will pass upon the matter now.

Mr. HATHAWAY. Will the gentleman from Lowell withdraw his motion for a moment?

Mr. BUTLER. I will.

Mr. HATHAWAY. I perceive that the Convention prefers to take the question upon the naked resolution as reported, and I therefore withdraw the amendment.

Mr. BUTLER. I now renew my motion to postpone.

The question was taken, and the motion was not agreed to.

The question then recurred upon rejecting the second resolve.

Mr. HASKELL, of Ipswich. I desire to say a word or two upon this subject. I think the question raised by the gentleman from Plymouth, admits of another answer than that given by the gentleman from Freetown. He asks what the second resolution can mean, by requiring, that a person convicted of a felony, should be restored to his right of suffrage before he can vote. I do not know what was the intention of the Committee, or of its chairman, in the preparation of this resolve, but I suppose and understand it to be this, that a party convicted of a felony shall be deprived of the right of suffrage. That is the import and effect of the resolution, as reported. As I understand it, the resolution simply provides, that such a party, thus deprived of his right of suffrage, by the commission of a felony, shall not vote until he is restored to that right by a pardon. It refers to the deprivation which a person is to suffer by his own act, and that he shall not be restored to that condition he was formerly in, until he has received a pardon. Such I apprehend to be the meaning of the resolution, and it is perfectly proper to declare that fact.

One word in reference to the suggestions of the gentleman from Lynn, (Mr. Hood). None of the difficulties to which he alludes, can possibly arise. I infer, from the gentleman's connection with a town, that he must have observed the manner in which the voting list is prepared. It is not prepared in town-meeting. The question of one's qualifications to vote almost always arises in the preliminary meeting of the selectmen, which takes place before the town meeting. It is there that the subject of qualification is canvassed, and there that the right of the party to vote is denied, if denied at all, and determined by the consultation and decision of the selectmen.

There is, too, a mode of proof, in reference to the commissions of felony, than which nothing can be more certain. The selectmen are not to become the tryers of that fact, and I apprehend that there can be no uncertainty about ascertaining the conviction. The record is open at all times, to the inspection of every one, and accessible to all, and it is only necessary, in order to prevent a person from voting, who has been convicted of a felony, to obtain a copy of the record and lay it before the selectmen. There are abundant means of ascertaining by the record, whether or not a party is disqualified to vote from such cause. If this provision is adopted, that any person convicted of a felony, unless pardoned and restored to the right of suffrage, shall not be entitled to vote in any election, the party whose

vote is questioned on that ground, can produce his papers, showing that he has been restored to that right.

This question has arisen quite unexpectedly to me, but I think much might be said, properly and justly, of the reasonableness and propriety of including a disqualification to vote, as one of the punishments for the commission of a criminal offence. Does it look reasonable, that a man who has violated the law of his country, by the commission of a felony, will take that interest in placing the execution of those laws into the hands of competent and proper persons, that all voters should take? We know that many men are restored to society, at the expiration of their term of confinement, without any more moral merits or qualifications, and with no more interest in the welfare of society, than they had at the time of their conviction for the offence, and yet you will let him exercise all the functions of an independent freeman, knowing that he is no more moral, and has no more interest in the welfare of that society whose laws he has violated, and whose interests he has sacrificed by the commission of a criminal offence. It is well deserving of serious consideration by the Convention, whether it would not be reasonable and just to provide, as an additional punishment for the commission of crime, the forfeiture of the elective franchise. Of course such a provision would be made applicable only to offences committed after the adoption of the principle. It seems to me, to be neither just or right, to permit a person who has violated one of the most important and fundamental laws of society, to come out of his confinement, and do, by his vote, perhaps as great a wrong as he has before done by violence, or in some other way.

Mr. ALDRICH, of Barre. I am glad to be able to state to the Convention that, although I could not concur with the Committee which reported these resolutions, in many respects, yet it was not the intention of that Committee—it certainly was not my intention as a member of that Committee—that the disqualification of a felon to vote, should be considered a part of his punishment. That is, in my judgment, entirely an erroneous view of this subject. We have no right to punish a man for a crime after he has suffered the punishment which a court of justice, upon a full hearing of his case, has inflicted upon him. My idea of the reason for making such a provision in relation to the disqualification of a felon, is this. When a man has committed felony and has been convicted of the crime, he may be considered so perfectly reckless—so utterly regardless of the best interests of society, as to render himself entirely unworthy to take any part in the administration of its affairs. We deprive an insane person of the right of voting, not as a punishment, but because he is unfit to take part in the affairs of government. He is intellectually disqualified. And the Committee propose to deprive the felon of the right of suffrage for the reason that he is *morally disqualified*, and not as a part of the punishment due to his crime. Mr. Chairman, it has just been said, by some member, who saw that the chairman of the Committee that reported these resolves is absent, that the Committee is absent. Nor is this the first time that such a declaration has been made with relation to this and other Committees.

Now, I beg leave to inform gentlemen, that,

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at least upon this Committee, there are some members besides the chairman who have an opinion of their own, and who are not afraid of expressing it. But I am not disposed to enter into the discussion of this matter, at all, at present, for I do not feel any particular responsibility in connection with the resolution under consideration, and quite indifferent as to the fate of it. I will remark, however, that a provision similar to this is to be found in the Constitutions of several of the leading States of the Union. It has been urged as an objection to the resolution, that it will be difficult in some cases for the presiding officers at elections to determine who are felons. Well, it will often be found equally difficult to ascertain who are insane persons, paupers, or idiots; and yet these several classes of persons are usually excluded, the difficulty of determination, not being regarded as a sufficient reason for making no disqualifying provision respecting them. The distinction or difference between an idiot and a person with just enough of intellect to render him a responsible being and capable of exercising the civil rights of a citizen, is very slight. The dividing limit is an extremely narrow one. It is very difficult to tell exactly where daylight ends and where night and darkness begin. But all this furnishes no reason why an idiot should be allowed the important and responsible right of suffrage. Nor should insane persons be permitted to exercise this right, because it is not always easy to ascertain whether a person be of a sane or insane mind. Well, Sir, there are those who deem it equally clear, that that man who has shown himself, in a sense, morally insane by the commission of flagrant crimes, ought also to be disfranchised. But as I said in the outset, I have no intention of entering into the discussion of this subject, and shall close, with an expression of my own opinion, that the several classes of persons named in this resolution should be excluded from the right of suffrage, but whether a provision to that effect should be incorporated into the Constitution, I leave for others to decide.

Mr. WEEKS, of Harwich. I think it will be useless to discuss these resolutions any longer. If they will not answer it will be cheaper to make new ones. I move the previous question.

The question was taken, and the main question ordered to be put.

The second resolution was then rejected by the Convention.

Plurality and Majority Rule.

Mr. BUTLER, of Lowell, submitted the following Report from a Committee:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 27, 1853.

The Special Committee, to whom was referred the several Orders of the Convention concerning the rules by which the number of votes necessary to the election of the various officers of the Commonwealth may be ascertained; and also a Report of a Committee of the Convention upon the same subject, having considered the various matters sent to them, pray leave to submit the accompanying Report and Resolves:—

Your Committee were not unaware or unmindful of the difference of opinion in the Convention, upon the matters submitted.

They believed, however, that all will agree that a majority rule of election was most consonant with the spirit of our institutions.

They have acknowledged the force of the objections of inconvenience and expense to the people, of too frequent elections, the evils of non-representation, and elections of local officers by the legislature, thereby passing the government into the hands of the minority, which have heretofore followed a too strict adherence to a majority rule in all elections.

Your Committee, therefore, have endeavored so to combine both rules, that the good effects of the majority system might be enjoyed, with the speedy and convenient results of a plurality election.

To that end, they have provided for the officers who represent the whole people, an election by a majority; or, failing in that, an election by a concurrent vote of both branches of the legislature, from the persons having the highest number of votes. The voice of the people would thus be obtained upon whatever basis these departments of the government are placed; and, as the Convention have already nearly unanimously determined to base the Senate on population, the governor and other higher officers of State will be ultimately selected by the immediate delegates of the whole people.

To guard against the election of officers who shall represent localities, such as senators and councillors, by the legislature, for them a plurality rule has been established.

To prevent a too frequent recurrence of elections, and the necessity of trials on subsequent days, when bodies as large as counties and districts fail to elect, for all county and district officers, a plurality rule is provided. From a desire that the government may be in fact, what it is in theory, a government of a majority, and to give opportunity for the exercise of the "sober second thought" by the electors, that rule is proposed upon the first ballot in the election of representatives to the general court: still, that differences of political or other opinions may not operate either to hinder a full representation, or to protract town-meetings to such an extent as to subject them to extraneous influences, a plurality is permitted to elect on the second ballot.

Like reasons have produced like rules in the elections of city and town officers, who are the government of municipalities, and where, from the narrow limits of the constituency, no great inconvenience can be felt in a second balloting.

The annexed provisions are therefore submitted by your Committee, as a just compromise of opinion upon this perplexing subject, with an earnest hope that these results of their deliberations are not too great a departure from that rule of majority election under which the Commonwealth has hitherto so wondrously prospered.

BENJ. F. BUTLER, *Chairman.*

Resolved, That it is expedient to provide in the Constitution, that a majority of all the votes given shall be necessary to the election of a governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general of the Commonwealth: *provided*, that if at any election of either of the above-named officers, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from which the

Senate shall, by *viva voce* vote, elect one who shall be governor.

Resolved, That in all the elections of senators and councillors, the person having the highest number of votes shall be elected.

Resolved, That in the election of representatives to the general court a majority of all the votes given in shall be necessary to the election at the first ballot: *provided*, that in case of a failure of election on such ballot, the person having the highest number of votes at the second or any subsequent ballot, shall be elected.

Resolved, That in the election of all city and town officers, the same rule shall govern as in case of representatives to general court.

Resolved, That in the election of all county and district officers, the person having the highest number of votes shall be elected.

Resolved, That in all elections where the person having the highest number of votes may be elected, and there is a failure of election because two persons have an equal number of votes, subsequent trials may be had at such times as may be prescribed by the legislature.

The Report was referred to the Committee of the Whole, and ordered to be printed.

Miscellaneous Subjects.

The same gentleman, from the same Committee submitted the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 27, 1853.

The Committee to whom was referred so much of the Constitution as is contained in the first eight articles of the sixth chapter thereof, exclusive of the provisions concerning the writ of *Habeas Corpus*; and also an order of the Convention relating to the exemption of certain property from attachment on mesne process; and also an order concerning the propriety of permitting certain persons, conscientiously scrupulous of taking human life as a punishment for crime or in self-defence, to act under the Constitution without taking the oath or affirmation ordinarily required; and also an order to provide that no bank officer shall be eligible to certain offices under the Constitution, —having fully considered said several subjects, pray leave to report, in addition to their former Report, the following Resolves.

All which is submitted by the Committee,

B. F. BUTLER, *Chairman.*

1. *Resolved*, That the first article of the sixth chapter be amended in the last paragraph thereof, by the insertion of the words "or before a Judge of the Supreme Court", after the word "Assembly," and by the insertion of the same words after the word "being," so that the paragraph as amended shall read as follows:—

And the said oaths, or affirmations, shall be taken and subscribed by the governor, lieutenant-governor, and councillors, before the president of the Senate, in presence of the two Houses of Assembly, or before a Judge of the Supreme Court, and by the senators and representatives before the Governor and Council for the time being, or before a Judge of the Supreme Court: and by the officers aforesaid before such persons, and in such manner, as shall from time to time be prescribed by the legislature.

2. *Resolved*, That the first paragraph of said article ought to be amended, by inserting after the word "Court," in the second line, "or Court of Common Pleas," and by adding after the last word of said paragraph, the following: "except that they may be appointed to take depositions or acknowledgments of deeds, or other legal instruments, by the authority of any other State or country;" so that the same amended shall read as follows, to wit:—

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No governor, lieutenant-governor, or judge of the Supreme Judicial Court, or Court of Common Pleas, shall hold any other office or place, under the authority of this Commonwealth, except such as by this Constitution they are admitted to hold, saving that the judges of the said courts may hold the offices of justices of the peace through the State; nor shall they hold any other place or office, or receive any pension or salary from any other State, or government, or power whatever; except that they may be appointed to take depositions, or acknowledgments of deeds, or other legal instruments, by the authority of any other State or country.

Also, that the second, third, and fourth paragraphs, and article eight of the amendments of said article, be stricken out and the following inserted:—

No person shall hold or exercise at the same time more than one of the following offices, to wit: the office of governor, lieutenant-governor, senator, representative, judge of the Supreme Judicial Court, or Court of Common Pleas, secretary of the Commonwealth, attorney-general, treasurer, or receiver-general, auditor, councillor, judge of probate, register of probate, register of deeds, sheriff, or his deputy, clerk of the Supreme Judicial Court, or Court of Common Pleas, clerk of the Senate or House of Representatives; and any person holding either of the above offices, shall be deemed to have vacated the same by accepting a seat in the congress of the United States, or any office under the authority of the United States, the office of postmaster excepted. And no person shall be capable of holding at the same time more than two offices which are held by appointment of the governor or Governor and Council, or the Senate, or the House of Representatives; military officers, and the offices of justices of the peace, justices of the peace and quorum, and notaries public, excepted.

And whenever there shall be a vacancy any of the above offices, the office of governor and lieutenant-governor excepted, the same may be filled.

That the fifth paragraph of said article ought to be retained without alteration or amendment.

3. *Resolved*, That the eighth article of the sixth chapter be amended by striking out the words, "Senate and House of Representatives in," and the words "assembled" and by authority of the same," and by adding the words "of Massachusetts," so that the article as amended shall read,

ARTICLE VIII. The enacting style in making and passing all acts, statutes, and laws, shall be: *Be it enacted by the General Court of Massachusetts.*

4. *Resolved*, That it is inexpedient to make any constitutional provision relative to the subject of the order exempting a certain amount of property from attachment on mesne process.

5. *Resolved*, That it is inexpedient to provide that any persons may act under the Constitution in an official capacity, without at least an affirmation that they "will discharge and perform all the duties incumbent upon them in such capacity, according to the best of their abilities and understanding, agreeably to the rules and regulations of the Constitution and the laws of the Commonwealth."

6. *Resolved*, That it is not expedient, by a provision of the Constitution, to render any officer of a banking company incapable of holding any office to which he may be duly chosen by the votes of the people, or any portion thereof.

The Report was referred to the Committee of the Whole, and ordered to be printed.

Amendments to the Constitution.

MR. NAYSON, of Amesbury, submitted the following, from a Committee:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 27, 1853.

The Committee on so much of the Constitution as relates to amendments and enrolments, and to

whom was also referred various orders relating thereto, have considered the same and report:—

That it is the opinion of said Committee, that provision should be made for calling future Conventions for revising and amending the Constitution, as well at stated periods, as also at such other times as the legislature might prescribe. The present Constitution is entirely deficient in this respect; and it is only in reference to single or specific amendments, that any method is designated whereby that instrument can be changed. The Committee believe that this power of revision, existing, as is universally acknowledged, *in* and *with* the people, should, at all times be available for that purpose; and to this end it is proposed to supply the present omission by a provision furnishing to the people the opportunity to pass upon all propositions for calling future Conventions, whenever and however made. And, in the resolves herewith submitted, the Committee would express the belief that this important right will be fully secured with scarcely the possibility of failure.

In the matter of specific amendments which may hereafter be suggested by the legislature, the Committee propose the substitution of the third resolve in lieu of article 9th of the Amendments to the Constitution, having reference to that subject.

All of which is respectfully submitted.

For the Committee,

JONATHAN NAYSON, *Chairman*.

1. *Resolved*, That it is expedient to provide in the Constitution that, at the general election to be held in the year eighteen hundred and seventy-three, and in each twentieth year thereafter, and also, at such other times preceding or succeeding the above-named year, as the legislature may by law prescribe, the question—"Shall there be a Convention to revise the Constitution, and amend the same?"—shall be submitted to the qualified voters in State elections; and, in case a majority of the same thus voting, shall decide in favor of a convention for such purpose, the legislature, at its next session, shall prescribe by law for the election of delegates to such Convention.

2. *Resolved*, That it is expedient further to provide in the Constitution, that, whenever the legislature shall fail to submit to the people, at the periods designated in the foregoing resolve, the question of calling a Convention for the purposes indicated therein, the qualified voters in State elections, in the several cities and towns, may, at the next general election thereafter, and upon notice of such failure by the Secretary of the Commonwealth, whose duty it shall be to issue such notice, proceed to vote upon said question as though it had been propounded by the legislature; and if, upon a return to the governor and council, of the vote so given, it shall appear that a majority have voted in favor of the proposition, the governor shall forthwith issue his proclamation, calling upon the voters of said cities and towns, at meetings legally warned for that purpose, to elect delegates to such Convention; the time and place for holding its session, being expressed therein.

3. *Resolved*, That it is expedient to amend the Constitution by striking out thereof article 9th of amendments, and inserting the following:—

Any amendment or amendments to this Constitution may be proposed by the Senate or House of Representatives; and if the same shall be agreed to by a majority of the whole number of senators and representatives elected, such amendments shall be entered upon their respective journals, with the yeas and nays taken thereon, and shall then be referred to the next general court. And if the proposed amendment or amendments

shall be agreed to by a majority of the members of the Senate and House of Representatives voting thereon, the same shall thereupon be submitted to the voters qualified to vote in State elections; and if a majority of the same, thus voting, shall ratify said amendment or amendments, the same shall be deemed a part of the Constitution.

The report was referred to the Committee of Whole and ordered to be printed.

On motion of Mr. WILSON, of Natick, the Convention then resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Boutwell, for Berlin, in the Chair, and proceeded to the consideration of the Report of the Committee on the subject of

Loanng the State Credit.

The question pending, being upon a motion of the gentleman from Braintree, (Mr. Stetson,) to strike out the resolve of the Committee and to substitute therefor the following:—

Resolved, That it is expedient so to amend the Constitution, as to provide that no loan of the State credit shall be granted to any private corporation.

MR. COLE, of Cheshire. As the Chairman of the Committee who made this report is absent, and the gentleman who offered the amendment is also absent, I think it would be better to postpone the consideration of it till some time when those gentlemen are present. However, if no one else makes a motion that the Committee rise I will not.

But, Mr. Chairman, if the Convention are desirous to bring this question to a vote this afternoon, I propose to make a few remarks upon the subject before us. It has been remarked by many of the gentlemen who have addressed the Convention that the subjects upon which they were speaking was one of great importance. Sir, the subject now under consideration in this Committee is one, which in my judgment, is by no means of minor importance. The question involved is, "shall the past policy of the State in regard to the loaning of the State credit to private associations and corporations continue to be carried out as the general policy of the State?" I know the sentiment has been advanced by many persons, and persons of intelligence, too, that a national debt is a national blessing, and what is true with regard to a nation in this respect, may also be true of a State. But, Sir, I entertain a different opinion in relation to this subject. I look upon the granting of the loan on the State credit as a very different matter from making a direct appropriation to a private corporation or association. Were there surplus funds at the command of the Treasury of the State, I think that state of things would obviate many of the objections to assisting these private associations by the State. But it is well known that many of the corporations to which the credit of the State is granted make bad investments, and that they are unable to pay the capital borrowed to carry out these objects. Under these circumstances the State incurs all the risk and the corporation derives all the benefit, if any benefit is derived, for certainly, if the corporation never realized any profit from its investment, it would never be able to pay this money, and of course the burthen must fall upon the Treasury of the State, and ultimately upon the tax-paying people of the State.

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But there are various reasons why I, as an individual, should be opposed to granting the loan of the credit of the State to private companies or corporations, and some of these reasons I propose to present to the Committee.

In the first place, where the credit of the State is loaned it must be done by an act of the legislature, and that is a subject which, for the very best of reasons, ought not to be submitted to the legislature. It was remarked in the Convention this morning that the amount of capital already invested in the railroads of this Commonwealth was too strong for the legislature; that the influence which these railroad companies exercised over the legislature was too powerful for the safety of the State; and it is well known that the influence brought by those associations to bear upon the legislature are exceedingly powerful and almost irresistible. This is one of the reasons why this question ought to be settled by the Constitution.

I am aware that in presenting these remarks to this Committee I am taking the unpopular side of the question. But, Sir, I think we ought to approach a subject of this nature upon its merits. I think that the representatives of the people, assembled as we are for the purpose of revising the organic law of the land, ought to consider and determine a question of this kind entirely independent of all outside influences whatever. I think that we shall be stepping aside from the high confidence reposed in us by our constituents if we were to allow our votes or opinions upon the question now before the Committee to be biased in the slightest degree by considerations of a local character. Sir, principles are to be settled by the members of this Convention. Our duties are of a very different nature, in that respect, from the duties of a legislature. And the principles which we are called upon to consider and to settle are those which are universal in their character, and ought to be for the benefit of the whole people of the Commonwealth; and in the settlement of those principles we are to regard the interests of the whole people of the Commonwealth, and not those of any particular portion. We are to consider ourselves as the representatives of the whole State, in all its length and breadth. Local considerations may exist at the present time, in particular portions of the State, which may have a material bearing upon this question; but I think it is unwise, injudicious and unbecoming in the members of this Convention to allow ourselves to be governed, in any degree, by such considerations, in determining what are to be the principles of the organic law of the Commonwealth. I can hardly believe that gentlemen will shrink from the task of proclaiming what they all acknowledge to be just and wise principles for the government of the future policy of the State, on account of any merely local and temporary considerations.

Mr. Chairman, as I am not looking forward to any preferment in office, I shall offer the remarks I have to make upon this subject honestly, and with the fullest conviction that what I advocate will, in all coming time, prove to be for the best interest of the Commonwealth.

Now, to come right to the point at issue. Is it best to continue the loan of the State credit for the benefit of these private associations or corporations? Is it the true policy of the State? I have conversed with many individuals upon this

subject during the few past months, and I have met very few who have differed with me as to the best policy to be pursued for the interest of the State. But at the same time, I have met with very many who have thought this a very unfortunate time for the calling of this Convention in relation to this subject. They themselves thought the only true general policy for the State to pursue, in future, was to refuse the loan of its credit to private corporations, but they at the same time expressed a very warm desire that certain things might be accomplished before that policy was adopted. They desired that there might be a departure in one instance from this policy. No one doubts the wisdom of this policy as the general policy of the State.

But, Sir, however unpopular it may be to advocate an amendment of the character of that offered by the gentlemen from Braintree, (Mr. Stetson,) I trust the amendment will prevail; and believing, as I do, that the amendment embodies the true policy of the State, I shall take this opportunity of presenting, in brief, my reasons for advocating that policy.

The subject before the Committee, namely, State loan to private companies, has become an exciting theme of remark in every section of the State. Every man feels, and without hesitation, gives an expression to those feelings, either in favor or against the principle involved, because the interest of every man is more or less directly affected by the exercise of this legislative authority. I suppose this right on the part of the legislature is predicated on a provision in the Bill of Rights authorizing that body to pass all wholesome laws and ordinances for the public benefit. I never have doubted the existence of that power in the light of our present Constitution, yet when traced to its final results, as it regards individual rights, it most evidently encroaches upon that protection secured to private property by the Constitution. That the law should provide for expenses of the government, in every respect, and for the development of all the resources calculated to advance the prosperity of the State, I admit; but it should be remembered that a marked distinction exists between making internal improvements at public expense and loaning the credit of the State to private corporations.

The great question involved in this resolution respecting the policy of the State, in my judgment, ought to be clearly defined and settled in the Constitution, because the people are to pass judgment upon, and finally settle, the principles of their own constitutional law; and if the decision of the people on this or any other subject differs from my opinions, I will most cheerfully respond to it. The history of the country furnishes the most abundant evidence that corporations often, very often, are unsuccessful, and consequences the most disastrous and unhappy are the results. The financial interests of whole communities often are seriously affected from failures of large corporate establishments, and the dependent families of the poor are reduced to suffering and want by the loss of the fruits of their labor and toil. I allude to cases of this description to show that, if corporations thus fail in the application of their own capital, who shall say they may not in the application of the capital of the State.

There are many considerations which give weight and importance to this subject, and first of all, and not least in the scale, is, that public

money, thus loaned, goes directly to aid and advance the interests of corporations, which are formed for the purpose of acquiring wealth. Our government has provided for the existence of corporate organizations for the purpose of enabling men of capital to concentrate their wealth, and thereby more successfully to prosecute measures in connection with great business transactions, than individuals could do; and certain privileges are conferred, by law, to corporate bodies, not given to individuals. These privileges are conferred on the ground that the public may be benefited, and the greater prosperity of the State secured. But, Sir, I assume, that in the event of an unwise and injudicious enterprise on the part of corporations, money expended may produce no profits, and if so, the payment of the money loaned could not be met, and the final result would be, that the tax-payers of the State must pay it. When the State loans its credit to a corporation, who are the parties that run any risk? The taxable inhabitants of the State, most assuredly; for, if the investment be in a railroad, which does no more than pay running expenses, the corporation cannot refund the loan, and if paid at all, it must come from the only reliable source—the tax-paying people of the State; but if the road pays well, then the corporation is enriched, and perhaps a monopoly is created, producing public uneasiness, and furnishing just ground of complaint.

Indeed, the strong argument of the friends of this policy before the last legislature, was the fact, that the State had built up a great monopoly in granting aid to western roads. The State is urged to repeat the same thing that has given such power and influence to a corporation as ought not to exist. It is said, that in view of the concentration of so much power in one great corporation, that the people cannot endure its rule nor submit to its unreasonable exactions. If these arguments are true, where is the remedy to be found? Will the same medicine cure the disease it produced? It might do so, provided always a state of antagonism should exist; but Sir, corporations, thus circumstanced study well their own interest, either by compromise, or by one or the other obtaining a majority of capital, and consequently the control, and in either case, the public obtain no relief. I would not leave a subject, so vast in its bearings, to the legislature.

The benefits, if anything beneficial can result from such a policy, must always be relatively local. Some portions of people must receive chiefly, if not wholly, the advantages, while all the people alike are responsible to the State for the redemption of its pledges. In every instance, where claims are presented for aid from the State, an influence, almost irresistible from without, is brought to bear on the members of the legislature, not to say degrading and dishonest. If a great enterprise is necessary for the best interests of the State, I would have the State take hold of that work, and accomplish it. But, Sir, I do not believe that private capital would be wanting to execute any work, where safe and adequate returns could be reliable. More than sixty millions of dollars of New England capital is invested in railroads west of the Hudson River. The Illinois Central Railroad Company have negotiated a loan in England, on the bonds of the company, for five millions of dollars.

So in any case in Massachusetts, where a rea-

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sonable prospect offers for safe investments, capital would not be wanting. Appeals to the State will be made where the risk is of such a character as to prevent the availability of private capital. Is it wise to go on with this policy; are the people in favor of pursuing this policy? I think not.

The Constitutions of most of the States have either prohibited the policy or guarded it by restrictions. I know very well, as I remarked in the beginning, that this is an unpopular subject, and I appeal to members of this Convention if it is not true, that during the whole year the most potent argument used why we should maintain this policy was, that the State had already loaned these companies their credit, and thereby had built up large corporations, by which the public was suffering, and that there should be an equilibrium produced by competition, thus to relieve the public. The influences that are often brought to bear upon a legislature when subjects of this kind are before them, are of a very unhappy character. I shall not, in the course of my remarks, allude to particular instances. I have only to appeal to members of this Convention, to bear me out in this statement, if they will reflect but for a moment. Do you not believe, that during the last two years influences liable to swerve the judgment of the legislative body, and lead them astray from the exercise of their own honest convictions, have been brought to bear upon the members of our legislature. We may not, by any policy, forbid or shut out those influences. It will ever be true, as long as loaning the credit of the State, to the amount of millions of dollars, and that to private companies and associations, shall be the policy of this State; as long as that is allowed to go on, unrestricted by constitutional law, so long you may expect that our legislation will be subjected to all the influences, right or wrong, degrading or otherwise, that can be possibly brought to bear upon them. I submit, whether, in the judgment of this Convention, assembled, as we are, as the representatives of the whole State, whether it would not be better to settle this question in the organic law, at least as far as the amendment of the gentleman from Braintree proposes. He proposes, by his amendment, that no such law shall have force, or go into operation, until it is submitted to the people, and receives a majority of their votes. Is this asking an unreasonable thing to be introduced into the Constitution of the State? Are gentlemen afraid to leave this matter to the people? We ask them nothing more by this amendment. I am opposed, as a general thing, to the idea that legislative acts shall be sent to the people for their confirmation; but in a question of this magnitude—a question that more or less directly bears upon the interest of every individual, it is but right and just, before such policy shall be carried out, and before such a law shall go into operation, that it may be submitted to the people for their approval or rejection. The reason is conclusive, in my mind, why it should, because as I remarked before, if the State should happen, under any circumstances, to fail in obtaining adequate and sufficient security, the money, when once expended, could never be recovered from the enterprise in which it was invested. I simply ask whether, in that case, the tax-paying people of the State will not be eventually called upon to pay that money. There is one other part to

which I wish to allude. I know it will be argued here, that as far as the credit of the State has been loaned to corporations, it has been successful; that is, that securities which the State have had for it have heretofore proved to be sufficient. But does that prove that it will always continue to be so. You multiply precedents, and the cases where the State has acted upon this policy shall become so numerous, that every association that wishes to construct a railroad will come before our legislature, and petition that body for loans, and the mere precedents will become at length potent arguments. These petitioners will say to the legislature, you have loaned the credit of the State to build up a corporation, one here and another there; we belong to another locality, and now we ask something at your hands. It will become a most irresistible argument, and there will be no resisting such an application, for the credit of the State. I know it is argued, that during a few years past the State had already, in certain localities, acted upon this policy, and now a portion of the State claims that they have not been benefited; that while they, as individual citizens, have considered their own property as actually under mortgage, they have felt as if they themselves were liable, in case of an emergency, and though they say the thing has operated pretty well, and they have been subject in reality to no taxes in relation to the adoption of this policy, still they have not been benefited like other portions of the State. They present their arguments, upon the ground that they desire to see an equality in this respect throughout the State, and that they need the advantages which other sections of the State have already had. It is said, likewise, ingeniously, that this policy, by producing competition, will relieve the public from the present pressure under which they are suffering. Is that true? Is that argument tenable in all cases? Why, it might be true, if it were not possible, that in the final votes, one of these associations, perhaps, might obtain a majority of the capital, so as to control the whole matter, and it is impossible for any individual to say but we may ere long, be called upon to meet the combined influence of large corporate bodies, and the public may be brought to suffer under a pressure arising from that cause.

I have already alluded to one very great objection to this policy, and in my judgment, if there was no other objection, that alone would be sufficient to condemn it, and that is, the unhallowed influences which are brought to bear upon legislative bodies. I believe that a question of this magnitude should be submitted to the people, and if they, by having an opportunity to express their minds upon the subject, favor such a project as this, I have not a word to say. When I look into our legislative bodies and endeavor to investigate the influences which are brought to bear upon them, I cannot avoid the impression, that we are not safe under these influences. I might allude to things which have occurred during the few months past in relation to this very subject, but I forbear, as I presume they are well understood and well known to all. Men who occupied the highest positions in our legislative bodies, merely because they have acted up to the convictions of their own judgments in this matter, have been treated with the greatest disrespect, and I feel, myself, when speaking upon this side of the question, that were it not for my retirement in

life, and my want of notoriety in public life, I might, myself, be subjected to like disrespect. Had I ability to present this subject upon its merits, in all its magnitude—had I the standing that many other men in our State have, I should not expect to assume the position that I do before this Committee this afternoon, without incurring the liability of being held up to ridicule. Small as my abilities are, and as little aspiration as I have for public promotion and office of any description whatever, having an internal, honest conviction to say to the people, wherever my lot may cast me, what my judgment is upon these most important matters, I take the position I have assumed to-day. I have no doubt in my own mind, if there were no subjects of great interest pending in this community, that had any relation to the subject proposed in this resolution, or to the amendment proposed by the gentleman from Braintree, (Mr. Stetson,) but what a majority of this Committee would strike hands with me this afternoon.

I have not the least earthly doubt of it; I have the internal conviction, that while I stand here, vindicating the impolicy of the State in continuing to loan its credit to private corporations, that if men would testify their internal convictions of the policy, I should have a majority of votes on my side. But though it be so, I have not the most distant idea that I shall find that there will be a majority who will vote with me. But in taking the vote on this subject, I simply ask, are we following out the obligations of duty to our constituents, or are we swerving from establishing those principles which have ever been avowed by the democratic party, which we in our heart believe are best calculated to promote the interest of the State. Or, again, are we unwilling to submit this matter to the people for their decision? Is this democratic? Do we ask anything unreasonable when we merely say, by the amendment proposed, that before such a law shall have any force, or go into operation, it shall receive the sanction of the legal voters in the State? Is this unreasonable, to propose such an amendment?

I hope the gentlemen of this Convention will not understand me as in the least degree opposing internal improvements. I have already said that it should be the cautious care of our legislature to take all such measures, that were in their tendency and nature, calculated to promote the best interests of the State, that were calculated to develop the resources of the State; but at the same time, I would repeat again, that there is a great distinction between making public appropriations for internal improvements, and granting the loan of the credit of the State to private companies or associations. If there is any object so vast in its magnitude that individual capital could not be enlisted to accomplish that object, if for one would be willing to agree that the legislature should be empowered to grant appropriations to accomplish it. I would not by any means close the doors to the prosperity of the State; but I do not believe in hiring corporations to carry out these measures, because the State runs all the risk, and if money is made the corporations realize all the benefit.

Many gentlemen, in the course of the debates in this Convention, have availed themselves of precedents; and I have one consolation, however unpopular the subject may be, in which I am engaged this afternoon, that the last time, until within three years, that an application was made

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to the members of the legislature of the State of Massachusetts to grant this credit in a loan, there was such security offered to the State that the legislature in both branches, and unanimously, were satisfied with the security. It was but a small loan which was asked for; some \$30,000, and not only the small road which was to be built, but another long railroad stepped in and offered to give security of its whole concern to secure the State. But the legislature took this view then. They were fully convinced that the policy was a bad one, and they thought that the proper time to close the door, was when there was the most undoubted security offered them. That was during the session of the legislature in the winter of 1839 and 1840, I believe.

I have another consolation; that many of our States of the Union have thrown restrictions around their legislatures in relation to loaning money to private corporations. I propose to call the attention of the committee for a few moments to some of the provisions of the Constitutions of other States in this particular. Many of the States have incorporated the principle of the provision contemplated in this amendment, in their Constitutions, and they have not done that without experience. The State of New York adopted the policy which we have been adopting, and which seems to meet such a general response, if I can judge anything by the countenances of the members of this Convention. After long experience, they have adopted the policy of refusing to grant the credit of the State to private corporations or associations. It is a fact probably well known to this Committee, that the State of New York has incorporated into the Constitution a provision prohibiting the granting of a loan of the credit of the State to corporations. They have had some experience on this subject. They pursued this policy of granting the loan of the credit of the State, until they had granted it in one case where the work for which it was loaned proved to be a failure. In one instance, by a legislative act, two millions of capital, I think, were relinquished to a corporation and given up, in consequence of the fact, that an application was made by the same corporation for more money; and rather than grant them further aid, the legislature chose to relinquish what had already been given. And in many other instances the terms of payment were protracted and became more doubtful, so that the legislature of New York became fully convinced, by what they learned from actual experience, that the policy was a bad one. In the Constitution of the State of New York, the clause touching this subject reads in this manner:—

"The credit of this State shall not in any manner be given or loaned to, or in aid of any individual, association or corporation."

I design to run through with but a few States because their prohibitions vary. In the State of Maryland the constitutional provision is:—

"No money shall be drawn from the treasury of the State except in accordance with a provision made by law; and every such law shall distinctly specify the sum appropriated and the object for which it shall be applied; provided, that nothing herein contained shall prevent the legislature from placing the contingent fund at the disposal of the executive, who shall report to the legislature at each session the amount expended and the purpose for which it is applied."

In most of the States, where they have not in so many words prohibited the granting of the credit of the State, they have thrown about their legislatures certain restrictions; they have not seen fit to leave the ground entirely open, without any control. In some of the States they have required that an act of this description should receive the vote of three-fifths of both branches of the legislature. In some of them, they have required that the act should receive the vote of the majority, at one session of the legislature, in both Houses, and then that the act should be published in the newspapers, and the succeeding legislature be elected with reference to this act; and if the second legislature saw fit to adopt the act, then it became a law. And in many of the States this has been done in terms equally strong with those contained in the amendment proposed by the gentleman from Braintree, (Mr. Stetson).

Now, without detaining the Committee, as I might, by referring to the provisions on this subject, to be found in the various Constitutions of the several States, you will find this true, that in no State, after leaving New England, can there be found a solitary instance where there are not restrictions thrown about the legislature of the State with regard to appropriations to aid private companies. Massachusetts has been held up by some members of this Convention as a perfect pattern, as though perfection was to be found in Massachusetts if anywhere, and as though her organization of government was superior to that of any State in the Union. I by no means desire to say anything against the laws of Massachusetts, or her policy heretofore; but it occurs to me, and strikes my mind with much force, that there are States which, under the organization which they have adopted, according to the length of time since their first settlement, have enjoyed an unparalleled prosperity. Go to many of the new States, and you will find that their growth and prosperity, when the length of time that they have existed as States is considered, has been even greater than Massachusetts has ever had in any period of her history. There has been developed in some of the new States, a greater degree of prosperity in relation to literature, science, arts, and a general diffusion of knowledge, and all that tends to make a people happy and prosperous, than Massachusetts has ever experienced during the same period of time.

I hope, Mr. Chairman, that the members of this Committee will take this subject into consideration, and all I ask of them is, to award to me that I have expressed fearlessly—and under very unfavorable circumstances, I will admit—the honest convictions of my mind. If it is the general desire of this Convention to continue this policy, so they will do; and if, in the course of twenty-five, thirty, or forty years, it should prove that my convictions in relation to this whole matter are right, it is possible that there may be individuals who will have occasion to look back to the time when this Convention was in session. Should it occur, hereafter, that an application for a few millions, for certain purposes, should be made, and that, in carrying out this policy, the legislature should grant the credit of the State for these few millions, and when that was expended—the work still being unfinished, and the application repeated for more money, and the State having become pledged—should continue to multiply these millions, and in the event it should prove

that that money could not be drawn from the source where it was invested, I simply ask, in what condition the State will be? Will there not be many at that time who will say that the whole policy is a bad one? I am confident, that if we pursue this policy, the time will come when that will be the result; because the conviction having once settled down that the policy was a bad one, to retrace our steps now and commence anew in this age of enterprise, we shall be liable to be led too far.

I presume gentlemen will agree with me that there should be a limit; and I would ask those gentlemen where they would fix that limit? Can you point out a better one than that of submitting every case of the kind to the people? It was remarked by the honorable member from Taunton, (Mr. Morton,) when the subject of plurality was under debate in Committee, that he was unwilling to leave it to the legislature. And why? Because he feared the influences which are often brought to bear on the legislature. That was the reason he assigned then; and if there was force in that argument then, I ask the Committee is there not a double force in it as applied to this case, as a reason that this subject ought not to be left entirely to the decision of the legislature? I feel—and I am willing to confess that I feel—a sort of indignant resentment arising in my own mind, when legislators, in the fulfilment of their high trusts and in consequence of their official acts, shall be held up to public ridicule, and when they cannot even escape that worst of all opposition—the opposition of the women. The recent demonstrations of burning effigies needs a timely rebuke. Is there not danger that the members of this Convention may even feel some of the pressure of that influence which is brought to bear upon the members of the legislature? We live in a world where depravity has put its stamp upon everything; there is no perfection here, men are liable to be led away from what is right; there are many wicked influences brought to bear upon legislators. I would, therefore, do all in my power to fix such principles in our constitutional law as would relieve our legislators from these liabilities. How should we feel, if there was an assembly of men around us trying to influence us in our deliberations?

Without concluding his remarks, the gentleman gave way for a motion by Mr. DURGIN, of Wilmington, that the Committee rise, and the Committee accordingly rose, and the President having resumed the Chair of

THE CONVENTION,

The chairman of the Committee of the Whole reported progress, and leave was granted to the Committee to sit again.

The Convention then, at ten minutes past six o'clock, upon motion by Mr. UNDERWOOD, adjourned.

TUESDAY, June 28, 1853.

The Convention assembled pursuant to adjournment.

Prayer by the Chaplain.

The Journal of yesterday was read.

Petitions Presented.

Mr. GREENE, of Brookfield, presented the petitions of Betsey T. Heywood and ninety-two

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others, women of Milford, and Abby H. Price, and forty-five others, women of Hopedale, in aid of the petition of Mrs. Alcott, that women may be permitted to vote on the proposed alterations of the Constitution.

The petitions were referred to the Committee on the Qualifications of Voters.

Report from a Committee. Relating to the duties of the Governor.

Mr. DAVIS, of Worcester, from the Committee on Governor, submitted the following Report, which was referred to the Committee of the Whole, and ordered to be printed.

COMMONWEALTH OF MASSACHUSETTS.
In Convention, June 28, 1853.

The Committee to whom was referred so much of the Constitution in chapter 2, sect. 1, (except articles 9 and 10,) as relates to the Governor; a Resolve of June 22, relative to the 7th article in chap. 2; a Report of the Committee of the 14th of June, relative to the 7th article; have attended to the duty assigned them, and submit the following Report:

The Committee having ascertained, that the Committee to whom was referred so much of the Constitution as relates to the Militia, had reported to the Convention an article upon which the Convention have acted, that it becomes necessary to strike out of the Constitution the said 7th article. They, therefore, report the following Resolve.

ISAAC DAVIS, *Chairman*.

Resolved, That it is expedient to amend the Constitution by striking out the whole of article 7th in section 1st, chapter 2d.

Orders of the Day.

On motion of Mr. WALKER, of North Brookfield, the Convention proceeded to the consideration of the Orders of the Day.

The first matter was the following resolve, which was read a second time, viz.:

Resolved, That the Constitution be so amended as to require a Voting List, or Registry, and to protect presiding officers in adhering thereto.

The question recurred upon the final passage of the resolve, and it was accordingly passed without debate.

The second subject in the Orders of the Day, viz.: the Resolve on the subject of General Laws for Corporations was passed over for to-day.

Upon motion by Mr. WILSON, of Natick, the Committee resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Boutwell, for Berlin, in the Chair, for the consideration of the unfinished business of yesterday, viz.: the Report that it is inexpedient to act on the subject of

Loaning of the Credit of the State.

Mr. COLE, of Cheshire. I respectfully ask the indulgence of the Committee, while I call their attention to what I consider the constitutional provision as it now exists, under which the legislature has hitherto acted upon this subject. I find no provision that gives authority to the legislature to grant the credit of the State in aid of private associations or corporations, unless it be found in the general clause contained in section 1st, article 4, which is as follows:

"And further, full power and authority are hereby given and granted to the said General Court, from time to time, to make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instructions, either with penalties or without, so as the same be not repugnant or contrary to the Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof."

Now, I would submit to the members of this Committee, whether a subject that embraces interests that are so general in their application, as the resolve which is now before the Committee for our consideration, ought not to be guarded with some further provision. I alluded, in the few remarks which I made yesterday, to the precedent which is furnished upon this subject in the Constitutions of the other States of this Union; but as the hour was late, I omitted to mention particularly what those provisions were, which were contained in the Constitutions of these other States, and recommended to gentlemen to examine these provisions for themselves. I will now, however, respectfully ask the indulgence of the Committee for a few moments, while I read extracts from a few of these Constitutions, bearing particularly upon this very point. The Constitution of the State of Virginia, provides as follows:—

"The liability to the State of any incorporated company or institution, to redeem the principal and pay the interest of any loan heretofore made, or which may hereafter be made, by the State, to such company or institution, shall not be released, and the General Assembly shall not pledge the faith of the State, or bind it in any form for the debts or obligations of any company or corporation."

There is a further provision, that whenever a debt is incurred for any special purpose of internal improvement, such debt shall not be incurred on the part of the legislature until it shall receive a three-fifths vote. I simply allude to this circumstance, to show how the Constitutions of other States, have watched the financial interests of their several States with jealous care; they have not left the whole subject in general terms as it exists in our Constitution, but they have thrown around the legislature certain restrictions.

I will now read from the Constitution of Mississippi:—

"No law shall ever be passed to raise a loan of money upon the credit of the State, or to pledge the faith of the State for the payment or redemption of any loan or debt, unless such law be proposed in the Senate or House of Representatives, and be agreed to by a majority of the members of each House, and entered on their journals, with the yeas and nays taken thereon, and be referred to the next succeeding legislature, and published for three months previous to the next regular election, in three newspapers of the State; and unless a majority of each branch of the legislature so elected after such publication, shall agree to and pass such law; and in such case the yeas and nays shall be taken, and entered on the journals of each House."

Here again we observe the same cautious care manifested by the representatives of the people, assembled in Convention, to watch over the disposition of the finances of the State. I will read from the Constitution of Louisiana:—

"The State shall not subscribe for the stock of, nor make a loan to, nor pledge its faith for, the benefit of any corporation or joint stock company, created or established for banking purposes, nor for any other purposes than those described in the following article.

"The legislature shall have power to grant aid to companies or associations of individuals, formed for the exclusive purpose of making works of internal improvement, wholly or partially within the State, to the extent only of one-fifth of the capital of such companies, by subscriptions of stock, a loan of money, or public bonds; but any aid thus granted shall be paid to the company only in the same proportion as the remainder of the capital shall be actually paid in by the stockholders of the company; and in case of loan, such adequate security shall be required as to the legislature may seem proper. No corporation nor individual association receiving the aid of the State, as herein provided, shall possess banking or discounting privileges. No liability shall be contracted by the State as above-mentioned, unless the same be authorized by some law for some single object or work, to be distinctly specified therein, which shall be passed by a majority of the members elected to both Houses of the General Assembly."

Here you find that a majority vote is required. I will now read from the Constitution of the State of Kentucky:—

"No act of the General Assembly shall authorize any debt to be contracted on behalf of the Commonwealth, except for the purposes mentioned in the thirty-fifth section of this article, unless provision be made therein to lay and collect an annual tax sufficient to pay the interest stipulated, and to discharge the debt within thirty years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it."

I will now read from the Constitution of the State of Ohio:—

"The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation whatever; nor shall the State ever hereafter become a joint owner or stockholder in any company or association in this State or elsewhere, formed for any purpose whatever."

I will now read from the Constitution of Indiana:—

"No law shall authorize any debt to be contracted on behalf of the State, except in the following cases: to meet casual deficits in the revenue, to pay the interest on the State debt, to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defence."

You find in this clause in the Constitution of Indiana that there is an exclusion of the legislature's ever granting or pledging the credit of the State unless for specific purposes; which amounts to an exclusion from loaning the credit of the State for private corporations or associations. I will read from the Constitution of the State of Illinois:—

"The credit of the State shall not in any manner be given to, or in aid of, any individual, association, or corporation."

In the Constitution of the State of Illinois we find that debts to a certain amount are authorized to be contracted by legislative enactment, for purposes of internal improvement, and in no other

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case, unless it be to repel invasion, or to meet some exigency that might be liable to arise suddenly. The Constitution requires that it shall be submitted to the people; so that no great enterprise can be entered into by the Constitution of the State of Illinois for the purpose of internal improvement, if a large amount of money is required, without the question being first submitted to the people. I will now read from the Constitution of the State of Michigan:—

"The credit of the State shall not be granted to, or in aid of, any person, association, or corporation. No scrip, certificate or other evidence of State indebtedness shall be issued, except for the redemption of stock previously issued, or for such debts as are expressly authorized in this Constitution. The State shall not subscribe to, or be interested in, the stock of any company, association, or corporation."

I will now read from the Constitution of the State of Missouri:—

"The General Assembly shall have no power to pass any law whereby any debt shall be created that shall cause the entire indebtedness of the State, contracted under this Constitution, to exceed, at any one time, twenty-five thousand dollars, except in cases of war, insurrection, or invasion. But the General Assembly may propose, by a vote of a majority of all the members elected to both branches thereof, the creation of a debt for any specified purpose, which shall be submitted to the direct vote of the people at the next general election thereafter, and if approved by a majority of the qualified voters voting on such question, shall be of full force and effect; provided that each proposition shall be for one object alone, and shall propose the ways and means by taxation for the payment of the debt and interest as they become due; and provided further, that no more than one proposition shall be submitted by any one session of the General Assembly, and that the debt proposed shall not have a longer time to run than twenty years."

I will now read from the Constitution of the State of Iowa:—

"The General Assembly shall not, in any manner, create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single object or work, to be distinctly specified therein, which law shall provide ways and means exclusive of loans for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and have received a majority of all the votes cast for and against it at such election."

I will read only one more extract, which is from the Constitution of the State of Wisconsin:—

"The credit of the State shall never be given or loaned in aid of any individual, association, or corporation."

I respectfully submit, that if precedent has any weight upon the deliberations of this Committee, we have that which is of a respectable character, from a majority of the States of the Union. In almost every subject which has been brought to

the attention of this Convention, great weight has been attached to precedents; and although this subject, as was remarked yesterday, under the present circumstances, comes before the Convention in a very favorable point of view, yet, let it be remembered that there is no want of precedent; for, in the constitutions of almost all the States out of New England, they cautiously confine the powers which are granted to the legislatures within certain wholesome restrictions, while at the same time they provide that moneys may be raised for purposes of internal improvement, and a reference to the constitutions of all these States seems to show that there is no such object in view as to curtail the prosperity, or to check in any manner the resources of the State. Ample provision is made—and this is a peculiar feature in these constitutions—whenever power is granted to the legislature to create a debt, that means shall be appointed to provide for the payment of that debt. In some instances a tax is to be levied annually to meet the interest of these loans. If a provision of that kind was in force in the State of Massachusetts, that whenever a debt was contracted by legislative enactment, a direct tax should be levied every year to meet the interest of that debt, I think it would have an important bearing on its general corporations among the people. I find that it is not a very popular sentiment in the country to be called upon to pay State taxes. In my own individual business affairs, whenever I contract a debt, I like to look to the end, to know whether I shall be able to meet it when pay day comes; and I think it would be a wise and judicious arrangement, in the management of our State affairs, whenever authority is granted to the legislature of Massachusetts to run the State in debt, that there should be in the same law a provision to meet the interest, if not the principal likewise.

The reason why we are called upon so often, to grant the credit of the State, to raise sums of money for private associations, companies and corporations, is not, in all cases, that the amount of money which is desired to be raised is so large, but because the objects for which it is called for, present so unfavorable a prospect of being good investments and paying operations. Now, we have but to look over the state of affairs of other States, in this regard, to find that railroads have been constructed, which have cost far greater sums of money than have ever been asked for from the State, by corporations. The Hudson River Railroad cost from seven to eight millions, or more, of dollars, and yet there was no want of capital on the part of the corporation. They could obtain, from private sources, all they wanted. Why? Because the investment was considered a good one, and because the road would pay when finished. There is, in the progress of construction at this time, in the Western States, a railroad known as the Illinois Central Road. It is being built by a private corporation, and they ask for no funds except what they could raise upon their own bonds, and they have been able to raise some five millions upon the merits of those bonds. And why have they been able to raise that loan? It is because capitalists have confidence that the investment will be a good one, and that the road will pay. When the facts connected with it are spread before the capitalists of Europe, they are willing to advance the loans upon the strength of the road. Now why is it

that money cannot be raised in the same way in Massachusetts? Is it because there is a want of capital? If that is so, why do the people of Massachusetts and of New England, invest such large amounts of capital in the Western States? The difficulty is not, then, the want of capital, but because capitalists are afraid to risk an investment here. Corporations call upon the State to run a venture which individuals are not willing to assume, and herein is found the reason of the frequent application to the State for a loan of its credit. Now such being the case, upon these premises, is it not possible, is it not probable, that a State credit may be given to a project that never will pay? Is it not more than probable that such will be the result, if this continues to be the policy of the State?

I treated this subject, yesterday, upon the merits of the question. I knew that it was a delicate question, but I am clearly of the opinion, that the present policy of the State, in this respect, is an unwise and injudicious one. I am willing, Mr. Chairman, as humble a member as I am, of this Convention, to stand upon that opinion and upon the ground which I have taken, though the voice of this Convention may decide against me. I am willing to leave the soundness of my opinion to the decision of coming time. If time does not reveal, to the satisfaction of the people of the Commonwealth, within the period of forty years, or at all events within half a century, provided this policy shall be continued, that it is an unwise one, I shall be greatly deceived.

Before closing my remarks upon this subject, which to me is one of deep interest, I should like to present a few views upon it, in a political point of view. We, the members of this Convention, acting in our capacity as representatives of the people of this Commonwealth, have all taken a deep interest in preserving the purity of the ballot-box. We have felt that that was the place around which centered the dearest privileges that belong to us as freemen. We have felt the obligation which is imposed upon us, to guard against any evil, wrong, or interest, which might be brought to bear, to corrupt the exercise of the right of the elective franchise. I submit to the members of this Convention, that if we decide to approve of the resolution, that it is inexpedient to act upon this subject, we decide that it is a wise and judicious policy to continue to loan the credit of the State to private companies and corporations. It virtually amounts to that, and we, as the representatives of the people, directly from them, say to the legislature, go on in the course you have heretofore pursued, and continue the policy in which you are already enlisted. It amounts to that, and to that alone.

We learned yesterday, from the gentleman from Natick, (Mr. Wilson,) that there was so much capital now invested in railroad corporations, that its influence was decided and powerful over the legislature, and if I did not misunderstand the gentleman, he stated that such was the influence growing out of that amount of invested capital, that we had no reason to expect that a suitable general act of incorporation, touching railroads, could ever be passed by the legislature. And why? Because of the array of this influence, through the individuals that have made their investments in these corporations. Is it not to be feared that that influence will become a political one, and be brought in to operate

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throughout the State, in our elections? Am I deceived, and have I not heard it said, since I became a member of this Convention, that such would be the case? Has it not been said, by political men, at least by men who are willing to receive the promotion of a large constituency, that such a course, pursued in relation to this very subject, will enable them to get, for their party, more votes than they could obtain by pursuing an opposite course? Would it be strange, in the existing state of things in this Commonwealth, that in the ensuing election this question should be made to be the great question? Men are moved by motives of self-interest, and, while I would be glad to award to every individual a high position in his political career, still I think it by no means improbable, that that influence may be bad in its effects. I could tell of the influence which the East India Company is exerting upon the legislative department of the government of England. I am inclined to think that it was the influence of that powerful company upon legislation, and the relation which it sustained to the Bank of England, which led the armies of England into the Celestial Empire. Is not the cause of the war with China to be found in the fact, that the East India Company was desirous of extending their commerce into that quarter?

I call upon the members of this Committee to pause in this matter while it is in their power to give a check to this unhallowed influence which is felt throughout the whole State; an influence which is brought to bear, perhaps, upon every elector. I call upon them, while they have the power, to throw about the legislative authority some wholesome restrictions. I hope they will think well upon the subject before they vote not to act upon it.

Mr. WEEKS, of Harwich. I hope the amendment will be adopted. I think there ought to be some restriction and check imposed upon the legislature, in regard to granting the State credit to private corporations, especially where the projects in view are such that the State receive no indemnification in case of a loss or failure of the enterprise. Where the case to which it may be applied, is detrimental to the interests of one part of the State, and beneficial to another part, I think it should be left to the people to decide the matter. They should have some voice in relation to it. Notwithstanding, I think the legislature would make judicious and perhaps consistent appropriations of State credit, were it not for the evil influences which are brought to bear here, by those who make such applications to them. A floating corporation presents itself here, by its agents, and they are more constant in their seats than some of the members themselves, and they exert a great, I might, perhaps, say, an evil influence, upon the members of the legislature. They take members by the button, and fairly compel them to vote against their will. I think that has been done during the last year, in the last legislature. Now, Sir, I think the matter should be left to the people.

We are aware that the Western Railroad called for and received a loan of the State credit to carry out their project. It proved beneficial to the State as a whole, though it was detrimental to some portions of the State, as I very well know. But the State had something of an indemnification against loss. But what was the language of the people when that project was before the legisla-

ture? What was the language of the legislature? It was stated upon this floor that every man's farm in the Commonwealth would be mortgaged, and that idea was bandied about in all the newspapers in the Commonwealth. The gentleman from Barnstable said that every man on Cape Cod would be involved in debt, and their children would be to all eternity. Now that may be true. At any rate, I think it should be left to the people to say what amount of State credit should be loaned.

Mr. STETSON, of Braintree. It was not my intention to address the Convention this morning. But it seems to me, Mr. Chairman, that the members of this Convention, for some reason or another, are rather afraid to discuss this question, and I know of no other reason, perhaps, except that corporations employ eminent legal gentlemen to throw in documents, speeches or other matter, to prejudice this subject, that it may not pass. This question, in my opinion, is an important one. It is important to the rights of the people, which it affects. I believe, Mr. Chairman, that the doctrine is a republican and democratic one, and one which, I think, all who are in favor of liberty, equality and equal rights, should support. There is an under current moving in this matter, and I do not believe, unless the Committee will amend my proposition, and perhaps defer action for two or three years, that this question can be fairly discussed. It may be discussed but the importance of it, and its bearings will not be fairly considered by this Committee.

Is it not true that corporations which want exclusive rights and privileges, use and employ their money in besieging the legislature, and the members of this Convention? Sir, a legal gentleman called at my counting-room since this matter has been before the Convention, and put into my hands a document purporting to be a Report in reference to the Hoosac Tunnel, for my perusal. I have read it, and I have heard it discussed in this House, and I have seen speeches in reference to the Hoosac Tunnel distributed upon this floor. Now is it right that outside influences of this character should be brought into this Convention, which has in hand the altering and amending of the organic law of the Commonwealth? Is it right that this outside influence should be thrown in upon this body, to affect the rights of the people? Well, I put it to those one hundred and twenty-eight farmers who are members of this Convention—according to Mr. Poole's Statistics, though it should be one hundred and twenty-nine, for I am nothing but a farmer, and claim to be ranked among them,—I say I put it to those one hundred and twenty-eight farmers, if they are willing that the legislature—which is hereafter to be constituted upon some basis, we know not what as yet, for we do not know who they will represent, whether a majority or a minority of the people—should mortgage their farms, without themselves having the privilege of saying "yes" or "no" to it?

Now, Sir, I doubt whether it is a principle which can be sustained, except by an overruling majority, in a great public exigency. I do not doubt that the exigency may exist when it may be proper and desirable to loan the credit of the State. But unless such an exigency should arise when such a loan would be directly for the benefit of a very large portion of the people of the State, I hold that the legislature have no right to

loan that credit, and in effect to mortgage the estates of all the farmers of the Commonwealth, unless a majority of all the legal voters in the Commonwealth say yea.

The gentleman from Cheshire, (Mr. Cole,) has referred to the constitutions of various States, to support this view of the subject, but he omitted to refer to that of California, and to those of several other States, which contain provisions of the same nature. The Constitution of California provides that the State debt shall be limited to \$300,000, and that before the State loans her credit for any purpose of public improvement, the question shall first be put to the people of the State, for their decision. Now, that is the true doctrine. That is the republican doctrine, and a doctrine which I think it would be well for Massachusetts to adopt. But there is no reason why Massachusetts, rich as she is, and able as her citizens are to build all necessary works of improvement, should pledge the public faith for the construction of those improvements. If a case should arise, where these corporations cannot borrow the money of private capitalists, where the success of the project is so doubtful as not to meet the acceptance of private capitalists, I ask whether the legislature, under these circumstances, should do, in behalf of the State, what an individual capitalist would not do? Should they loan the credit of the State, and mortgage the credit of its inhabitants, in cases where an individual capitalist would not grant such a loan? I think not. And I trust this Convention will never authorize the legislature to grant any such loan, unless the emergency should be one which would commend itself to the good sense of the voters in the Commonwealth.

I do not propose to express any opinion upon the past action of the legislature upon this subject. The credit of the State has been loaned upon several different occasions to these private corporations, and I do not pretend to say that the exigencies were not such as to warrant the action which was taken, but I hope we shall have no more action of this kind upon the part of the legislature.

There is another reason why the Report of the Committee, as introduced, should not be adopted at the present stage of the proceedings, and indeed it is a reason why it should not be disposed of in any way for the present. The final action of the Convention upon the subject of the basis of representation has not yet been taken. The members of the Committee may be more willing that this matter should be left to the people, if they find that a minority of the people are to be represented in the legislature, and not the majority, than if the contrary principle were to prevail.

Sir, I think there is some necessity for placing a check upon the power of the future representatives who are to assemble in this hall, for the protection of the rights of the citizens of the Commonwealth. Such a power, placed in the hands of the legislature for all future time, is, in my opinion, dangerous to the safety of the Commonwealth. It would introduce into the politics of the State, an element of contention which is certainly not desirable should be introduced into our political arena.

The question of the loan of the State credit is one, in my opinion, of sufficient importance to call for the opinions of the wise and judicious men of this Committee. It would produce a

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sufficient cause, if injudiciously exercised, for those who are thus deprived of their political rights and political power, to rebel against the government, as the people of Rhode Island did several years ago. I believe the principles would be the same.

I heard, upon one occasion, a member of this body deliver a very able argument in the supreme court, sustaining these principles which I now advance. I presume that gentleman may sit quietly in this Convention, and see the principles so ably vindicated by himself, trampled upon, but I maintain that they are the same principles which he so ably advocated on the occasion to which I have alluded.

But, Mr. Chairman, I do not propose to continue this debate. I hope that some gentlemen who are able and willing, will defend the rights of the farmers of this Commonwealth. I have presented my opinions, and I am willing they should go for what they are worth. But before I sit down, in order that the Convention may deliberate upon this subject—aside from any reference to any political consideration connected with the present—I propose to indicate a modification, which I may at some future time make, of my amendment, so as to provide that it shall not take effect until after the year 1856. I think this amendment will free the minds of the members of this Committee from any bias which a certain measure, now being agitated throughout the Commonwealth, may give them, and which I presume does affect, more or less, nearly all of us.

Mr. FRENCH, of Berkeley. I hope the credit of the State will not be loaned to any private corporation or association for their pecuniary benefit. I believe the people of this Commonwealth, if they were to be consulted, would not be in favor of having their private property mortgaged for the special benefit of any special corporation. If a man had sent his ship to sea for ten years and it had returned safely, would that be a reason why he should not have insured for the future? We are told that the State has already loaned its credit to private corporations for the purpose of private speculation, and that is brought as a reason why we should continue to do so. It is said that the Commonwealth ought to treat all her children alike; that she ought not to give bread to one, and a stone to another. But it seems to me that there should be some stopping place where the State should rest, in giving its credit to private speculation. I submit, whether this granting the credit of the State to private speculation is not giving a premium to speculation itself? I submit, whether it is not holding out an inducement to the people of the State to go into speculation recklessly, believing that the credit of the State will be given to support them? Sir, I repeat that there should be some point fixed at which we shall stop in this matter. Is it possible that there is at this moment, a feeling pervading the members of this Committee, moved by the very impulse of speculation? What was the last amendment which it was proposed to offer to this Report? It was that no check should be placed upon this power of the legislature until 1856. Why not place it there now? Why shut the stable door after the horse has been stolen? I do hope and trust, Sir, that with all the evidence which has been presented here, the Committee will see the reasonableness and the necessity of placing this check upon the legislature at once, and that a stop

will be put to their power to grant the loan of the State credit for purposes of private speculation.

Mr. FOSTER, of Charlemont. I desire to call the attention of the Committee, for a moment, to the case of a father and son, which may serve to illustrate this subject. The son has arrived at his majority, and his father calls him into his counting-room. The son is a noble, intellectual man, standing six feet and an inch in his stockings. He is a young man who has seen considerable of the world; been shrewd and calculating in his business transactions, his father has trusted him with the management of his affairs since he was sixteen, and he has never once betrayed his confidence or shown himself in any way incompetent; he has in every way shown himself admirably calculated to manage his business affairs with an almost certainty of success. Well, Sir, the father now calls up his son to him, and commences to read him a lecture of an hour and three-quarters long upon the subject of prudence, upon the subject of caution and carefulness in the management of his affairs, upon the danger of placing his credit in a position where it may, under any circumstances be violated, and finally winds up by restricting his son forever after, as long as they shall live together, from loaning his credit or involving it here or there under any circumstances whatever. Well, Sir, the son replies: "Have I not transacted your business heretofore with success? Have not the investments I have made on your account for the last three or four years in every instance proved a source of profit to you? Has not every enterprise I have engaged in more than returned the capital I have risked? Have I ever been wasteful or extravagant? Have I ever shown a want of prudence or carefulness in any business transaction in my life?" "That is true," the father replies, "you have ever shown yourself shrewd, keen and discreet in all the business you have ever been intrusted with, but that is no reason why you should continue to be intrusted with this power in the future." And then he refers him to a certain son in such a place who has squandered his father's estate, and the father had restricted him for the future in the use of his credit. Then he refers him to another son in another place who had also squandered his father's estate, and whose father had also placed a check upon the use of his credit. Then he refers him to another, and another, and so, to six or eight such cases, but each case was one where the son had been a spendthrift and had shown himself utterly incompetent for the transaction of business. [The member from Cheshire read restrictions to State credit in the Constitutions of several States which had repudiated or failed to pay the interest on their debts.] "But," the son replies, "Do not you understand the difference between these cases and mine? Do you not understand that these sons have been improvident in the management of their fathers' property, which I have not?" "That is very true," says the father, "but because you have been careful and prudent, is no argument that you will not, by and by, squander away all my estate. None at all. Because you have in all times past shown yourself an excellent financier, is no reason for supposing that you will not, by and by, become a spendthrift and squander away every thing you can get." [The gentleman applied this language to Massachusetts.]

Well, Sir, this is the condition in which I

understand the State of Massachusetts to be placed at the present moment. A shrewd State. A State that has been, and is a model to other States, in her pecuniary transactions. A State that has been exceedingly cautious in the management of her affairs—so much so that I have never heard of her losing a cent by any of her investments. And now, when her public improvements are nearly completed, when she will be asked for her credit to assist but in a few more instances; although she has prospered in every thing she has undertaken, and is now prospering, strange as it seems, to me, just now the people of a certain portion of the State, and I may add, of that portion which has hitherto received the greatest benefit, and all it wants from the credit of the State, have taken it into their minds to place a check upon the power of the State to go any farther in this direction. Well, Sir, I do not know but these people have good reason to apprehend danger in the future, but I ask wherein the danger consists for the future? It certainly cannot be drawn from the past history of our legislation; for, heretofore Massachusetts has shown herself shrewd and care-taking in all her transactions. She understands her interests, and if she continues to exercise her power and capital with as much discretion hereafter as she has done heretofore, no danger certainly need to be apprehended, and no check is required. But that father says to the son; "if you have any quarrel with your neighbors, why then you may have as much money as you please. If you have a fight with your neighbor's son, and you wish to contend with him, then you may have my credit to any extent." That is what the State proposes to do. We are at this day saying that we will let the credit of the State go for the purpose of resisting sudden invasion, a thing which we have never yet experienced since the days of our independence. I should be willing to shut up that door, but I should never be reconciled to the idea that we must shut our doors against internal improvements. They must be and will be carried in one form or another.

Mr. SARGENT, of Cambridge. I am hardly able to determine which way I ought to vote upon this question. It seems to me, that the decision of this question has been brought upon us rather prematurely. I think there is another and very important question which should be settled, and upon the decision which the Convention may make of that question, my vote will be determined upon this. If the legislature of Massachusetts, into whose hands the right of loaning the credit of the State is to be placed, are to represent the whole people of the Commonwealth, and the majority of the people through their legislature are to be left to decide this question, then I should have no particular objection to its being left in the hands of the legislature. But if, on the other hand, a basis of representation is to be adopted by which you place in the hands of two-thirds of the people of this Commonwealth the right to loan the credit of the State, then I should be ready to vote to restrict them as provided by this amendment. I hope, therefore, that the question of the basis of representation will be first settled.

Mr. WILSON, of Natick. I must confess, Mr. Chairman, my inability to see so far as my friend from Cambridge, (Mr. Sargent). I do not understand the connection between this plain

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and simple proposition, that hereafter Massachusetts shall not loan her credit, and the question of the basis of the organization of the House of Representatives. I do not see the dependence of one upon the other. This question is now before us, to be acted upon, to be decided upon its own merits, and not to be connected, directly or indirectly, with any proposition for the settlement of the basis of the House of Representatives. I am ready to vote upon this question now. Early in the session, my friend from Dracut, (Mr. Brown,) introduced a proposition for the appointment of a special Committee to consider this proposition. That Committee was appointed, and I understand, by a vote of eleven out of thirteen, they reported that it was inexpedient to act upon the subject. I shall vote to sustain the report of that Committee, and of course I shall vote against the proposition of my friend from Braintree, (Mr. Stetson,) who has made an earnest appeal to the farmers of the House to sustain the proposition which he has made. I am aware—for it has been already thrown out here—that certain gentlemen will vote against this amendment, and for the Report of the Committee, owing to a certain question that is agitating the public mind. My friend from Braintree has referred this morning to that question. He has made complaint that documents have been circulated this morning on the floor of the Convention in regard to that subject. I believe if the gentleman from Braintree will read what has been circulated, he will find that it is a very able argument of a distinguished member of the State Senate from Boston, Mr. Cary, against the Tunnel project, and upon his side of the question.

Suppose, Sir, it may be the case, that gentlemen on the floor of this Convention will vote against incorporating into the Constitution the amendment proposed by the gentleman from Braintree, (Mr. Stetson,) because they may be in favor of granting the credit of State for the Hoosac Tunnel. I find all around me here and elsewhere, gentlemen who, through a long series of years, advocated, sustained, and carried through a policy by which Massachusetts has loaned her credit to the amount of more than five millions of dollars, that have now changed their policy altogether, and wish to incorporate into the Constitution a proposition of this nature, which a few years ago they would have resisted with all their powers. While gentlemen suspect that some of us may be governed by reference to that question now pending before the State, I hope they will see to it that they are not governed in their action here by hostility to that proposition, and especially that they will not act under the influence of a great and controlling railroad interest, where the State has already loaned its credit to the amount of \$4,000,000.

I should vote against the proposition of my friend from Braintree, if the proposition to aid the Hoosac Tunnel was not before the State. I am opposed to the proposition to limit the credit of the State, ever have been opposed to it, and ever intend to be opposed to it. I look upon it as a narrow policy—a policy that sprung out of a condition of things, that I trust is never more to exist in this country.

What is the origin of this new doctrine? It was not the doctrine of the men who made the early constitutions of the country. It was not the doctrine held by our public men for two genera-

tions. When Gen. Jackson came into power in 1829, the men who elevated him had assailed the administration of John Quincy Adams for its policy in regard to internal improvements. When that party came into power, under the lead of that great general and greater statesman, that policy of the federal government in regard to internal improvements was arrested, and I am glad it was arrested then and there. This question of internal improvements was then left to the State governments, and under the pressure of public necessity for railways and canals, many of the States entered upon a policy of internal improvements, and from 1830 to 1840, something like \$200,000,000 of State debts were incurred, mostly for these purposes. Many of the States, in this policy of internal improvements, have gone into extravagant expenditures and speculations. Pennsylvania had incurred something like \$40,000,000 of debt in internal improvements, the interest of which she was unable promptly to pay—she was compelled to suspend payment under the pressure. Illinois had incurred a debt of about \$16,000,000, and she was compelled to suspend payment. Maryland and some other States were embarrassed by these large debts. Mississippi was not only compelled to suspend payment, but she actually repudiated her debts, and the name and the credit of the country at home and abroad was affected by this discreditable policy. Under the influence of this state of things, the States have incurred debts to the amount of more than \$200,000,000.

Having engaged, many of them, in the direct work of internal improvements, and having brought upon themselves great pressure and embarrassment, the people, while under the influence of that state of affairs, in the new States, inserted in their Constitutions a provision that the credit of their States should not be loaned; and the States, also, that have recently held conventions, many of them, have incorporated a similar provision into their Constitutions. This whole policy springs out of the great abuses which have existed in several of the States. How was it in this Commonwealth? Massachusetts entered into no system of internal improvements of her own. This Commonwealth, guided and governed by a wise policy, loaned its credit, to the amount of \$4,000,000 to the Western Railroad, and by so doing carried through that great project—a project that has poured immense wealth into the city of Boston and other portions of the State. That policy was assailed. My friend over the way, (Mr. Cole,) has referred to it this morning. It was said all through the Commonwealth that the farms of the people were mortgaged to pay this debt of the Western Railroad. All apprehensions in regard to that matter have passed away, and that policy stands vindicated by the results. Massachusetts loaned her credit to carry on that great work; but it was amply secured. She has spent no money directly for internal improvements, as New York, Pennsylvania, Illinois, and other States have done. She simply loaned her credit, taking ample and abundant security to carry through these great projects, and now, here, to-day, who doubts the wisdom of that policy or the ample and perfect security held by the Commonwealth? I am ready to trust Massachusetts in the future, as in the past. Because new States, having no settled policy, and having squandered or mismanaged their finances, have been com-

pelled by the people to insert in their Constitutions a provision of this character, I see no reason why we should borrow from them a provision of this character and incorporate it into our Constitution—a provision which has cost the people of the State of New York millions of dollars, by its unwise incorporation into their Constitution—a provision which they are endeavoring to modify, under the lead of Mr. Vanderbilt, a leading Democratic politician, I believe. The whole matter is in process of settlement at Albany, and I have no doubt that an overwhelming majority of the legal voters of New York, to-day, would vote to strike the provision out of the Constitution. It was incorporated into that instrument under peculiar circumstances, and it has been to them a source of great embarrassment ever since. Now the people of New York will vote to strike it out, and, in my opinion, they ought to strike it out, or modify it. I wish to borrow no such policy. I believe that government has its duties in times of peace as well as in times of war, and I believe that the government may loan its credit or incur a debt for a wise and comprehensive policy in times of peace, as well as incur a debt for war. I would leave this matter just as it stands. I would, however, be careful and cautious in regard to loaning the credit of the State. I would loan it in no case excepting where it would be for the benefit of the people, and where it could be made reasonably safe and secure. When that necessity arises, I am ready to trust the legislature of this Commonwealth to decide upon the merits of the case.

Now, Mr. Chairman, I do not wish to detain the Committee in discussing this question. I say here, to-day, that I am not to be governed, that I am not governed, in my views upon this question by anything that has arisen during the past two years; and I hope that gentlemen who favor this doctrine of putting into the Constitution this provision—men who resisted this Constitutional Convention to the last—men who are deeply interested in the great existing corporations, can say that they are not governed by any question which has arisen recently in this State.

I listened to the very elaborate speech of my friend from Cheshire, (Mr. Cole,) in which he has gone over the whole of this matter, and has presented with great distinctness and clearness the arguments that sustain the policy of preventing the State in the future from loaning its credit. Sir, I do not, I cannot agree with his view of the matter; and I do not, I cannot agree, either, with my friend from Braintree, (Mr. Stetson.) This talk about a Democratic policy does not seem to me to be of any value. Why, Mr. Chairman, the great Democratic party sustained Gen. Jackson in his Maysville veto, and in his policy against our entering into internal improvements; their orators everywhere, and their presses everywhere, sustained that position. I think they were right, substantially. But how is it to-day? Why, a Democratic Senate and House of Representatives have passed a bill, authorizing surveys for a great railroad to the Pacific Ocean which is to cost one hundred millions of dollars, ten times more than ever has been expended for internal improvements by the general government, since the beginning of the government. In Mr. Adams's administration, a few thousand dollars were spent, annually, but the Democracy became satisfied the policy was a bad one, and they abandoned it. But now,

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a Democratic administration, under the lead of a statesman from New Hampshire, a statesman of the straightest sect of Constitutional Constructionists, goes on to make surveys, from Memphis, from St. Louis, and also by a northern route, under Gov. Stevens. The government proposes to build this road at an expense of at least one hundred millions of dollars. I go for that railroad to the Pacific. Democratic theories give way before such practical questions.

Mr. COLE, of Cheshire. I would like to inquire of the gentleman from Natick if it is proposed to loan that money to a private corporation?

Mr. WILSON. I think not. The government proposes to do more than that, it proposes to go on and spend millions to build it. Better far to loan the money and take ample security from a company or an individual, to accomplish a great work than to enter upon the work as a State or national government. Every man knows that a corporation or a private individual will do, and can do, any piece of work far cheaper than a government can do it.

Our friends talk about political considerations. I do not like to refer to political considerations, but I have a single suggestion to make to those gentlemen, here, who hold themselves responsible for the results of this Convention. We have carried this Convention before the people of Massachusetts by labors almost unparalleled in the political struggles of this country. We lost the Convention at the first trial, and we lost it because there is an instinctive feeling in the breasts of the people of Massachusetts against any untried experiments, any headlong changes or reforms. We have a history, Mr. Chairman, running back two hundred and thirty years. Unlike the people of new states, who have no past, who look to the future, the people of Massachusetts reverence the works of their ancestors. They touch not with irreverent hands the works of their fathers. It cost an immense effort to carry this Convention. Having carried the Convention, I would make the necessary reforms and changes, but I would not put into the Constitution a provision, even if I was in its favor, if I knew that it would endanger the adoption of the amended Constitution by the people. I say frankly to the friends of constitutional reform, that the incorporation of this proposition into the Constitution, will array against us thousands of voters who are now with us. I caution the friends of the Convention to look to this question, and not to follow the lead of any one, in or out of the Convention, in a policy that will endanger the amended Constitution before the people.

Mr. COLE. If the gentleman will allow me, I would like to ask him what the policy of the State of New York has been, as he has made reference to that, with regard to loaning the credit of the State to corporations. I would like to know whether the policy of that State was not for many years, to loan its credit, and pledge that credit to private corporations. And I wish the gentleman would tell me what the result of that policy was in the State of New York.

Mr. WILSON. Mr. Chairman, I understand the policy of the State of New York to have been this: that she not only loaned her credit, but she went into internal improvements to a great extent—on her own account.

Mr. COLE. I would like to ask, again, if the policy adopted on the part of the State of New

York, in entering into internal improvements—and among the works of that kind, the Erie Canal stands pre-eminent—has not proved a judicious, wise, and sound policy, and has not proved a source of great profit from year to year?

Mr. WILSON. The debt of New York is \$22,000,000, her property is valued at \$35,000,000. I am glad to see the gentleman from Cheshire advocating internal improvements after all. New York did expend millions of dollars in internal improvements; but much of that money being expended under the direction of the State, it was not so judiciously expended as it could have been. But I do not wish to detain the Committee further. I will simply say that I shall vote against the amendment of the gentleman from Braintree without any reference to the Hoosac Tunnel. I am opposed to the proposition embraced in the amendment—I ever have been and ever expect to be unless my views are greatly changed.

Mr. COLE. I wish to say to the gentleman from Natick, with his permission, that I understand that the policy of the State of New York had been, for a great number of years, the same which the gentleman now advocates.

Mr. WILSON. If the gentleman understands the policy of New York, as I suppose he does, he will find that New York entered on a direct system of internal improvements; that she built and has widened her canals, and has had her own commissioners and superintendents of her public works.

Mr. Chairman, let Massachusetts retain the sovereign power to loan her credit and to incur debts, if in the discretion of the legislature the interests of the people demand its exercise. In the progress of events it may be for her interest to loan her credit or to invest her funds in some public enterprise. Let us not tie the hands of the legislature or of the people, by the incorporation of this amendment into the organic law.

Mr. DUNCAN, of Williamstown. Mr. Chairman. The gentleman for Abington, (Mr. Keyes,) a few days since, foreshadowed the course which this debate would take. He assumed to inquire whether this order would have been introduced, had not the project of a Hoosac Tunnel been lately before the legislature, and whether it was not the fact, that it was again to be discussed by this Convention? When the order was introduced, it occurred to me that the mover had a direct reference to that project, and so it seems the gentleman for Abington understood it, and, with his accustomed frankness, made the open avowal. I am sorry that it should come in as an issue at all, but I suppose a bore of that magnitude is not easily to be kept out of sight; and, since it has been formally introduced to the Committee, by the gentleman from Braintree, (Mr. Stetson,) we must look at it as it is. Every gentleman has his own method of arguing his case, and undoubtedly this is his privilege, within certain limitations, but I am compelled to doubt the correctness of taste in any individual, who attempts to enforce his argument by an appeal to the prejudices and passions of men, rather than their reason and understanding.

It has been considered, heretofore, as a cunning fetch in political tactics, to appeal to the prejudices of farmers, by holding up to them the mortgages which the State has given on their farms, for the purpose of aiding corporations and securing

monopolies. And, within the last half hour, the one hundred and twenty-eight farmers of this Convention have thus been appealed to, with great warmth and fervor, by one who undoubtedly has much more than an ordinary affection for farmers, and farming interests; but, Sir, I claim the right of appeal also, and I ask, whether this Convention is a popular or a deliberative body, and whether we shall take counsel of our fears and prejudices, or calmly and dispassionately investigate the question before us, with reference to its wisdom or necessity. There are two hundred and ninety-one members of this Convention who are not farmers, but does it follow that they are not land-holders? yet not one word is said about mortgaging their houses and lands, to enable corporations to carry forward "enterprises of great pith and moment." And for myself, were I a farmer I should consider that I was not very highly complimented by the frequent allusions to the "rural districts," which gentlemen are so fond of making. But to return—the easiest way to shut out the light, is to hold something before the eye, and for that purpose nothing answers better than a mortgage—hold before men the instrument which is to convey to the Western Railroad, or Hoosac Tunnel, their houses and lands, and immediately the cry is raised of ruin and monopoly. I am told that the restriction of the State credit is a Democratic policy, and, therefore, we must adopt it. For one, I deny it. I grant that in '39, (if I am not mistaken,) it was used as a political slogan; but, in my humble opinion it had far less influence on the result of that election, than a certain obnoxious law. I have no objection against calling it a democratic topic, since it suited their purpose, and served their turn, but I doubt the propriety of hallowing it, and placing it in the Constitution because it was thus fortunately useful. What the true Democratic doctrine is, cannot be easily determined, and therefore I adopt the excellent political maxim, "*as I understand it*," which gives great individual scope and latitude, therefore the doctrine that Massachusetts must restrict the legislature in the use of the State credit, is not the Democratic doctrine, "*as I understand it*." So much for its Democratic relations. But there is a power behind the party, stronger than the party, which demands the engraftment of this resolve into the Constitution—the power which fought, through material agents, the appropriations for the Hoosac Tunnel in the legislature of last winter. Do you doubt it? Look at the documents which have flooded this floor, to which the gentleman from Natick alluded. I was not among the fortunate ones who received a pamphlet "*with the respects of T. G. Cary*," but through the kindness of a friend, I have had an opportunity of examining one. There may be a difference of opinion, but for one I think it in bad taste for the Hon. T. G. Cary to distribute his argument against the Tunnel loan bill, just at this juncture—it seems too much like an attempt, on his part, to influence the members of the Convention in their decision upon a great question, where, if freedom from bias is ever necessary, it is here.

I will do him the justice to say that his argument is an able one, and well enough in its place; but the character and occasion are sadly out of joint. It answered its purpose when delivered, but its introduction on this floor, just at this mo-

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ment, must be regarded as another attempt at coercion in that power, which is ever mindful of its own interests and anxious to perpetuate its monopoly. He says, very quietly, in his concluding remarks: "I look for great evils to come from the rivalry that would be engendered by this measure." I suppose he means that the fare and freight would be reduced on the Western Railroad if the Hoosac mountain was tunnelled. This has been a cunningly devised plan, and it belongs to this Convention to say whether it shall succeed or not—whether, after all, and it must come to this, that the Western Railroad shall give law, and constitution, to the people of Massachusetts.

The gentleman from Natick, with great force and clearness, has given the reasons which should induce him to vote for the Report of the Committee. These reasons, I take it, are satisfactory, and such as must commend themselves to every friend of reform in this State. He says very wisely, "that we are not here to legislate for the people, but to propose certain changes in the organic law, which, if accepted, shall act as checks and balances on future legislation." It is, in fact, a self-imposed law, the last will and testament of the people, by which they devise and grant power in general terms only, leaving it wholly with the legislature to meet to the especial wants of the Commonwealth in conformity to it. But we cannot cover the whole ground of legislative action. We must be content to establish general principles, and then leave to future legislation the duty of filling up the minutiae and carrying out the details. And I ask gentlemen, is it not wise to do so? Again: is it well to introduce into the Constitution any question of doubtful policy? And this, in my humble judgment, is one of that character, and if adopted into the Constitution, and the Constitution submitted to the people as an entirety, will cause a rejection of the whole. Then shall we hazard all these reforms for this question of doubtful expediency, even though urged never so strongly by a power which works unseen through every chink and crevice of governmental policy.

My friend upon my right challenges me to say how this influence is exerted. I cannot tell; I am unable to trace power through all its ramifications, and say, where, and how, it urges, persuades, and moves men. But let me state one of the most common methods, one of easiest facility. It has become the custom of railroad corporations to furnish members of the legislature with tickets at half price for transportation over their roads. There is nothing improper in this—quite a business transaction; but the kindness of such corporation is not lost upon the individual. He thinks, honestly enough, that such an act of courtesy entitles the corporation to his warmest thanks; and not to be outdone in kindness, he naturally enough falls into a partizanship, and at last identifies his interests with those who are willing to serve him. This is only the natural tendency of kindness, and men do and must gravitate towards the source of attraction. But the suspicion is rife among the people that more material means than tickets were used by a certain corporation to defeat a project before the legislature of last winter. I am unacquainted with the process of legislation, and therefore cannot say but this is the regular method of procedure; but it seems to me, if these charges are true, it savors somewhat of corruption.

The CHAIRMAN. The Chairman will remark that reflections upon the legislature are not strictly in order.

Mr. DUNCAN. I will endeavor not to transgress the rules of order, but it came in so easily that I could not resist the temptation of stating myself what I have heard so often stated by others.

Mr. COLE. If the gentleman from Williams-town will allow me, I would like to ask him whether it has not been the practice for all railroad corporations to carry members of the legislature free, before this subject was in agitation at all.

Mr. DUNCAN. Possibly. I do not know, but then the gentleman will pardon my skepticism when I say that they would be just as likely to carry every-body free as members of the legislature, unless they expected, in some way, to reap a benefit more than equal to their fare. The same rule applies to the Convention; and at this moment the pressure from outside is so great that we can barely stand up against it; but I hope there is mainly firmness enough to resist the monster force which has hitherto carried all before it.

Mr. Chairman, I have no disposition to weary the patience of the Committee, but before I close my remarks I would like to say one word on the subject of the application of this resolve to the policy of other States. Much has been said about a similar provision in the Constitution of the State of New York, and it seems to have been argued, that if it had been found good for the State of New York, it must therefore be good for Massachusetts, very much on the principle that "what is sauce for the goose is sauce for the gander." But let me remind gentlemen that we have nothing to do with the Constitution or policy of New York. We are to determine what shall be the Constitution and what shall be the policy of Massachusetts; and I look upon it as a much safer precedent to refer to her own past history, and to let our action on her future destiny be governed by a wise regard for the past, than to follow theoretical vagaries at the expense of sound discretion. Has the public property been squandered, that the people are clamorous for the adoption of a provision which will hereafter tie the hands of the legislature, that they, or others through them, may not plunder the public chest? I believe not. If they have erred heretofore, it was on the side of parsimony and not prodigality; and therefore I am opposed to the adoption of any clause in the Constitution to prevent them from doing what they have repeatedly refused to do. At this present juncture it seems like surplussage; for the power to which I have referred before, is a sufficient check without any constitutional provision to the contrary. We have had repeated glorifications of Massachusetts, and nothing has been said in her praise to which I do not fully assent; and I only refer to this to call the attention of gentlemen to the fact, that all her greatness and prosperity has grown up under the Constitution which we have assembled to reform. Let us approach it with some misgivings, rather than lay violent hands upon it under the false impression that "change is reform;" lest we find too late that we have "advanced backwards," while the people refuse to follow.

Mr. HURLBUT, of Sudbury. As allusion has been made to the Committee who reported

this proposition, and as the chairman of that Committee is not now, and probably will not be present to-day, I beg leave to submit to the consideration of the Committee an amendment to the amendment of the gentleman from Braintree, which is, to strike out all after the word "Resolved" in the second line, and to insert the following:—

That "from and after the first day of May, which will be in the year 1855, the credit or moneys of the State be not loaned to the prosecution of any private enterprise, unless the question be first submitted to and accepted by the people."

I suppose, Mr. Chairman, that I shall be called upon to give my vote upon this question, and I am unwilling to do so, or to give it silently, as a member of that Committee and a member of the minority of the Committee to whom allusion has been made, without first explaining my position. Reference has been made by gentlemen to the leading of others. Sir, I came into this Convention a free man, independent of the views and independent of the action of any other gentleman. I went into the Committee with these views, and I entertain a view upon that subject different from the majority of that Committee. Nor do I here allow myself to be guided or governed by the views or feelings of any man or of any party of men. I deny the right that any man has or may have to control my action. I hold myself responsible only to my own conscience and to the God who gave me being. I believe, Sir, that this doctrine of State loans is not in accordance with the views or wishes of the people of this Commonwealth. I believe, that if we were assembled under other circumstances than those under which we are now assembled, this Convention would give the amendment introduced by the gentleman from Braintree its cordial assent. But we are told from one quarter and another that if we entertain that amendment or anything approximating to it, it will prejudice the acceptance of our doings in the minds of the people of this Commonwealth. Sir, if that be true, let us stop where we are—let us pause forever. If gentlemen dare not come into this Convention and express their views and act in accordance with the dictates of their free, enlightened and honest convictions lest the people of the Commonwealth should overthrow all else which the Convention has done, I say, let it be overthrown. Sir, I entertain no such views; the people will pass upon each proposition separately upon its own merits. We were told the other day that if we passed another certain proposition, we should thereby secure the cooperation of five thousand voters in the Commonwealth; but I submit whether this be a consideration worthy of this body. I believe the true democratic principle to be this: that the State credit shall not be loaned to private enterprises. Had there not been an enterprise of that kind; had the Hoosac question been settled in the last legislature, we might now justly stop where we are; we might have started anew, and say that, from this time forth, there shall be no State loan for any private enterprise without the assent of the people. But, Sir, this aid has been granted in several instances. Some gentlemen—more than one, I think—have called upon us to state if a single instance could be produced in the history of the Commonwealth, where one dollar,

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or a fraction of a dollar, of the people's money has been sacrificed in consequence of any loan or grant of the State credit. Sir, if our records be true, money has been sacrificed and lost. I will refer gentlemen to the action which this State took in 1820, when, although the amount was comparatively small, yet there is the fact of a loss which may stand as a precedent for future time. The State purchased thirty shares in the Gloucester canal, and it was a complete failure. Not one dollar or one cent of that money was ever received by the State again. I believe, Sir, that although the Commonwealth of Massachusetts has been generally successful in all her enterprises of this kind, yet that does not warrant the assertion, upon this floor or elsewhere, that she always will be. We may have had wiser or better legislators than we shall have in this respect. I pretend not to say how that will be; but it is clear to my mind that the time may come, and in the common occurrence of human business the time *will* come, if we continue this policy, when we shall engage in some enterprise that will *not* prove as fortunate as those in which we have engaged hitherto. I would therefore place the matter beyond the control of the legislature; I would not give them the power *thus* to entangle themselves and contract a debt for the people of this Commonwealth. I believe this principle is right. I do not agree with the gentleman from Cheshire that the Constitution of this State does warrant the legislature in loaning the public money for private enterprises. Upon this I entertain an honest difference of opinion from him.

But, Sir, there is one point which this resolution contemplates, that I wish now to suggest; and that is this: Since 1822, and up to 1839, the legislature has granted very liberally these loans; it has loaned its name and its credit for private enterprises. I consider, therefore, that other bodies of men—other corporations and other individuals—have, in consequence of this, had expectations raised in their minds of receiving similar aid. In consequence of these antecedents, persons in another quarter of the Commonwealth have come up here in years past, seeking a loan of the State credit for their own purpose. I think, under these circumstances, it would be unjust and wrong, inasmuch as the State has already embarked in these enterprises, to shut them off now, at once and forever. I wish to be understood distinctly, that although I am opposed to the principle of loaning the State credit in this manner, I would only yield thus much for the sake of equality and fairness. I cannot agree with the gentleman from Natick in thinking that the farmers generally are opposed to the principle of this amendment, and by the way, I believe that gentleman does not belong to the farming community—I believe he represents a mechanical and not a farming interest—although he may, perhaps, have better means of knowing the views of farmers than myself. I am decidedly of opinion, however, that the farmers of his county and mine, which is the same, are opposed to the loan of the State credit for private enterprises. It is only because the State has entered into it—because she has granted this aid, and thus others have been led to expect it in their own cases, and think they have reason to expect it, that I would prolong the time to give them an opportunity to accomplish their objects and get the facilities which they require; but I hope the time is not distant when it shall not be in the power

of the legislature *alone* to grant this aid to any private company.

And, Sir, this resolution does not cut off the possibility of assistance to any person or to any company of persons hereafter, and on this point I wish to be very particular. If the people of this Commonwealth are willing that the monies which they pay should go for any other than the necessary purposes of government; they are capable, and in my humble judgment they alone are capable, of expressing that willingness. If the matter is submitted to them and they approve of it, they will express that approval, but if it does not meet with their views, they will say “no” to it, and there is where I wish to have the responsibility rest.

Sir, I am opposed to the Report of the Committee because it leaves the question open for all coming time. And I am opposed to the amendment of the gentleman from Braintree because it would at once and completely cut off expectations just and proper. And, Sir, I oppose it from another consideration. The State has helped to create a monopoly in one section, and it is from that source more than any other, in my judgment, that opposition has arisen. Gentlemen well understand the outside influence, from the Western Road. No one has denied the statements made on this floor, that thousands of dollars are paid annually by that road to retainer counsel, against this new enterprise of the Hoosac Tunnel. And why this opposition? Because in that it sees, or imagines it sees, a rising competition. Was there any such opposition to the Norwich, to the Portland, or to the Andover and Haverhill roads? Certainly not. And each of these claimed and received aid from the State. Sir, I am opposed to a monopoly. The Western Road, with its five millions of dollars, has been the great opposing centre to this enterprise. Massachusetts has long been a nursing mother to private corporations, and now, for the first time in her history, gentlemen propose not only that she conceive not again, but that she choke and strangle this *little one* just struggling into life. Sir, I protest against it. The amendment which I have had the honor to submit, provides, that after a future day named, the State shall stand aloof from private loans while, at the same time, it offers an opportunity to such as have expected, and justly too, to renew and perfect their claim.

Sir, having submitted these my views, humble though they be, I yield the floor, with my hearty thanks for the indulgence of the Committee.

Mr. HOOPER, of Fall River. Coming from a section of the State which is not particularly interested in the great projects which gentlemen are disposed to make an exception to the general rule, I wish merely to remark, that for one, I am opposed to the gentleman's amendment, and indeed to all amendments which have been offered to the original Report. And I would say to the gentleman from Cambridge, (Mr. Sargent,) that I am not sorry that this question has come up for discussion at this time, for I am ready to discuss this question independently and by itself, as I am every other question, upon its own merits. I have no fear that there will be any injustice done to any other question which can have any bearing upon this. Sir, if this were a new question, if this credit of the State never had been loaned in any case, I for one would take a different position from what I shall now take. I should have con-

tended at the outset that under no circumstances should the credit of the State be loaned, without the question being first submitted to the action of the people. But the case is now different, and the question is not an open one, as the credit of the State has been loaned, and repeatedly loaned, and thus far successfully. Now gentlemen come forward and propose and desire to put a provision into the Constitution, that shall put a stop to this policy, and cut off the loaning of the State credit. But these very gentlemen would put in a saving clause, by which the operation of the provision should go into effect so far in the future as to accommodate a particular project, as I understand it, to which, in my opinion, if the State credit can be safely loaned, it can be safely done in any case which may hereafter arise. If we leave the principle open to projects which have already been proposed and advocated, I see no reason why we should not leave it open hereafter to every case that may arise, for I can conceive no project which will ever be started that can present more risk than this to which gentlemen refer.

Now, Sir, in relation to this question, I wish to say in the outset, that I have no hostility to it, though I do not know that I am an advocate of it. I have not examined it to an extent sufficient to enable me to judge whether the scheme is practicable and plausible or not. But I say this, that if a case can be made out as favorable to loaning the State credit to that undertaking, showing it to be safe to do so, then I go for letting the State assist that project as well as others. I believe, if I know the feeling of the people of the section of country from which I come, they have no prejudices and jealousies upon the subject, and they are willing that it should receive the same aid that other projects receive. I see no reason why we should make this project an exception, or why we should put it into the Constitution at all. I say leave it out, and accept the Report of the Committee, and let that project stand upon its own merits, and leave the legislature to judge and vote in relation to it, as upon any other case which may be presented to them. For this reason, I shall vote against every proposition to amend, and in favor of the original Report.

Mr. KEYES, for Abington. I never expected to take a very active part in the discussion of this question, nor do I pretend to take a very lively interest in it one way or the other, though it appeared to me that it was one of that sort of questions which might require me to say something, because it is somewhat delicate in its nature, and I have never been in the habit of being alarmed by public opinion.

It seems to me, that there may be a few words said in relation to some representations which have been made upon this subject. In the first place, it will be borne in mind, that if the amendment offered by the gentleman from Braintree, (Mr. Stetson,) is adopted, it will not shut up the public treasury entirely against great public works. It simply puts upon the matter this restriction, that the question shall be left to the people to decide. Is there anything wild in that?

Now, this Convention have decided that the legislature, chosen by the people of the Commonwealth, are not fit to be trusted even with the simple question of their adjournment. It has been intimated here that they will either sit here day after day for two dollars pay per day, or else for the purpose of wrangling and quarrelling and

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debating, and using up time unnecessarily. If that is the character of the legislatures which are to be hereafter—and that is the character which this Convention has assumed that they will hold—it seems to me, that it will not be very wild if we refuse to trust such a body with the unlimited wealth and property of the State. Therefore there is nothing alarming in the proposition itself.

Now, Sir, there are other things to be considered; and it strikes me, and I am firm in the faith, that were it not for the matter of the Hoosac Tunnel, some restriction would now be put into the Constitution upon the matter of loaning the State credit. The loan first made to the Western Railroad commenced, I believe, about the year 1836-7, and ended in 1841. Here was a great project, which was supposed to be beyond the reach and accomplishment of private corporations and individuals. It was an experiment, and an experiment which ought to have been tried. It was tried, and the object was accomplished. That was an experiment worthy of being tried, even had Massachusetts sunk every dollar of that loan. But so long as that object has once been accomplished, you do not want to try it again on the same ground. So long as the object was to open one avenue from the seaboard to the Hudson River, it was a project worthy the enterprise of the whole people of the Commonwealth. But since it has been accomplished, you do not want another of the same kind effected, either by public or private means, until this great avenue ceased to be able to perform the work for which it was made. The arguments which were made in favor of the Western Railroad are not at all applicable to the Hoosac Tunnel. The one, I hold to be a great State project, and the other a local project. I do not propose, however, to go into a discussion of that subject at all; but I want to say, that the legislature, in consequence of granting that loan, found that many other corporations in the State came before them one after another, and by arguments drawn from that loan, succeeded in inducing the legislature to make other loans.

It is assumed on all hands here, that Massachusetts has never lost anything, and never will lose anything by these loans. How is it known? Scarcely one of those loans have been paid. We are not wholly out of the woods, and it is by no means entirely impossible that Massachusetts may lose a great deal by these corporations yet. I do not hold it entirely certain she may not. The stock of some of the railroads which have obtained the aid of State credit, has been worth almost nothing, and in the multiplication of railroads, and in view of their being affected by the various new internal improvements that have been projected, who knows but that, within the twenty-five years which are to elapse before the loans are to be paid, these roads may not fail altogether.

After the legislature stepped in, and made these loans, the railroad corporations from every quarter of the Commonwealth came pressing into the legislature for similar grants. The legislature saw that it had commenced a plan or system which it would be dangerous to carry out, and I ask if the people of Massachusetts did not accord with the design and purpose to put a stop to it? From 1841, if I am not mistaken, until the present time, the legislature has refused constantly to grant a loan of the State credit for these purposes, and I ask if the people of Massachusetts do not approve of that? To be sure, the legis-

lature came very near granting the State credit to the amount of two millions of dollars at the last session of the legislature, and if it had been made, would it not have been the source of other applications and grants? Would it not have been the basis upon which to found arguments for repeating the same grants for other sections of the State? The argument in favor of this grant of the State credit to the Hoosac Tunnel, was founded upon the fact that the State of Massachusetts granted its credit to the Western Railroad. Such was the argument, and such its foundation. Had it not been for the prejudice against the Western Railroad, which was brought to bear upon the question, the Hoosac Tunnel claim would not have been half as successful as it was. When I had the honor of being one of the directors of that road, I recommended to its directors to say nothing about the Hoosac Tunnel, and to keep its attorneys and agents out of the State House. I told them not to lift a hand, if they did not want the Hoosac Tunnel loan to be carried. I saw that the prejudice against that Western Railroad was the chief capital for the Hoosac Tunnel. In relation to buying friends by a liberal distribution of tickets, that corporation has never been considered as very liberal, but has had a reputation directly the other way. Along its line I found that its enemies exist in great numbers, on account of the manner in which it conducted its affairs.

But it strikes me that, over and beyond all this, there is another subject which should be considered, and that is, the influence, growing out of attempts to obtain State loans, which is brought to bear upon the legislature, not only in regard to the loan claimed, but in regard to all other subjects. When a corporation wants one or two millions of State money, we all know what inducement there is to use all attainable means, whether proper or improper, to accomplish that end. And how do such influences affect the legislature here, not only upon the question at issue, but upon all other subjects of legislation? For the first time, perhaps, a man comes to the legislature from some distant quarter of the State, whose constituents have some project which they expect him to carry through. It may be one so reasonable and so just, that there would be no difficulty in carrying it. But he is timid and doubtful, and wishes to recommend himself to his constituents by his success, and the friends of some great project, which is to plunder the treasury out of some one or two millions of dollars, finding him in such a position, come to him and say, "You want to carry your project?" "Yes, Sir." "Well, you vote for our great project, and we will put yours through." In this way bargains are made in the legislature, and in this way, I believe, many of the members of the legislature are pledged to vote for those great projects before they hear an argument in favor of them, and before there is any necessity for pledging themselves, even as a means of promoting their own ends; and thus, when the discussion arises afterwards, they are not in a condition to be influenced either by truth, justice, or anything else. I do not allude particularly to the Tunnel matter at this time, but to other projects which are urged and hurried through the legislature by this species of log-rolling. But from the time the Hoosac Tunnel project was first brought before the legislature, it has been amazing to witness the

increased corruption of that body, not only in regard to that special measure, but to other matters which the people know nothing about. Now, Sir, how did this matter, which came so near passing at the last session, differ from the Ogdensburg and Vermont Central railroads? What reason had we to believe that the latter would not be just as likely to pour wealth into Boston, and to be as profitable an investment as this Hoosac Tunnel project? I ask, if these two corporations, which contemplated opening a communication between Lake Ontario and the city of Boston, could not, on the ground of the very same arguments which have been used in favor of the Hoosac Tunnel, have claimed the aid of the State credit, with as much force as the Tunnel?

Sir, the gentleman from Natick, (Mr. Wilson,) stated that this Western Railroad Corporation had vindicated its character, and stood before the public, fully justifying all the reasons on which its application was founded when these grants were made. Now, Sir, I do not understand that to be the universal opinion, by any means. If I understand it, the arguments of the friends of the Hoosac project are based upon the ground, that the Western railroad has utterly failed to accomplish the objects for which it was constructed, and therefore another great avenue must be opened to do the business which that road has utterly failed to perform. If that is not so, what are the arguments in favor of the new avenue? None at all, Sir.

They are based entirely upon the ground that another avenue is wanted in order to conduct the trade and produce of the Western States to the city of Boston. In my opinion, it is perfectly absurd in that view—supposing the argument is good for anything under any circumstances. If the Western Railroad has done what it pretended it would do when it asked the loan of the State credit, that is sufficient, and we do not want any more answers, but if it has failed to accomplish that object, then the argument, based on the wisdom and propriety of the grant to that road, falls to the ground, and there is no other which can be adduced.

Now, Sir, allusion has been made to other States. I care but little about the example of the Western States or of the Southern States. I think they are not in the habit of setting examples which it would be well for us to follow, but I think we may place some reliance upon the provisions of the Constitutions of those States which have grown out of their experience and misfortunes. I know that Mississippi and Michigan, and several other States have placed provisions in their Constitutions forbidding their legislatures to loan the credit of their States to private corporations, and what did they do it for? It was because, before these restrictions were placed in those Constitutions, the States had become absolutely beggared by State loans, or what is about the same thing, State expenditures for internal improvements. It was because the credit of these States had become a by-word, and a sneer to the whole world in consequence of the acts of their legislatures in loaning their credit. They have placed these provisions in their Constitutions because their experience taught them that their safety and security depended upon it, and it seems to me, it would not be very unwise if we should allow their experience to admonish us.

Sir, I dislike very much to appear as the oppo-

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nent of any project like that of the Hoosac Tunnel. Some very good friends of mine are very warmly interested in the success of that project. Sir, I am not opposed to the accomplishment of that work. I should be glad to see it completed, for I believe some good may be accomplished by it. But it has never been my habit or custom in places like this, to forbear saying what I believe in regard to subjects of this character, because it will have any effect to prejudice the interests of any party or section of the Commonwealth. But I think the gentleman from Williamstown, (Mr. Duncan,) in his remarks upon this subject, has not assisted that project at all, nor has he done any credit to the people of his section by intimating that they will oppose the new Constitution provided their wishes in regard to the Tunnel are not complied with. I do not know whether these things operate upon others as they do upon me; but when I answered a question the other day, by saying, that because one large party—who did not oppose the calling of a Convention, but denied the power of the people to call a Convention—I went for it. That was one of my reasons, and that was enough in itself. And when it was stated that the military of the State, five thousand in number, proposed to vote against the Constitution which we shall make, if we did not set the feathers higher than any thing else, I would have voted to kick them out of the Constitution altogether for that very reason. [Laughter.] And now, if gentlemen in favor of the Tunnel project cannot vote for the Constitution because we cannot approve of their project, I would say to them, "If that is the case, you may go through the Tunnel if you please." But I think the Tunnel people need not be at all alarmed. I have no power or wish to oppose the Tunnel, against what I believe will be the action of this Convention, although I trust that if we are not to oppose the project by the action of the Convention we shall not endorse it directly, as the amendment of the gentleman from Sudbury, (Mr. Hurlbut,) would do if adopted.

I hope we shall not give the friends of the tunnel project cause, when they come into the legislature next winter, for saying that this Convention, representing some of the talent and all the people of Massachusetts, favored it, and opened the door by which they might enter into the public treasury. I would not do anything here improperly to influence the legislature to be chosen hereafter, for or against it. But I think the friends of the Tunnel need not be at all alarmed, for, if what they say of the general popularity of this measure be true, the amendment offered by the gentleman from Braintree, if adopted by the Convention, will materially aid them.

They appear to be perfectly convinced that a large majority of the people of Massachusetts are anxious that the credit of the State should be granted to the Tunnel project. Now, if the assertion be true, I have no doubt that a bill, submitting the question to the people, would go through the legislature with a great deal less trouble, and one quarter the expense, that it would require to put it through, if the legislature were to settle the question definitely themselves, because there is a tendency upon the part of the members of the legislature, as well as upon the part of members of this Convention, to throw the burthen of responsibility from their shoulders, upon the broad shoulders of the people, and there may be many

men would vote for a bill submitting the project to the people, who would not vote for it if they were to bear the responsibility themselves.

As I said before, I sometimes make prophecies, and I would now prophecy that the best method, the easiest and most facile way of obtaining the loan of the State credit for the Tunnel project, would be to put this provision, submitted by the gentleman from Braintree, into the Constitution, and then for the legislature to pass an act referring the ultimate decision of the question to the people; for I can tell those gentlemen, that though they represent an important section of the State, and although they represent a great many small towns which are going to be pretty well represented in the legislature hereafter; yet, if it is intimated that their friendship or their hostility to the Constitution which we shall adopt, is going to grow out of the favorable or unfavorable action of the Convention towards their favorite project, I do not believe they will gain any friends by it, but I believe that the open hostility which they will incur by such a course, will be perfectly and completely fatal to them. Let them pursue a liberal course towards this Convention and Constitution, and my word for it, the people will meet them with equal frankness and the same liberality.

These are the views which I entertain upon the subject. I shall vote for the amendment of the gentleman from Braintree. I think it is safe; I think it is wise, and so far as the legislation of the Commonwealth for the future is concerned, I think it is eminently proper. In these days of railroads and rapid inter-communication among the people, when the remotest corners of the State are placed within a few hours reach of this capital, I think our representatives need protection, and their authority needs limitation. I think every guard should be thrown around them which it is possible to throw around them. The temptations are yearly becoming greater in number and in magnitude, and it will, ere long, become as impossible, unless some check be placed upon them, to obtain justice without paying for it more than it is worth, as it is now in the congress of the United States.

These considerations have induced me to adopt the conclusion to which I have come. I have lived in the railroad cars somewhat for the last year, and I have seen a great many of the people of Massachusetts. Something has been said about what the people expect of this Convention in regard to the various subjects which have been placed before us. Well, Sir, I will give it as my opinion, that the people expect that some check shall be placed upon the power of the legislature to loan the credit of the State. The legislature has kept as clear of these matters as possible. They have held off as long as possible, but now, when they are about to be overwhelmed, this Convention is called. The people come to their rescue, and I believe that it is in accordance with the wishes of the people, that this protection or guard should be thrown around them. I would not restrict the legislature where it is not necessary for its own and the public good. I have voted against such restriction in every case. I have some confidence in that body, but it is not precisely confidence that we want. We want safety. They want to be protected from the hundreds of claims and petitions which they have no arguments in their own minds to oppose; and when

we throw this shield around them, they will sit with much more satisfaction and ease in their seats than they otherwise would.

I do not know but I should make a break down if I were to undertake to make an apology to the friends of the Tunnel, as I am not much in the habit of making apologies. Yet, I am constrained to say, that I have no word to oppose to them. I like the small towns and the people who live in them, and I do not feel that I could take their property, or their credit, and appropriate it for the benefit of a corporation. If I could do something for their great project—and it is worth something for its very grandeur—I would do it, and it is with no feelings of hostility to it that I have made the remarks which I have.

Mr. HILLARD, of Boston. I think it is obvious, from the tenor of this discussion, that many gentlemen are inclined to look at this question through the telescope of the Hoosac Tunnel. But I submit that we want more light, and a wider horizon than such a point of view affords. Now, I happen to be one of that small minority who have no opinions at all about Hoosac, any more than I have who were the men that built "Stone Henge" or what tune the "Syrens sang to Ulysses." I have carefully barred the doors of my mind against all arguments for or against the Hoosac Tunnel project. I have studiously avoided reading any thing that has been written upon one side or the other of the question, and therefore, so far as this project is concerned, I am in a state of absolute indifference.

Then what is it that we propose to do, in rejecting the Report? We propose to give away a portion of the natural sovereignty of the State of Massachusetts. We propose to surrender a portion of that sovereignty which is, and ever has been, devolved upon everything like a sovereign State—I mean the power of lending its credit in aid of enterprises which have for their object the prosperity and welfare of the whole community. And what is the argument upon which this proposition to surrender, rests? It is an argument drawn against the use of this power from its liability to abuse. Well, Sir, suppose you extended that consideration to all the business of life, what would be the result? The world would absolutely come to an end. No man would send his ship to sea because it might be wrecked. No man would give a promissory note in his business, because when it should become due he might not be able to pay it. No man, in short, would ever go into water until he had learned to swim. By imposing this restriction upon the future legislatures of the State, we assume the spirit of prophecy, and suppose that we who sit here to-day, are better able to judge of the exigencies that may arise ten or fifteen years hence, and are better able to apply the principles of wisdom and expediency, than the men into whose hands the government of the State will then be intrusted. I think that the gentleman for Natick, (Mr. Wilson,) gave the doctrine of the true political church.

He said, that he would leave the power in the hands of the sovereignty, but would exercise the greatest caution in the use of it. Now the history of this restriction is curious. It illustrates two things. It illustrates the tendency of the human mind to seek right in reverse of wrong, and it illustrates the tendency of the American mind to rush from one extreme to the other. New York, while smarting under the evils produced by

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an abuse of this system, in granting the aid of the State to private corporations, also felt powerfully the contagion of the example of Pennsylvania, where the same evil was felt in a greater degree, and under that pressure she incorporated into her Constitution a restrictive clause. New York being so great a State, naturally served as an example to the States which followed in her path, and, therefore, they, one after the other, I suppose without much reflection, incorporated into their Constitutions the same clause. I suppose that the Constitutions which have been formed since 1846, have adopted that restriction. What has been the result? The State of New York has felt the inconvenience of that policy so severely, that since this Convention has been in session there has been a law introduced into the legislature to amend the Constitution, which passed both branches unanimously, I believe, with the exception of a single dissenting voice in the Senate. So take the State of Michigan. I understand, that in consequence of the restriction in her Constitution, she has found very great inconvenience in her inability to give the aid of the State to a most excellent scheme of internal improvements, and the result has been, that the congress of the United States has granted aid to a private corporation to enable them to do that very thing which Michigan wanted to do. If I am wrong, my friend who represents Marshfield, (Mr. Sumner,) will correct me. We see what are the results of a measure made under the pressure of temporary inconvenience, and which looks forward to a long period. I submit for the consideration of the Committee, that the temptation which led Pennsylvania and New York to overdo this matter, does not exist in Massachusetts. What was the cause of this over-issue of the State credit in Pennsylvania? It arose from her remarkable material resources, from her remarkable mineral wealth, which it was very important to bring to the sea-coast in order to be distributed to other parts of the country. What was the case in New York? That great State, touching on one side upon the great Western Lakes, and having at the other end the greatest commercial metropolis of the country, was led to open a system of internal communication and internal locomotion with other parts of the country. Pennsylvania and New York both over-acted in this matter. Pennsylvania was perfectly right in her policy, but she over-looked the important element of time. She did in ten years what ought to have been distributed over thirty years. I submit, that Massachusetts has neither these great internal resources more than those ordinarily possessed by other States, nor are her relations such as powerfully to stimulate any system of internal improvement. Therefore, the elements of temptation which exist in Pennsylvania, and New York do not operate here. As to the amendment of the gentleman from Braintree, (Mr. Stetson,) it seems to me, to be one of those questions upon which much may be said upon both sides. On the other hand, I do not like the principle of shifting our responsibility upon the shoulders of the people. I think it is not manly, not courageous, and it is a departure from the proper function of legislation. Besides, if we devote this matter upon the people the issue may be determined by a certain popular excitement passing from one portion of the country to another, and thus a question of general policy may be determined by the force of local

prejudice. Granting the credit of the State, is not one of those usual normal legislative acts, for which we may suppose the legislature to be sent here to exercise. It is not an act of government, but of administration, and whenever the State lends its credit to any scheme of internal improvement, that is strictly speaking an act of centralization about which we have heard so much; and I confess that I should be willing to have this particular mode of State action guarded by some more cautious sanctions, than an ordinary act of legislation. For that reason, I think that the action of two successive legislatures would be better than to submit the question to the people, and I could wish, so far as I have considered this subject, that it might be put upon the same footing as constitutional amendments now are, and that the credit of the State may be granted to any incorporations whenever two successive legislatures shall deem it expedient.

Mr. WILSON, of Natick. I wish to say a single word to my friend, the delegate for Abington, (Mr. Keyes,) the clear tones of whose voice I always listen to with great pleasure. That gentleman made a very powerful argument in favor of the Report of the Committee, and against the amendment which he advocated. He assumed that the grant of the credit of the State of \$4,000,000, and the subscription of \$1,000,000 stock, amounting to \$5,000,000 in the Western Railroad, was an experiment that the State ought to have tried, and would have been justified in trying, at the risk of losing the whole. If the Western Railroad was one of those great experiments which would justify this policy, I put it to that gentleman to say if another just such emergency should arise, whether the State should not risk its credit and peril something? The gentleman says, that in 1841 the legislature abandoned that policy. That is true. I happened then to be a member of the legislature for the first time. I well remember the discussion had upon that subject.

It was said that the State had gone far enough, and that there was no great pressing question then to call for the use of the State credit. Then the legislature had wisdom enough to guide the policy of the Commonwealth aright; and from that time up to the present no great emergency has arisen which called for the use of the State credit.

The gentleman shows by his argument in the first place, that an emergency did arise, justifying the action of the legislature, and if it arose then, it may arise in future. Then, in the second place, he shows that the legislature, when it has accomplished what was demanded by the emergency of the case, has sagacity, principle, and firmness enough to pause. The gentleman says—and he only repeats what we all say—for I notice every man when he gets up, says that the people agree with him upon all these points—that he has lived in the cars the last year much of the time, as some of us know, and that he has seen a great many people, and understands thoroughly their views, and that they expect something to be done in this matter. We all know that he is a very sagacious observer of men and things; but I always notice when I talk with any man about this matter, he most always agrees with me about it. The gentleman assumes another position, that we ought to submit this matter to the people. I deny this whole doctrine of submitting questions to the people, unless we

believe they are just and wise. I go for submitting the Constitution to the people as a whole. I will not consent to insert anything in the Constitution which I do not believe to be right, to gratify anybody here or elsewhere; and I will not incorporate any particular views of my own which I think will peril any important questions. I do not want the Western Railroad interest coming up to this legislature and undertaking to influence anybody; and I think that the managers of that road will hereafter act with a great deal of wisdom if they will take the advice of the gentleman, even at this late day, and not send agents here to meddle with pending matters. Let them leave the legislature free and unembarrassed to settle this question according to its own wisdom. That is my view of this matter. I say that the question of the Hoosac Tunnel should not govern our action here. It has not governed my action heretofore. I do not believe that we should insert in the Constitution this limitation.

In the future, perhaps twenty years hence, in the progress of science and of great discoveries, it may be the part of wisdom for the people of this State to exercise this power to loan the credit of the State. I am willing to trust the future to this extent. I am willing to trust future Constitutional Conventions in this matter. I do not believe that the wisdom of Massachusetts will die out when this Convention dissolves. I look upon this Convention as a very able body of men, but there will be wiser men to come here twenty years hence. Every generation grows wiser and wiser, according to my views, as they have the experience of the past to guide them, and the world will learn much during the next twenty years. I hope twenty years hence another Convention will sit here, for, whatever may be the result of this Convention, in my judgment, the expense attending it will be more than repaid by the fact, that for two years the people of this State have been discussing fundamental principles, and examining those great principles that underlie our Constitution, and that are embodied in our fundamental laws. Every farmer and mechanic in the State has been reading the Constitution, and all our proposed amendments have been examined with more knowledge of the Constitution of the State and the Constitutions of the several States, than ever existed before in this Commonwealth. I hope every twenty years hence we shall have a Constitutional Convention, and therefore I do not go for tying up everything now, but leave it to the wisdom of the future to take care of this matter.

Mr. DAVIS, of Plymouth. I rise, merely for the purpose of expressing a hope that the Committee will take a vote upon this question soon. I wish to add, that I agree with the gentleman who has just addressed the Committee, that there has been no call on the part of the people for a provision in the Constitution limiting the legislature from loaning the credit of the State. I agree with the gentleman from Fall River, (Mr. Hooper,) that in the south-eastern section of the State, and more particularly in that section of the State which has never received any portion of that credit, so far as I can understand, that no complaint has as yet been made that the credit of the State has been used against their interests or against the interests of the public generally. There is no demand by the people for the incorporation of such a pro-

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vision in the Constitution. Those sections of the State that have received no benefit whatever from any credit of this kind, do not ask it, and it seems to me, that this is a sufficient reason why the Report of the Committee should be accepted. I believe that two-thirds of the members of the Committee are ready to vote upon this question. The Report of the Committee will probably be carried through by a majority of three to one, and I do hope that we shall not spend much more time in discussing it.

Mr. PHINNEY, for Chatham. I have no desire to prolong this discussion, which has been so fully and so ably discussed by members of this Convention; nor do I intend to retract anything I have heretofore said or written against the policy of loaning the State credit to corporations or private enterprises. I should not have risen now to speak upon this subject, had not my past course as the editor of a newspaper been called in question by the member from Harwich, (Mr. Weeks,) who took occasion this morning to speak of certain statements about "mortgages upon farms," growing out of the loan of the State's credit to the Western Railroad. This credit, I believe, has been extended to that and other railroads to the amount of over \$5,000,000. The opinions I then entertained have been more than confirmed, and the fact is well established, that the business of several enterprising towns in Barnstable County has sustained serious injury. I mean, Sir, the carrying trade between Boston, Albany, and Troy—so largely engaged in by the citizens of Barnstable, Yarmouth, Dennis, and Chatham, and to a greater or less extent by other towns in this important section of the Commonwealth. This trade, so largely engaged in by her mariners, has been almost entirely destroyed by the transportation of the freight over the Western railroad; and when the State gave its loan to the building of this road, it required no prophet to foresee its result upon the business of the Cape. Most of the vessels built for this business, were of a class not easily converted to the fisheries, and their owners had to suffer great losses in their disposal. This it was which gave rise to strong prejudices among the citizens of Cape Cod against State loans for building railroads.

It is not my intention at this time to oppose this measure. The towns I have alluded to have recovered, for the most part, from the injury thus received, and their seamen have become usefully and, I believe, profitably employed in other pursuits.

Cape Cod—which has been so often and so justly termed the "right arm of the Commonwealth"—is now struggling to improve her condition by establishing better facilities for communicating with Boston and New York, where so large a portion of her products find a market. And let me add, Mr. Chairman, an effort is now being made to extend the Cape Cod Branch Railroad from Yarmouth to Provincetown, and I fear that it cannot be done without a loan from the State. I cannot believe the members of this Convention are desirous of shutting down the gate forever, and thus doing injustice to this section of the State, by depriving the citizens of Cape Cod of the benefit they may hereafter derive from a State loan.

Several MEMBERS (in their seats). "I go for Cape Cod."

Mr. PHINNEY. In connection with the bor-

ing of the Hoosac Tunnel, it has been more than intimated that the State will lend her aid to Cape Cod; and it is chiefly in this way that it can help to recover to Cape Cod somewhat of her loss by past legislative action. As it respects the feasibility and importance of this project, there can be no doubt. There are facts and figures sufficient to show that the importance of the fisheries, in which Barnstable County is so extensively engaged, would warrant the extension of the Cape Cod Branch Railroad to Provincetown at an early day, and who is there that doubts, when completed, it would prove beneficial to the whole State? I shall, therefore, vote against the amendment of the gentleman from Braintree, (Mr. Stetson,) and against all amendments limiting the legislature to a narrow policy, and I trust the majority of the Convention will go for sustaining the Report of the Committee, for the reasons which I have offered.

Mr. WEEKS, of Harwich. I wish to make a single remark in reply to the gentleman from Chatham. He has alluded to me, and has misapprehended my remarks. I said a gentleman from Barnstable had made such and such statements. There are other gentlemen in Barnstable besides the gentleman for Chatham. Although he belongs in Barnstable I did not refer to him. But there have been remarks made in certain papers with regard to loaning the credit of the State, to some of which I had reference.

Mr. MORTON, of Taunton. I rise to submit a motion that the Report of the Committee be recommitted with instructions to report a resolve limiting the power of the legislature to grant the credit of the State beyond a certain amount, and also limiting their power to incur liabilities to aid any corporations or associations.

The CHAIRMAN. The Chair would suggest to the gentleman from Taunton that the Convention being in Committee of the Whole, it is not in order to submit that motion at the present time.

Mr. MORTON. I acquiesce in the decision of the Chair. I see the Committee are very anxious to take the question. I feel, Mr. Chairman, a good deal of interest in this subject, and I have some desire to express some of my views in relation to its merits; but I have not either the physical or intellectual power to treat the subject as it ought to be treated. I have neither health nor preparation; but it is a subject to which I have given a good deal of consideration, and would therefore ask the indulgence of the Committee to express in brief some of my views in relation to it. I have no fear that the Committee will suppose that my views have any reference to the Western Railroad or to the Hoosac Tunnel, or to any other local and special object; because my opinions on this subject were long ago put upon the records of the State. Different individuals have expressed different opinions in relation to the wishes of the people in different parts of the Commonwealth, and no doubt each has expressed correctly the views of the people in his own section. I must say, before proceeding, that in that portion of the Commonwealth where I reside, the people have looked upon this subject with interest, and did expect it would be brought before the Convention.

Sir, what is the real question which is proposed for the action of the Convention? It is the question of the grant of power. We are now to de-

termine what powers the people of the Commonwealth shall grant to the legislature. In relation to this, I apprehend the rule by which we ought to be governed is very plain. The people ought to grant such powers, and such powers only, as are necessary for the proper transaction of the public business. Shall they, then, in this view, grant to the legislature the power of running the State in debt, or of incurring the liability or responsibility of the State for the benefit of private corporations? It is not, Sir, a question whether these private corporations shall have the aid of the State. That is left entirely open. But it is a question, by whom this aid may be given, or a question whether the people or their agents are to decide upon the propriety of granting this aid. If any corporation or enterprise needs the assistance of the Commonwealth, they have only to ask the people, the source of all power, and if they choose to grant it, it will be given. But when we are conferring power upon the legislature, I think we should be exceedingly cautious in granting it. If the power is liable to be abused, and is not indispensably necessary, it should be withheld from the legislature, and exercised solely by the people. In this case, I apprehend there is no such necessity for the granting of this power. Sir, I hold that this power is one which is peculiarly liable to abuse in the present state of our country; and whether we refer to the State or nation, we are in danger from an abuse of this power. The very great prosperity throughout the country, and the great surplus of means in circulation is a source of danger. The temptation, either in the congress of the United States, or in the legislature of Massachusetts, to make improvident grants, is very great. When it will cost nothing but a vote in the legislature, members will be much more readily convinced that an appropriation is for the public good than if they have to put a tax upon the people themselves, to meet it.

I regard the subject of taxation as one of great difficulty. I may be wrong in my views, but I hold, that the greatest safety in a democratic government is a resort to direct taxation and nothing else. If the expenses of this Commonwealth and the expenses of the United States were necessarily paid by direct taxation upon the people, they would be less by three-fourths, or at least by one-half, than they are at the present time. In the United States government you would not have seen them rise within fifty years, from eight millions to over fifty millions. I hope we shall come to this sometime or other in this State, and that we shall cease all indirect taxation. An indirect tax is collected and paid, and nobody feels any sort of responsibility, or knows much as to what he pays or the manner in which it is expended. I think the tax upon banks is founded in very great error, and I hope the time will arrive when it shall cease, not by a repeal of the law, but by the expiration of the charters which have been granted to those institutions, and the resumption of private banking establishments. I hope the time will come when the whole United States will have to support their government by direct taxation, when we shall manufacture everything we want and everything we can use, and collect nothing on imports. Then, I apprehend, you will have a security which you never can have by indirect taxation. Then, you will take away the inducement to squander the public money, and

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abolish the temptation to run into all manner of extravagance if not corruption.

But this is not very directly connected with the subject under consideration. I think we may well learn something from the example of our neighboring States. I am not prepared to say that we are so wise that we may not derive improvement from the example of others. Within the last twelve or fifteen years more than half the States in the Union have introduced restrictions upon the power of their legislatures to incur responsibilities, and involve the States in debt. It was not, as my eloquent friend from Boston, (Mr. Hillard,) suggested; it was not because New York has done it. One half of the restrictions which have been made were made before New York made hers, and therefore they were not made to imitate her. And it was not because half the States had involved themselves in extravagance and in debt. It was done by other States as well as by those. Our daughter, Maine, was one of the first to adopt such a restriction, and Rhode Island, our neighbor, did it very early. Then go to a distance, and look at the great and prosperous State of Missouri, that depends upon hard money for her circulating medium, and which has restricted her legislature from running into debt beyond the small sum of \$25,000; and with the light to be derived from these States, which have been involved in difficulty for the want of these restrictions, and those which have kept entirely clear from difficulty by having them, I think we have a safe guide, and one which we may very properly follow.

But I think there are innumerable evils arising from this. I have already alluded to the facility with which an act of appropriation is passed when nothing but voting is necessary to grant the credit of the State. Another evil is the tendency to create unprofitable and useless corporations. You establish a corporation by your aid in one part of the State, and it makes a foundation for another grant somewhere else, and so on for a second, or a third, or even a fourth, until, as a consequence, you will see projects rise up which are entirely useless. Some of them may originate from such a reason as that given by my friend from Barnstable, (Mr. Phinney,) representing Chatham. He is quite disposed to hold up the project for the Tunnel, because there is a railroad down on the Cape somewhere which he wants to have aided in the same way. If the Old Colony is to be considered a part of the Commonwealth, I hope she will come in and take her share, at least a small share. She will require but little to satisfy her wants. But other things may be asked for by and by, and the time may come when somebody may say: "The Western Railroad has got \$4,000,000," and perhaps, "the Hoosac Tunnel has got two, or four, or six millions, and we want a canal cut across Cape Cod,"—a project which has been agitated for the last half century—"so as to cut across from Buttermilk Bay to Barnstable Bay, and save that long route of dangerous navigation around the Cape;" and can we refuse to vote the aid they need, when so much has been done for other parts of the State? But, to come nearer home, there was once a project for a canal from Taunton River to Weymouth Landing, and whether that may be of any use or not, and whether we have any faith or not that it will be useful, we may insist upon it in order to get our share of the plunder. I think, that by pursuing

this course, you increase the tendency to improvident and useless grants. I hope, therefore, that the amendment of the gentleman from Braintree, (Mr. Stetson,) will prevail. I am opposed to the subsequent amendment. I am opposed to the introduction into a constitutional law of anything which shall have reference to any private corporations, or any private transactions whatever. If it is proper to establish a rule let us establish it, and not except any body from its operation. I think it an undignified and inconsistent course for this body to pursue. Mr. Chairman, I hold that the functions of government are essentially different, and should be kept distinct and separate from all private transactions. I would never have the government enter into partnership with individuals or corporations, either for railroads, or banks, or manufactures, or for any other purpose. The result always is, that the government loses. Every-body knows that government cannot carry on any transaction so economically as a private individual, and if she enters into partnership with any company, the consequence will be, that she will share the expense, while the profit of the partnership will go into private hands.

Mr. Chairman, there is one subject to which I would refer by way of example, and that is, the extravagant expenditure of other parts of the United States. We have seen all about us States involving themselves in debt; sometimes in profitable investments, and sometimes in unprofitable ones. What has been the consequence throughout the country? What is the consequence of granting the credit of the State anywhere? It has led to involving your country in debt; and from a statement which I lately saw, it appears that the United States are indebted to individuals in Europe to the amount of \$312,000,000; and upon that we have to pay, in interest, at least \$20,000,000 annually. I do not mean to say that none of these investments have been well and profitably made; but I do mean to say, that the draught of \$20,000,000 a year impairs to a considerable extent the resources of our country. I do not mean to say that we are not able to meet it, and much more, but I do mean to say, that it is a direct drain upon the country, and very essentially limits the capacity of our citizens in other respects.

I did not intend, when I rose, to go into this subject, but to throw out some hints; and in this view of the matter, I hope that in some stage of it, it will be recommitted for the purpose of having the proposition introduced, limiting the ability of the legislature to run the State in debt beyond a certain amount, and also limiting the power to grant to corporations the responsibility of the State.

Mr. WALKER, of North Brookfield. Mr. Chairman. Although I know that gentlemen are very anxious to take the question, I hope the Committee will indulge me a moment, for I have a vote to give, and I wish to state the reasons for that vote in a very few words. I am in favor of the amendment which is proposed, but I should have liked it better if it had said 1856, instead of 1855. For one, Sir, I want to give the friends of the Hoosac Tunnel a fair chance to get their grant from the legislature. I am disposed to do everything for them consistent with justice, and give them a fair opportunity; and, as they have made their application under the old state of things, to have that matter tested to their satisfaction under

the old *regime*. I think three years will be an ample allowance of time for that purpose, after the new Constitution goes into effect—that is, if this proposition should be accepted with the amendment now pending. I think, therefore, that it would be better to add one year more, so that nothing could be said against this proposition by the friends of that project, and nobody could suppose that injustice or unfairness was intended with regard to the Hoosac Tunnel.

I am in favor of having the legislature limited in this matter—not that I am, by any means, opposed to internal improvements; but I want the people to have a chance to say whether they deem them real improvements or not. I think we ought to restrict the granting of the money on the credit of the State, until the voice of the people, who are interested in the matter, shall be expressed upon the question; for, Sir, a wonderful change has taken place in our legislative affairs within the last few years. Lobbying has become a science, and log-rolling one of the fine arts! [Laughter.] This has all taken place within a few years, and gentlemen know perfectly well what the state of things is; and now we have got to guard against this influence. That is what I intend to do, so far as I can, at the risk of being one of those who are in a small minority; for one gentleman told us that the Report of the Committee would be adopted, three to one. Notwithstanding that, I am going to vote for this restriction, after giving a reasonable opportunity to our friends to get the aid which they want for the Hoosac Tunnel.

I do this because I think I ought to do it—because experience shows that it is necessary, and because we have the example of a majority of all the States of this Union in favor of this course of action. I think we are fully justified, and more than justified in doing this, and that it can by no means be called an illiberal course. Those who know me know that I am willing to give the Tunnel project a fair chance to be carried; but then I am for putting up the bars, so that hereafter, if the State credit is to be loaned, the question shall be referred to the people. And why should it not be referred to them? I am not afraid of referring any question to the people; I believe their decision will be right. If there is a manifest propriety in making a grant of the credit of the State, I believe the people will agree to it, and will do it cheerfully.

I have no doubt at all about that matter. But if the State credit is to be left altogether in the hands of the legislature, there is great danger that they will go too far, and act unadvisedly under this outside pressure. There is a tendency—and it is one of the worst tendencies of the present age—towards the creation of a public debt. This is one mode of enslaving a people—absolutely selling them. Why, Sir, how is it in England? It is stated by their distinguished statesmen, that the industry of England is now taxed one-half of all its earnings. If a laborer earns a shilling a day, sixpence of that has to go to pay his taxes. This is the effect of legislation, which has created an enormous funded debt, by which the people are bound down and forced to work half of their time to pay the interest upon this debt, and the ordinary expenses of the government. Suppose that public debt should increase, and be twice as large as it is now, the people would then have to work all the time to

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pay the interest, and would be utterly enslaved—there would be no remedy for them.

Now that we understand how the system operates, I hope we will be careful to avoid it, and not begin to enslave our posterity. And I say, therefore, that if anybody desires to have a debt created, the effect of which will be to mortgage the industry of the people, it is no more than right that they should have a voice in the matter, and say whether they are willing to assent to it or not. I agree that the past course of the legislature in granting the credit of the State has been judicious, so far as we can see; but I think, as it has been shrewdly said by the member for Abington, (Mr. Keyes,) that we are not out of the woods yet, and we had better not halloo too quick. The State may be taxed very heavily before we get through with all these speculations. I would not like to see our State lose a million of dollars in any one of these projects. That million of dollars would afford sixty thousand dollars a year in interest, and that sixty thousand dollars a year would do a great deal towards educating the people, and keeping up schools and free colleges. I would like very much to have an article inserted in the Constitution, which should prevent the legislature from involving the Commonwealth in heavy pecuniary obligations, of the kind referred to, without the consent of the people. As things now are, this may be done. Projects may be suddenly brought forward, and, by management and intrigue, carried through the legislature, which the people never would and never ought to approve. Let us prevent this. After giving a chance to those who have applied, under the present state of things, to get their case fairly and fully tried before the legislature, let us then place a safeguard, as other States have done, against all further danger from that source. In regard to the application to which I refer, it is proper and safe to make the exception, because the people, throughout the State, are fully apprised of the measure, and will choose their representatives in reference to it, and thus give their verdict, *pro* or *con*, upon the subject. I hope, Sir, the amendment before us will prevail.

Mr. WHITNEY, of Boylston. I merely wish to say, Mr. Chairman, that we have all got votes to give, up here in the eastern gallery, but we do not propose to make any speeches upon them. [Laughter.]

The question being then taken on the amendment to the amendment, which was submitted by Mr. Hurlbut, it was not agreed to.

Mr. COGSWELL, of Yarmouth, moved to amend the amendment by striking out all after the word "that," and inserting the following:—

The legislature shall have no power, unless by vote of a majority of the members elected to either branch thereof, to loan money or otherwise to involve the State in debt, excepting in case of war, insurrection or invasion.

The question being taken, the amendment to the amendment was not agreed to.

The question then recurred upon the amendment submitted by Mr. Stetson, which was read. It is to substitute for the Report of the Committee, the following resolution:—

Resolved, That the Constitution be so amended, that hereafter no loan of the State credit shall be granted to any corporation or individual, unless the question be first submitted to the people.

The question being taken, the amendment was not agreed to, upon a division—ayes, 144; noes, 145.

The question then recurred upon agreeing to the Report of the Committee.

Mr. TYLER, of Pawtucket. I wish to offer an amendment to that Report, viz.: to strike out all after the word "Resolved," and insert the following:—

That every bill, for a loan of the credit of the State to private corporations, shall be framed by one legislature and be referred to a succeeding legislature before it shall become a law.

I am not much acquainted with the forms of legislative proceeding, and having had no assistance in framing this amendment, I do not know that it is in the best form, but I should like to have something of the kind adopted.

Mr. Tyler's amendment was read by the Secretary, and the question being upon its adoption, Mr. COLE, of Cheshire, moved that the Committee rise, report progress and ask leave to sit again.

The motion did not prevail.

Mr. TYLER, proceeded to address the Committee in support of his amendment. Gentlemen may be assured, said Mr. Tyler, that I will not inflict a speech upon them. I desire only to make a very few remarks in defence of the amendment I have had the privilege of offering.

Sir, I hope that something of this kind will prevail, in order that the people may have an opportunity to express their will in regard to it. We must trust the people. If we are afraid to trust them, the people may well be afraid to trust us, and they will distrust us unless we show confidence in them.

Perhaps, Sir, I may be permitted to answer one argument which has been advanced in this body against the amendment which was offered by the gentleman from Braintree, (Mr. Stetson). That argument was, that hitherto the loan of the State credit has not been attended with any disastrous results. I think that argument is not a sound one, for how often do we see cases where an enterprising man will go on from one enterprise to another, and be encouraged by his very success to go into enterprises that will ruin him at last. I have now in my recollection, three young men who commenced business on nothing and went on until they had divided seventy thousand dollars apiece; but they still kept on, and went into one speculation after another until they were all bankrupts, to the amount of several hundred thousand dollars each. It was my desire that the amendment of the gentleman from Braintree should prevail, and therefore I did not offer mine until his failed; but I sincerely hope that we shall act upon this subject deliberately. I am sorry to see that there has been a degree of impatience and haste manifested in regard to this subject that has not been manifested upon any other subject which has yet been before this Convention since we have been together. Why is this? Why is a measure of this importance to be hurried through in this manner? I think that the remarks which were made by the gentleman from Taunton, (Mr. Morton,) were worthy of consideration, and I entirely coincide with them. I think that the remarks of the gentleman who represents Abington, (Mr. Keyes,) were also very just. He has well remarked that

we are not yet out of the woods. Instead of that, Sir, I am afraid that we are getting farther into the woods; and we shall get so far in that we shall never get out if we go on much longer at this rate. I apprehend, however, Sir, that unless there is some pause, some time for reflection, my amendment will fail, because there seems to be a disposition to vote down everything without consideration. I hope that action will not be taken upon it now; but that when final action is taken, the question may be taken by yeas and nays.

Mr. MILLER, of Wareham, moved that the Committee rise, report progress, and ask leave to sit again.

The motion was not agreed to.

The question being then taken on the amendment submitted by Mr. Tyler, it was not agreed to.

The question then recurred upon the adoption of the Report of the Committee.

Mr. JAMES, of South Scituate. I would like to inquire what that Report is.

The CHAIRMAN. The Committee to whom was referred the subject of the loan of the State credit to any individual or corporations, etc., report that it is inexpedient to act thereon. The question is now on agreeing to that Report.

Mr. JAMES. I am very sorry that that is the Report of the Committee. I have been indisposed, and consequently unable to be here, and I have heard scarcely a word of this discussion. I claim the privilege of saying a few words before the question is taken, if the Committee will have patience with me.

Mr. HALL, of Haverhill. If the gentleman will yield the floor, I will move that the Committee rise. I think it is due as an act of courtesy to the gentleman from South Scituate that he should have an opportunity of being heard upon this question. I therefore move that the Committee now rise, report progress, and ask leave to sit again.

The motion was agreed to.

The Committee accordingly rose, and the President having resumed the Chair of

THE CONVENTION,

The chairman, Mr. Boutwell, for Berlin, reported progress, and asked that the Committee have leave to sit again.

Leave was granted.

Mr. MORTON, of Taunton, then submitted the following resolution, which was read:—

Resolved, That the Committee of the Whole be discharged from the further consideration of the Report of the Committee, and that the same be recommitted, with instructions to report a resolve limiting the power of the legislature to create debts or to incur liabilities on behalf of the State.

The hour of one o'clock, P. M., having arrived, The Convention adjourned.

AFTERNOON SESSION.

The Convention met at 3 o'clock.

Orders of the Day.

The Orders of the Day were taken up for consideration, upon motion of Mr. MORTON, of Taunton, when that gentleman modified his resolution offered in the morning, so as to read as follows:—

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Resolved, That the Committee of the Whole, to whom was referred the Report of the Committee on the State Credit, be discharged from the further consideration of that subject, and that the same be referred to a Select Committee, with instructions to report a Resolve, limiting the power of the legislature to incur debts and create liabilities in behalf of the State.

Mr. WHITNEY, of Boylston. I did not think that I should be tempted to say a word upon the motion, but I will make one remark, and that is, that I hope the resolution, before the Convention, will not pass. It seems to me that, however well disposed we might be to put such an article into the Constitution, if it came to us under favorable circumstances, yet we cannot do it now. If we vote to shut down the gate now, we shut off the Hoosac Tunnel case, and if we let the gate set open long enough to let them get what they want, we commit ourselves in favor of the Tunnel. In either case, it seems to me, that we commit ourselves one way or the other. I hope, therefore, that this Convention will vote to lay this resolution upon the table, and take no action upon it, but leave the Constitution where it is in reference to this matter. I move that the resolution be laid upon the table.

The question was taken, and the motion was agreed to by a division vote—ayes, 104; noes, 51.

So the resolution was laid upon the table.

Mr. BUTLER moved to lay the Orders of the Day upon the table; which motion was agreed to.

House of Representatives.

Mr. BUTLER then moved that the Convention resolve itself into Committee of the Whole, upon the Majority and Minority Reports upon the House of Representatives, and the subjects connected therewith.

The motion was agreed to.

The Convention accordingly resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Wilson, of Natick, in the Chair.

The CHAIRMAN stated the question before the Committee to be, the amendment offered by the gentleman from Lowell, (Mr. Butler,) to the Report of the majority of the Committee upon the basis of the House of Representatives, (herein before inserted).

Mr. WESTON, of Duxbury. Mr. Chairman: It was my intention not to trespass upon the indulgence of the Committee with any remarks upon the subject now under consideration. But, considering the importance of the question, and the interest felt in it by the inhabitants of the Old Colony, which I in part represent; and believing, as I do, Sir, that if the amendment of the gentleman from Lowell should be adopted by the Convention, it would deprive the five south-eastern counties of the Commonwealth of their just, proper, and equitable share of political power, and transfer it to the four western counties—Hampshire, Hampden, Franklin, and Berkshire, I am constrained, by a sense of duty, to state the reasons which will govern me in the vote that I shall be called upon to give. I came into this Convention, Mr. Chairman, with my prepossessions strongly in favor of town representation; of preserving this principle, as far as it could be consistently done with justice and equity, to all parts of the Commonwealth, and not make too

large, numerous, and unwieldy a House of Representatives; and, Sir, my feelings in this respect remain unchanged. I have ever looked upon the little municipalities—town corporations—as one of the greatest beauties and blessings of our system of government, and as one of the chief safeguards of our free and republican institutions. I believe they create, in our people, a feeling of deep interest in the affairs of the government, which stimulates and incites them to study, and become familiar with its true principles, its theory and practical operations, and thereby enables them to appreciate the blessings which they enjoy under it. I believe they cause every citizen to realize more fully than he otherwise would, the responsibility resting upon him to preserve and protect the invaluable inheritance of civil and religious liberty which he has received from his fathers; and I believe they nourish in him a desire and determination to transmit this great legacy unimpaired to posterity. As the inhabitants of the small towns assemble in town-meeting for the purpose of discussing and regulating their municipal affairs, and deposit their votes at the polls, they are reminded that the sovereign power is in their hands; they realize the importance of exercising that power in such a manner as shall permanently secure to themselves and their children the rights which they now enjoy; and they feel that they have—as they do have—a voice in making the laws under which they live, and in choosing the rulers whose duty it is to see those laws faithfully and impartially executed.

Mr. Chairman, I am not one of those who believe that the greatest object of our government is the protection of property. This is undoubtedly one of its objects, but its chief design, in my judgment, is to defend and preserve the lives and liberties of the individual, without distinction of race or color—of the poor man as well as of the rich—of those of foreign as well as those of American birth—one and all who seek an asylum upon our soil. In times past, nowhere in this land of liberty has the great object of government to which I have just alluded, been more fully attained than in Massachusetts. This has been justly attributed by many, in a great degree, to town representation.

For the considerations which I have briefly stated, as well as for others which time will not now permit me to enumerate, I am in favor of preserving town representation as far as it can be done with justice and equity to all sections of the Commonwealth; and to this principle I shall adhere, unless driven by necessity to abandon it for the protection of the political rights of those whom I in part represent.

I will now proceed to consider the amendment before the Committee, and attempt to show its unequal distribution of political power, and the great injustice that will be done the Old Colony if it shall be adopted by the Convention. I have, Mr. Chairman, with much care, made some figures upon the subject, and drawn a comparison between the four western counties and the five south-eastern, to which I now ask the attention of the Committee. The four western counties, with a population of 164,269, by the amendment, will be entitled to a representation of 932 in 10 years, averaging 93 2-10ths a year. This gives them a representative to every 1,762 2-10ths of their population, and gives them, every ten years, 202 more representatives than they are entitled

to under the present Constitution. Their average gain is 20 2-10ths a year. The five south-eastern counties, with a population of 176,648, by the amendment will be entitled to 716 every ten years, averaging annually 71 6-10ths. This gives one representative to every 2,467 1-10th of the population. This allows the five counties, every ten years, 50 representatives more than they are entitled to at the present time. The average annual gain is 5, which is 15 less than the four western counties, which have a population of 12,379 less than the five eastern counties. It will be readily perceived, by this, that the four western counties, with a population of 12,379 less than the eastern counties, will be entitled, by the amendments, to the privilege of placing upon this floor, every ten years, 216 representatives more than the five eastern counties, and 15 2-10ths more annually.

Now, Mr. Chairman, I will bring Norfolk County into view, and see if it will improve the picture. She, with a population of 77,441, will be entitled to 302 representatives every ten years, being 22 more than she is entitled to at the present time. Add this 22 to the 50 gained by the five south-eastern counties, and you have 72 gained in ten years. Here we find the four western counties, with a population of 89,815 less than the six south-eastern counties, entitled to the right of placing upon this floor annually 20 6-10 more representatives than the six south-eastern counties.

I will call the attention of the Committee to a comparison between Plymouth and Franklin. I select Franklin, as she has the smallest population of the four western counties. Plymouth, with a population of 54,509, will be entitled to 2 4-10 more representatives annually than she has at the present time. Franklin, with a population of 23,621 less than Plymouth, will be entitled to an annual representation of five more than she has now. It is plain that 2,290 of the population of Plymouth will be allowed but one representative, while 1,457 in Franklin will be entitled to the same. I am unable to understand, Mr. Chairman, why so great a political inequality should exist between the inhabitants of old Plymouth and those of Franklin. While I accord to the latter every virtue that can adorn an intelligent people, I claim equal merit for the former.

I will now institute a comparison between the counties of Barnstable, Dukes, and Nantucket, and that of Franklin. The three former, with a population of 47,192, will have 192 representatives in ten years, gaining but two more than their present number in that time. Franklin, with a population of 16,304 less, will be entitled to 212 in ten years, 50 more than her present number, and gaining annually five representatives; while Barnstable, Dukes, and Nantucket will gain only 2-10 of a representative annually.

Mr. BUTLER, of Lowell, (interposing). If the gentleman will allow me, I will ask him a question.

Mr. WESTON. Certainly.

Mr. BUTLER. I desire to know whether Franklin will gain from the number it is entitled to now?

Mr. WESTON. I understand that, by the proposition of the gentleman from Lowell, Franklin will gain 60 representatives more than she is entitled to now.

Mr. BUTLER. Franklin is now, in valuation

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year, entitled to 26, and she will be entitled to 20 by my plan.

Mr. WESTON. I have endeavored to go over the calculations which I have made very carefully. I have shown them to other gentlemen and I have full confidence that they are accurate, and that the statements I have made are correct.

I would ask, Mr. Chairman, why this great inequality exists? Why are the political rights of Old Cape Cod thus disregarded—"the right arm of the Old Commonwealth," (as has been said by the gentleman from Boston on the opposite side of the hall,) "always stretched out to welcome the returning mariner from his labors and dangers on the mighty deep?" She has ever been regarded as the great nursery of our seamen; and her noble and hardy sons have, in time of peace, with unequalled skill and enterprise, carried the stars and stripes of our glorious Union into every navigable ocean, sea, and river; and, in the future, as in the past, they will stand ready to defend the flag of their country in time of war. But, Sir, it does not become me to defend Old Cape Cod; she has able delegates upon this floor who can protect her rights with far more ability than I can.

Mr. Chairman, all that the Old Colony asks or claims, at the hands of this Convention, is a share of political power equal to that of other sections of the State; nothing more nor less. This she has a right to demand; and I trust this Convention will pause and deliberate before they adopt the amendment now under consideration. Mr. Chairman, I love the Old Colony; yes, Sir, I love the Old Colony, and I will say, in the language used by one of her distinguished sons, when standing upon the spot hallowed by the footsteps of our Pilgrim fathers and mothers:—"She is the mother of us all. Unlike other matrons, her strength increases with her years, and her beauty with the number of her children."

Mr. Chairman, I am in favor of what may be called rather a large House of Representatives—say a maximum of 350 or 400—and a minimum of 250 or 300. I am willing, Sir, to adopt any system of town representation that will produce this result, if it can be done upon any principle nearly approaching an equal distribution of political power. I do not expect to obtain numerical equality and retain town representation. The great difficulty in adhering strictly to an annual town representation, without making too large a House, is caused by the great increase of small towns.

Much has been said, in this debate, of the danger apprehended, growing out of too great a centralization of political power and wealth in the city of Boston; and, Sir, I cannot shut my eyes to this danger. I fully concur in the sentiments expressed the other day, by my honorable friend for Berlin, upon this subject. But I do not stand here to say anything against the city of Boston, or anything to create a country prejudice against her or her inhabitants, nor to utter one word in disparagement of her "princely merchants," as they are called. In all my dealings and transactions with them, I have always found them governed by the highest principles of integrity and honor. I do not cast the slightest reflection upon the inhabitants of this noble city, when I speak in terms of disapprobation of her vast centralization of power, which is far greater than that of 130,000 people in the rural districts.

The citizens of Boston are not to be blamed that the evil exists. It is nothing more than a natural effect from a known cause.

Sir, it requires no argument, in addition to what has recently been said in this debate, to prove that the tendency of large municipal corporations is to place in the hands of their citizens a vast amount of political influence, which acts as an unit and moves with almost irresistible power in one direction. We need not cross the ocean and seek for illustrations of this subject among the despotisms of Europe; instances, fortifying the position which I have assumed, may be found nearer home. In this House, most of us have seen Boston represented for a few years past, by upwards of forty of her able and distinguished sons, who all entertain the same political opinions, and who stood shoulder to shoulder on all great political questions relating to the interest of their constituents. Why! the fact is before our eyes now. Here, this day, is this vast metropolis with forty-four delegates—among whom are many of the ablest men of our State, and not a few of those whose graceful oratory and finished rhetoric enchain our attention daily, and delight our ears. In order, Mr. Chairman, to check centralization, and restore to the large minority of the citizens of Boston a proper share of political influence, I have been able to devise no better plan than that which has been proposed of districting the city.

But Mr. Chairman, I will not longer detain the Committee.

Mr. ALLEN, of Worcester, (interrupting). Before the gentleman yields the floor entirely, if he will allow me, I will ask him, as he has stated the difficulties and the objections to the plan of the gentleman from Lowell, to tell the Committee what plan would meet his concurrence.

Mr. WESTON. I am aware that there is great difficulty in forming a plan which will be just and equal to all portions of the State, and which will at the same time preserve the principle of town representation. At some future time I may—I do not say that I *shall*—but I *may* submit a plan to the Convention which will embody my views of justice in regard to the basis of representation.

Mr. KEYES, for Abington, (interposing). I have understood that the statistics presented by the gentleman from Duxbury, are based upon the existing state of things; that he has contrasted the plan of the gentleman from Lowell with our present system. Now it is true that we may see difficulties with this comparison, and perhaps injustice, provided the present state of things is exactly just. But, supposing it so happened that the present system was also unjust, then it would not necessarily follow that the plan presented by the gentleman from Lowell was intrinsically unjust in itself because it differed from the system now in existence. It would only follow, that those counties of which the gentleman speaks as unjustly dealt with, were favored to a greater extent by one system than by the other. I understood the gentleman, all the time, to compare the plan before us with the existing state of things, and to complain of its injustice because it differed from that state of things. Now, the present system has been considered as entirely unjust, and has been rejected as absolutely out of the question; and it seems to me, therefore, that if the comparison he makes be a correct one—and I have no doubt that it is—it does not prove the

plan under consideration to be necessarily or intrinsically wrong, but only differing from the present state of things.

Mr. WESTON. If I understand the gentleman, my answer to his remark is this. The injustice of the proposed plan is proved by comparing it with the present state of things, from the fact, that under the present system the four western counties of the State have a *greater proportion* of political power than the five southeastern counties, and therefore, any plan which gives to the former more political influence than they now have, and to the latter about the same as they now have, is a still wider departure from equity and produces still greater injustice.

I thank the Committee for their kind attention, and I will close by saying to my western friends, that I am willing to be just toward the western counties, and more than just—I am willing to be generous towards them in the distribution of political power; but the political inequality which would be caused by the adoption of the proposed amendment, as it now stands, I cannot, in justice to my constituents, vote for.

Mr. UPTON, of Boston. There has been a good deal of research and learning shown in the course of this discussion, to prove that, in the early history of the Commonwealth, town corporations, as such, are represented in the legislative department of the government. I do not propose to go into that matter, upon the present occasion, to any extent. I have probably not read the early history of the colonies aright; at least, the opinions I have formed from that reading in relation to this matter of representation, differ very materially from those advanced by various gentlemen who have spoken upon this subject. I can see in the early history of town representation in Massachusetts, little more than a representation of parishes, and by a representation of parishes I mean Protestant parishes, Congregational churches and societies, or by whatever name they at that period were known; and this system of representation was followed as long as the public opinion would have it. Within the memory of most gentlemen here, the towns were substantially, nothing more than ecclesiastical corporations. The minister was chosen by the town, and the people taxed for his support. At that period of our history, the representation was founded upon these religious societies, and the changes which have taken place is the transition state of representation based upon church-membership, to that upon ratable polls, property, or population. But as I remarked, I do not propose to discuss this particular question at this time.

The question arises, and it has been very much debated in this Convention, whether there is a necessity for all the small town corporations in the Commonwealth, as such, to have annual representation in the House of Representatives. Well, Sir, I am in favor of every individual in the Commonwealth being annually represented if they desire it. It was stated by the gentleman from Pittsfield, (Mr. Rockwell,) that if the entire inhabitants of the Commonwealth were assembled together for the purpose of enacting the laws which should govern them, that would have been an equal representation of the people. But let these inhabitants say how they will be represented. If they please to be represented by districts, each containing an equal number of inhabitants, that would be also an equal representation,

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and abstractly speaking, it would be the only equal representation which can be provided. But a different system has hitherto been adopted in Massachusetts; according to the present indications, a different system is to prevail in future, and so far as my vote goes, I am willing to concede to the small towns twice the representation in proportion to their population, which I will ask for the city of Boston; but I am not willing to carry the principle further than that, particularly when you provide for districting the cities and large towns of the Commonwealth. Gentlemen must bear in mind one thing. The very moment you undertake to district the cities and large towns, that moment you divide those towns against themselves. You make, practically, an aggregation of small towns out of one large town, and in fact, politically neutralize the power of that town. So long as you allow the cities and large towns to elect by general ticket, so long you give them an advantage in your legislature, but the moment you provide for districting them, that moment the advantage ceases.

But the particular point to which I wish to call the attention of the Committee is, as to the question *Whether there is any necessity that all the town corporations of the Commonwealth should be annually represented?* In order to illustrate this question, it seems to me that it would be a fair proposition to place before the Committee a statement of the condition and size of the House of Representatives, when the members of the legislature were paid by the towns which sent them here, and when there were about three hundred town corporations, each entitled to as much as one representative, and with the right to send as many as five hundred members.

In the year 1818-19 there were 224 representatives.
 " 1819-20 " " 402 "

This was the year of the Convention.

In the year 1821-22 there were 238 representatives.
 " 1822-23 " " 159 "
 " 1823-24 " " 296 "

This was a year of great excitement, growing out of the question of the Warren and Charles-town Bridge, and the Committee will remark, there were but 296 representatives.

In the year 1824-25 there were 249 representatives.
 " 1825-26 " " 199 "

In this year of 1826, by a concurrent vote of both branches of the legislature, the members were paid from the treasury of the Commonwealth, which system has continued until the present time.

In the year 1826-27 there were 237 representatives.
 " 1827-28 " " 350 "
 " 1828-29 " " 355 "
 " 1829-30 " " 501 "
 " 1830-31 " " 452 "

This is as far as I have carried the statistics, but I will state, for the information of the Committee, that the House of Representatives went on increasing, until the amendment to the Constitution of 1840.

I only produce these statistics by way of answer to the argument which has been adduced here, and with a great deal of force, that there is a necessity for an annual representation of each town. I ask gentlemen, if there was that necessity, why did it not exist, when towns paid their own members from their own treasuries? I am

not going very far back in the records, although the book from which I intend to quote seems to be such a formidable one. I am speaking, let the Committee bear in mind, to one important point only, and that is, whether there is a necessity for towns, as such, to be *annually* represented upon this floor in their *corporate capacity*. It was found, at a very early stage of the government, that the towns did not value this right of sending representatives, and although they occasionally sent them here, they came, staid a day or two, and then went home. Precepts had to be issued, calling in members, and the House would be often left without a quorum. The result was, that towns were often fined. The following is a resolve passed in 1801, and is a sample of the various resolves which were passed, commencing at this period:—

" Resolve, abating Fines to Towns for not sending Representatives.

" Whereas, the towns hereafter mentioned were fined in the several sums annexed to their respective names, for not sending a representative to the general court the last year—that is to say—

" Hamilton, forty-nine dollars and twenty-three cents; Holliston, sixty-four dollars."

And so on, for fifty different towns, and concluding as follows:—

" *Resolved*, for reasons set forth by representatives from the aforesaid towns respectively, That the said sums be remitted, and the towns aforesaid are hereby respectively discharged from paying the same; any resolve or order to the contrary, notwithstanding."

This, as I have before stated, is a sample of the various resolves which have been passed upon this subject, from the year 1801 to the year 1826. I desire the Committee to bear in mind the point upon which I have been speaking, and that is, does a necessity exist, of such an important character, as that each town in this Commonwealth should be represented here in its corporate capacity annually? It seems to me, that I have shown from the records, when the question was put to the towns themselves,—Have you any particular business affecting your prosperity coming before the legislature of Massachusetts, to make it necessary that you should be represented there? that they have said no, by refusing to send representatives. I now submit, for the consideration of the Committee, a form of tax act, passed in 1824, four years after the Convention was held for revising the Constitution.

" An Act

" To apportion and assess a tax of seventy-five thousand dollars, and to provide the reimbursement of sixteen thousand nine hundred and ninety dollars, paid out of the public treasury, to the members of the House of Representatives, for their attendance the two last sessions of the general court."

The Committee will bear in mind, that the representatives were paid from the public treasury, and then the assessment was made afterwards upon these towns. The pay of the various members, commencing with the county of Essex, was as follows:—

" Salem, three hundred and forty-two dollars; Marblehead, one hundred dollars; Danvers, one hundred and fourteen dollars; Beverly, fifty-six dollars; Gloucester, seventy-four dollars;"

And so on, through all the counties, with such towns as were represented in those counties, respectively. The aggregate amount paid for the whole representatives of the Commonwealth, according to this tax, in the year 1824, was the sum of \$16,990. That was the amount assessed upon the various towns and cities of this Commonwealth, in the year 1824, for the pay of their representatives. And now, Mr. Chairman, I think, if anything is to be gathered from statistics, it is, that there is no necessity for each town to be represented in its corporate capacity, annually. It seems to me, that this is a fair argument. I think that the business of the Commonwealth can be better accomplished with a smaller House than has been proposed by the gentleman from Lowell, (Mr. Butler). According to that gentleman's proposition, we are to have, upon an average, for ten years, a fraction of over three hundred and ninety-seven members, that is to say, we are to have three hundred and fifty-nine members for four years in the ten, and four hundred and twenty-three members for six years, which gives a fraction over three hundred and ninety-seven. I am very free to admit, that that, in my opinion, is too large a House. If you adopt the basis of the gentleman from Lowell, (Mr. Butler,) in regard to the small towns, I think that you would have to increase the basis of the large towns, particularly if you propose to district them, which would make altogether too large a House. It has been argued in favor of a large House, that it is the means of diffusing information among the people. I concede to a certain extent that it is. It has occurred to me, however, in the course of this debate, why should not this information be divided equally among all the inhabitants of the Commonwealth? Why confine it to small localities? I find, in looking over the statistics, that there are two hundred towns in the State which have an average population of only 1,175. Gentlemen can see at once that to undertake to give a representative, even half the time, to towns of that size is going to make a very large House, too large a House, in my opinion. There is another important matter which has a bearing upon this question. By the basis proposed by the gentleman from Lowell, (Mr. Butler,) I have shown that we shall have about four hundred members of the House of Representatives. The pay of these members is proposed to be fixed by a resolution which was offered a few days ago, at \$250 each. The pay of the members annually cannot be less than \$110,000. The average annual pay for your House of Representatives for the last six years, has been \$108,000. You propose to increase the pay of your House of Representatives, and make it \$110,000. I submit, to the members of this Committee, and the representatives of small towns generally, if, in the period of ten years, there will not be drawn from the treasury for the pay of representatives alone, one million one hundred thousand dollars. Will it be drawn by equal representation of the people of this Commonwealth? By no means. The sum of \$1,100,000 will be divided among the citizens of this Commonwealth, but it will be divided very unequally, less than one-third of the population of this State, through their representatives, drawing more than one-half this amount. I have a table of forty cities and towns, having an aggregate population of more than one-half of the inhabitants of the Commonwealth, which, according

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to the proposition of the gentleman from Lowell, will elect less than one-third of the members of the House of Representatives.

Now, Sir, supposing we change that proposition and take the converse of it, and it should be argued on this floor by the gentlemen who represent the large towns in this Commonwealth, that the small towns should pay in this ratio. I ask gentlemen if they think such an argument, if advanced, would be sustained for a single moment? I think not.

Mr. FRENCH, of Berkley. I wish to ask the gentleman whether he could give us any assurance that a small House would not cost more than a large one?

Mr. UPTON. I would say, in answer to the gentleman from Berkley, in the first place, I do not think he could have heard my remarks. I read from the list of the State-taxes for 1824, and I stated the number of representatives for that year, and every town was entitled to send. The amount of the taxes for that year, for the pay of representatives to the towns, was \$16,900, and I think if the gentleman will put my argument together, it would be satisfactory that a small House did not cost nearly as much then as a large one.

Much has been said about centralization, and its effect being unfavorable to the small towns. I do not claim to know as much about the internal affairs of this Commonwealth as many gentlemen on this floor. It so happened, however, that what little education I obtained, was obtained in a quiet town situated between this city and the city of Lowell; and it was before the city of Lowell was conceived of. I think, therefore, I know something of the inhabitants between here and the city of Lowell, and the effect of centralization upon them. I think I understand that as well as any gentleman who lives either in Lowell or Boston. I am well acquainted in the vicinity of Lowell, I have seen salmon taken in the Merrimac River, where Lowell now is, and if any boy in those days caught more fish in the Concord river than I, it was because he got up earlier and fished later. [Laughter.] But this is an episode. I supposed that this centralization was for the advantage of the whole State of Massachusetts. I confess that in other bodies than this, I have done what I could to get this centralization here and prevent it from going to New York. I have thought that I was doing the Commonwealth of Massachusetts good service in that way, that I was not doing any wrong to the internal population of this State. Why Sir, in some towns that I know of in the neighborhood of Lowell, the centralization here complained of, by the gentleman from Lowell, (Mr. Butler,) is the very life-blood of those towns. Lowell has given them a market. If other towns have not the same advantages which Lowell has, it is because nature did not give the same resources to make them which she gave to Lowell.

I know, Sir, of no evil which has resulted from centralization. I associate in society in the city of Boston, and I associate with a great many from the country; and none of the gentlemen with whom I associate from the city or country have any of those feelings which have been stated upon the floor of this Convention, as existing with regard to this question of centralization. Why, Sir, the gentleman from Lowell, in speaking of this matter, when he introduced it, did not mani-

fest exactly the spirit which I liked. He said—and I thought I saw his eye twinkle as though it could not be answered—"that great fish eat up the little ones; but that nobody ever heard of little ones eating up the great ones." The gentleman is a little wrong in his natural history. In the Pacific Ocean, the sperm whale, which I suppose may be called a great fish, finds one of its greatest enemies in the smaller fish called the killers and in the sharks. You can fancy these little killers with their associates, the bill-fish, with their bills sticking out from their nose, going off a reasonable distance and then darting forward and thrusting their pointed weapon into the body of the sperm whale, and then going off in those blue waters and making an attack again, trying if possible to hit the former wound a second time; and finally are the death of the whale. But there is the shark a little way off—

Mr. BUTLER. Do they eat them?

Mr. UPTON. Yes, Sir, they do. I will give the gentleman the moral of it. They eat as long as they can after they have destroyed the whale. But there is a very wise ordination of Providence with regard to it, which, after the life is out, causes these carcasses to float upon the waves, and long before the sharks have had time to consume them, the blasted carcass lies floating upon the ocean, unfit even for the stomachs of the sharks.

Now, Sir, I do not believe that centralization will do the State of Massachusetts any harm; because if it will, we had better stop our large towns in their growth. Let us take the converse of the proposition; let us abolish Lowell and let us pull down Boston. It is hardly worth while to have these wharves stretching out here. Let us send our ships to other ports; and so far as the great mart of trade gathers here, let us seek for it another channel, so far as this place is concerned. Now I appeal to the members of this Convention, to gentlemen representing the towns in this Commonwealth, whether the language upon this floor has not been rather bitter, and whether any cause for it exists in fact. I think it leads to irritation of feeling which does no good. I should be most happy as a representative on this floor, to give my vote upon any question affecting the basis of representation, which should give to the small towns of the Commonwealth, and to all in fact, a just and reasonable share of representation.

The question was put to the gentleman from Duxbury, (Mr. Weston,) what he proposed, or if he had any plan. Now, I have no plan to propose. There was a plan proposed by my friend from Charlestown, (Mr. Thompson,) which I think looks like the most reasonable one which has been proposed. It was printed and distributed this morning. There may be objections to it, for, as I understand, it is very easy to find fault with any plan. Still, that looked to me more reasonable than any which has been proposed. But I think the plan proposed by the gentleman from Lowell is too severe upon the large towns; and the effect will be that it will lead to irritation of feeling in the great towns and cities, which after all, results in no good to this question. I suppose it is the desire of every member of this Convention, if possible, to have this question settled by some fair and amicable adjustment which shall not only be satisfactory to the Convention but to the great body of the people in the Commonwealth.

Mr. KINGMAN, of West Bridgewater. I understand, Mr. Chairman, that every member in this Convention ought to have the privilege of expressing his views upon the subjects to be discussed here. I have not spoken one word upon the subject now before this Committee, and I do not intend to detain the Committee more than ten minutes, and perhaps not even that. My friend from Duxbury, (Mr. Weston,) has anticipated much that I intended to say; therefore I shall not go over, if I can possibly avoid it, what he has said. I have the honor to represent a small town in the county of Plymouth; but I do not appear here to claim or ask any special privilege for the town that I represent. All that I ask for it, is, what is right and just and equal. I do not propose to make any invidious comparison between my constituency and the people of any other portion of the Commonwealth. I merely say this, Sir, that in point of general intelligence, they will compare favorably with any other portion of the Commonwealth; and I will remark, that we have a very fair sprinkling of "men of eminent gravity." But I wish to show, not so much what is proposed to be done, as what already has been done by this Convention. I had the honor to make a very few remarks when the basis of the Senate was under consideration. I then endeavored to show the inequality of the basis then established, and I remarked that if the power thus taken from the smaller towns and given to the large manufacturing towns and cities, was returned when the basis should be fixed for the House of Representatives, I would be content.

I have here a very few statistics merely comparing the county of Suffolk with the county of Plymouth; and I wish to show that in making that basis, it gives to the county of Suffolk one senator which I think, fairly belongs to the county of Plymouth; because I think the legal voters are the only true expression of political power. While in the county of Suffolk it takes 3,767 to choose a senator, in the county of Plymouth it takes 6,104. These include all the voters upon the check list. If we take the votes actually given in the election for governor in 1850, the result is far more unfavorable to the county of Plymouth. We find the number of votes then required in the county of Suffolk to elect a senator was 1,641 only, while in the county of Plymouth the number of votes required, was 3,846.

Thus, by the basis fixed for the Senate, it takes two legal voters in the county of Plymouth to be equal to one in the county of Suffolk. All I ask is, that the county of Plymouth shall have equal justice done. Much has been said by the representatives of the city of Boston on this floor, with regard to their wish to establish representation upon principles of equality. I am ready, as far as I am concerned, to meet those gentlemen on that issue, and whenever they are ready to place it on legal voters, as a basis of representation, I am ready to adopt any just system, even the district system.

Mr. Chairman, I promised not to detain the Committee more than ten minutes, and I intend to fulfil my promise. I came here with strong prepossessions in favor of town representation. I should still desire it, but I consider that one thing is settled. In my mind it is a fixed fact, that sooner or later, we have got to come to the district system. That is a settled fact; how soon it may

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come, I do not know. But I wish whenever that system is adopted, it may be upon a just and reasonable basis; and it appears to me that that basis is the legal voters.

Mr. WILKINS, of Boston. When the gentleman from Duxbury, closed his argument, I understood him to say that he had not seen the statistics of the gentleman from Lowell, which have just been distributed. I suppose he referred to the Document No. 84, made to illustrate the amendment of the gentleman from Lowell. Now, it so happens that I have not seen anything else on this subject, I should be glad to read what I regard to be wrong in respect to this table. The county of Barnstable has only two hundred and ninety-three less inhabitants than Hampshire and only sixty less legal voters, but has ten less representatives. Franklin County, that county so often referred to has five towns less than Berkshire, and has 18,049 less population; and it has four more representatives.

Mr. BUTLER. Do I understand the gentleman to say that Franklin has four less representatives than Berkshire?

Mr. WILKINS. Franklin has four more than Berkshire.

Mr. BUTLER. The gentleman is mistaken, I think. I presume he is looking at the wrong column of the table. As I read it, Franklin has seven less than Berkshire.

Mr. WILKINS. I believe I have got the wrong column, Sir.

Mr. WILKINSON, of Dedham. It was at one time my intention, Mr. Chairman, to have gone over the ground of this question somewhat at large, so many have spoken upon the subject, however, and the matter has been so thoroughly discussed, I had almost abandoned the idea of addressing the Committee at all. But coming as I do from a town and county whose inhabitants it is deemed unsafe to intrust with an equal share of power in the legislation of the Commonwealth, it may not be improper for me, perhaps, to make a few remarks in reference to the Report of the majority of the Committee. The inequalities and injustice of the system proposed by this Report, have been clearly pointed out and are not denied by its friends. It seeks its justification, however, in the history of the past. Corporate representation has existed, therefore it should continue to exist. It has always been unequal and unjust therefore its inequality and injustice should not only continue but be progressive. I do not think there is a very striking analogy between the towns of the Commonwealth as they are now, and as they existed under the colony charter, or the province charter, or even under the Constitution in its earliest state. The present great disparity in the size of towns is of more modern growth. Under the old colony charter, towns were more nearly equal in population. They were not allowed by the general court until they had a sufficient number of church members, in whom alone was the right of suffrage, to maintain a church government, and support the administration of its ordinances. They had also to provide for their defence against the Indians. They were established before representation, and while the freemen assembled in general court as a body, the representative system was merely the substitution of a part of the freemen for the whole. When representation was adopted for the freemen of the towns, the sending of a representative to

the general court was considered rather as a matter of duty on the part of the towns, than as a matter of right.

These towns were not only required to pay their own representatives, but to send men "sound in judgment concerning the main points of Christian religion, as they have been held forth and acknowledged by the generality of the Protestant orthodox writers." The towns were fined if they failed to send a representative sound in the orthodox faith, and such unsound representatives might be, and actually were, expelled the general court. Besides, the subject matters of legislation at that time were of a more general and public character. Their statute books were not so filled with acts of local and special legislation as they are at the present day. The colony towns in point of fact, however, were not entitled to representation equally. Nor were they all required or allowed to send. Until they had a certain number of freeholders, they were to vote for representatives with some other town—that is, towns were put together so as to constitute representative districts.

When the Province Charter came, in 1692, then, for the first time in the history of the Colony, or Province, as then called, all the towns and places were entitled to equal representation, but at the same time that charter authorized the legislature to prescribe the number of representatives for each county, town, or place, and that body accordingly did make such an enactment, destroying this equality of town representation.

There is another point, which has not been alluded to in the course of this debate, or if so, it has escaped my attention; the provincial legislature proceeded to incorporate towns and districts with all the rights and privileges of towns, with the exception of the right of sending representatives to the general court; and continued so to do till their dissolution by the revolution. A large number of towns thus grew up in the Commonwealth, which were either not entitled to be represented at all, or else were formed into representative districts. They were sometimes called, in the act of incorporation, districts, and sometimes they were simply called towns, there being no distinction between them and the other towns, with the exception that they were not singly entitled to representation. Why, Sir, the town of Palmer, when incorporated in 1752, represented to the general court that she did not wish to be represented in that body, and a charter was granted giving her all the rights and privileges, and making her subject to all the duties of other towns, but exempting her from the privilege of representation, the right of which she disclaimed. There was the representative district of Deerfield, as I should call it, composed of the towns of Deerfield, Greenfield, Conway, and Shelburne, all of which were classed together, for the purpose of electing a representative to the general court. Thus an extensive system of district representation grew up and existed under the provincial Charter.

I am aware that when the Revolution commenced, this power of incorporating towns under the charter without the right of representation, as has been stated by the gentleman for Wilbraham, (Mr. Hallett,) was questioned. The provincial congress, which was then assembled, considered that it was an exercise of power in derogation of the Charter, and went on to declare, that the dis-

inction between the districts and towns should be abolished, and to provide that all towns and districts having thirty voters should be entitled to a separate representative.

In May, 1776, the general court was composed of two hundred and sixty members, and great complaint was then made in regard to the size of the House. The number was said to be double that of any general court prior to the year 1774. Induced, by this evil of a large House, or some other cause, the general court, in 1779, incorporated the town of Mount Washington, and restricted her from the right of separate representation; they also incorporated a district in the year 1780 with the same restriction. These acts show that their former disapprobation of the course pursued by the provincial legislature was confined to the creation of towns and districts whose inhabitants should have no right to vote for a representative at all, and not to the denial of the right of corporate representation. When the Constitution was adopted, it contained a provision that each town, then existing, should be represented, but that no new town should be created, with the privilege of representation, unless it should contain one hundred and fifty ratable polls.

Immediately after the adoption of the Constitution, the system was again pursued of incorporating districts, with all the rights and privileges belonging to towns, excepting the right of sending a representative to the general court, and from that time to the present, a large number of corporations, exercising the rights and privileges, and subject to the duties and obligations of towns, but excluded from the privilege of representation, have always existed. It would therefore seem to be clear, from the history of this matter, that with the exception of one or two short periods, and each of those at some great crisis in the affairs of the country, there has never been in this Commonwealth, either under the colonial or the provincial charter, or under the Constitution, a time when all the town corporations then existing had a right to be represented in the general court; and nowhere do I find the principle recognized that all such future corporations should have that right by inheritance. I submit, then, that we are called upon by the Majority Report of the Committee, to adopt a new system, that is: that all towns existing, and hereafter to be created—for this is the way I understand the Majority Report—shall be entitled to a representative in the general court. I conceive that to be the introduction of a principle which does not exist now, and which I am not aware has ever existed in the history of this Commonwealth. Our legislation, so far from being general, as was formerly the case, has now become to a great degree local, special, and sectional in its character; and for this reason, together with many others which may exist, we can not safely continue, much less increase and endeavor to make perpetual, this inequality of representation.

Much has been said about log-rolling. I will not enter into the discussion of that matter at all, for I think that it is an argument in itself against the increase of power in local districts. If legislators are subject to improper influence the danger of giving their election to a minority of the people is much increased.

Who, I would ask, first created these towns? Was it not the freemen in whom the right existed, not only of creating towns, but of making laws

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for the guidance of the Commonwealth? It must certainly be conceded. Towns existed before representation was known,—I had almost said, before it was thought of,—and after these towns had been created, then it was that representation was established. And is it to be said that the equality of freemen is to be sacrificed for the preservation of the representation of these towns? Perhaps I may unconsciously argue this question as though the system of district representation would destroy the towns. Gentlemen have spoken of it in that aspect, but I cannot conceive it to be so. In my opinion, towns will exist for all the purposes of their original creation, just the same under the district system as they do at the present time. Individuals will go into their town meetings and vote as they do now, and all the town duties will be performed and the town rights preserved as they are and have ever been, with the simple exception of a corporate representation in those towns too small to constitute a district.

I have listened in vain for some reason to satisfy my mind of the necessity for an increase of our already overgrown House of Representatives and making the election of its members still more unequal.

The preservation of town rights, does not require this, because I do not understand that any body is desirous of adopting a district system which would divide towns or destroy their municipal character. In fact, excepting the tendency to centralization which has been so forcibly urged, I do not know that I have heard any very strong argument suggested. I am anxious, as are some other gentlemen who have participated in this debate to know what is meant by centralization. I come from the county of Norfolk, a county in which, by the Report of the majority, three men are allowed to have about as much political power as one man in the county of Franklin, and all for the purpose of getting rid of the supposed tendency to centralization. What evidence of centralization has Norfolk given to cause this great alarm, and justify the restraints to be imposed upon her. What great tendency to centralization existing on Cape Cod, deprives her of a fair and equal representation? I am aware that when this argument is pressed, the place usually selected as the centralizing point is the city of Boston. Why, then, should other portions of the State suffer on her account? Or is there no centrifugal force to counteract this centralizing tendency, except in the West? A district system would divide this central point, and, one would think, thus neutralize its force. But I do not know what is meant by the centralizing power in the State of Massachusetts—a State scarcely two hundred miles long and less than half that in breadth, and a constituent part of a great country, extending from ocean to ocean. Can it be, that this State has within her limited borders a portion of territory inhabited by a class of legal voters who cannot be safely trusted with an equal share of legislative power. I think this matter of centralization is only terrible from its vagueness and incomprehensibility. Its dangers cannot be defined and pointed out with accuracy; they are, therefore, easily magnified by the imagination.

In making a Constitution, I do not think it is wise or proper to incorporate any provision in it which shall array one portion of the citizens of the Commonwealth against another, or which shall

make any invidious distinction. In my opinion, if this Majority Report is adopted, especially if adopted for the reasons suggested in the argument before the Convention, it will be said that the Constitution cannot give a fair and equal representation to all portions of the people of the Commonwealth, because crime exists in some portions to a greater extent than in others; because a larger proportion of the persons who exercise the elective franchise in some localities are dependent, ignorant, vicious, or unsafe, than those in other sections of the State. I ask, will not such a course engender the greatest dissatisfaction, to say nothing of its injustice. Will it not make the Constitution itself unpopular in certain portions of the Commonwealth, not only creating a prejudice against this the organic law of the State, but causing the most bitter heart-burnings and jealousy among the people? Can it be, that gentlemen are prepared to say that there is this great difference in the people of the several parts of the Commonwealth. I am led to believe, as I said before, that there is not that inequality which would make it proper for us to provide in the organic law for such an unequal representation of the citizens as is proposed by the Committee. It seems to be admitted on all hands that entire town representation, with anything like an approach to popular equality, would give us a House of Representatives far too large for the proper discharge of public business. If, then, the so-called town rights come in direct collision with human rights, which should be preferred?

I submit, we are required to preserve town representation only so far as is consistent with the equal rights of all the community.

The question was then taken upon the adoption of the amendment of Mr. Butler, of Lowell, as a substitute for the Report of the minority, and upon a division—ayes, 155; noes, 118—it was decided in the affirmative.

So the amendment was agreed to.

Mr. BIRD, of Walpole, moved that the Committee rise and report to the Convention the resolve and the amendment.

The motion was agreed to.

The Committee accordingly rose, and, by their chairman, (Mr. Wilson,) reported to

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That they had had under consideration the Report of the Committee on the subject of the Basis of the House of Representatives, had adopted an amendment to the same, and recommended to the Convention that it ought to pass.

The amendment was read by the Secretary.

The question being upon concurring in the amendment reported by the Committee of the Whole,

Mr. HUNTINGTON, of Northampton, inquired of the Chair, if it was proper to amend the amendment?

The PRESIDENT replied that it was.

Mr. HUNTINGTON. I move, then, to strike out from the third paragraph of the amendment of the gentleman from Lowell, the words "one thousand," and insert "twelve hundred;" and likewise in the fourth paragraph, to strike out and insert the same words.

The question was upon the adoption of the amendment.

Mr. HUNTINGTON. This proposition presents the question in an entirely new aspect, but

it has been suggested to me by the mover of the amendment which has been adopted in Committee, (Mr. Butler,) that the further consideration of the subject had better be postponed until to-morrow. I am perfectly willing that it should take that course, as, on account of the lateness of the hour, but little progress could be made this afternoon. I would state, however, that I have incorporated here the main principle which I intended to submit in my plan which has been printed. There are a few reasons which I have to present in favor of this alteration, but I defer them for the present. I now move that the further consideration of this subject be postponed until to-morrow.

Mr. HALLETT, for Wilbraham. Will the gentleman withdraw his motion for one moment; I desire to suggest an amendment.

Mr. HUNTINGTON. I should like to know what the gentleman's amendment is.

Mr. HALLETT. I do not know that I can inform the gentleman without the withdrawal of his motion.

Mr. HUNTINGTON withdrew his motion.

Mr. HALLETT. I propose to amend the amendment of the gentleman from Lowell, by striking out from the second paragraph the word "five," and inserting the word "two," so that it will read, "towns may unite for a period of not less than two years," instead of five years. In the last paragraph, I wish to substitute the word "two" for the word "three," so that the last line will read, "no district will be entitled to elect more than two representatives."

The PRESIDENT. The Chair would state to the gentleman for Wilbraham, that his amendment will not be in order until the amendment of the gentleman from Northampton is disposed of.

Mr. HUNTINGTON renewed his motion to postpone the further consideration of the subject until to-morrow, and the question being taken, it was decided in the affirmative.

Compensation of Members.

Mr. LIVERMORE, of Cambridge, moved to take from the table the resolve reported by the Committee on the Pay Roll, on the compensation of members.

The motion was agreed to.

The resolve was read by the Secretary as follows:—

Resolved, That there be paid out of the treasury of this Commonwealth, to the members of this Convention, respectively, three dollars for each and every days' attendance, and two dollars for every ten miles travel from their respective places of abode, once during the session; and to the President three dollars a day, in addition to his pay as a member: *provided*, that, in no case, shall any member receive more than two hundred dollars for attendance, and the governor is hereby authorized to draw his warrant accordingly, on the treasurer, on an order of this Convention.

Mr. LIVERMORE. I move to amend the resolution, by striking out the word "authorized," and inserting the word "requested."

The amendment was agreed to.

Mr. LIVERMORE. As the Committee have seen fit to report a different sum for the compensation of the members of the Convention, from that usually received by members of the legislature, it will probably be desired that an explanation should be given why the Committee were

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COMPENSATION OF MEMBERS. — LIVERMORE — MORTON — DANA.

[June 28th.]

induced to make that change. When the subject was first considered, the Committee were rather inclined to report the same pay per diem as is received by members of the legislature; but after deliberating upon the subject more fully, they finally came to a different conclusion. It is known to all who are conversant with the duties of the legislature, that there is but a limited portion of the session of that body when they can have two meetings in a day. Now, it is directly the reverse in regard to the Convention; members from the very first were willing to hold two sessions a day, and would have done so, could they have found a convenient place for that purpose. As soon as an opportunity was offered, however, they commenced to hold two sessions a day, and have continued to do so until the present time, and, no doubt, will still continue to hold two sessions until the final adjournment of the Convention. That was one reason which induced the Committee to report the sum named in the resolve as the per diem pay of the members.

Another reason—and one that had great weight with the Committee—was, that the Convention was called together at a time when it was very inconvenient for members to leave their farms and business; and that they had much rather come to the legislature in winter for two dollars, than to leave home and their several avocations at this season of the year for three dollars a day.

Another reason which had considerable weight in our deliberations on the subject, was, that about the time this body assembled, there was a general raising of the prices of board throughout the city, which made it more expensive for members who attend here from the interior, than it was for the same members of the legislature during the winter season. It was for these reasons that the Committee finally unanimously reported the order allowing three dollars per day as compensation. So far, I believe all is plain. Then comes a proviso, that in no case shall any member receive more than two hundred dollars for his attendance. The Committee thought that, with the exercise of due diligence, the Convention would be able to adjourn by the tenth of July, or at most in a few days after, and in order to satisfy a part of the members by having a session of only sixty-seven days, which would allow them to draw two hundred dollars, we made this proviso. And I am sure there is no reasonable person in this Commonwealth who would think of allowing members who perform the arduous duties which we perform in this Convention, a less sum than that I have named. These are in brief the reasons which induced the Committee to make the Report now under consideration.

Mr. MORTON, of Fairhaven. The gentleman from Cambridge has stated the reasons which induced the Committee to report this resolve, but I am inclined to ask the sense of the Convention upon a portion of that Report. I therefore move as an amendment, to strike out the words "Provided, that in no case, shall any member receive more than two hundred dollars for attendance."

Mr. LIVERMORE. I would have no objection whatever to that amendment, if I did not think that it is intended by the gentleman from Fairhaven, to follow up that motion by another to strike out three dollars and insert two.

Mr. MORTON. I will go as far as I can to please my highly respected friend, but I cannot make any promises, as to what motions I may

submit hereafter. As I understand the present meaning of the resolve it is that it is the deliberate judgment of the Convention, that our services here are worth to the Commonwealth for sixty-seven days just three dollars per diem, no more and no less. But I think that if we discharge the duties properly which we have been sent here to perform in sixty-eight, sixty-nine or seventy days, that either of those days will be worth just as much to the Commonwealth, as any within the sixty-seven days so amply provided for in the resolve. The same reasons which I endeavored to assign the other day for the payment of members of the general court apply with equal force to this case, but I will not allude to them here. It seems to me, however, and I would not by any means use discourteous language, that the idea savors somewhat of meanness, that the Commonwealth is not willing to pay its public servants for the labor of every day spent in the employment of the public; and I submit to the members of this Convention, if it is not the most manly and dignified course we can pursue, to go on as we have since we first assembled here, do our duty faithfully to ourselves and our constituents, and when we have accomplished the purposes for which we have come together, we can then adjourn, whether it be after a session of sixty-seven or seventy-seven days, unrestricted by any such provision as is contained in this resolve.

Mr. DANA, for Manchester. I hope the motion that was last submitted will prevail. I confess I felt badly, very badly, when the Convention, the other day, passed the resolution letting out the legislature of the State by the job. It entirely conflicted with my notions of the manner in which the Commonwealth of Massachusetts ought to treat the legislature of Massachusetts. But, Mr. President, I know I am out of order, and probably will be so told in a moment.

The PRESIDENT. The gentleman has a right to allude to the action of the Convention, but he cannot, in this connection, reply to arguments used in the debate on that occasion.

Mr. DANA, (continuing). But then the answer was that there was an absolute necessity, that it was in accordance with the character of the legislature, that such had been the character, and such for the time to come would be the character of the legislature of Massachusetts, that they could not be trusted without some hold upon their pecuniary interest; and that a very small hold would be strong enough to govern such a body as the legislature of Massachusetts. Another reason seemed to be that it was no great matter if such a provision were introduced into the Constitution, because the legislature meets annually; and a gentleman of much experience remarked to me that however injuriously it might operate upon one legislature, the inconvenience would be temporary, another would come in in six months time; and that is very true. Although they may hurry through the business of legislation when the money is exhausted, and transact the business imperfectly, yet a new legislature is to come after, which will remedy the defects and imperfections of the former. All that is true enough; but I should like to know when a Convention is to meet to do what we leave undone.

Has this Convention shown, as yet, such a character or disposition as to oblige us to put such a restriction upon ourselves as we have thought proper to put upon the legislature? Has

there been such conduct exhibited as to render such restriction necessary? Now gentlemen in this Committee, I doubt not, have the same notions of propriety and dignity that I have, they differ from me in opinion only as to the necessity of the case. The principle is this, the Commonwealth desires to compensate members for services, for expense incurred while performing services, and the question is, shall that compensation be made by a reasonable allowance *per diem*, or shall the work be given out by contract? I am myself greatly in favor of having the work of legislation done by day's work. If I set about building a house, and I can find an honest and skillful mechanic, and if I want my house to stand as long as stone and wood can stand, then I should undoubtedly employ such mechanic, if I had confidence in him, to do the work by the day; but if I do not care very much how my house is built, or if I cannot find a workman whom I can trust, then I should have it done by the job. And it really seems to me that if gentlemen of the Committee had the same idea about the necessity of the case that I have, they would come to the conclusion that it is unworthy of the State of Massachusetts to put such a proviso into the Constitution. But it seems to me that gentlemen have discovered a necessity that has not been apparent to me. I do not know how great that necessity may be to the minds of other gentlemen, but I cannot believe there is a gentleman in this house to whom the *per diem* allowance is any kind of consideration. If there is a gentleman here who is not sitting here at a daily pecuniary sacrifice greater than the *per diem* allowance of a member, then I have entirely misapprehended their usefulness, the importance of their pursuits. I had supposed that most of us, if not all, were sitting here at no small sacrifice of time and money; and I cannot believe that the prospect of compensation would induce any gentleman to sit one day longer than the public business required.

This proviso is based upon the supposition that gentlemen would sit here without that restriction longer than they ought to sit. Sir, I cannot believe it. And if I did believe it I would not put it upon the records of this Convention.

I sincerely trust—though I ought to ask the pardon of the Convention for having assumed to indoctrinate it on a matter of dignity, but really the question, and the only question is, whether this Convention is likely to sit here longer than it would otherwise do for the sake of the compensation? And even if so, is it best to put such an admission upon record? It strikes me, Sir, that we should not. I hope we shall sit here just as long as it may be necessary to do the work we have to do, and to do it thoroughly and well. I do not want to see the previous question voted for upon any other ground than that of public duty. I do not want to have it suspected of any man or by any man that he is voting for or against the previous question, for any other purpose than the public benefit, yet this proviso assumes that gentleman may be governed by other motives. I hope, therefore, the motion of the gentleman from Fairhaven, will prevail; and that when we come to the question of compensation the vote will be given without reference to any supposed necessity—erroneously supposed as I believe,—for placing a limitation or restriction of this kind upon gentlemen who have been selected by the people of

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COMPENSATION OF MEMBERS.—KEYES—HILLARD—HOOD—SIMONDS—CHAPIN.

[June 28th.

this Commonwealth to represent them in this Convention.

Mr. KEYES. I suppose it would be improper for me to say that I rise for the purpose of shooting "folly as it flies," but rather "to catch the manners living as they rise." Sir, I like the argument I have just heard remarkably well. I have had occasion once or twice to say, in this Convention, that I have sometimes stemmed the torrent of opposition, here and elsewhere, and have been for the time overpowered and defeated, but I have generally had the satisfaction, not long afterwards, of finding that I was right.

I have risen, Sir, almost solely for the purpose of asking the Convention to consider how much better I shall feel in voting for this proposition, than will those who vote to impose the same restriction upon the House of Representatives from which it is intended to relieve the Convention. I ask the Convention to consider how these gentlemen are situated who have voted to put a halter on to the legislature, which they will not submit to themselves. [A laugh.] I certainly hope the Convention will adopt this amendment. I hope they will reflect sufficiently upon it to cause them to remove the stigma which they have placed upon the legislature of the Commonwealth, a body which ought to be as respectable, clothed with as much dignity, and possessed of as much integrity, as the Convention.

Mr. HILLARD. I was not a member of the Committee which considered this matter and reported upon it, but I suppose the object of the Committee was—or, at least, that they argued in this way, that we should get just as much for our work if we sat only sixty-seven days, as if we sat one hundred days. We have for several days past had under consideration the subject of representation, and we have finally made a compromise between the town and the district system. It was not done by the job nor by the day, but it was a combination of the day system and the job system.

The emperor of China once asked Lord Amherst or Sir George McCartney, at that time ambassador from Great Britain, how his master the king dealt with his physician. The ambassador replied, when my master, the king of England, is taken ill, he sends at once for his physician, and pays him his fees for attendance. Then he is paid so long as his majesty is ill, is he not? Undoubtedly, sire. Truly, replied the emperor, that seems to me to be an injudicious way of managing things; my physician has a salary while I am in good health, and which ceases so long as I am ill, and the consequence is that my illness comes very unfrequently, and lasts but a very little while. [Laughter.]

Now, I suppose it is proposed by gentlemen to combine the system pursued by the emperor of China in paying his physician, and the system of the king of England in paying his. [Laughter.]

The question was taken on agreeing to the amendment of the gentleman from Fairhaven, and it was decided in the affirmative.

So the amendment was adopted.

Mr. HOOD, of Lynn. I now move to strike out the word "three," and insert the word "two," so that members shall be allowed two dollars per day for their attendance here. I make this motion because two dollars was the sum paid to the members of the Convention of 1820, and has been the pay allowed to members of the legisla-

ture, with but one exception, from that time to the present. Besides that, Sir, I think it will be establishing a precedent which will be followed by future Conventions and legislatures, and I believe that two dollars is a sufficient sum to be paid for the services of members. I presume it is well known that there are in the towns of the State many number of competent men, who are willing to serve the Commonwealth for this sum, not on account of the pay, for that is not the motive for accepting the office. Another and important reason why the pay of members should not be increased, is that those who were opposed to the Convention, objected to it on account of the expense. I desire to have a limit placed upon the expenditure which may result from it, and that the sum may be kept within the estimate of its friends. It is a matter of but little consequence to us, individually, whether we receive two or three dollars per day, and if we cut off one-third of the amount, the result will be more likely to meet with the approbation of the people. I therefore hope that the amendment will be adopted, and the compensation fixed for two dollars per day. When the question is taken, I move that it be taken by yeas and nays.

The question was taken on the call for the yeas and nays; and, upon a division—yeas, 45; noes, 198—there being not one-fifth voting in the affirmative, it was decided in the negative.

So the yeas and nays were not ordered.

Mr. SIMONDS, of Bedford. I had intended to have remained silent upon this question, and be satisfied simply with having my vote recorded against it, but as I am deprived of that privilege, I propose to express my dissent to the raising of the pay of members of this body above that which has been heretofore allowed to members of the legislature. It has ever been the policy of Massachusetts to allow a moderate pay to her servants in the general court, not so much as a compensation for their service, as to remunerate them for the expenses they may have incurred while performing their duties in the legislature. A large house has always been the result of small pay, and a small house will increase the compensation of its members. I hope we shall not deviate from the course we have always pursued in this matter, but that the compensation will be the same as that allowed in all our legislative bodies.

Mr. KEYES, for Abington. I regret exceedingly the position of things. I thought that if anything was to be paid to the members of this Convention, three dollars a day was the proper compensation, and I am satisfied that the people so regarded it. It was my intention, if the yeas and nays had been ordered, to have voted for it, but as we have been debarred from the privilege of recording that vote, that the people may see how we stand in this matter, I shall now vote against the proposition for three dollars. It was an act similar to this, which, more than anything else, rendered the last session of the legislature so obnoxious to the people. When members were called upon, on one occasion, to record their vote, that it might be known who voted for increasing the compensation to two dollars and a half, they absolutely refused. This was the subject of comment and jeers in the newspapers.

Now, I want to know whether the members of this Convention are not, on this occasion, repeating the same thing? I will say again, that I

think it is quite reasonable that the Convention should be paid at the rate of three dollars per diem for its labors; that the people will be satisfied with it, I am confident; but, notwithstanding I am in favor of the proposition, I will not vote for it, unless I can have an opportunity of recording that vote by yeas and nays.

Mr. STETSON, of Braintree. I propose to amend the amendment of the gentleman from Lynn, by substituting the following in its stead, "That all those who have conscientious scruples against receiving three dollars a day, may be permitted to receive two dollars and fifty cents." [Laughter.]

The PRESIDENT. The amendment is not in order.

Mr. CHAPIN, of Worcester. I voted against the calling of the yeas and nays, but for fear that I shall not have an opportunity to record my vote against the amendment of the gentleman from Lynn, I move a reconsideration of that vote. And I desire simply to say in this connection, that if I should not happen to be present to give my vote against the amendment, I wish to have it distinctly understood that I am opposed to it, because I believe that the people of Massachusetts feel that the sum proposed in the resolution reported by the Committee is necessary and proper, and that they do not wish us to sit here during the warm season, for a less amount than that.

Mr. DANA, for Manchester. I wish to say one word in defence of the Convention. I voted for the yeas and nays, on the ground that I believe that they ought to be taken in all cases where we vote ourselves money; but I think that this body would appear in an unfavorable light, if the construction put upon that vote by the gentleman for Abington, (Mr. Keyes,) was a correct one. Most of the gentlemen near me voted against the taking of the yeas and nays upon this amendment, under the supposition that they would be taken upon the final passage of the resolution. I do not believe—because it would defeat all the arguments which I made against the proviso—that any gentleman in this Convention voted against taking the yeas and nays with any reference to the keeping of his vote concealed from the people, and I think that this fact should be known.

Mr. TYLER, of Pawtucket. I would state to the Convention, that the reason which governed my vote against the taking of the yeas and nays upon this amendment, was, that I supposed they would be taken on the final passage of the resolution.

Mr. DANA. As the gentleman from Worcester kindly withdrew his motion to allow me to make a brief statement, I now renew it.

Mr. HALLETT, for Woburn. I wish the Convention, in considering this subject, to stand upon its own dignity and character, and that its members shall conduct themselves as men acting in the agency of a great Commonwealth. I think the time has gone by when any political capital can be made out of two and three pence, or fifty cents, put upon the wages of the representatives of this State. All such attempts to make party capital should be thrown to the dogs. It is unbecoming any party, and especially unbecoming a body, of the high character and the higher objects of this Convention. The question is, "What is right?" Why, Sir, gentlemen have been called here from their various avocations to perform the

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COMPENSATION OF MEMBERS.—HALLETT—HOOD—BIRD—STETSON.

[June 28th.]

most important of public duties, in attending to the interests of the Commonwealth, and at what expense and inconvenience to themselves and their families? I do not at all speak for myself, because, although I come from a *distant* country town, [laughter,] my domestic arrangements are so handy that it is convenient for me to be at home all the time the Convention is in session! But there are large numbers of delegates in this body, who, being from towns more distant than mine in reality, though nearer in locality, are compelled to remain here during the whole time, and what compensation will they receive that will save them paying more than they get? We know that the prices that members are now obliged to pay for comforts of the ordinary kind, are sufficient of themselves to require very nearly the expenditure of the usual amount received for attendance. Besides this, there is not a gentleman in the Convention, from the country, who owns a farm, or has other business, but is compelled to pay probably more than the amount he is receiving here for the purpose of carrying on his business in his absence. It is not a question, therefore, as to the mere increase of compensation to meet increase of expenditures, but a question of justice. It has been said that the people are not willing to pay their delegates more than the ordinary *per diem* which is paid to members of the legislature. But I believe the people are always willing and ready to be just, and if it is necessary to increase the compensation of members of that body hereafter they will approve of it, although that is not a matter which this Convention should interfere with. I am a friend to labor, and I want to see the poor man able to come here or elsewhere, as well as the rich man, who can afford to stay here and find himself. At this time, when prices of living are rising, labor of every kind is struggling hard for some addition to the compensation that is paid for it, and I want to see the prices of labor increased in all departments of industry. I am willing to set the example here. The mechanics have struck for higher wages, and though there is no occasion for us to strike, and, if need be, we could give our labor to the public for nothing, yet I hope we shall establish the rule, that the laborer is worthy of his hire, and join the laboring class, and do what is right to establish a rule, of reasonable compensation. I hope that the amendment will not be adopted.

Mr. HOOD, of Lynn. The gentleman who has just taken his seat, says that the time has come to strike for higher wages, and that the question should be settled by fixing the price at three dollars, as an example. But, let me ask, how it is in regard to this Convention? Have we not been fixing the pay of members of the legislature for future years, or at least regulating the length of the session, and not allowing the members to receive pay after one hundred days? And I submit, if there is not as much propriety in limiting our own compensation as in limiting that of members of the legislature. As I find there is great opposition to the amendment, however, and that it will require some time to take the yeas and nays, I withdraw the amendment.

The question being on the adoption of the resolve reported by the Committee,

Mr. THOMPSON, of Charlestown, moved that when the final question be taken upon it, it be taken by yeas and nays.

The motion was agreed to, and the yeas and nays were ordered.

Mr. BIRD, of Walpole, moved to amend the resolve, by striking out the words "three dollars" and inserting "two dollars," and upon that question he moved that the yeas and nays be taken.

The yeas and nays were ordered.

Mr. THOMAS, of Weymouth, moved that the Convention do now adjourn.

The motion was not agreed to.

Mr. STETSON, of Braintree. I desire to say that I shall vote for the resolution reported by the Committee. If I recollect aright, there was one legislative body in session during the warm season of which you, Mr. President, was a member, and that body received three dollars per day. I intend to vote openly and frankly in favor of the resolve, because I think, that if the duties devolving upon this Convention are worth anything, they are worth the amount which has been named, and I believe the people so consider it.

The question was taken by yeas and nays, upon the adoption of the amendment, and it was decided in the negative—yeas, 54; nays, 192—as follows:—

YEAS.

Allen, Parsons	Hale, Nathan
Alley, John B.	Harmon, Phineas
Alvord, D. W.	Hood, George
Ayres, Samuel	Howard, Martin
Bates, Moses, Jr.	Hurlbut, Moses C.
Bennett, William, Jr.	James, William
Bird, Francis W.	Marble, William P.
Boutwell, George S.	Miller, Seth, Jr.
Boutwell, Sewell	Morton, Marcus, Jr.
Breed, Hiram N.	Newman, Charles
Brown, Hammond	Packer, E. Wing
Brown, Hiram C.	Phinney, Sylvanus B.
Bullock, Rufus	Richards, Luther
Butler, Benjamin F.	Richardson, Samuel H.
Chapin, Chester W.	Simonds, John W.
Cook, Charles E.	Spooner, Samuel W.
Crockett, George W.	Stevens, William
Crowninshield, F. B.	Thomas, John W.
Cushman, Henry W.	Underwood, Orison
Davis, Isaac	Walker, Amasa
Deming, Elijah S.	Warner, Samuel, Jr.
Fisk, Lyman	Weston, Gershom, B.
Freeman, James M.	Wheeler, William F.
Gates, Elbridge	Whitney, James S.
Gilbert, Winton C.	Wood, Charles C.
Giles, Joel	Wood, Nathaniel
Griswold, Whiting	Wood, Otis

NAYS.

Adams, Benjamin P.	Brown, Alpheus R.
Aldrich, P. Emory	Brownell, Joseph
Allen, James B.	Bryant, Patrick
Allis, Josiah	Bumpus Cephas C.
Andrews, Robert	Burlingame, Anson
Aspinwall, William	Cady, Henry
Atwood, David C.	Carter, Timothy W.
Austin, George	Case, Isaac
Baker, Hillel	Chandler, Amariah
Ballard, Alvah	Churchill, J. McKean
Bancroft, Alpheus	Clarke, Alpheus B.
Barrows, Joseph	Clark, Ransom
Bartlett, Russel	Ceverly, William
Beach, Erasmus D.	Cogswell, Nathaniel
Beal, John	Cole, Lansing J.
Bigelow, Jacob	Cole, Sumner
Bliss, Gad O.	Conkey, Ithamar
Bliss, William C.	Coolidge, Henry F.
Booth, William S.	Copeland, Benjamin F.
Bradford, William J. A.	Crittenden, Simeon
Braman, Milton P.	Cross, Joseph W.
Brewster, Osmyn	Curtis, Wilber
Brinley, Francis	Dana, Richard H., Jr.
Briggs, George N.	Davis, Ebenezer
Brown, Adolphus F.	Davis, Solomon

Day, Gilman	Mixer, Samuel
Denison, Hiram S.	Monroe, James L.
Deuton, Augustus	Morey, George
DeWitt, Alexander	Morton, Elbridge G.
Doane, James C.	Morton, William S.
Dorman, Moses	Nash, Hiram
Duncan, Samuel	Nichols, William
Dunham, Bradish	Noyes, Daniel
Durgin, John M.	Nute, Andrew T.
Eames, Philip	Orcutt, Nathan
Easland, Peter	Osgood, Charles
Eaton, Calvin D.	Paine, Benjamin
Edwards, Elisha	Paine, Henry
Edwards, Samuel	Parker, Adolphus G.
Ely, Joseph M.	Parker, Samuel D.
Ely, Homer	Parsons, Samuel C.
Fay, Sullivan	Partridge, John
Fitch, Ezekiel W.	Penniman, John
Foster, Aaron	Perkins, Daniel A.
Foster, Abram	Phelps, Charles
Fowle, Samuel	Pierce, Henry
French, Samuel	Plunkett, William C.
Gale, Luther	Pomroy, Jeremiah
Gilbert, Washington	Rawson, Silas
Goulding, Jason	Reed, Sampson
Gray, John C.	Rice, David
Green, Jabez	Ring, Elkanah, Jr.
Griswold, Josiah W.	Rockwood, Joseph M.
Hallett, B. F.	Ross, David S.
Hammond, A. B.	Royce, James C.
Hapgood, Lyman W.	Sanderson, Chester
Hayward, George	Sargent, John
Heard, Charles	Sherman, Charles
Heath, Ezra, 2d	Sherrill, John
Henry, Samuel	Sikes, Chester
Hillard, George S.	Sleeper, John S.
Hobbs, Edwin	Smith, Matthew
Holder, Nathaniel	Sprague, Melzar
Houghton, Samuel	Stetson, Caleb
Howland, Abraham H.	Stevens, Charles G.
Hubbard, William J.	Stevens, Granville
Hunt, Charles E.	Strong, Alfred L.
Hunt, William	Sumner, Charles
Huntington, Asahel	Swain, Alanson
Huntington, Charles P.	Taylor, Ralph
Huntington, George H.	Thayer, Joseph
Hurlbut, Samuel A.	Thompson, Charles
Hyde, Benjamin D.	Tileston, Edmund P.
Jackson, Samuel	Tilton, Horatio W.
Jenkins, John	Tower, Ephraim
Jenks, Samuel H.	Turner, David
Johnson, John	Turner, David P.
Kellogg, Giles C.	Tyler, William
Kellogg, Martin R.	Wallis, Freeland
Kendall, Isaac	Walker, Samuel
Keyes, Edward L.	Ward, Andrew H.
Kingman, Joseph	Warner, Marshal
Knight, Hiram	Waters, Asa H.
Knight, Joseph	Weeks, Cyrus
Knowlton, Charles L.	Wetmore, Thomas
Knowlton, William H.	White, Benjamin
Little, Otis	White, George
Littlefield, Tristram	Wilder, Joel
Livermore, Isaac	Wilkinson, Ezra
Loomis, E. Justin	Williams, J. B.
Loud, Samuel P.	Wilson, Henry
Lowell, John A.	Wilson, Milo
Marcy, Laban	Winn, Jonathan B.
Marvin, Abijah P.	Winslow, Levi M.
Marvin, Theophilus R.	Woods, Josiah B.
Merriitt, Simeon	Wright, Ezekiel

ABSENT.

Abbott, Josiah G.	Bennett, Zephaniah
Abbott, Alfred A.	Bigelow, Edward B.
Adams, Shubael P.	Bishop, Henry W.
Allen, Charles	Blagden, George W.
Allen, Joel C.	Bradbury, Ebenezer
Appleton, William	Bronson, Asa
Ball, George S.	Brown, Artomas
Banks, Nath'l P., Jr.	Brownell, Frederick
Bartlett, Sidney	Buck, Asahel
Barrett, Marcus	Bullen, Amos H.
Bates, Eliakim A.	Carruthers, William
Beebe, James M.	Chapin, Daniel E.
Bell, Luther V.	Chapin, Henry

Wednesday,]

HOUSE OF REPRESENTATIVES, &c.—SPOONER—BATES—HUNTINGTON.

[June 29th.

Childs, Josiah
Choate, Rufus
Clark, Henry
Clark, Salah
Clarke, Stillman
Coggin, Jacob
Crane, George B.
Cressy, Oliver S.
Crosby, Leander
Crowell, Seth
Cummings, Joseph
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, John
Davis, Robert T.
Dawes, Henry L.
Dean, Silas
Dehon, William
Earle, John M.
Easton, James, 2d
Eaton, Lilley
Eustis, William T.
Farwell, A. G.
Fellows, James K.
Fiske, Emery
Fowler, Samuel P.
French, Charles A.
French, Charles H.
French, Rodney
Frothingham, R., Jr.
Gardner, Henry J.
Gardner, Johnson
Giles, Charles G.
Gooch, Daniel W.
Gooding, Leonard
Gould, Robert
Goulding, Dalton
Gourgass, F. R.
Graves, John W.
Greene, William B.
Greenleaf, Simon
Hadley, Samuel P.
Hale, Artemas
Hall, Charles B.
Haskell, George
Hapgood, Seth
Haskins, William
Hathaway, Elnathan P.
Hawkes, Stephen E.
Hayden, Isaac
Hersey, Henry
Hewes, James
Hewes, William H.
Heywood, Levi
Hinsdale, William
Hobart, Aaron
Hobart, Henry
Hooper, Foster
Hopkinson, Thomas
Hoyt, Henry K.
Ide, Abijah M., Jr.
Jacobs, John
Kimball, Joseph
Kinsman, Henry W.
Knight, Jefferson
Knowlton, J. S. C.
Knox, Albert
Kuhn, George H.
Ladd, Gardner P.
Ladd, John S.
Langdon, Wilber C.
Lawrence, Luther
Lawton, Job G., Jr.

Leland, Alden
Lincoln, Abishai
Lincoln, F. W., Jr.
Lord, Otis P.
Lothrop, Samuel K.
Mason, Charles
Meador, Reuben
Moore, James M.
Morss, Joseph B.
Morton, Marcus
Nayson, Jonathan
Norton, Alfred
Ober, Joseph E.
Oliver, Henry K.
Orne, Benjamin S.
Paige, James W.
Park, John G.
Parker, Joel
Parris, Jonathan
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Jesse
Perkins, Jonathan C.
Perkins, Noah C.
Pool, James M.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Putnam, John A.
Rantoul, Robert
Read, James
Richardson, Daniel
Richardson, Nathan
Rockwell, Julius
Rogers, John
Sampson, George R.
Sanderson, Amasa
Schouler, William
Sheldon, Luther
Simmons, Perez
Souther, John
Stacy, Eben H.
Stevens, Joseph L., Jr.
Stevenson, J. Thomas
Stiles, Gideon
Storrow, Charles S.
Stutson, William
Sumner, Increase
Taber, Isaac C.
Taft, Arnold
Talbot, Thomas
Thayer, Willard, 2d
Tilton, Abraham
Train, Charles R.
Tyler, John S.
Upham, Charles W.
Upton, George B.
Viles, Joel
Vinton, George A.
Walcott, Samuel B.
Wales, Bradford L.
Wallace, Frederick T.
Whitney, Daniel S.
Wilbur, Daniel
Wilbur, Joseph
Wilkins, John H.
Williams, Henry
Wilson, Willard
Wood, William H.

Absent and not voting, 173.

The question recurred upon the adoption of the resolve.

Mr. SPOONER, of Warwick. I move to strike out the words "three dollars" and insert "two dollars and fifty cents." Much has been said, Mr. President, about the great sacrifices and inconveniences which gentlemen have suffered in coming here to represent the interests of the State. But, Sir, it is my opinion that there are

not one-eighth of the gentlemen in this House who suffer to the extent of one dollar in their interests at home, or anywhere else, by coming here and receiving their *per diem*, but on the contrary, I believe they are making money by it. [A laugh.] Here is my honorable friend on my right, who represents Wilbraham, (Mr. Hallett,) who is engaged in his ordinary duties of an officer of the United States, but, Sir, I do not believe the United States has suffered in the least from his attendance in this place.

I will not consume the time in further remarks, however; I merely offer my amendment as a compromise, and I hope it will be adopted.

Mr. EAMES, of Washington, moved that the Convention adjourn.

The motion was not agreed to.

The question was then taken on the amendment of the gentleman from Warwick, and it was decided in the negative.

Mr. TYLER, of Pawtucket moved that the Convention adjourn.

The motion did not prevail.

Mr. THOMPSON, of Charlestown. I would ask if it is competent to withdraw the motion to take the question on the final passage of the resolution by yeas and nays?

The PRESIDENT. If no objection be made, the gentleman can withdraw his motion for the yeas and nays.

There being no objection, Mr. Thompson withdrew his motion.

The question was then taken upon the final passage of the resolution as amended, and it was decided in the affirmative.

So the resolution was adopted.

On motion by Mr. FAY, of Southborough, the Convention then, at ten minutes past six, adjourned.

WEDNESDAY, June 29, 1853.

The Convention assembled at 9 o'clock, and was called to order by the President.

Prayer by the Chaplain.

The Journal of yesterday was read.

Report from a Committee.

Mr. BATES, of Plymouth, from the Committee on the Reports of Debates, submitted the following Report, which was adopted:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 29th, 1853.

The Committee to whom was referred the subject of Reporting and Publishing the Debates and Proceedings of the Convention, ask leave to report the following resolution.

For the Committee,

M. BATES, JR.

Resolved, That there be paid to Harvey Fowler, the official Reporter of this Convention, the sum of \$1000, in part payment for his services, and that the Governor of the Commonwealth be requested to draw his warrant on the Treasury for the same.

Orders of the Day.

On motion by Mr. BREED, of Lynn, the

Convention proceeded to the consideration of the Orders of the Day.

The first item in the Orders of the Day, was the resolve reported by the Committee on the House of Representatives, with the amendment offered by Mr. Butler, of Lowell, and recommended by the Committee of the Whole—the pending question being upon the amendment to the amendment, offered by the member from Northampton, (Mr. Huntington.)

Mr. HUNTINGTON, of Northampton. When I made the motion, Sir, to strike out "one thousand" and insert "twelve hundred" inhabitants as the basis for annual representation, it seemed to me that it might bring the action of the House to some direct test, upon the question whether we should give the towns below twelve hundred in population, a full representation, or exclude them. It has occurred to me, however, upon further reflection, that the object will not be attained by this motion. Those who are in favor of a higher number than twelve hundred, and yet who would prefer twelve hundred to a thousand, would now vote against the basis of twelve hundred, because they prefer a higher basis. If presenting this amendment would secure a test vote, I should feel disposed to urge it. But it has seemed to me, upon the whole, that it may be proper and advisable to withdraw it, until gentlemen have had an opportunity to test the sense of the Convention on the higher numbers. There are schemes to take fifteen hundred as the basis—there are schemes ranging from fifteen hundred to two thousand, and from one thousand up to three thousand, as proposed by the member from Boston. By the common parliamentary rule, the question should be taken upon the highest number first; and perhaps fairness would require, that this amendment should now be withdrawn, unless it can be taken as a test question.

We have reached a certain stage, upon this great question of representation, but the matter is yet open for amendment.

To my mind, there are two great evils attending the present system. The first is the general ticket system, which has always been extremely obnoxious to me. We see the operation of it in regard to the city of Boston. Here there are forty-four representatives, elected by general ticket—no matter what party they represent, for I am not speaking with reference to party. In the future, we do not know what party is to prevail; in fact, judging from the vote last fall for President, it is not the whig party, at any rate. I say that there is an unfairness, standing out palpably in the general ticket system, where there is so great an inequality as exists between the city of Boston and all the other cities and towns in the Commonwealth. Where there is anything like an equal division of parties in the Commonwealth, forty-four men coming into the legislature, by general ticket, from one city, can control every political question, from the election of a United States Senator down. That is one great objection, in my mind, to the present general ticket system.

Another great objection is, the operation of the amendment of the Constitution in 1840, as to representation upon the small towns. Not that the amendment of 1840 in itself unjust—not at all; but the operation of that amendment upon the small towns has been entirely unexpected, both by the inhabitants of the large and the small

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towns. By the rapid growth of the cities and large towns, the representation from the large towns has retained its strength, while the small towns have lost in their ratio. The basis of full representation has advanced from twelve hundred up to about sixteen hundred, more or less, and thus the small towns have dropped behind in the race. They have lost a portion of their representation; and we all wish to redress that wrong. Now, how is it proposed to remedy these two evils? We have gone so far as to decide not only that the general ticket system is a bad one, but that it is proper that the State should be restricted to some extent. So far as the vote went yesterday afternoon, it decided that the districting system is to be applied to the cities. Another step has been taken. It has been decided that towns containing less than one thousand inhabitants, are not to have a full representation; but it has not been decided that a still higher number than one thousand should not be adopted. Another thing has been decided. It has been decided that a system of representation for every town in the Commonwealth, every year, is not a just system, in the opinion of this Convention. So far we have advanced, and perhaps we have gone one step further, and that is, to reject the plan of districting the whole Commonwealth. Some gentlemen say that has not been fairly tested; if it has not, I hope it will be. But, in my opinion, the sense of this Convention is, that the people are not ready for a full district system, especially a district system based upon population and mere numerical equality, for every district. And, Sir, if a district system ever is adopted in this Commonwealth, I think it will be with a different basis in the different districts—one basis for the cities and large towns, and a smaller basis of representation for the smaller towns. If we have such a feature as that, in my opinion, there is no great objection to the district system. I did not come here with my mind made up as to town representation or district representation. I can see good and evil in both systems; both can be attacked, and both can be defended. I came here in the spirit of the document which was put forth by the friends of this Convention, a majority of the legislature of 1852; and by that, no particular preference was expressed for town representation over the district system. Let me say, further, that by that document, the idea was not even shadowed, that towns containing less than twelve hundred inhabitants, were to be entitled to a representative every year. What was complained of, then, by the majority of the legislature friendly to this Convention? It was the unjust and unexpected operation of the amendment of 1840, tending to disfranchise the small towns. Not, that in itself it was wrong, or that it was wrong at the time when it was adopted. There was no intimation that the basis of annual representation was to be depressed below twelve hundred. That document alludes to both systems—the district system and the town system, and no great preference is expressed for one or the other. I read from it:—

“The first subject which would demand the attention of the Convention is, a change in our present system of representation. . . . The present constitutional provisions on this subject, though complicated, are ingenious, and though they have been the source of much complaint during the last few years,” [mark these words,]

“yet the practical working of the system has been much better, thus far, than it is likely to be if continued in future. But however light, comparatively speaking, may have been the evil hitherto, . . . ten years' experience under it, coupled with a knowledge of its future operation as now established by official facts and calculations, can leave no doubt, &c., that some change is absolutely necessary.” . . .

Again:—

“Whether this most desirable result can be best accomplished by dividing the State into single districts based upon the number of people, of legal voters, or of ratable polls, or whether corporate or town representation under which the people of the Commonwealth have so long lived and prospered, and for which there unquestionably exists a strong attachment—it is not the province of the legislature to say.”

I do not think any member of this Convention has the right to say that one system is more democratic than another. I have no doubt that if the basis of representation was fixed altogether on the district system, it would operate with some inconvenience for a time; but I think the people would flourish as well under that system as under any other, when they should have accommodated themselves to it. I have a preference for the town system on some accounts, if we can get a system which shall be tolerably fair, without conflicting too much with the habits and feelings, or if you please, with the prejudices of the people.

I do not place any stress upon the past history of the Commonwealth in regard to this matter; the habiliments of the child are not the habiliments of the grown man. I care not whether by the colonial history of the Commonwealth it is shown that the district system or the town system prevailed. I believe it has been a corporate right long enough to establish it in the feelings or the prejudices of the people of this Commonwealth. It is a corporate right, and the Constitution recognizes it as such. The right to be represented does not exist in the people of the Commonwealth independently of this corporate right. That doctrine has been established by the supreme court of this Commonwealth. The question was raised of the right of a town to vote not to send a representative; and it was argued, that a town could not vote not to send, because, according to the Constitution, the right existed in the people, and not in the town. The Constitution, it was argued, declared that *the people* shall have a right to be represented. The answer of the supreme court was, that this right to be represented, by the Constitution, was a corporate right, and not a right of the people, independent of their municipal institutions. That is the doctrine in this Commonwealth. It may be changed, I admit; and we have settled it, as I conceive, that this corporate right, to some extent, shall continue. What is the next thing to be done? Well, Sir, by the amendment of the gentleman from Lowell, the basis of annual representation is changed from that established in 1840; it is changed from twelve hundred to one thousand. He proposes that all towns having one thousand inhabitants, shall have a representative every year. Now, Sir, can any one man tell me why a town of one thousand people should have a representative every year, and why a town containing five hundred inhabitants should not? If you take a standard below twelve hundred, can

any good and valid reason be assigned for making this distinction in favor of a town of one thousand inhabitants, while you refuse to admit a town of nine hundred to the same privilege? I cannot see any such reason; and therefore I can see a degree of justice, or less injustice, in the plan of the gentleman for Erving, which I cannot find in the plan of the gentleman from Lowell, in this respect, because while it admits every town in the Commonwealth to a representation every year, it also adopts the general ticket system, which is a compensating advantage given to the large towns and the cities, and one wrong is neutralized by another. And if I were compelled now to vote, and choose between these two systems alone, that of the gentleman for Erving, and that of the gentleman from Lowell, I should give my vote for that proposed by the gentleman for Erving, unjust as I think it is.

My amendment proposes to take twelve hundred as the basis; it can be defended by good, substantial reasons. I go to the Constitution as it was amended in 1840; and what is the history of the basis which was adopted at that time? That amendment was, that a town of twelve hundred inhabitants should be entitled to a representative every year, but that no town below twelve hundred should be thus entitled. That, Sir, was the result of a compromise. At the time when that was adopted, the question of the property basis in the Senate was before the people; and there were friends of the property basis in the Senate who belonged to the legislatures that passed that amendment. There were also the friends of a large House, and these were those who were in favor of reducing the number, which was very great at that time. Committees embracing these different interests and opinions were constituted, and the result was the amendment now standing in our Constitution, that towns containing twelve hundred inhabitants should be entitled to a representative every year, and all others below proportionately. And, Sir, from the earliest history of the Commonwealth down to the present time, there has been this distinction in relation to small towns. The doctrine has always been recognized that the smallest towns were not entitled to a representative every year, with the compensating principle of the general ticket. The amendment of 1837, which had been adopted but recently, did not stand, because the House was rapidly becoming more unwieldy than ever, and the basis of 1840 was adopted, almost by the unanimous consent of the people of the Commonwealth. Every small town in the Commonwealth had an opportunity to know, and did know, exactly what the compact was. Every town containing less than twelve hundred inhabitants knew that it would not be entitled to a representative every year. That amendment received the sanction of one general court. It then came before another general court, and received the sanction of that also, by a vote of two-thirds of the House of Representatives each year. It then went to the people. Less than five thousand of the people recorded their votes against that compact—that compromise. We have, then, the calm, deliberate agreement, that all towns containing less than twelve hundred inhabitants should not be entitled to a representative every year.

Mr. GRISWOLD, for Erving. If the gentleman will give way, I will state that there were, less than thirty thousand people who voted for it,

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while there were probably 140,000 voters in the Commonwealth at that time.

Mr. HUNTINGTON. True, Sir; but I take it a man must be considered as approving a measure when, having the opportunity, he does not dissent. If a man does not choose to express any opinion when called on to vote yea or nay, it is fair to conclude that he acquiesces in the doings of the majority, in such a case as this. As I stated, there were less than five thousand votes recorded against that compact or compromise of 1840; and the senatorial basis entered into that compromise. Now, Sir, there has been no retrograde movement in relation to the basis of the Senate in this Convention. The avowed movement is certainly the other way. The Senate is to become the popular branch, and the House is to become the conservative department it is said, which seems to be a perversion of all theory and practice, and all constitutional doctrine. At any rate there is no advance proposed by this Convention towards a more conservative or property foundation in constituting the basis of the Senate.

Now, Sir, I can justify myself to my constituents, and to the people of this Commonwealth, in taking the basis of twelve hundred. When I am asked, why do you fix the basis there? I can reply, that it was because that number was solemnly agreed upon in 1840, by two legislatures, and not five thousand people in the Commonwealth recorded their votes against it. I can give a good reason for my course upon that ground. But when I am asked why I give my support in favor of a basis of one thousand, and why I allow these thirty-one towns,—I believe there are that number, with a population between ten hundred and twelve hundred,—a representative every year, and exclude all towns having less than one thousand from having a representative every year, and lessen the representation in towns that have gained in population, I can give no good reason. The selection of that number is entirely arbitrary, and cannot be supported by any principle whatever.

Since 1840, I suppose the population of the Commonwealth, in the large towns and cities, has increased from two to three hundred thousand. (About 235,000.) These two or three hundred thousand are to be cut down in the basis of representation, cities are to be divided into districts, by the amendment of the gentleman from Lowell, (Mr. Butler,) while in the other direction, a boon is extended to some thirty-one towns, which, for ten or twelve years past, have not thought of having a representative every year, and they are to be allowed to come in and enjoy rights which they have not even asked for. I ask why it is, that these two or three hundred thousand people are to be cut down in their rights, and why these thirty-one small towns are to enjoy privileges which they had not before?

I have here the number of representatives which it was estimated in 1840 would constitute the House, when the census of that year should have been taken. When the amendment of 1840 was adopted, two hundred and forty constituted the number of representatives, and it was estimated that when the census should be taken, upon which the amendment was to operate, the House would consist of two hundred and seventy members. The number of small towns, at that time, which were not entitled to representatives every year, was one hundred and four. Now, upon

the basis of twelve hundred, which I propose by my amendment, that number of towns is reduced, and it excludes from annual representation only ninety-four. So that my amendment does not operate against the spirit of the compact entered into at that time.

Another circumstance I call to mind. It is said that this system has operated unjustly upon the small towns since 1840. I agree to that. But what was the extent of the injustice? In 1851, a proposition to call a Constitutional Convention was laid before the people, with a full knowledge, on their part, of the extent of this inequality and injustice. And what did they do? They rejected the idea of calling a Convention to cure it. That system, which required twelve hundred as the basis of one representative, had been in operation some ten or twelve years, and the people of the Commonwealth knew all about its effect, and yet the evil had not reached a magnitude which would induce them to come together to correct it. Next year, to be sure, they did call a Convention. I say these are controlling considerations, in my mind, why towns, containing less than twelve hundred inhabitants, should not be admitted to a full representation.

Well, Sir, there is another feature in the amendment offered by the gentleman from Lowell, which I do not like; and that is, that it does not allow for the advantage gained by the operation of the general ticket system. It says: "Every town of one thousand inhabitants, and of less than four thousand, shall be entitled to one representative each year." Here the increasing ratio is "three thousand." The next clause is: "Every town of four thousand inhabitants, and of less than eight thousand, shall be entitled to two representatives each year." Here the increasing ratio is "four thousand," and no more is required in the next advance, from eight to twelve thousand, in order to entitle a town to an additional representative. And when you go above twelve thousand, the increasing ratio is again brought down to three thousand; and above that number, a still different ratio is adopted.

Now, the amendment which I have suggested, but have not yet offered, though it is in the hands of the members of this Convention, has regard to that objection. It proposes to establish an increased ratio for each additional representative. As you increase the number by general ticket, you should increase the ratio also. But I do not look upon that as an all-important objection.

But there is another feature in this proposed amendment, the operation of which I did not fully understand. It seems to me, that it may make a very large House, much larger than is contemplated. The proposition says: "In all apportionments after the first, the numbers which shall entitle any city or town to two, three, four or more representatives, shall be so adjusted, in proportion, as hereinbefore provided, that the whole number of representatives, exclusive of those which may be returned by towns of less than one thousand inhabitants, shall never exceed three hundred and seventy."

Now, there are some sixty towns, containing less than one thousand inhabitants. To be sure, it takes three hundred and seventy as the number to compose the House, but to that you add sixty more, and you have four hundred and thirty. To that, also, you are to add representatives from all towns of fifteen hundred inhabitants, which shall

hereafter be incorporated. So that, in 1855, when a new census is to be taken, you have a House composed of from four to five hundred members, for aught I can see. Even that I can vote for, but for reducing the number below twelve hundred inhabitants, as the number required to entitle a town to a representative every year, I can find no reason satisfactory to myself. I am free to say, that I think twelve hundred too low a basis, but there is a show of substantial justice in it, and it seems to me, that in adopting that number, full and ample justice is done to the small towns, and it is as far as they could ask the people of this Commonwealth to go.

Well, Sir, so much for this amendment. I have already said that I approve of one feature of that amendment, and that is the one in relation to the district system. That system is convenient for the large towns, and they can easily adopt it, but I think "five thousand" is too low a ratio of increase for the city of Boston. I think a basis of "six thousand" for the large cities would operate more fairly and equally upon the people of the Commonwealth. That would be convenient for their wards; and a double district would make twelve thousand inhabitants, and one half of a senatorial district; or if we should give them a general ticket of four representatives, it would cover a senatorial district. But this consideration has nothing to do with the justice of it.

I propose to explain in a few words, why I think an increasing ratio and a larger basis of representation should be adopted in relation to the large cities and towns. There are three great interests in this Commonwealth: the commercial, the manufacturing and the agricultural. As to the commercial interest, the legislature of Massachusetts can do very little toward sustaining that. Massachusetts is not a nation, and she has surrendered jurisdiction upon the subject of commerce to the United States. Representatives, sitting here in general court, can do little in any way, towards sustaining or injuring that great interest.

Next, there comes the manufacturing interest. How is the city of Boston situated in relation to that? In 1845 or 1846, returns were procured from the assessors of all the towns and cities of the Commonwealth, showing the amount of the industrial products of each. By looking at those tables, you will find that Boston has but very little capital invested in manufacturing, in the city proper. While the population of Boston is about one-seventh of the inhabitants in the whole State, her amount of capital invested in the industrial pursuits of the Commonwealth in the city is only about one-fifteenth of that of the whole State. You find then that the manufacturing capital, which is to be protected by the general court, is not in Boston, but in the country. It is scattered all along your little streams; though, perhaps, owned to some extent by gentlemen residing in Boston and its vicinity; it is doing good there, is represented there, and the people there will take care of it. It is in safe keeping, and I venture to say it is where the owners of this property, and where the capitalists of Boston interested in that species of industry, wish to have it, and wish to have it represented, inasmuch as they have placed it there.

The same tables show the number of hands employed in these industrial pursuits of the Commonwealth, and how does the number of hands

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so employed in Boston, compare, with the number employed in the country? While she has one-seventh of the population of the State, she has, or then had, one-thirtieth of the number of hands thus employed. So it appears that she has only one-fifteenth of the capital and one-thirtieth of the hands employed, with a population amounting to about one-seventh. It seems to me that Boston must admit, that so far as the industrial products of the Commonwealth are concerned, they should be strongly represented from the country. They are then, and the representatives from the country can and will sustain them.

Then there are other great manufacturing interests; the leather, and the boot and shoe manufacturing interests, more important, by far, than that of woollen and cotton manufactures. They are not situated here in Boston. The agricultural interest too, is not here; and I submit, that it is not competent for Boston to say, in relation to these three great interests, that she is entitled to be as fully represented as the country.

Something has been said in the progress of this debate, as to the superior intelligence, and wisdom, and sober second thought of the people in the country. I would not be understood as intimating or encouraging the idea that the voters of the country are more intelligent than the voters in Boston. I do not believe it. I believe that the voters in Boston are, as a class, as intelligent as those who reside in the country. By their schools and by the lectures and libraries to which they have access, they have the means of advancing quite as far in that direction, as the people of any part of the State, and if it were not so, to base any provision, which we may incorporate into the fundamental law of the Commonwealth, upon the idea that the voters of any one section of the State are more intelligent, and wiser, and better men than those of any other section, would be highly unjust. But, Sir, we have a right to look at the great interests which are represented in the legislature of Massachusetts, and we have a right, and it is our duty, to see that they are properly represented.

Another great interest of this Commonwealth is that of education; the interest of your common and public schools which are supported by taxation—not your private schools, supported upon the voluntary system, which are, I was about to say, detrimental to the great cause of popular education. If you take taxation as the basis of representation—as one gentleman from Boston, who has brought forward his tables here to show the wealth of Boston, as compared with that of the country, says you should—look for a moment at the amount which the small towns of the State pay towards the support of the public schools, and that paid by the city of Boston, and see where, according to that comparison, the representation would fall. That would give the country a higher basis of representation than is asked for by any body here.

Inasmuch as the Secretary of the Board of Education has shown what percentage of the taxable property of the Commonwealth is contributed towards the support of the common schools, in the different parts of the State, I had the curiosity to look at it, and I found this to be the result. The table is headed by the Secretary "Counties arranged according to the percentage of their taxable property, appropriated to the sup-

port of public schools for 1851 and 1852, expressed in decimals:—"

Barnstable,	2.53	Norfolk,	1.77
Plymouth,	2.26	Franklin,	1.74
Middlesex,	2.13	Bristol,	1.73
Nantucket,	2.06	Hampden,	1.66
Essex,	1.99	Worcester,	1.61
Dukes,	1.83	Berkshire,	1.53
Hampshire,	1.81	Suffolk,	0.94

Now here are nine counties in the Commonwealth, which exceed Suffolk two-fold, in what they contribute for the support of our common school system. The average for the whole State, is 1.54 per cent. upon the property of the Commonwealth, and you will see how far Boston falls below that, when she only contributes .94 per cent. Well, Sir, Boston does a great deal for public schools, a great deal for colleges, and a great deal for private schools. I do not mean to say, she does not do as much for the cause of education, including colleges and private schools, within her own limits, as any other portion of the Commonwealth. But I say, that so far as this great system of public schools, provided for by the legislature is concerned, which secures to every child in the Commonwealth, an education, at the public expense. Boston does not, according to her ability, do as much as the small towns of the Commonwealth, by one-half.

Mr. UPTON, of Boston. Does the gentleman mean to assume that the schools in Boston, are not as good, as they are in the small towns of the State?

Mr. HUNTINGTON. Not at all. I believe the schools in the city of Boston, are rather above the average standard of schools in the community. I wish I could say that the public schools in every portion of the Commonwealth, were as good as they are in the city of Boston. Indeed, I think I should be safe in saying that the schools in this city, public and private together, are superior to the schools in the country. They are made so by their central position, by the wealth of the people, and by the interest which the people take in them. That is a safe calculation to make. I am willing to yield that point. But it is no purpose of mine in this argument, to make any odious comparisons, either against the city and in favor of the country, or in favor of the city and against the country. I am only considering such of the great interests of the people of the Commonwealth, as this Convention ought peculiarly to regard and protect, and I think this great system of public schools, comprises one of those interests, and in connection with that interest, I alluded to the fact, that the city of Boston, in proportion to its valuation lists, does not pay for the support of this system of public schools, more than one-fourth or one-half as much, as the people of the small towns.

Let me call the attention of the Convention, to another fact in connection with the subject of public schools. I find, from a cursory examination of the returns of the Secretary of the Board of Education, that the attendance upon these schools, considering all the disadvantages of distance and travel in the country, is much larger in the small towns than in the large. Notwithstanding many of the children are compelled to go two or three miles to reach their school-houses, they are there more regularly than in the large towns and cities. This shows the great interest which is taken in these towns,

in our system of public schools. It is considered by the people of those towns as one of the most important interests of the community, and it is an interest which is to go on and increase hereafter. I, therefore, regard it as one which should be taken into great consideration by this Convention in establishing their basis of representation.

Then there is another subject which I also desire to bring to the attention of the Convention. Much has been said about centralization here. This doctrine of what is technically called centralization, I care nothing about. I cannot see that it has any proper application to this subject. The doctrine of centralization, as applied to the governments of the old world, we know nothing about, practically, here. What I understand by that term, as applied to government, is when that government itself is centered in the hands of the few. As our government is absolutely in the hands of the legal voters of the Commonwealth, no centralization can take place, so far as the government is concerned, except so far as the people themselves, in migrating from one place to another, or in gathering into large towns and cities, may collect in larger numbers in some one place more than in others. This we have no right to prevent in establishing a fundamental law. But so far as the administration of the government is concerned, there can be centralization, in the sense in which I understand the term. The people delegate the powers of government to their officers, state and county, and to representatives who meet here in the city of Boston, and to that extent the administration of the government is centred in the city of Boston. But the municipal institutions which prevail amongst us, and which, as they exist here, are unknown to the old world, are an effectual and perfect protection from this danger of centralization of the government, and therefore, I say, I care nothing about this doctrine, as applied to the government of Massachusetts. There is, however, a concentration of wealth, power, influence, and numbers combined, in the cities and large towns, and this is a fact entitled to consideration in the determination of this question. Take, for instance, the city of Boston, and compare its advantages for representation with the country. Boston is more strongly represented in the legislature than a country town is, because she is not only represented by her own delegates, but she is also, in a peculiar sense, which does not apply to country towns, represented by all the delegates from all the portions of the State, even by the country representatives themselves. Beside the general doctrine—and it is the true theory of our government—that a man who is elected from any particular place, is the representative not only of that place, but of all the towns and cities in the Commonwealth, and which will apply to the relative position of the city members towards the towns, as well as to that of the country members towards the city,—I say, besides this general doctrine, the country members, when they come here, do, in a peculiar manner, represent the city also; not in any illegitimate or improper sense, but they truly represent the interests of the city. While they are here, as they are, from all parts of the Commonwealth, they see what Boston wants. They go to her wharves, and her places of business of every description—they witness her pub-

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lic works. They are ready to investigate any plan which you will show them for public improvements. They visit your charitable and literary and scientific institutions, your private and public establishments for the poor and suffering, and see with their own eyes what are their necessities. Many country representatives are doing business here with their Boston constituents, are in their counting-rooms, shops, and banks, hear what they have to say by way of suggestion, and look to their interests in legislation. But the people of the country do not enjoy these advantages. If you would take the Boston representatives into the country, and give them the same opportunity of ascertaining the wants of the country, as the country representatives have of attending to the wants of the city, they would be quite as willing to give their aid. I do not mean to intimate that they would not do as much, and go as far to promote their interests and assist them, as do the representatives from the country, but it is impossible, from their situation, that it can be so.

It is an impossibility, from the very nature of things, that gentlemen who live in the city can understand the interests of the country as the country representatives do those of the city, so far as local legislation is concerned. For instance, suppose there is a question as to the alteration in a city or town line in this neighborhood, or a ferry, or railway, the members can go and examine and hear for themselves, and can administer to the public exigency from their own positive observation and knowledge. But suppose the question of the settlement or alteration of town lines, or any other local question, in the county of Berkshire, should arise, Boston gentlemen cannot visit Berkshire, for the purpose of obtaining the requisite information, but they must receive it second-hand. I do not mean to say that there is any disposition on the part of the people of Boston not to do justice to the people of the country, certainly not, but I do mean to say that Boston, from her position as the seat of government, has an advantage over the country, and that her interests are better represented than country interests, from the fact that they are not only represented by the members elected from the city itself, but also by the members who come here from the country. If Boston had not a single representative upon this floor, still her interests would be well guarded. The very fact that the State House is in the city insures that protection. Why, Sir, I venture to say that Worcester or Springfield would either of them give up half their representation for the sake of having this State House located there, because they would feel that by the mere presence of the legislature, their interests would be regarded and promoted, and better protected without a single representative elected by them, than they now are with all the representatives they are entitled to. In this respect, therefore, the people of Boston have much the advantage over the people in the other portions of the Commonwealth.

Permit me again to allude to the fact, that from the very nature of things the representative from Boston is in more immediate communication with his constituents than the representative from the country can be with his. He lives almost within a stone's throw of them, and can at any hour confer with them, or be conferred with in ten minutes' time. If absent when a question is to

be taken, he is summoned in. But when any matter arises in the country, touching local interests, which require legislation, that representative is away from them and cannot consult with them. They must and do send down lobby members, or let the matter in hand go unrepresented.

Then there is another advantage which the representatives from Boston and the large cities always have. The members from the country are many of them obliged to go, or they *do* go, home towards the close of the sessions. It has always been noticed, that at these periods there is an undue number of absences among those representing the remote parts of the Commonwealth. They are also absent more or less during the session, and cannot be called in when a question is to be taken. These are not very consoling arguments I admit, but I think the fact is entitled to some consideration, and I present it for what it is worth.

The great interests in the Commonwealth, to be provided for by State legislation, are the educational, the manufacturing, and the agricultural. These interests must and will be fostered. The country and the city are both interested in them, for one is dependent upon the other. But they mainly are found and exist out of the city. Your agricultural products are necessary for the existence of the cities, and in return your agricultural communities are enriched by the cities. Our manufacturing interest, I think, is eminently entitled to the consideration and protection of the legislature of the Commonwealth, so far as it has control of the subject. I know that this interest is, to some extent, regulated and protected by the national legislature. But it is the great interest of Massachusetts after all. I do not, as some gentlemen do, rank it below the agricultural. There are as intelligent men engaged in mechanical and manufacturing pursuits, as can be found devoted to agricultural. My professional experience has brought me in connection with both, and given me some opportunity to judge in relation to this matter, and that is my conviction. Something has been said, in the course of this debate, about farmers as a superior order of men. I do not believe the agricultural portion of the people of the Commonwealth have any greater claim upon the protection or the power of the government, or to higher consideration, than have those engaged in manufacturing, mechanical, or commercial pursuits. I would not give one the preference over the other. An ignorant farmer is no better than an ignorant mechanic. An ignorant man is an ignorant man, and an intelligent man is an intelligent man, whatever his occupation, and without much regard to it, here in Massachusetts. I believe about the same number, proportionately, may be found in either, or in any trade or pursuit. I would not be understood as detracting from the importance of the agricultural interest of the Commonwealth. Far be it from me to speak a word against that interest. My closest ties are in that direction. I have always looked forward to a farm as a kind of land of Beulah, where, if I could dwell, I could almost fancy myself living in sight of heaven, and hearing celestial sounds. But I do not believe the farmers themselves wish to be set apart as a favored or superior class in the Commonwealth; or that they demand an undue amount of influence in the affairs of the government. I believe they are willing to take just what they are entitled

to under a fair and equal apportionment of the powers of the government. I do not believe they desire to be treated as a superior order of men. I would not underrate any one of the great industrial interests of Massachusetts, but I believe, nevertheless, that if we were compelled to part with either the agricultural or the mechanical and manufacturing interests, that we could better spare the agricultural. We can supply ourselves with bread from abroad, but the products of the industry of our mechanics and manufacturers are essential to our prosperity, and we could not well live and flourish without them for a day. When I hear gentlemen talk of our farmers as a higher class of men, in whose hands the power of the government can be more safely placed than in the hands of the mechanics and the manufacturers, and, as if they were to be invested with the control of affairs, to the exclusion of other classes, I cannot sympathize with them in any such opinion. I think they are entitled to a just and fair representation, and that is all.

These are some of the reasons which induce me to advocate an-enlarged basis of representation for this city and the large cities and towns. In town or in corporate representation, this can only be attained by an increasing and enlarged ratio. These considerations would prevent my supporting a district system based on the equality of mere population, without regard to voters.

It has been said, and I know it is a controlling conviction in some minds, that the district system will introduce the convention mode of making nominations more extensively than it now exists. Well, Sir, I do not object to the district system so much on that account. Political conventions are already introduced, and have become almost a part of our institutions. They exist as a sort of political necessity.

If the people choose to nominate their candidates by means of a convention I do not know why they should not do it. I have seen as much mischief and intrigue, and petty jealousy at town caucuses as I have in any convention system. They are both in the hands of the people. If good men will attend your town caucuses they will nominate good candidates, and if good men will attend your conventions, you will have good candidates. There is no more danger in the one case than in the other, if they are under the influence of good men, and they may be. There are evils connected with the representation by the small towns which are not incident to an election by districts. A politician can go into a little town of three hundred inhabitants in a closely contested election and do a great deal more with a little money, than he can in a large city, towards effecting a particular result. I do not mean that the result is obtained by bribery or corruption, but merely by getting out the voters of the right stamp, and putting other machinery in motion. I do not mean that opinions or voters are to be improperly influenced by any such means, but it will require a great deal less money and exertion to change the result in one of these little towns, by getting out a few antique voters, who otherwise would not attend the polls, than it will in the large towns and cities. I have known caucuses held in small towns where a committee would be appointed to select the candidates of the party for which the caucus was held. The people have not permitted their committee to report to the meeting, but have appointed them,

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with instructions to report, when and where? At some time previous to the election, to the caucuses, for their ratification? No, Sir; but with instructions to report at the polls! In these small towns, the people are not always left free and independent to select their candidates for representatives; sometimes they do not know who is to be their candidates until they go up to the polls to vote, and they are compelled to take the candidate reported by their committee, without knowing even his name till they are called on to cast their ballots.

And it very often happens that in the small towns the election turns, and the representative is chosen upon merely sectional and small local considerations. A new religious society is formed in a small town—one man will not vote for this candidate because he belongs to that church, and another will not vote for that candidate because he does not belong to his own church. Various neighborhood feuds and jealousies creep into these small town nominations.

Now, Sir, this consideration, it seems to me, is one which should have some weight in determining this question as to district conventions and town nominations, and whether the district system is objectionable on this account.

These various views which I have presented, it seems to me, show the fallacy of the tables which have been got up to set forth the equality or inequality of the various plans which have been proposed. I contend that exact numerical equality is not necessary, nor is it consonant with exact political justice in apportioning the representation of the State. We do not want mere numerical equality in our representation. What we want is, that all the interests of the State should be fully and fairly represented. That is political justice and equality, and that is the system of representation which I hope the Convention will adopt.

I have presented considerations, tending to show, that you cannot take a mere numerical majority, based on population, as reliable in any system,—either in the district or the representative system. I wish to present a few controlling facts in relation to this particular branch of the subject. On looking at one of the documents, (No. 17,) which contains a list of the population and legal voters, you will find, that in the large cities and towns, the population runs much above the legitimate proportion between population and voters. I have looked through these tables, and I find, that what may be called a fair and healthy proportion between the population and the legal voters, is about five to one.

If gentlemen will examine these tables as to the small agricultural country towns, they will find that about one-fifth of the population are voters. In the large cities and towns, you will find, that in Boston, not one-seventh of the population are voters. I take twenty-one of the largest cities and towns in the order of their population, and I find, on an average, that only one-seventh are voters, instead of one-fifth. Just take this result, and apply it to the basis of representation. You have not done it in regard to the Senate. There you have taken the population. You find that this advantage is gained by the cities and large towns on their population, that it operates just like the representation of property, and it looks something like a return to the old system of the property basis, because this floating population

always come in, where the property and the largest wealth are to be found. And when you permit this floating population to be represented, you in fact admit property in another shape and form to come in and be represented—not in name, but in substance. As I said before, apply this to Boston, and take the same ratio in regard to voters and population as you find in the country, and how does the case stand? Boston does not count over 138,788, by any reckoning; but by this mode, only about 107,000. Multiply her voters by five instead of seven, as that is the proper way to ascertain her legitimate population, to be represented by Boston representatives, and her population is only 107,000,—and when she gets twenty-four or twenty-nine representatives therefore, she gets them upon 107,000, and not upon 138,000. Apply this calculation to your county population, about which so much has been said, and where such apparent inequalities have been presented. Take the county of Hampshire for instance,—her population is 34,290 by the tables. Multiply her voters by seven, and bring them up to the same ratio or standard which exists in your large cities and towns, and you find that her population should be reckoned at about 42,000, instead of 34,000, in determining her proportion of representation. Hampden has about 70,000, instead of 50,000; Franklin has about 43,000, instead of 30,000; Berkshire has 68,000, instead of 48,000, expressing it in round numbers. Take the tables as furnished us yesterday by the gentleman from Lowell, (Mr. Butler,) and apply the principle. Reduce the population in your large cities and counties by that scale, and you leave a basis for a fair representation. You may give Boston a representation of one for every 6,000 of population. Based on voters, it would be one for about 4,815. Where is the great injustice and inequality in that? Above all, considering the other great interests which predominate and prevail in the country, I submit that we should be doing ample justice to Boston and the large towns, by putting them upon this basis of 6,000 as to population.

It is to be borne in mind also, as to much of this floating population in large cities and towns, that it is made up of transient persons,—emigrants, foreigners not naturalized, male and female operatives,—persons whose interests can be as well protected, and as rightfully belong to the country, as to the city.

The country is quite as much interested as the city, in a cargo of destitute emigrants just landed, when the question arises as to what almshouses shall receive those that cannot take care of themselves.

For no other purpose, unless it were to swell and inflate the basis of population, would the large cities be likely to claim them as their peculiar constituency.

This excess, therefore, of population, found in cities and large manufacturing towns, beyond the healthy and legitimate ratio of population and voters, should, for the purpose of determining the representative basis, be distributed among all the cities and towns of the Commonwealth.

To recapitulate, then, in conclusion. As to a basis of 1,200 population for the small towns, to entitle them to an annual representation, I am willing to adopt it as a compromise, if you please to call it such, already sanctioned by the people, as it was in 1840. I am willing to agree, that the smaller towns shall be secured there. As expe-

rience shows, that these smaller towns do not increase as the large towns and cities do, and as a constant and advancing ratio is to be applied to them, I am willing that every town up to 1,200, shall be secured in having one representative every year, and that they shall stand as well as ever they stood. This is the basis which was sanctioned by the Convention of 1820. It had the sanction of two-thirds of the legislatures of 1839 and of 1840, and was adopted by almost unanimous consent. I think it will fully secure the smaller towns in their rights. While the large towns and cities have increased in wealth and numbers, they have, most of them, remained stationary, and thus fallen behind in the race. Our Commonwealth, like the solar system, has been advancing towards some distant and unknown centre of centres among the constellations, but the smaller planets have been somewhat thrown from their orbits. I would restore them to their appropriate paths and balance-power in our political system. Give them full, and ample, and generous security on the old recognized and established basis of twelve hundred, but below that basis, in my judgment, we should not go.

As to towns entitled to more than one representative, I submit, the ratio ought to be increased, to meet the additional strength gained by the general ticket system, so far as it is adopted, so that if 3,000 is the additional number required for one representative, four thousand should be the additional number required for two, and five thousand for three.

Then, beyond that, I would adopt the district system, on a basis still higher, for the reasons already assigned. Such a system of corporate representation, with a limit as to the number of representatives, and a proportionally advancing ratio that shall not affect small towns, I can defend here, or before my constituents, and the people.

Mr. HASKELL, of Ipswich. Notwithstanding the diversity of opinion, upon the subject now under consideration, I suppose we shall all agree to one proposition—that unless some plan may be devised, which shall be more just, equal, and more acceptable to the people than the present system, it will be better for us to retain the old system as it is. Most of the gentlemen who have addressed the Convention, seem to have taken it for granted that the present system is obnoxious, in a great degree, to the people, and that there is no danger of our framing a worse system. I do not concur in that view, or in the opinion which has been so frequently expressed, that there is great injustice and inequality in that system. I propose now to make a very brief examination of the plan proposed by the gentleman from Lowell, (Mr. Butler,) compare it with the existing system, and see if it obviates any of the objections which have been urged by the gentleman for Erving, (Mr. Griswold,) against the existing system. The first objection to the present system, which was suggested by the gentleman for Erving, if I recollect aright, was, that it was too complicated. Is it as complicated as the proposition now submitted by the gentleman from Lowell, (Mr. Butler)? I contend that it is not.

By the present basis, one sum is given as the number to entitle a town to one representative; another sum is fixed as the mean increasing ratio for additional representatives, and another sum is

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given, by which the population of towns not entitled to one representative, is to be divided, and the quotient thus obtained determines the number of representatives they are to be entitled to in each ten years. We have, then, three fixed or certain numbers given for these purposes, and the provision is, that for every 70,000 increase in the population of the State, (10 per cent. on the census of 1840,) 10 per cent. is to be added to each of these given numbers. I submit, there is not any great complication in this matter, and that any man can sit down with the census and Constitution of Massachusetts before him, and operating with the simple rules of arithmetic, can apportion the representation in a very short time. Can it be done as easily by the plan of the gentleman from Lowell? I must confess that I have given this subject a careful and candid attention, and I am hardly able to see the results, which the gentleman from Lowell is inclined to think will be realized, from the adoption of his system. The provision of the first resolution in his plan is, that every town of a less number than one thousand inhabitants, shall be entitled to five representatives in each ten years, &c.; then there are four degrees of the sliding scale in the ratio of increase, by which the representation increases, not by any regular percentage, according to the increase of population in the State, but by an arbitrary rule, in which the town is in some measure deprived of its power in proportion to the increase of its population.

The second resolution in the plan of the gentleman from Lowell, (Mr. Butler,) is a very complicated one indeed, and I would defy any gentleman of this Convention, except the gentleman from Lowell, to sit down and tell me what the result will be ten years hence, of the sliding-scale part of the basis laid down there. It provides, that "in all apportionments after the first, the numbers which shall entitle any city or town to two, three, four or more representatives, shall be so adjusted in proportion as hereinbefore provided, that the whole number of representatives, exclusive of those which may be returned by towns of less than one thousand inhabitants, and towns incorporated after this provision shall be adopted, shall never exceed three hundred and seventy."

Now, Sir, there are various ways in which this apportionment may be "adjusted." I have found that it might be "*adjusted*," (not proportionately increased,) as "in the manner before specified," so as to present very different results. There are two or three other elements which must always enter into the apportionment of the House, upon the plan proposed by the gentleman from Lowell. The date of the incorporation of a town must be ascertained; the population of towns subject to loss, on their representation, must be computed, so as to have the ratio increased to such an extent as to keep the number below the maximum. It is more complicated—infinite more so, than any system we have yet had, as experience will show, if it is adopted, and decidedly more complicated than the present system.

Again, it is suggested by the gentleman from Erving, that there is a great loss by fractions under the present system. He made out the loss to be 140,000. Now, I take it for granted, that we do lose by the present system, and I am willing to take the estimate at 140,000. I have made an estimate of the loss by fractions under

the system proposed by the gentleman from Lowell, and I find that the loss by fractions is nearly double what it is under the present system. I have all the details, and they are more surprising than the aggregate. I find that, according to the proposition of the gentleman from Lowell, the loss, in the aggregate, will be 277,060, nearly double the loss by fractions under the present system.

But I ask the attention of the Convention for a moment or two to the details of this comparison. Where does the loss chiefly fall under the system now proposed? In general terms, I may say that two hundred and eleven towns, entitled to one representative each will lose in the aggregate 205,089, making a fraction of nearly one thousand on an average, for each town; while the city of Lowell, which sends eight representatives, loses only a fraction of six hundred and twenty. If this is equal representation I must confess I have not been able to understand it. Lowell seems to be entitled to the lion's share in the system proposed by the gentleman from Lowell, as the county of Franklin was in that proposed by the delegate for Erving. Lowell loses by a fraction, only 620, while the two hundred and eleven towns which send only one representative each, lose nearly one thousand each, or almost double what is lost by Lowell, which sends eight.

To carry the matter further;

Boston, having	28 Reps.	has a fraction of	1,788
Lowell, "	8	"	620
Salem & Roxbury,	5	"	3,264
Five cities, having	4	"	15,877
Seven towns, "	3	"	11,635
Thirty towns, "	2	"	38,787
Two hundred and eleven towns one each,			205,089
			277,060

The Convention will see that the middle sized towns, sending but two representatives, and those smaller, sending only one, lose almost the whole. They lose, in the aggregate, more than 240,000, more than 100,000 above the amount lost by the present system, in all the Commonwealth, according to the statement made by the delegate for Erving. And yet this plan is put forth on the ground that there is a great loss by fractions under the present system. Gentlemen will see that there is nothing gained by the system proposed by the gentleman from Lowell, in respect to losses by fractions. Nearly all the loss will fall upon the small towns, and it will greatly exceed the present loss. I submit, that it is no improvement over the present basis in this particular.

Then there is another objection to the present plan, suggested by the gentleman for Erving. I refer to his objections because he stated them with more particularity than other gentlemen have stated theirs. The objection is, that all the towns are not represented. This, I think, is a very serious objection to any system. I agree in what has been said as to the right of every portion of the community to be represented every year. I believe it is their right, and I think it is the duty of this Convention to make such a provision, that every portion of the Commonwealth shall be represented on the floor of the House of Representatives every year. I do not know by what right the majority of this Convention may prescribe that any portion of the people shall not be repre-

sented half the time. I do not see the philosophy of the principle, or the justice of the doctrine upon which such a system is supported. But does the proposition, submitted by the gentleman from Lowell, obviate the objection to the present system entirely, in this respect? I do not know the precise number of the towns which are entitled to representation by their fractions; I know, however, that under the present system it is larger than it would be under the system proposed by the gentleman from Lowell. But, if the principle is bad in one case it is just as bad in the other. The plan submitted by him does, perhaps, obviate the evil in a measure, but it permits the pernicious principle still to remain as a portion of the Constitution of the Commonwealth. As a member of the legislature in 1839, when the present system was discussed and adopted, I voted for it; but it was under a sort of necessity and as a matter of compromise. I am not now prepared to vote for any system, either that proposed by the gentleman for Erving, or that proposed by the gentleman from Lowell, which shall deprive any portion of the Commonwealth of representation every year. I think the basis of representation ought to be so arranged, that the right of every person to representation, every year, shall be secured.

The proposition of the gentleman from Lowell, does, in a measure, correct that evil in the present system; but it still leaves some 45,000 inhabitants unrepresented half the time. The same objection exists, then, to the proposition of the gentleman from Lowell as to the present system, and I do not see that the amendment is any better in principle, in this respect, than the present system.

Another objection is, that the votes of the people do not have an equal force. The same remarks, just now made, with regard to the objection that all are not represented, apply here. The amendment now proposed, contemplates that there shall be a provision in the Constitution by which one man may vote for two or three representatives, and another, in the small towns, may vote for only one, and that a citizen of a fractional town shall only vote for a representative once in two years, or for half a representative each year, if the power is distributed over a term of ten years. It seems to me there is an inequality here; and though the proposition submitted by the gentleman from Lowell, lessens this evil in some degree, it is still permitted to remain. He proposes that in the cities districts shall be formed, and the voters have the right to vote for two or three representatives. Under this system, as now, there will be a very unequal power exercised by the voters. One person will have a right to vote for three representatives, another for two, and another for only one, and another for one every other year. I think the present system is obnoxious to this objection, and that a citizen of Boston ought not to have a right to vote for forty-four representatives, while I have the right to vote for but one. I know of no rule of logic or mathematics by which these capacities can be reduced to an equal power. But the objection applies to one system as well as the other, and if the principle is wrong in the present Constitution, it is equally wrong in the system proposed by the gentleman from Lowell; and, although his plan reduces the evil, it is still objectionable in principle.

Then, again, it is objected that by the present

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basis all the power will be absorbed by the large towns and cities. Why so? Not because the principle is wrong? The gentleman from Northampton, (Mr. Huntington,) and others who have stated this objection, have complained of the result, but have not objected to the principle or claimed that it is not equal, for if it is unequal it is clearly so to the disadvantage of the large towns only; and, Sir, when it was adopted in the legislature of 1839, the gentleman from Boston, whom I do not see in the hall, (Mr. Gray,) objected that it was prejudicial to the rights of the city.

But it is said that the results are different from what was contemplated, and that its operation was not understood by its framers. I believe the legislature that passed it discussed it for a long time, and I think that they understood it as well as gentlemen here who have condemned it so severely. It was before that legislature for several months and thoroughly considered; and it was finally carried, as the gentleman from Northampton (Mr. Huntington) has said, as a compromise between the opinions and wishes of the city and country members.

But it is said that, by the present system, the large towns will absorb all the electoral power. Why so? How? Only by the increase of population. Well, ought not the power to go where the people go? I have been used to hearing the doctrine taught, and especially by the teachers of democracy throughout the Commonwealth, that the power resided in the people, that it is inherent in the people, and derived from the people. I do not know what consistency there is in conduct which undertakes to exclude the people from the exercise of that power, or how the action of any political party, which professes to act in accordance with this principle, can prevent the power from going where the people go. If it is inherent in the people, it must go where the people go, and dwell where they dwell, whether it be in town or city. By the very great increase of population in the cities and large towns, it seems to be feared that they will absorb all the political power in the Commonwealth, and acquire a majority of the representation in the House of Representatives. There is a limit to this. Boston cannot double her resident, domiciled population. Her limits forbid it. Already she begins to overflow. A large portion of her population is already seeking its abode in the surrounding towns, not only in the suburbs but in more remote localities.

Almost all the future increase of the population in the Commonwealth must be in the middling sized and small towns. By the basis adopted in 1839 there is an inequality, and it is *against* the cities. By the basis then adopted, a town of 1,200 inhabitants was entitled to one representative; one of 3,000 inhabitants was entitled to two, and so on. Thus, by a sliding scale and different ratio for the small and large towns, the disparity of representation increases, to the disadvantage of the large towns as the population increases.

It starts with a disparity of 1,200 to 3,000, (one to three,) and these numbers are to be increased together by a uniform percentage. It must follow, that as these numbers of 1,200 and 3,000 are augmented the disparity increases.

Suppose that in 1860, or 1870, or 1880, the population of the State should be double the amount that it was when the ratio was fixed in 1840. Then twenty-four hundred will be the number which will entitle any town to one repre-

sentative every year, and seventy-two hundred to send a second representative. The small town must gain 1,200 to retain its one representative, and the large town must gain 3,600 to retain its two representatives, and so on. That is the only inequality after all. A large town will have to gain two inhabitants to get an additional representative, or hold its number; whereas a town which has only one representative, or a fractional representation, has to gain one inhabitant only to retain its representation. The large towns and cities will have to increase twice as fast as a small town to maintain their relative position. How is this objection, as to the absorption of power, obviated by the proposition of the gentleman from Lowell? He limits it so that there is no danger of the large towns gaining too much power. That is effectually guarded against. But the predominance of the small towns is just as effectually secured. The proposition as to the large towns is, that "in all the apportionments after the first, the numbers which shall entitle any city or town to two, three, four, or more representatives, shall be so adjudged, in proportion, as hereinbefore provided, that the whole number of representatives, exclusive of those which may be returned by towns of less than one thousand inhabitants, and towns incorporated after this provision is adopted, shall never exceed three hundred and seventy."

Now, Sir, what will be the effect of this provision? Will it prevent the accumulation and absorption of power in some portions of the Commonwealth, at the expense of other portions? I find, upon the basis submitted by the gentleman from Lowell, that forty-six cities and towns, entitled to more than one representative, will send one hundred and forty-seven representatives, according to the first apportionment; and there are sixty-four towns which will, at first, be entitled to but thirty-two representatives, but which will, undoubtedly, become large enough in population, before long, to entitle them to one representative each; which result will take them from the exception as to the maximum, and it will require thirty-two representatives more to supply their constitutional quota; and then there are seven towns, incorporated since 1850, for which no provision is made, as I understand, in the proposition submitted by the gentleman from Lowell, and which are not in the exception as to the maximum of three hundred and seventy. That will make thirty-nine rights of representation hereafter to be provided with representatives, and the representatives to supply which, must be taken from the three hundred and seventy now granted to the large towns and cities. But the provision is, that they must be taken from towns entitled to two or more, and these thirty-nine must therefore be taken from the forty-six towns and cities having one hundred and forty-seven representatives; and that will cut down the number, one hundred and forty-seven, to one hundred and eight, leaving to such towns and cities, having more than one-half the population, but little more than one-fourth of the representation. The large towns and cities will then, in the course of time, and that not far distant, be deprived of a large amount of their representation, and it will be awarded to the smaller towns which have succeeded in mustering one thousand inhabitants. The objection of the gentleman for Erving, that by the operation of the present system, the power is to go to

the large towns and cities, where the population has been tending for many years past, is, after all, more than counterbalanced by a similar objection to the proposition of the gentleman from Lowell. The political power, by that system, is going to the small towns, and the injustice will be done to the large towns and cities, which may have increased in a greater proportion than the small ones. I submit, that there is no improvement here; that the political power is going from the many to the few, from the large towns to the rural districts, and the very small towns, which contain only one thousand inhabitants. It is more unequal, in my opinion, than the present basis can ever be.

But, Sir, the objection that the amendment submitted by the gentleman from Lowell, will be ineffectual to obviate the difficulties which exist in the present system, is but a small part of the objection which I have to this amendment; this is a trifling objection, compared with the objection which, to my mind, will be, of all others, the one that will have most influence against that proposition in the minds of the people; and that is, it does not reduce the size of the House. Now, Sir, I think I know something of the desire and expectation of the people in that part of the country in which I reside, both of the large towns and the small towns, as well in the rural districts as in the cities; and although I do not wish to make any prediction with regard to the matter, as the gentleman who sits near me, (Mr. Keyes,) often does—and if I could succeed in making predictions as well as he does, I certainly would make the attempt—yet I may be permitted to express the opinion, that whatever basis of representation may be adopted by this Convention, and submitted to the people, if it does not reduce the number of the House materially, it will be rejected by them. I think there is danger that we shall lose other desired reforms in our Constitution, if we adopt some of the propositions which have been submitted here, by a failure to meet the expectations of the people upon this point. I must confess, Mr. President, that I have been surprised by the remarks which have fallen from some gentlemen here, as to the advantage of having a large number of members in the House of Representatives. I think that those gentlemen who express that opinion cannot have been here when we have had such large houses, as I have sometimes seen; for, on some occasions there has been a great deal of inconvenience experienced from this cause, upon this floor. I have been here when there were five hundred and thirty-nine members in the House, and I would not want to come here again, if I come at all, to sit in a House of that size. There has been a change in the accommodations since that time, and the seats have been enlarged and widened, so that gentlemen do not now sit so close and crowded, by a great deal, as they did then. As to the despatch of public business, I cannot agree with those who think that it was more expeditiously or properly performed in a House consisting of five or six hundred members, than it would be in a House of only half that number. I think, Mr. President, that it is a very serious objection to the proposition now before the Convention, that it increases the number by reducing the basis. By the present existing provisions of the Constitution, the number is necessarily limited; I do not mean that there is any

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express provision on the subject, but as the ratio is fixed, it is impossible that the number should exceed certain limits. The ratio will increase just in proportion to the increase of population, which must necessarily keep it down to just about the existing number. Or, if anything, it tends to keep down the size of the House, because, as the ratio entitling a town to representation increases, the fractions may be larger, so that under the existing system the tendency is to reduce the House. But the proposition now submitted will increase the number of members something like one hundred—ninety-four—I believe; and not only that, but it prevents its indefinite extension hereafter, at least so far as the thirty-nine members from the new and fractional towns may be entitled to seats. I must confess that I not fully understand the practical operation of the sliding scale in the proposition of the gentleman from Lowell; but one thing is clear, it does not diminish the House of Representatives, or confine it to anything like the present number, but it positively increases it to something like ninety-four over the present basis. I think it is a very serious objection, when we are undertaking to make a new basis, that it should increase the number of members instead of reducing them.

There is another objection to his proposition, and that is, that it will put the government into the hands of a minority of the people of the Commonwealth. I suppose it is too late in the day—that it is quite unnecessary—for me to say, that the minority who reside in the rural districts ought not to have the whole power of the Commonwealth; no one claims that they should have it, expressly; but this system will give it to them. This plan which is proposed by the gentleman from Lowell assuredly puts the power into the hands of the minority of the people. I have looked at it carefully, and I will give the Convention the result of my investigation. I find, as I have already said, that there will be forty-six cities and towns which are entitled to more than one representative each, and which, in the aggregate, contain a population of 511,870, and which will be entitled to one hundred and forty-seven representatives. Then, Sir, if we add forty-seven to that number, for forty-seven towns which contain a population of 143,420, and which are entitled to one representative each, we shall have one hundred and ninety-four representatives for a population of 655,290. Here is more than two-thirds of the population of the State, and they would have just one less than half the representation of the State; while sixty-four small towns having a fractional representation, and one hundred and sixty-four towns choosing one representative each, with a population of only 318,426, would choose one hundred and ninety-six representatives, being a majority of the House of Representatives; and thus, as I have stated, the majority of the House would be chosen by less than one-third of the people of the Commonwealth. But I need not extend my remarks on this point; I will simply re-state these facts, in order that they may be impressed upon the minds of gentlemen of this body. I want every member of this Convention to remember that if we adopt this proposition, 318,426 of the inhabitants of the Commonwealth will choose a majority of the House of Representatives, while 655,290, or more than double that number, will choose less than half of the members of the House. This

is not the whole inequality of the system, that it effectually puts the whole control of the House of Representatives in the hands of a minority of the people of the Commonwealth. I find a still greater inequality when I come to ascertain the ratio by which these different parts of the Commonwealth will be represented. Forty-six cities and towns, which choose one hundred and forty-seven representatives, will only have one representative for 3,482 inhabitants, while two hundred and twenty-eight towns, which will choose one hundred and ninety-six representatives, will have one representative to every 1,114 inhabitants. The towns which thus hold the control of the House of Representatives, and which choose a majority of its members, will thus have a representative to every 1,114 inhabitants, while the forty-six cities and towns, embracing more than half the population of the State, will only have one representative to 3,482 inhabitants—less than one-third their equal proportion with the small towns! Now, I do not wish to argue to an intelligent body like this, that such a proposition is unjust, or that it is unequal. There is no reason, I apprehend, that gentlemen can assign for such a proposition, unless it is designed to base the power of government upon something else besides the people. Unless such a principle is assumed, there is no reason whatever in giving the control of the House of Representatives to a minority of the people, and of giving the representatives of the country three times as much political power as you give those who represent the cities and the large towns.

There is another objection to the proposition,—that it violates the true democratic principle—the principle upon which the government and the institutions of our country are recognized as being founded. And in order, Mr. President, that there may be no misapprehension as to what I understand to be the democratic principle, which is the foundation of all republican institutions, I am happy to have the authority of several gentlemen upon this floor, who have laid down what I conceive to be the correct doctrine upon this subject. I am not, therefore, compelled to go back to those “fossils,” who have been alluded to as yet living among us; but I am very happy in being able to find authority for the position which I take, among the progressive democracy in this body. It has been said, Sir, upon this floor, “that the principle of republicanism is that the majority shall govern. The moment you depart from that principle and place the government in the hands of one man less than a majority, you have no republican government.”

I consider this good doctrine, and I quote it, not for the purpose of making objections to it, but I adopt it as embodying my own views and opinions upon this matter.

We have heard it said here in different quarters, that the majority should govern, and the idea has been often repeated in different forms, that the moment we depart from this principle, and place the government in the hands of one man less than a majority, we have no republican government. I believe that, Sir; and now I would inquire, if this system of representation which is proposed by the gentleman from Lowell, illustrated as I have endeavored to illustrate it by a reference to figures and to the facts, does not conflict with this principle? I cannot reconcile

it with this principle at all. It appears to me that any fair exhibit of the proposition of the gentleman from Lowell will show that the adoption of that system would place the government in the hands of more than a hundred thousand less than a majority of the people of this Commonwealth; and by so doing it would be “departing from the very fundamental principle upon which a republican government is based.” There is the declaration, and I hold it to be incontrovertible, that “if we adopt a rule which puts the power into the hands of one man less than a majority, we have no republican government,” because the fundamental principle upon which it rests is departed from and abandoned. Now, Sir, I ask, whether this Convention, which claims to be a reform Convention, is disposed to take a step backwards and give this power to a minority of the people, although they may be landholders? We have more agriculturists in the town I represent than any other class; we have no manufacturing corporations there—not one, Sir; and that place has grown all that it has grown (which is very little, I admit) within the last ten years, it has managed to keep along at any rate, through the farming interest, and to send abroad its products—not of manufactures but *minds*—to fertilize and enrich other fields of human thought and action. I come from one of the rural districts, where, if the power is to be placed in the hands of the few, I agree it ought to be put; but is it right to give it to the few even there? There is no desire, in my judgment, in the rural districts, to have a system perpetuated which is to war with the fundamental principles of republican government; and which, as I believe, would be the tendency and effect of the introduction of any system similar to that which is proposed by the gentleman from Lowell. Another branch of the same doctrine of republicanism is as eloquently and ably laid down in the argument of the gentleman for Wilbraham, (Mr. Hallett,) before quoted. He said, “that the people may prescribe that less than a majority shall rule, is not a republican doctrine.” I agree to this. And it is a direct answer and refutation of the position taken by the gentleman for Berlin, (Mr. Boutwell,) the other day. Now, Sir, suppose that this Convention should adopt a rule that the minority of the people of the Commonwealth, living in the rural districts, and in the small towns, should have a predominant influence and vote in the legislature of the Commonwealth, and suppose that a majority of the people should assent to it; if the principle here laid down is correct, it could not be a republican government, because it is not a republican doctrine that the representatives of a minority may exercise the power to make changes in the laws even if the majority should consent to give the minority power to elect them. The executive and administrative functions of government are, of course, performed by a small part of the people; but it is the exercise of power delegated by a majority of the whole, and not a minority. But when you come to organize a body whose powers and acts affect the rights of *all* within the State by the exercise of sovereignty in the institution of laws for the government of all, I apprehend that that can never be justly done by less than the will and choice of a majority of the people; and that a majority of the people can not now deprive any future majority of their rights by saying that any minority may govern by the in-

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stitution of laws. But that is not the only authority which I can produce among the able and eloquent speakers of this body, to prove that the system of representation which is proposed by the gentleman from Lowell conflicts directly with the principles of democratic government and our republican institutions. We have the same doctrine laid down by the gentleman from Natick, as follows:—

“Government exists by the consent of the people—the majority of the people—who alone can give their consent.

“Whenever or wherever we depart from that idea, whether we adopt the plurality rule, or any other rule which allows less than a majority to rule, we depart from that fundamental democratic principle—that American idea—underlying all our American institutions. Nor would the assent of the people to have a minority of the people govern make it any the less anti-democratic.”

I cordially agree to that doctrine; and I ask if it is not the effect of the proposition of the gentleman from Lowell to “allow less than a majority to rule?” Does not that basis depart from “the American idea underlying all our American institutions?” I have stated that the doctrine quoted is my belief exactly; and now all I ask is, that gentlemen in this Convention who have advanced such views will adhere to that principle when they come to vote upon this question. But in order to get rid of this difficulty, gentlemen tell us that if the people adopt what we do, no matter whether it places the power in the hands of a majority or of a minority, it is democratic, because the majority of the people assent to it.

I deny this proposition, Sir, altogether. Suppose we should choose an emperor, and submit our action to the people, and the people assent to it and agree to his authority, that would be a democratic and republican institution and government! That is just what the argument amounts to. The principle leads to that conclusion. Now I think that the inference based upon that argument is wholly unfounded. I fully agree with the propositions which have been again and again repeated here, that the government must rest in a majority of the people; and I ask those gentlemen who have advanced this idea, to act in accordance with it, and show, by their vote on the proposition of the gentleman from Lowell, that they mean to abide by their professions; or, at any rate, if they do not concur with me in my deductions, as to the effect of that proposition, I wish them to show how the principle and proposition can be reconciled, that we may have the benefit of the rule of their action to aid us. As it seems to me, it conflicts directly with the democratic principle “underlying” our form of government, and it cannot be denied that it gives the government to a minority of the people. I believe the most of us claim to be reformers, (and I have been classed with them); we have come here to reform the Constitution, and I believe this is one of the points where a reform is needed; and I hope, therefore, that in the formation of the fundamental law of the Commonwealth, we shall not take such a long, disproportionate stride backwards, as to let the minority of the people have the control of the legislature. I am not ready for that. I object to the proposition of the gentleman from Lowell, upon that ground, and I hope it will be rejected.

There is still another objection to it, and that is that it is unjust. It is well, Sir, for communities as well as for individuals, to look occasionally—once in a while, at least—at fundamental principles, that we may direct our steps aright, and shape our course in wisdom. If we neglect to do so, we soon wander in darkness and doubt.

Now, we all know that, owing to the peculiar constitution of this Convention, having come here, as we have, on the basis of valuation year, the small towns hold the balance of power, and control the proceedings of this body; and let me appeal to gentlemen representing those towns—is it right and just for us, from the small towns, having the power as we have here, to say to our neighbors from the cities and large towns, “you shall not have as much power in the legislature of the Commonwealth as we have?” For one, Sir, I am not ready to say this. I think the interest and prosperity of the large towns and cities are infinitely more connected with, and dependent upon, the legislation of the State, than the interest of the small towns is. We care but little if you do reduce the representation of the towns to its just and fair proportion, if you leave us the township system in all its integrity and power. And I do not consider the choosing of a representative a necessary function of a town, or a right of a municipality, as I understand it. Let all the power which we have in the legislature, be that which justly belongs to us, and it is all that we ask. For if we have the township system we can get along very well without any legislature. All the great interests of the social state would be protected, without the aid of a legislature. The country towns are not so much affected by the action of the legislature as the cities are. Indeed, we are in the habit of boasting—or I am—of our independence of the legislature of the State, and that it makes but little difference to us what they do or undo. We do not care much what goes on here generally. Now and then they pass a liquor law or a railroad loan, that excites us a little; but, with few exceptions, the proceedings of the legislature affect us but little, either for the better or worse. The great and general amount of legislation, (and a great deal too much,) is for the interest and business of the inhabitants of the cities and large towns, which are a great deal more affected by the results of the legislation of the Commonwealth in their welfare and their pursuits, than the inhabitants of the rural districts can be. Is it then just or right, for us from the rural districts, to control the legislature? Can any member from the rural districts reconcile it with his conscience, to say that these small towns shall hereafter hold and exercise the power of the House of Representatives, and that the large towns and cities shall have only one-third their equal right and power? I do not know how he can justify himself in so doing; I cannot justify myself for my part. As I said before, I hope our friends from the rural districts will look at the principles of justice and equity, rather than to political considerations and expediency, in matters relating to the important business we are now doing. I think, Sir, that it is a serious objection, that the proposition of the gentleman from Lowell will deprive a large part, the majority, of the inhabitants of the Commonwealth, according to the census of 1850, of two-thirds of their just and equal proportion of power in the legislation of the Com-

monwealth, when their interests are so much more affected by it than the interests of the rural districts.

But, Sir, although I am disposed to vote to make the plan submitted by the gentleman from Lowell, as perfect as possible—and for that purpose I shall vote for the amendment offered by the gentleman from Northampton, (Mr. Huntington,)—I shall vote against that and every other scheme submitted which does not tend to reduce the House, and which will not give every voter in the Commonwealth an equal power at the polls, and every part of the Commonwealth representation every year.

Mr. BUTLER. I desire to ask the gentleman if he is in favor of the present plan.

Mr. HASKELL. In preference to any other system which has been proposed, except the district system. There is another reason why I think we ought to adhere to the present system. I have already alluded to some of the proceedings and views of the legislature of 1839, upon the subject, and if the Convention will excuse me, I will detain them a single moment in regard to the manner of the introduction of the present system before that legislature. I think I am correct in the facts which I shall state, for I have referred to a memorandum which I had, to see if my memory was correct; and if I am incorrect, the gentleman from Boston, before me, (Mr. Gray,)—who was a member of that legislature—can set me right.

In 1839, it was found that the county of Suffolk had increased so enormously in wealth, that it was found to be entitled to nearly one-third of the senatorial representation of the State. The amount which it paid for public purposes, according to the valuation, entitled it to that number. The first proposition that was submitted to the legislature, in either of its branches, was one which proposed that the basis of representation in the Senate should be altered before the next census should be taken, in 1840, upon the ground that Suffolk was then, in 1839, entitled to one-third of the whole senatorial vote—thirteen or fourteen out of forty; and because, according to the estimated increase of her wealth, at the next census, in 1840, she would show a constitutional right to one-half of the Senate. I have in my hand the report of the committee on that subject, and the majority reported that it was inexpedient to alter the basis of the Senate; and the minority reported that upon the then constitutional provisions, Suffolk would have a senator for every six thousand inhabitants, and that Barnstable, with a population of thirty thousand, would not be entitled to one senator. The matter then, after having been referred to a committee, came before the House upon the report of a majority of that committee, against any change, and the report of the minority, adverse to the report of the majority. The minority reported that the basis ought to be changed in order to prevent the county of Suffolk from being entitled to nearly one-half of the whole number of senators at the next valuation. In the action of the legislature upon this subject, the proposition was brought forward, that the basis of the representation of the House of Representatives, as well as of the Senate, should be changed, and that both should be fixed upon the amount of population. This proposition was referred to a new committee, who were instructed to consider the

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expediency of placing both the Senate and the House of Representatives upon a population basis. I shall not attempt to go into the details of what transpired after the matter was referred to the new committee, of which the gentleman from Boston, (Mr. Gray,) I believe, was the chairman. The majority of the committee reported in favor of a system of districting—in favor of dividing the State into forty-seven districts, for the choice of as many representatives each as the number of two thousand and five hundred should be contained in the number of the whole population of the district. No town lines were crossed, and no county lines, except that the town of Chelsea was annexed to a part of our county of Essex. And both the majority and minority reports proposed a population basis for both branches. That system of districts was not acceptable to the House, and the present system was introduced by the recommendation of the minority of the committee. I will not trouble the House with any details on that point. The result of it was, that, in consideration that the county of Suffolk was deprived of more than one-half of her senatorial force, a proposition was made and adopted, that the towns should be regarded as representative districts, and that representation in both branches of the legislature should be based upon population.

The minority of the committee which reported the present system, say:—

"In advocating town representation, we have nothing to say of corporate rights. It is the people whom we would have represented, and not corporations. If our districts ought to be small—and the little we have said shows plainly that they should be—towns, on every consideration, ought to constitute those districts."

The minority of the Committee then go on to say:—"The amendment proposed by us, so far as relates to the House of Representatives, is nearly the same with that of the Convention of 1820. That highly respectable assembly, second to none which ever convened in this Commonwealth, in either talent or intelligence, in their address to the people of Massachusetts, used the following language: 'We are all agreed that representation should be according to population, in this branch.' It was the general opinion that the number should be reduced, that town representation should be preserved; &c. And again: 'We will not say that this system is the best that could be; but we may justly say that we have spared no exertion to form, and to present to you, the best which we could devise.'"

That Convention substantially recommended in 1820 the same system which now exists, with the single exception that towns not having population sufficient to entitle them to one representative, (1,200,) should have a representative each other year and be classed in two divisions, and that the House should not exceed two hundred and seventy-five. The whole tenor of the argument contained in that report of the committee in 1839, is to show that the large towns ought not to complain that they were deprived of a part of their power. They did, however, complain at the time, and there was some reason for it, though the system was not as unjust as either of the plans which are now before us.

Now, Sir, I submit that it is hardly just to say that the present system is so full of iniquity and injustice as some seem to think, when it has had the deliberate sanction of the Convention of the

1820, and of two legislatures, and of the people of the State. True, it was at first rejected by the people when submitted in 1820, but it has since been ratified by them, with a slight modification.

The point to which I particularly desired to call the attention of this Convention was this, that according to the principles upon which the Commonwealth of Massachusetts had before acted, the right of representation in the Senate according to taxation had, up to 1839, been recognized, and under it, Suffolk was entitled to one-third of the senators, and the counties of Essex and Middlesex absorbed a good proportion of the rest. It was found necessary, therefore, that the basis should be changed from valuation to population, and Suffolk, Essex and Middlesex fell in with the proposition upon the ground that these corporate rights, as they have been termed—though I take a different view of the matter from some gentlemen—were relinquished in some degree by the small towns. I, therefore, think it unjust to undertake to deprive the large towns of their right to representation according to population, since we have heretofore taken from them their rights under the old system, upon the ground that population was the proper basis.

I do not justify or defend the ancient basis of the Senate. I do not say it should have been preserved. But it was the "practice of the fathers," and was sanctified by the "usage of centuries;" it had been a part of the policy of the government from the earliest settlement of the Commonwealth, to base representation, in part, upon taxable estates; it was, in 1839, the right—the constitutional right—of Suffolk, and the wealthy counties to insist upon that basis. They held it to be as sacred as that of town representation, as it exists under this present, or as it had existed under any prior Constitution; they surrendered it for a population basis in both branches; and is it just that we should now deprive them of the benefits which fell to them, and claim those which accrued to us, under the basis thus established? I think not.

Now, Sir, I prefer the present system, in answer to the question of the gentleman from Lowell, (Mr. Butler,) unless we can have an equal system, which shall materially reduce the House—which shall give to every voter a representation every year, and a right to vote for an equal number of representatives, and by which each representative shall be the representative and exponent of the political power of the same number of population, or legal voters. Do this, and for one, I am indifferent whether these results are secured by a town or district system, or whether the districts are large or small, or whether representation is based upon population or upon legal voters; though, I think, the latter the proper basis for representation in both branches of the legislature.

Mr. HUNTINGTON, of Northampton. I merely wish to say, that when I was upon the floor before, I expressed an inclination to withdraw the amendment which I offered last evening. I assigned the reason for it, and that was, that in the first place, when I offered the amendment I thought it might present a test question as to the number which should be required to entitle a town to one representative, whether it should be one thousand or twelve hundred. Upon reflection, as there are plans before the Convention which contemplate a higher number

than twelve hundred, as it is more parliamentary to take the question upon the highest number first, and as I have another proposition, which is in the hands of the Convention, and which I may offer hereafter, I have concluded to withdraw the amendment, and leave the question to be taken upon the Report of the Committee.

Mr. MARVIN, of Winchendon. I have a proposition which I desire to submit, but I do it with a great deal of diffidence, because I am entirely unused to the course of legislative proceedings, and because I am surrounded with men of such great experience and reputation, that anything which they offer will be received with a degree of respect, which cannot be hoped for in relation to anything which may come from me. I may, however, ask for the candid attention of the Convention for a few moments, although what I have to offer may not be recommended by experience or influence acquired in public bodies.

A very distinguished teacher, Dr. Dwight, being asked what his rules were in governing the schools and higher institutions under his care, answered that he never had but one rule, and that was to meet every case as it came up, and deal with it in the best way that he could. His rule was to use his common sense, and do right in every case. That was the only general rule. Now we have gentlemen here, who have some great rule or principle which they wish to drive through, and regulate every thing by. But I believe that it will be found here, and in legislation generally, that there is but one general rule never to be departed from, and that is, in moral questions, that we should do right, and in practical matters, when we cannot do exactly right, do as nearly right as we possibly can.

Some wish to have the State districted, because there is a great principle involved in it; but that principle subjects the small towns to the larger. Others wish to have all the towns represented every year, because there is a great principle at stake; but that principle gives the towns uncontrolled power and swamps the cities. I suppose both of these great principles, so called, have already been rejected by the Committee, and the conclusion we have come to, is, that there must be a compromise, while the great principle upon which we shall be compelled to act, is, to do as nearly right as possible.

I now wish to introduce an amendment to the amendment now before us. It is, one, I may say, which has been seen by several gentlemen who represent the small towns, and it has been examined by some gentlemen, in whose judgment this Convention has great confidence, and they say it is a proposition which will be more just in its operation, than any before us.

The amendment which I propose to submit is the following:—

Strike out from Mr. Butler's amendment all the paragraphs before the word *Resolved*, except the second, and insert the following:—

Each town having five hundred inhabitants and less, shall be entitled to five Representatives in ten years.

To all towns having between five hundred and fifteen hundred inhabitants, an additional Representative, every ten years, shall be given for every two hundred additional inhabitants.

Each town having between fifteen hundred and four thousand inhabitants, shall have one Representative annually.

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eight thousand inhabitants, shall have two Representatives annually.

Each town or city having between eight thousand and twelve thousand inhabitants, shall have three Representatives annually.

Each town or city having between twelve thousand and sixteen thousand inhabitants, shall have four Representatives annually.

Each town or city having between sixteen thousand and twenty thousand inhabitants, shall have five Representatives annually.

Each town or city having between twenty thousand and twenty-six thousand inhabitants, shall have six Representatives annually; and each additional six thousand inhabitants shall entitle any town or city to an additional Representative.

Each town having less than fifteen hundred inhabitants, shall have one additional Representative every ten years, for valuation year.

According to this plan,—

23 towns would have	5.	rep's in 10 years.
31 " " " "	6	" " " "
25 " " " "	7	" " " "
34 " " " "	8	" " " "
16 " " " "	9	" " " "

Besides an additional representative for valuation year.

That is,—

23 towns would have	11½	rep's every year.
11 " " " "	18½	" " " "
25 " " " "	17½	" " " "
34 " " " "	27½	" " " "
16 " " " "	12½	" " " "
129	87½	

Giving to these 129 towns an additional representative, valuation year, would give an annual average addition of thirteen representatives, nearly. The total annual representation from 129 towns having less than 1,500 inhabitants would amount to 100½.

Allowing each of the 146 towns containing between 1,500 and 4,000 inhabitants, to have a representative annually; it would give 146 representatives. The ratio of increase is 2,500.

Allowing each of the thirty towns containing between 4,000 and 8,000 inhabitants to have two representatives annually, it would give sixty representatives. The ratio of increase is 4,000.

Let each of the seven towns or cities containing between 8,000 and 12,000 inhabitants, have three representatives annually; that would give twenty-one representatives. The ratio of increase is 4,000.

Let each of the four cities containing between 12,000 and 16,000 inhabitants, have four representatives annually; that would give sixteen representatives.

Let each of the three cities containing between 16,000 and 20,000 inhabitants, have five representatives per annum; that would give fifteen representatives.

SUMMARY.

129 towns containing less than 1,500 inhabitants, would have annually 87½ representatives.

146 towns containing between 1,500 and 4,500 inhabitants, would have annually 146 representatives.

30 towns would have annually	60	rep's
7 " " " "	21	"
4 towns and cities	16	"
3 " " " "	15	"
1 city would have	8	"
1 " " " "	25	"

378½

Average per annum, valuation year, 12½

Total, 391½

Now, I submit, that this is a fair plan, substantially like that we have adopted, but improved a little in detail; and if this matter is to be recommended to a Committee, and if the whole of these plans which have been proposed are to go there, I want to go with the rest. This plan, it will be perceived, will be favorable to the small towns; but I think it is the policy of the Convention to give them some advantage in the House of Representatives, because the cities have much advantage out of the legislature.

There is one point bearing on this general question which I desire briefly to notice. It has been several times brought up here, and I have never heard a reply. As I have not heard all the debate upon this question, it may be that I shall go over the same ground that others have in advertising to it. The plan of town representation has been compared to the rotten borough system in England. Now, Sir, I want to know what system this Convention could possibly adopt which would reduce the towns of Massachusetts to a system of rotten boroughs, like those in England, or which could bring them within the range of comparison? And if it were true, would gentlemen accomplish any object by making the comparison? Would such a comparison do any good, or have any tendency to conciliate? What is a rotten borough in England? Does it require a few people, or many, to make it a rotten borough? Is a small borough rotten while a large one is sound? I understand, that a rotten borough, in England, is one where the lands and houses are in the hands of a single person, or a few persons. When one of the ancestors of William Pitt returned from Madras, with his great diamond, he bought up two of those boroughs, and by controlling the electors, was enabled to return himself to parliament from one, and to secure a seat for his eldest son, his brother, or his creature, from the other. Lord Clive, who came home rich from India, bought up several of these boroughs, and thus secured a strong parliamentary interest. Many other nabobs followed his example. Besides, many of the peers, and other landed gentlemen, owned boroughs by hereditary right, and thus controlled those electors who were their tenants.

Such is the rotten borough system in England. Now, is there anything like that in Massachusetts? Is there anything like that in this country? Are the towns of Massachusetts rotten boroughs in this sense? Are they owned by any one or two individuals who control their elections? Are they similar, by any manner of means? No, Sir, they are owned by the people who live in them; by the farmers, the mechanics, the merchants, and others. They are generally divided off into small farms, and every man, almost, owns one of these farms, and the elections are controlled by the free choice of a majority

of the people. There is, therefore, no sort of resemblance between the two. But if there was a rotten borough in Massachusetts, I will venture to say it would be owned in Boston. This remark is not made to provoke any gentleman from the city of Boston. If such a state of things should take place, it would be no fault of her citizens, it would rather be to their credit. The wealth of the city is increasing very disproportionately to the increase in the country. To this increase there can be no objection. With an increase of wealth will come an increase of influence, and there can be no objection to that; and when I say, that if there is now, or ever will be, a rotten borough in the State of Massachusetts, it will be owned in the city of Boston, I do not say it for the purpose of creating a jealousy between the city and country. However, I do not believe the delegates from Boston, who are so ready to defend their city, have any strong objection to these comparisons being made between the relative wealth, influence and prosperity of the city and the country, as it gives them such a fine opportunity to set forth the praises of Boston. I am reminded of a picture, with a bit of description to it, which was hung up in our print shops a few years since. It represented a French girl who had a beau. There were several other girls around, teasing her about him, at which she affected great indignation. Seeing this, they left off their banter, when she cried out, "tease me more!" [Laughter.] I very strongly suspect that such would be the result with the Boston delegates, if we should cease talking about the wealth and influence, and political power of their constituency. Sir, I hope Boston will go on increasing in wealth, in population, and in power. I hope her new library will increase, until it becomes the largest library in the country, and rivals the great libraries of the Old World. I hope the Athenæum, with its galleries of painting and of statuary, may increase, until it shall attain sufficient attractions to keep our young men of genius at home, and attract the sons of genius from other countries here. But what is the effect of this great increase of wealth, learning, and population? The greater their increase, the greater will be the political influence and power of Boston; so that it is necessary for the small towns to secure their interest in the legislature, before there is an overwhelming power to prevent them. And there can be no just cause for jealousy against the country towns, because they desire to secure for themselves a proportionate power and influence in your House, in respect to representation. They think it is only what they are justly entitled to, and therefore they come forward in this Convention and claim it as their right.

Again, if you will allow me, Sir, to allude once more to the comparisons which have been made between the city and country, I think there is at least as much intelligence and democratic spirit in the country as in the city. Gentlemen have said that there was more of the democratic spirit in the city than in the country. It is not so in our country, however it may be elsewhere. In England, the princes, the barons, and the rich men, who live in the city, have country residences and estates, and it is there that they exert their influence; and therefore, so far as politics are concerned, there is more of aristocracy and less of democracy in the counties than in the city. But it is not so in Massachusetts. The Boston mer-

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chants and bankers cannot go out into the country and buy up large estates, and live upon them, and control the elections in the places where they live. There are but few of the princely men, doing business in Boston, who live in the country. So that there can be no comparison in this respect, between the state of things in England and in Massachusetts. In England, there is more of the democratic spirit and principle in the cities, and more of the aristocratic spirit and principle in the country; but here the case is precisely the reverse. It seems to me, therefore, that there is no occasion to draw comparisons of this description between England and Massachusetts, unless it is by way of contraries.

Now, Sir, I hope the plan I have indicated will commend itself to the good sense of this Convention. As I remarked before, there is no substantial difference between it and the plan submitted by the gentleman from Lowell. It is only a modification of that plan. It seems to me that it need give rise to no jealousy upon the part of the people of Boston. The very fact of the presence of the legislature in Boston gives that city a very great advantage over the other portions of the Commonwealth. The people of Boston are in constant communication with the members of the legislature, and in this way they are constantly modifying their opinions. They are constantly shaping the opinions and the course of the country representatives by means of the press, and their means of diffusing information through the State are much greater. Here in the city you can tell what towns will be likely to return majorities for any particular party, and you are able to send out lecturers into every part of the Commonwealth, and you have the money to spend in bringing out the voters to the polls whenever it is desirable to change the result. So that although you did not elect a single representative from Boston, you would, perhaps, have fifty members returned from other parts of the State devoted to its interests. I do not mean that this result would be secured by bribery, but through your influence, nevertheless. I, therefore, hope that all jealousy between the city and country, if there be any, will be discontinued and will be left out of the question in the settlement of this subject.

Mr. WHITNEY, of Boylston. There has been much said in this Convention, and many speeches made by various gentlemen, in favor of reducing the House of Representatives. Now, Sir, I want to say a word in favor of a large House. Some gentlemen think that the House should be reduced to one hundred and fifty or two hundred members. Now, Sir, it seems to me that this proposition is to reduce the representation, here, of your farmers and mechanics, and to increase the number, relatively, of the lawyers and professional men. I would not say precisely that there should be no attorney elected to the legislature, as was provided on one occasion in the early history of our institutions, but I certainly do desire to provide that the attorneys shall not predominate in the House.

By the way, it has been taken for granted here, that if you provide for small Houses, you will secure a greater proportionate amount of talented men there; that although you will have less in number the material will be fewer. Well, Sir, I am afraid it would be in this case very much as it is in our business transactions, if you get fine material you will have to pay a high price

for it. You cannot expect to go to one of your stores and get cloth worth ten dollars a yard for two dollars a yard. And to carry out the comparison, I think the expense would be about the same to have one hundred and fifty members at four dollars a day, as it would to have three hundred members at two dollars a day.

Now, I want to ask the representatives from the large towns—and you can always tell whether a man represents a large town or small one, by the speech he makes. Every man calculates the effect every proposition will have upon his own particular town, and favors or opposes it in proportion to the number of representatives it will give that town. I say I want to ask these gentlemen how they will demonstrate to us that the small towns will be the gainers on the whole by a small House? They say we shall be compensated by a larger relative power when we are represented. Well, Sir, we do not regard that as compensation. I happened, not long since, to call upon an old gentleman in the town in which I live. Said he: "I am glad you have called. I hope you will not agree to any system of district representation. I had rather be represented three times in ten years than not to be represented at all." Now, Sir, here is a proposition brought in, to give each of the small towns three representatives in ten years, and if we are to yield that, I see not why it will not go further, and that we shall have a proposition brought in by and by, by which we shall be represented once in ten years. I tell gentlemen that is a compensation that we do not like. It may be true that it is better to be represented three times or once in ten years, than not to be represented at all, but I do not think we should submit to either. Mr. President, are we to surrender at discretion? I ask the farmers in this Convention if we are to surrender at discretion. In my opinion we had better have your system of representation as it is, and preserve what we already have.

I desire to say one word about centralization. We have been challenged to give any definition at all of centralization. I do not know that I can define it better than by saying that it is the absorbing of power by large masses in central governments. It is the power by which the government will send out and seize upon whatever men they choose to take and send them into interminable slavery without trial by judge or jury. That is what I call centralization of power. It is the absorption of the powers of small towns by the large ones, as in Boston for instance. By this, I do not mean to say that Boston shall not have its fair chance in the representation of the people, but this large mass of 150,000 people here can do as they please, no matter what the law is. They will have their own way, and the rights of free speech and the free press have been trampled under foot time and time again, in this city. I have been present at meetings when my rights were trampled under foot. I considered that I had a right to come to this city and hear one of the most eloquent men that ever ventured to speak upon great national subjects, and yet I could not hear one word of what was said by this most eloquent man on account of the clamor and noise made by those who were endeavoring to suppress free thought and free speech. I say that such an influence is centralization of power, for it does what it will, despite the law. The legislature of Massachusetts have passed a law regu-

lating the sale of intoxicating liquors, yet it cannot be enforced here. I say then let us not yield what little power there remains to us. The danger which I fear the most proceeds from this centralizing influence. I say that I fear it, because if men can come in here and take whom they will they can come in and take me. I thank the eloquent gentleman from Boston, (Mr. Choate,) for introducing a principle which is not often introduced into political matters, and that is, "that we should do unto others the same which we would that they should do unto us." Some of us know no other rule than this. We should all look with abhorrence, and only abhorrence, at the fact that another man who may be a little whiter or blacker than we are should be taken from Massachusetts and consigned to everlasting slavery, without being tried by twelve men good and true, to say whether or not he has a right to have a place as a freeman upon the soil of Massachusetts. This is what I call centralization, and what I fear. It is the great question that now agitates the nation and the world, and we must use our best endeavors to guard the Commonwealth against the danger to be apprehended from this centralizing influence.

I hold we can do that better by standing where we are upon our present representation than to be absorbed in districts, where I take it we can be easily managed. I hope therefore that the farmers, the mechanics, and all good men upon this floor will stand by their rights, and manfully maintain them. If we must be absorbed let it be done inch by inch, and let us contend every inch of ground.

Mr. FRENCH, of New Bedford. I have listened to this debate with a great deal of interest. Certain gentlemen have discussed this subject most ably and eloquently, and from the opinions expressed on all sides I am inclined to think that we may very soon come to a result. There are a great number of propositions in regard to this matter of representation now before the Convention, and some of them differ widely from each other. I cannot subscribe to the proposition of the gentleman from Lowell, (Mr. Butler,) now under discussion. I am satisfied, though very many gentlemen might vote for it, that a better plan might be submitted to this Convention than that—one that would unite a larger vote, prove more satisfactory to ourselves, the country, and the large cities and towns. The plan proposed by him seems to be unequal. We must expect some inequality, for I am greatly in favor of town representation. I could wish that every town in this Commonwealth might have a representation every year, were it practicable. The present system of giving twenty-six representatives to a county having 30,000 or 31,000 inhabitants, and only twenty-eight representatives to a county having 75,000, seems to be a little unequal. Besides, one county having 30,000 or 31,000 inhabitants has twenty-six representatives while another, having 31,900 inhabitants, has fourteen representatives. It seems to me, that it would be well to recommit this whole subject, with all the various plans which have been submitted. Farther discussion upon this subject can do no good, and will bring us to no better result. It seems to me if we will simply refer this whole subject with all the plans to a Special Committee consisting of one from each county, with instructions to report at an early period, no matter how

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early, to-morrow if they please, that they will be able to devise a plan which will be more satisfactory to us and the Commonwealth. I therefore hope that this motion will prevail, as such a Committee would have before them all the plans, tables, and figures which have been presented before us, and they would have the benefit of the able and lengthy discussion that we have had to guide them in the discharge of their duty. I intend to make the motion to recommit this subject to a Committee of one from each county.

Mr. GILES, of Boston. I favor the object of the gentleman from New Bedford, (Mr. French,) if it be the sense of the Committee to recommit at this time. I thought he took his seat without making the motion he intended, and that was the reason why I arose. But as the floor has been yielded to me, I say now that I should be in favor of a recommitment of this subject to a special committee of one from each county, or a committee formed in any way agreeable to the Convention, who should consider all the plans and endeavor to reconcile and eliminate such an one as should receive the approbation of a large majority of this Convention. While I have the floor, I will say a few words upon this subject, and before I am done, if the gentleman from New Bedford desires it, I will make the motion which he intended to make. Until yesterday, I had made up my mind to listen in silence during the progress of the discussion, and watch, in a friendly spirit, all the propositions that should be offered, intending to vote for anything that I conscientiously believed to be an improvement upon the present system. The district system which I approve, was rejected by so decided a vote, early in the debate, before I had an opportunity to speak upon it, that I concluded not to speak upon the subject at all. I adhered to that conclusion until the vote yesterday, by which the proposition of the gentleman from Lowell, (Mr. Butler,) was adopted. That vote encouraged me to hope for some substantial improvement of the present system in a direction towards the district system. The speech of the gentleman from Ipswich, (Mr. Haskell,) has increased my disposition to say a word upon this subject, and increased my hope of a good result. We are not in a position to reject everything, unless it meets entirely our approbation, because we have a system now to which we all object, and which we all desire to improve, and we must vote for something as an improvement, or adhere to the present system, and, therefore, we are not in that position which will enable us, as between two evils, to do according to the old maxim, naturally to choose neither; but we are compelled, between two evils, to choose the least. Therefore, if the amendment of the gentleman from Lowell, (Mr. Butler,) which has been adopted, shall eventuate in anything which I can deem a substantial improvement upon the present system, I shall go for it, though it does not square entirely with what I believe to be right and desirable. I am willing to do so. I would say that I think it is the duty, and I am happy to see that it has been the disposition thus far, on the part of the Convention, to receive all these propositions made by various gentlemen in a friendly spirit. I believe all the propositions have been offered with a sincere desire to make,—and a belief on the part of the gentlemen who have offered them,—that they made a substantial improvement upon the present

system, and, therefore, they have all been received in a friendly spirit. At the same time, I wish to be at liberty to express my views and principles, without being thought to criticize harshly any plan before us.

What is the evil which now exists in regard to this matter, and what have we to do in reference to it? For what have the people sent us here in regard to this matter of representation? The first evil complained of, is that the House of Representatives is too large. The maximum now may be 445. Large and small are relative terms; but, I think, it is a fixed fact, that a House, the maximum of which may run up to 400, is, in the judgment of the people of the Commonwealth, too large a House. That is the first evil which is, to be feared, and we must devise a plan that shall remedy that defect. No plan is perfected to that extent which I believe it should be, until it does remedy that defect. What is the second evil? It is this, and it touches a matter of principle, that, under your present system, at this moment, one hundred and thirty-nine of your towns are disfranchised. They have not a constant representation which of right they are entitled to have. I say it is a right of every inhabitant in Massachusetts to be constantly represented. This is a thing which the people want and which they will have. It is a thing that they ought to have, and which we are bound to give them. Through the kindness of the officers in the treasury department, I have a list, taken from the pay-roll of all the towns that have failed in representation for the last thirteen years. I do not feel at liberty to ask the Committee to print it, though it affords information, which is worth printing. It is a formidable list, making seven large folio pages of tables and columns, and it shows that there were 1,035 towns which failed in being represented from 1840 to 1852, inclusive.

But, at the same time, the friends of the district system may say, you are taking the representative power from us and locking it up. Our friends in the country do not use it, and it is lost to them now, practically, to a great extent. I would rather have the power used by the yeomanry of the country, even if they do it in derogation of my right, than not to have it used at all. I believe the power of representation to be good in itself, to be beneficent, and that it is to be exercised so as to improve and bless the community. Therefore, I do not wish to lodge this power in dead hands, under the mortmain principle, where the land of England once went. Now I accord to the plan which the Convention adopted in Committee yesterday much merit. I believe it to have been made, in good faith, to improve the present system; I believe it does improve the present system; I believe it accomplishes all, or nearly all, that can be accomplished upon that principle; but the principle I do not assent to.

Now, Sir, what does it accomplish in reference to the first evil, to wit, a large House? It does reduce the large House from its present maximum of four hundred and forty-five, to a possible maximum of four hundred and twenty-five. It does that. Practically, three years out of ten it would do more. But it does not remove that first difficulty, to wit, the large House sufficiently, in my judgment, to go before the people and say to them: we have remedied that evil. I think the people will turn upon us and say that we have not, that they sent us here to reduce the House

and we have not done it. Therefore, I wish to see that plan, if it is to be adhered to, so far perfected as to reduce the possible maximum. I am willing that the House should range somewhere near three hundred in number, and I should be glad not to have it go beyond three hundred and twenty. I think that eight representatives to one senator would make things safe, and sound, and pure.

In reference to the second evil: does it enfranchise all your towns which are now disfranchised? Does it give to every man who is an inhabitant of Massachusetts a constant representation? No, Sir, it does not. Of the one hundred and thirty-nine towns now disfranchised it will enfranchise all but sixty-four, and leave them in precisely the same predicament in which the one hundred and thirty-nine are now left. It does not, therefore, completely cure that evil, and that is an evil, in my judgment, of principle. One word upon that principle. As far as the future growth of the population is concerned, the plan, as it now stands,—and I understand my friend from Lowell is in favor of improving it, if it can be done in his judgment, and therefore he will not take my criticisms in an unfriendly spirit, for they are not meant so,—the plan, as it now stands, says, that as to future growth, every inhabitant in sixty-four of your smallest towns is but a sixth part of a man, as compared with the inhabitants in two hundred and twenty-two other towns; and it says to the inhabitants of twelve of your largest towns and cities, that five of them shall count as only equal to three, as to future growth; that five of their future increase of population are only equal to three in the medium towns. Therefore, I say, that we fail, in the first place, to remove these two evils to a degree which I wish to see them removed, and to a degree which I believe the people of the Commonwealth demand that they shall be removed, and to a degree which they have a right to require at our hands that they should be removed. And, Sir, it cures these evils to the extent that it does go, at the expense of your twelve large towns and cities. And the question which arises in the mind is, whether that is not a greater evil than that which it removes, in enfranchising so many towns, now deprived of representation?

Now, Mr. President, in a friendly spirit, I wish to say one word upon the principle. I will not call things by party names. I wish to use the word democratic, but I wish to use it in that sense in which we are all, every man of us, democrats; to wit, in the sense that the people have the right to govern themselves, to which we all agree. Now, I cannot assent to the plan of my friend from Lowell, as it stands at present, nor unless it can be amended so that these sixty-four towns which are now disfranchised, shall be released from that inequality. I want every inhabitant of Massachusetts represented constantly. I do not look upon any one as a full man until he is. Therefore, I say, you must adopt a system to accomplish that. What is the matter, Mr. President? Are you afraid of the people? Are we, democrats, every man of us, to the back bone, in the sense I have defined the word, afraid of the people, unless they are landholders? Are we afraid of the people when they are aggregated in numbers, as in the cities? Does not your Bill of Rights say that the people have a right to aggregate themselves anywhere, at any time, expressly

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to address and influence the government? I go for the people, and with my friend, (Mr. Haskell,) I say I will let the people go where they please, and the power shall go with them, and the blessing of God upon it. And because they choose to live in a city I will not sunder from them the power of self-government, or because they must live in a small town, I will not sunder from them the power of self-government. My friend has said that these small towns may be represented if they will unite. True; but it takes two to make a bargain; and town A. may desire it, and its neighbor, town B., may decline; and though that power of uniting was in the Constitution of 1778, and in the amendment of 1836, and in the amendment of 1841, the towns have not availed themselves of it, because, practically, they cannot. This is the very thing we are sent here to do for them, to district them into representative districts, so that they may enjoy this right. A waiver, in law, is when a man has the sole right to decline and he does decline. That is not the case here; it requires an agreement to accomplish anything. Now, are we quite ready, Mr. President, to say that the increasing population in your large towns, your twelve largest cities and towns, and in your sixty-four smallest towns shall be considered in the ratio of five to three in the other towns. That is an ominous ratio.* Look at congress. Representation in congress is for the purpose of taxation; and the apportionment of representation among the States is based upon population; but in some of them, in making up the number of the people, there is an ominous ratio. What is that ratio? Why, that "three-fifths of all other persons shall be added"—so that five men of a certain color are equal to three, and shall be counted as three, of a certain other color.

Mr. BUTLER. If the gentleman from Boston will allow me, I would like to ask him where he finds a ratio of three to five in my plan?

Mr. GILES. I allude to the growth in the population of the towns containing between one thousand and four thousand, compared with the growth in towns containing fifteen thousand. I am treating of it in that way for the purpose of not going over the ground which has been gone over so ably by my friend on my right, (Mr. Haskell). I am considering the matter looking to the future growth, and I take round numbers because fractions are not suitable to public debate.

Now, I do earnestly desire a plan, and will, with all my power, labor and coöperate with the most benevolent and yielding disposition, for any plan, coming from any quarter, that shall reduce the House to the neighborhood of three hundred members, and shall secure a constant representation to every inhabitant of this Commonwealth. I want this Convention to go before the people with a plan which shall accomplish those two objects, and if they do so, that plan will be triumphantly adopted. I greatly apprehend that if they do not, any plan will be rejected. Though, as I have said, condemning now, as I did in 1841, the existing plan, because it disfranchises a part of your citizens, and as I am compelled to choose between two evils, I will go for the plan of my friend from Lowell, if I shall conscientiously believe it, when perfected, to involve the least of the evils, but I should, naturally, choose neither of them. Now my friend has said, and with great cogency—I hope the gentleman will not suppose that I wish to criticize his plan or the

plan of any other person—that it is an easier matter to pull down than to build up. It is so. And that is the "*facilis descensus*" to which our republican policy is tending. It is hard to build up, I admit; and if a proposition has been adopted without reason, it is very difficult to change it by reason. A custom which has grown up inch by inch, day by day, and year by year, must be changed in the same way. All that I admit, and yet I respond to my friend when he says, "Before you condemn, produce your plan; do not say this will not do unless you have something that will; do not cry out stop in that direction unless you can point to a better course." That is just; he is right to say so.

Now, I have not turned my attention to the production of a plan until within a very short time, but I will indicate in the shortest possible outline what I would wish to see, and what I think will meet some of the desires expressed in this Convention, and avoid some of the evils. It is this: I would limit the House to three hundred and twenty. That should be a maximum, above which the House could never go. I would apportion your representation according to the inhabitants; or I am willing to say, as at present advised, according to legal voters; and I would district the State for that purpose, with no limit, except it is that you should not divide the towns having less than twelve thousand inhabitants. These should be the principles embraced in my plan, and it would not require this long agony of mathematics which we have had for three weeks past, striving to conceive and bring forth an impossibility. I say, limit your House and limit it so as to cure that evil and fix the limit so that the number shall never again rise. Then apportion your representation either upon the basis of inhabitants, which is a definite term in the Constitution, or upon legal voters. I can conceive an advantage in some instances in taking legal voters; for the people seeing that their power is apportioned upon legal voters, will take care that proper persons and none others are legal voters. Then, to save the town lines, I would put a limit incidentally, that no town having less than twelve thousand inhabitants should be divided, and that would secure your towns which have not a right to become cities, and the instant they became cities they will district themselves into wards and vote upon the principle of a general ticket.

Now, one word upon the size of the districts; and I believe these three principles, if we district the whole State, would preserve every town line, would give a convenient number of inhabitants in each district, and apportion the representatives to the entire satisfaction of the people, and to the entire justice of the case. I speak now of the substantial terms, for there always will be fractions of a hundred or so, perhaps more, in fixing the numbers. But, in looking at this document, if it should be printed, or if it should not, you will notice one or two things, which, in my judgment, have an important bearing on this matter. We have these 1,035 towns which have failed to be represented within the last thirteen years; and how has that failure ranged? I have counted up, and I will state the result very briefly. In 1840, there were thirty-nine towns which failed; in 1841, there were ten; in 1842, there were fifty-seven; in 1843, there were forty-four; in 1844, there were seventy-seven; in 1845 there were one hundred and seventeen; in 1846, there were one

hundred and twenty-two; in 1847, there were one hundred and forty; in 1848, there were one hundred and twenty-six; in 1849, there were one hundred and thirty; in 1850, there were one hundred and ten; in 1851, there were thirty-three, and in 1852, there were thirty. And why did they fail? There were three causes, as I judge from these statistics, which I have had but a limited time to examine. The first and the general cause is, because the Constitution forbids them to send; it forbids a large number of these towns to send, and they cannot do it. That is an evil to which I object, and that is an evil which we must remove—we are under a political and moral necessity to remove it. The next reason why these towns have failed to send, so far as I can judge, is, that many of them voted not to send. That is a town right, but, is it one which the towns wish to preserve? Will you preserve the power of a majority of those who happen to be present in town-meeting at the moment such a vote is put and carried, to deprive the minority, or it may be the majority, of the actual voters of that town, of the right to be represented? I wish to see the Constitution so amended, that no citizen of this Commonwealth shall, behind my back, take from me the right of representation. That is wrong, and it is unjust in practice. My friend, (Mr. Wood,) shakes his head as though he thinks it is not unjust in practice. But the principle was established when the towns paid their representatives themselves, and it seemed to be no more than just, where they paid the expense themselves, that they should have the right to refuse to send if they saw fit, and thus save the money. The question was merely whether the money should come out or stay in their purse. To be sure, the towns might be fined if they refused; but that is not material to this point. Now, a district cannot disfranchise itself in that way, nor any of its members.

The other reason was,—for I find I must condense my remarks as much as possible,—that they could not elect. They tried to and could not succeed. Why could they not succeed? Because your small towns, which make up most of that roll of towns which failed to be represented; failed, before they were called upon to vote, to do certain things which must be done in order for them to have representative action. Public opinion must be conciliated and concentrated upon one man, in order to secure an election; and this must be done before the day of voting as well as at the polls. If you mean to elect a general ticket, you must conciliate and concentrate public opinion upon your candidates. If you have but one candidate, it is not so easy a matter to do that; where there is a general ticket, people of every class in the community are represented as far as possible by men of their own class, but in a small place every class wants its man, and thus they break up and divide upon so many candidates that it is a hard matter to elect a single ticket. A town which is large enough to district, is large enough to have two or three representatives; and your nominating caucus can concentrate and conciliate public opinion upon that ticket so as to carry it. Do you find Boston in that list? No! Here is a ticket of between thirty and forty. Here we go to the other extreme, from an excess the other way, because the ticket is too large, and the delegation is liable to have weak timber in it. My principle of district-

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ing, therefore, would be, to arrange it so that a ticket should not be less than three nor over five. That would give scope to arrange, and to concentrate, and to conciliate as much as was necessary before election; and it would very generally secure the success of the ticket.

I have thus hastily thrown out these views; and I think if I have accomplished nothing more, I have demonstrated a good disposition to get rid of these evils and to achieve this great boon for the people, viz., a reasonably sized House and constant representation; and I will strike hands with my friend from Lowell or any other gentleman who will submit a proposition that I can conscientiously believe involves an improvement, to any extent, upon our present system, which I do condemn, and feel a moral necessity to the extent of my power to amend. I should be in favor of recommitment, but I certainly do not desire to deprive any gentleman of the same privilege of which I have just availed myself of; and, therefore, unless my friend from New Bedford requires me to make the motion which he intended to make, I will leave it to the sense of the Convention to renew the motion for recommitment, whenever any gentleman pleases, and I will vote for it.

Mr. FRENCH, of New Bedford. If I was not understood to submit the motion, I will submit it now, that this whole subject be recommitment to a Committee of one from each county in the Commonwealth.

The PRESIDENT. The Chair did not understand the gentleman to make the motion before. The question is now on the motion to recommit.

Mr. HATHAWAY, of Freetown. I would inquire of the Chair, whether that motion is debatable?

The PRESIDENT. The motion is debatable, but the Chair will suggest, that it does not open the whole merits of the question. It is merely a motion to recommit the subject.

Mr. HATHAWAY. I will endeavor to confine my remarks to that point. I hope, Sir, that the motion of the gentleman from New Bedford will prevail. We have been almost drowned and smothered with propositions in reference to the basis of the House of Representatives. There are so many propositions, that I confess I am at a loss to know which of them all is the preferable one; but, Sir, I feel the force of a remark that was communicated to me by a friend, a few days since, which a distinguished individual, formerly President of the United States,—I allude to John Quincy Adams,—made upon a certain occasion. I feel that remark pressing upon me at this moment. Here, Sir, as to this very proposition before this Convention, I feel that there are a majority of the delegates who are opposed to us—that any proposition which may come from the small towns can be pressed here and carried, no matter how unjust. Yet here is a minority, Sir; and upon that topic I am happy to say, that a minority of delegates represent the majority of the people, and we have eternal justice upon our side, in reference to the matter of equal and fair representation. But yet I know what the vote is to be upon this question. Let me say, Mr. President, to gentlemen who press this motion to have the vote now taken, that there is behind us a power greater than them, or us; and let me say to them, that although a majority of the delegates upon this floor represent only about two-fifths of the people of this Commonwealth, while a mi-

nority here represent the other three-fifths, if this matter is pressed upon us, and a more unjust proposition in reference to representation than even the one before us is adopted by the Convention, the people have yet to pass upon it, and it is for them to judge whether it shall form a part of the Constitution of this Commonwealth or not.

Mr. President, the "Old Colony" has not been very forward in this debate. I have never before opened my mouth in reference to this subject; but, Sir, I wish gentlemen to be reminded that the "Old Colony," or Plymouth and Massachusetts Colony, which now constitute the State of Massachusetts, were once independent of each other. Jacob and Esau, however, were brethren in one family; and we happened to be the older brother. If gentlemen are disposed to press this proposition upon us to a vote now, however unjust the Commonwealth may have been towards us heretofore, they must remember that we shall not be content now to take up with a mess of pottage. I say it in a spirit of kindness, however, and a spirit of brotherly love towards other portions of the Commonwealth—I mean those which belonged to Massachusetts Colony. If this proposition is pressed upon us with too much severity, I give gentlemen notice, that all the blessing of Isaac upon his son may turn back upon them, and the yoke of Jacob may be broken. I hope, Sir, that this proposition will be recommitment, and at the same time, in reference to this matter, permit me to turn to my distinguished friend for Berlin, (Mr. Boutwell,) and refer to his argument the other day, that, although the present mode of representation and the principle upon which it rested, were unjust and unequal, yet that is no reason under heaven why it should not be continued. I am aware, Sir, that under our present Constitution it is unjust and unequal, but that is no reason why the inequality should be made greater; and unless I have very much miscalculated the proposition of the gentleman from Lowell, it carries us a step or two beyond the wrong which we are now suffering in that section of the State, so far as representation is concerned. Permit me to say, in short, that if a fair basis of representation can be adopted, upon which you will have your representatives approximating to equality,—for I do not expect that it can be entirely equal; that is impossible in the nature of things,—I shall be content with it, and will vote for it. But I shall vote against any system which, instead of approximating to equality, make it more unjust than the present system under our present Constitution.

There is one other thing which I wish to say now, as, perhaps, I shall not have another opportunity. I go against increasing the number of the members of the House. I am satisfied, however other gentlemen may feel in regard to that matter, that so far as the southern section of the Commonwealth is concerned, a large majority of the people of that section are opposed to increasing the number of the House of Representatives; and the proposition of the gentleman from Lowell does increase it.

Mr. BUTLER, (in his seat). That is a mistake.

Mr. HATHAWAY. The gentleman from Lowell says that I am mistaken; but I think I can prove that I am correct. If gentlemen will turn to document No. 12, they will find that 299 towns in this Commonwealth are entitled to send

representatives annually; and of course, in ten years, if they are fully represented, they would send 2,990. The towns which are entitled to send fractional representatives, or in other words, those which are not entitled to send a representative every year, would have a right, in ten years, to send 737. Then, according to my arithmetic, if you add these two sums together, 2,990 and 737, it makes 3,727, which is the maximum of representation in this house for ten years. I am aware that the valuation year is excluded. Then, if you will just divide it by ten, you will find that the representation, annually, from all those towns, averages 372.7. All that is perfectly plain and simple. Now, the proposition of the gentleman from Lowell, as I understand it, gives us 391, and gives us somewhere about 32 or 34 more in the valuation year. I am opposed to that, for I think that the people of this Commonwealth, generally, just as much believed that the number of the House of Representatives would be reduced, as they believed that this Convention was to come together. I am confident that such was the feeling in the southern section of the State.

If this matter is recommitment, as I hope it will be, gentlemen will have an opportunity to examine the practical operation of these systems, and to offer other propositions to remedy their defects. I have a proposition which, in that case, I shall wish to submit. I have eliminated it, and drawn it up, but I have no disposition to lay it before the Convention, to take its chance with the numerous others that have been submitted, upon a question of amendment. I know what the fate of it would be; it would stand no chance at all. My proposition, if carried out, would be this—to fix a general basis, and set the maximum of representatives at 320. I confess, that if it had been left to my own judgment, I would not have gone quite so high; but, yielding to what appeared to be the sense of the Convention, I should put it at 320, and have the House based upon the qualified voters of the Commonwealth. After basing it upon the qualified voters, I would have the representatives elected by districts; and I should have left it to the Convention to say whether there should be eighty or more. I would have proposed, however, if you intend to preserve the general ticket system, that it should be general throughout the Commonwealth; and no district should ever have a right to vote for more representatives than one district should vote for in common. That would be the basis of the proposition; for, to preserve the general ticket system in certain towns, and not in others, would be manifestly unjust and unequal.

The hour of one o'clock, P. M., having arrived, the Convention adjourned until 3 o'clock.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

Motion to Print.

On motion by Mr. WHEELER, of Lincoln, it was

Ordered, That the list of towns, not represented for the last thirteen years, as presented by Mr. Giles, of Boston, be printed.

Upon the motion of Mr. UNDERWOOD, of Milford, the Convention proceeded to the consideration of the Orders of the Day.

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HOUSE OF REPRESENTATIVES.—HATHAWAY—ALLEN—EAMES.

[June 29th.

The PRESIDENT stated, that the pending question was upon the motion of the member from New Bedford, (Mr. French,) to recommit the Majority and Minority Reports on the House of Representatives, and the questions connected therewith, to a select Committee, consisting of one from each county, upon which motion Mr. Hathaway, of Freetown, was entitled to the floor.

Mr. HATHAWAY. Mr. President, when this Convention adjourned, I was saying that there were other propositions to be presented, and among the rest, I had one in reference to this matter, which, at the proper time, I proposed to submit. It is not necessary for me to state that proposition here. If this matter is recommitted to a committee, I shall take occasion, hereafter, to submit it to the Convention, in order that it may be referred to the same committee. Let me say, however, to this Convention, that quiet as we, from the Old Colony, may have been in this discussion, it has not been because we have had no anxiety upon this question, for we have been, and are exceedingly anxious that justice should be done. I stated, when I had the floor before, in alluding to remarks made by the gentleman for Berlin, (Mr. Boutwell,) he admitted that there had been a great inequality in representation, and in the distribution of political power in that branch of the government, under the present Constitution, and if so, then it follows as a matter of course, so far as the distribution of political power is concerned, that great injustice has been done to various parts of the Commonwealth; and is that injustice still to be continued, under the amendment now under discussion, and to a greater degree? Sir, it is in order to remedy that injustice, that I want a recommitment of this matter. I would by no means take a proposition still more unjust, and adopt it because it is more unjust than the provisions in the present Constitution.

Ever since the charter of 1691, under which these twin-brothers, as I called them this morning, the Massachusetts and Plymouth Colonies, were united, injustice has been done to the Plymouth Colony, and I hope it will not be continued. Let me say to gentlemen, that under the Charter of William and Mary, there were, I believe, twenty-eight assistants or magistrates to be elected. Massachusetts had at least eighteen, the Old Colony at least four, and what is now the State of Maine three, and Nova Scotia one—for the territory of all these places were included in the Charter of the Province of Massachusetts.

The PRESIDENT. The Chair would suggest to the gentleman, that the motion to recommit does not open the merits of the question to discussion.

Mr. HATHAWAY. I did not intend to go into the merits of the question generally, but to apply these remarks to show why the matter should be recommitted.

The PRESIDENT. The question is as to the propriety or impropriety of the motion to recommit. If debate upon the merits is allowed, it would be interminable, and when the Convention came to a vote, they would decide nothing.

Mr. HATHAWAY. I did not intend to trespass upon any rule of this Convention, in the remarks I was about to make. I have said something in reference to the injustice under which the Old Colony has suffered, and under which she would continue to suffer, if this proposition

should be adopted, but I will restrain further remarks upon that point, if it is a subject which should not now be discussed. But, Sir, for reasons that have been stated, in the course of this debate, I feel that great injustice has been done to us, and I am exceedingly anxious that it should not be continued, but that justice should be done. Therefore I am in favor of recommitting this subject, hoping that the committee to which it shall be committed, will elaborate, as has been said, a proposition, from the light which has been thrown upon this matter, that may be acceptable to all of us, at any rate, one that will approach nearer to the principles of justice, than the one from which, under the present Constitution, we are suffering great injustice.

In reference to other matters, I restrain myself here, though I may hereafter have something to say upon the propositions which have been submitted, and upon the remarks made by the gentleman for Berlin, (Mr. Boutwell.) I had hoped that a portion of the eternal principles of justice would be dealt out to us, and that no one, living either in this or any other section of the State, would wish to ask of us of the Old Colony, that which is unjust, or require us to yield to them that which they would not be willing to yield to us. Hence, I hope the matter will be recommitment, and that all the propositions which may be presented up to the time when that Committee shall report, will be committed to them.

Mr. ALLEN, of Worcester. I cannot see that any good will result from the recommitment of this matter, which has been the subject of debate for so many days before this Convention. It will throw the whole subject back, and at some future day, when the committee shall have reported, we shall commence discussion upon it "*de novo*." I suggest to my friend from Freetown, (Mr. Hathaway,) that some other mode of meeting this question should be adopted. I do not belong to either of the four western counties of the State, which, it is said, will obtain an undue share of representation by the adoption of some one of the plans which have been proposed. I am disposed to examine the propositions which come from different portions of the State, and finally to accept the best scheme which may be offered. If no better plan of representation is brought forward, than that which has been offered by the gentleman from Lowell, (Mr. Butler,) I certainly may adopt his; and it seems to me, that our friends who belong to that part of the State from which the gentleman from Freetown comes, instead of intimating, as he did, that which sounds so much like nullification, should give to every scheme that may be presented here, and to those which have been already presented, that consideration to which they are entitled, and should present their own more perfect plan.

Mr. HATHAWAY. I would inquire of the gentleman what statement I made which approached at all to nullification. Surely, I intended no such language.

Mr. ALLEN. I am glad that the gentleman had no such meaning. I referred to the antagonistic position which he represented the "Old Colony" and "Massachusetts Bay" to occupy, and the intimation of some desperate remedy. What that remedy was to be was only fearfully shadowed forth, and we who were listeners, were obliged to draw from it such inferences as we could.

Mr. HATHAWAY. I ask if what I said was

not true, that the majority of the delegates upon the floor of this House were not the representatives of a minority of the people?

Mr. ALLEN. Certainly, I would not question the truth of any assertion which the gentleman would make upon this floor. I know his regard for truth too well not to know that every statement which he makes is intended to be perfectly grounded in that respect.

Let me say that it is easy to object to any scheme of representation which can be offered, come from what quarter it may; but much more difficult to present a more perfect plan. I have been looking, for days, to the direction from which the gentleman from Freetown comes, for the presentation of a scheme of representation which shall be more acceptable than those which have been offered; and I now ask, that instead of recommitting this matter, they will now offer their matured plan. We will, I am sure, go into Committee of the Whole, if the gentlemen desire it, and examine the scheme which they may have to present, as a substitute for that which is now before the Convention.

Let me say one word upon the subject of the injustice of which the gentleman from Freetown has complained. He knows very well that whatever basis of representation we shall adopt, must be a matter of compromise, unless we resort to the district system, which I hope we shall not do in any event. If the gentleman will take the amendment which was offered by the gentleman from Lowell, (Mr. Butler,) and which is now before the Convention, and will take his pen and paper, he will find that that amendment gives to Plymouth County, to which he has referred, a greater proportionate representation than the county of Middlesex, almost equal to that of the county of Worcester, and more than its proportion of the representation of the whole Commonwealth if the representation were based upon population.

Without trespassing further upon the time of the Convention, I commend these suggestions to the consideration of the gentleman from Freetown, and ask him not to complain of injustice, when, as yet, no proposition coming from him, or from his friends, has been rejected, for they have given us no opportunity of passing upon them.

Mr. EAMES, of Washington. I am opposed to recommitting this subject to a special committee. I have sat here a number of days patiently, to hear what might be said for and against it. There must be some time for us to bring our deliberations to a close. It is now a little more than eight weeks since we commenced our duties in this Convention for revising the Constitution, and I cannot see that we are any nearer to the close of our labors here, unless it is that we are nearer the end of time. Now, Sir, I am willing that any person who has a plan, shall propose it, and to sit here and hear it discussed, but we gain nothing by a recommitment. This matter is as well before us as it will be before a committee. If it is recommitted to a select committee all these subjects which have been discussed in the Convention must be brought forward and discussed in that Committee, and whenever it comes into this Convention upon the Report, the whole ground will be gone over again. I hope for these reasons that we shall not recommit it, but proceed, in this Convention, to do what we have to do in regard to it.

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HOUSE OF REPRESENTATIVES.—BUTLER—HATHAWAY.

[June 29th.]

Mr. BUTLER, of Lowell. I trust I shall not infringe the rules of this House, so well and properly put to the Convention by its presiding officer. Although I may be strongly tempted to say a word in regard to the discursive remarks of the gentleman from Freetown, (Mr. Hathaway,) I will endeavor to make them exactly fit to the question in some one of their bearings.

He says it is best to recommit this subject to a committee of one from each county, in order to get at an equal basis of representation, or, as he expressed it, to get "eternal justice." Well, then, he says there is apparently a kind of conspiracy—for that is the fair import of his language—on the part of what was Massachusetts proper and the Old Colony.

Mr. HATHAWAY. The gentleman may use my language, but if he says that is an inference of his, and not my language, it is all very well. But if he undertakes to make the charge that I used the word "conspiracy," I should thank him to point it out.

Mr. BUTLER. I was afraid to use the gentleman's language, lest I should travel out of the rule. But as he wants his language, I will tell him what he did say. He said that the Old Colony was the elder brother Esau, and Massachusetts was the Jacob that got the brother's birthright for a mess of pottage. I remembered that Jacob and Rebecca, by a hotch-potch of kid skins and kid soup, defrauded Esau of his birthright, therefore, I came to the inference objected to. That is all. [Laughter.] Now I was not aware that Massachusetts had given any goat soup to the "Old Colony."

But what does the gentleman want? He says he wants "eternal justice" for the Old Colony, and that the various portions of the Commonwealth should be equally represented, and therefore he wants this matter recommitted to a committee composed of one from each county, in order that each portion of the Commonwealth may be equally represented in population. Now, the proposition of a committee of one from each county is much more unjust than any proposition that I have introduced here, for he proposes to put this question of representation into the hands of a committee, one of whose members shall represent the county of Dukes with a population of only four thousand, and one, and one only, of whom shall represent the great county of Suffolk, with a population of 145,000 inhabitants. He proposes to have that committee fix a basis which he expects we shall adopt, and he means that that committee which fixes the basis of "eternal justice" shall represent different portions of the State in the ratio of 4,000 to 145,000.

Now, Sir, again, he proposes that the county of Nantucket, with 8,000 inhabitants, shall stand upon this committee which is to consult upon the "eternal justice" due to Bristol, with the same power as the 74,000 inhabitants of Bristol itself.

But why did the gentleman choose counties for the basis of his committee? For the same reason that I chose towns, because they were in the habit of going together. He proposes that we should commit to a committee of fourteen, eight of whom represent only 300,000, and six of them represent 600,000 population; he proposes to give them the entire control of the eternal principles of justice, and if that is not done, why then the gentleman hints at something which sounded very much like nullification. But as the gentleman seems,

by his reply to the gentleman from Worcester, (Mr. Allen,) to have forgotten after dinner what he said before, I will ask him what he did mean when he said that if they did not get "eternal justice," Esau would break the yoke of Jacob? It sounded to me amazing strange. I ask him what he is going to do with the Old Colony? Is he going back to the old colonial state? Are we to have another Hartford Convention upon a diminutive baby-like scale? Does he speak for the reform men of the Old Colony? I trust in God, not, because I do not believe there is any such feelings between the various sections of the Commonwealth.

The PRESIDENT. The Chair must remind the gentleman that he is travelling somewhat beyond the question.

Mr. BUTLER. I confess it, *mea culpa peccavi*, but, Mr. President, I had very strong temptation.

Now, Sir, I trust that this subject will not be recommitted. What will be the effect of it? There is this radical division between the parties in this Convention, and I hope the division is, by no manner of means, in the middle. One division is that to which my friend from Boston, (Mr. Giles;) my friend who addressed the Convention this morning from Ipswich, (Mr. Haskell,) and to which my friend from Freetown, (Mr. Hathaway,) also, are wedded; and that is the district system. A small House, and the district system, is the one side. On the other side there seems to be a disposition to stand by town representation. Here are the two extremes. Now send this subject to the Committee, and what do you get? On the one side you will have more or less of those who believe in a small House, and a basis of voters upon population. On the other side, you will have those who are in favor of town representation. Well, Sir, where are we?

This Convention, by a vote which seemed to settle the matter, if it meant anything, have determined that they will not adopt equal districts as a basis of representation, and then, on the other hand, without the offensive language of having "it crammed down our throats by the small towns," there seems to be a disposition by what I hope, is the reform party, the party of progress, in this Convention, to give town representation a prominent place in the system which we shall adopt. That is the state of things; these are the feelings of gentlemen upon one side and upon the other, and what will you gain by your Committee. That Committee will represent the same dispositions, the same feelings and views which we have here in the Convention, and why cannot we settle the matter here as well as there? I have had some little experience in this matter of compromising an important subject by means of a committee—by your kindness, Mr. President. One would not naturally suppose, that upon a committee of thirteen, there could be more than thirteen minds, still there may be. I was somewhat amused the other day by a proposition indicated by the gentleman from Lynn, (Mr. Hood,) in relation to this subject, and I suppose I may allude to it by way of illustration. He says send this subject to a committee composed of the sixteen gentlemen who have offered propositions in relation to it. Why, Sir, you might as well send sixteen babies to their mothers, and get them to make a unanimous report upon which was the prettiest. [Laughter.] One could be done as soon as the other. It is utterly impossible.

There would be no hope, no chance of agreement. And it will be precisely the same in a committee composed of one from each of the counties. You will have the same number of different minds and the same difficulty in getting them to agree upon any plan.

I listened with pleasure upon the one hand and with pain on the other,—because I knew his disposition to advance his argument upon a correct data,—yesterday, to the argument of the gentleman from Duxbury, (Mr. Weston). I concur with him entirely when he says he desires to see equal and exact justice done to all sections of the Commonwealth, and I think he will concur with me, when he comes to look at this table, that it will be of no avail to send this matter to a committee, because so far as the county from which he comes is concerned, he cannot complain of a want of a proper proportion of political power under the plan which I have proposed.

Now, Sir, I repeat, what will you gain by sending this matter to a committee? You cannot take any system that will insure perfect equality of representation, unless you take the district system, and no man believes for a moment, that the Convention will take that. Sir, I believe my friend from Boston, who spoke this morning, was wild, when he said our constituents sent us here to make a district system of representation. But, I repeat, you cannot take any system that will be exactly equal as regards population, unless you take the district system, and on the other hand, you cannot make any system that will be accepted by the people of the Commonwealth which is not commended to them by long usage, by their knowledge, by their tradition, if you please. Now, Sir, here is a system before you, for which I have no feeling of partiality, except, that I believe it is a system of compromise which will unite all the opposing and conflicting minds upon this subject that can be united by any plan. The moment you step farther than this will carry you, you will abandon town representation and adopt the district system. The moment you step farther, you have the small towns without representation, and I feel that I have a right to speak for the small towns. I am ready to yield this much to them, and in this, I know I represent the wishes of the people whom I have the honor to represent upon this floor. The people of Lowell are willing to concede this much for town representation; and the city I have the honor to represent is not by any means one of the small towns. It is as large as Freetown, if you please, or any other of your towns. And I say, to the gentleman from Freetown, and those who think with him, upon this matter, you cannot expect any support or comfort, in this Convention, or out of it, from those persons who believe in, and who are in some degree wedded to town representation. And when I say this, I trust I shall be understood as uttering no threat to any one.

Sir, I am wedded to no particular view of this matter. Give me a plan which shall seem to be better than mine, and if my scheme is not taken by the Convention I will go for it, heart and hand. I am not going to nullify and vote for somebody else, if my scheme is rejected. I have no threats to make. If my scheme is not acceptable to the Convention, give me another that shall prove a more acceptable one, and I will be found instant in season and out of season, pressing it forward. But, Sir, when I see the glistening

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satisfaction which I saw when this motion to recommit was brought forward; when I see such satisfaction as I saw glistening upon the face of my friend from Suffolk, (Mr. Morey,) I shall very much distrust any such proposition. I shall very much distrust it when I find that we are threatened if we undertake to carry this scheme forward, with a "power" behind us. Where is that power? Show me that power and I will vote for the motion to recommit. But I am not to be frightened by this "power" that the gentleman (Mr. Hathaway) talks of in Bristol. Sir, I repeat, what power is it? Where has it been felt? Is it that "power" which elected two governors from Bristol? Sir, we have grappled with that power, and have throttled it, so there is no trouble to be apprehended from that quarter, and therefore, I do not think I shall vote for this recommitment for fear of that "power." I am led almost to digress into the expression of a feeling of hostility towards Bristol, because of the aggravations we have had from that quarter; but, Sir, I make no such expression, for I have no such feeling.

Mr. President, as a member of this Convention from the county of Middlesex, I have laid down, I have given away more in my proposition, from the county of Middlesex, than is given up by any other proposition, from any other county in the State, and will your committee do more? Gentlemen have said that we have taken the lion's share for Lowell. Judge ye when ye look at the votes. I have given away much of the power which Lowell might justly have claimed, and will your committee do more? Sir, I will do anything for compromise and harmony, except to be threatened or to be bullied, but I will not do that, nor will I suffer it. I will not be frightened from my propriety by any such talk, and I trust gentlemen will find that it is not the best course to gain favor for their motion to recommit, by telling us that if we do not do such and such things, there is a power behind us. There is a power behind us? Aye, Sir, there is a power above us, which has watched over us day and night.

Now, Sir, I trust this subject will not be re-committed, because we have no time for it. If you appoint this committee a week or a fortnight hence, they will bring forward a proposition and the whole subject will again be opened. We shall again have the same fight for the district system on the one hand, and for town representation on the other, and we shall find ourselves, upon this subject, back where we were when we commenced. No, Sir, let us not recommit it; let gentlemen who have propositions which they desire to offer, offer them here; let us try the question, and I trust we shall find that there is no disposition upon the part of any one to do injustice.

I am glad to have my attention called to one consideration in connection with this subject. It was said, when this motion to recommit was made, that there was a disposition upon the part of the friends of town representation, to force a vote. Sir, I have admired the course which those who are the most deeply interested in town representation have taken upon this subject. The gentlemen who represent the small towns upon this floor have sat quietly and allowed every-body to talk but themselves. We have waited in Committee as long as any body would speak, or as long as any one would offer propositions, and there is certainly no occasion to recommit on that

account. We have waited until no man would speak upon the question, and until we had reason to suppose there was no one behind, who would bring forward any other proposition, and could we have done otherwise under such circumstances than to have taken the vote? Sir, I do not desire to cheek discussion upon this subject. I am glad to hear any discussion upon the subject. I am glad to see any proposition brought forward, and I hope no gentleman who has a proposition which he prefers, will hesitate to bring it forward for fear it will not get votes enough. No, Sir, let us have all the propositions brought forward. "In a multitude of counsellors there is safety," and in the multitude of propositions we shall be more likely to arrive at the true one. Again, I say, let us have all the propositions brought forward. Let us not vote in the dark—but above all things, let us not recommit this subject to another committee, for fear that there is still some proposition yet undiscovered which will be brought to light and which will unite the conflicting views of the members of this Convention. I trust we shall go on with our business, otherwise the long days of summer will be over and find us here in this hall, no further advanced than we are now.

Is there a gentleman here who has not made up his mind upon this subject? If there is such a man, that is a reason why it should be re-committed. But if there is not, then I take it we have settled upon either the town or district system of representation, and what shall we gain by a recommitment? It is my most earnest desire that no man, who is favorable to this Convention, or who is opposed to it, either one or the other, will support this motion.

Mr. DAVIS, of Plymouth. It seems to me that I am called for, in some measure, as one of the members of this Convention from the Old Colony, to say a few words. I regret very much that any particular portion of the State should have been brought before the Convention, and especially so at this stage of our proceedings, upon this subject. I regretted the motion made by the gentleman from New Bedford, (Mr. French,) this morning, and I regretted more that it should have been supported by the gentleman from Freetown, (Mr. Hathaway,) in the manner in which he saw fit to press it this morning. I have no sectional interest to represent in this Convention. I hold no member responsible for the statements of another from the same, nor from a different section of the State. And for one, I did not consider, until called out by the gentleman from Lowell who has just taken his seat, that another member from the Old Colony was called upon to disclaim the threats, for I could consider them nothing else, announced to the Convention this morning by the gentleman from Freetown, (Mr. Hathaway).

The PRESIDENT. It is hardly in order for the gentleman to use that phrase. The Chair understood no threats to have been made.

Mr. DAVIS. Well, Sir, I am merely repeating the language of the gentleman who has just taken his seat, (Mr. Butler). But, Sir, I will not call them threats, I only say that to me they had very much that bearing and appearance.

I said that I regretted that the gentleman from New Bedford felt called upon to make this motion to recommit this morning, but after the motion has been made, after what has been said, and after the feeling which cannot but have arisen, to

a certain extent, in the minds of the members of the Convention, I think it would, perhaps, be well that the motion should now prevail.

It has been asked by the gentleman who last spoke, and by the gentleman who spoke before him, why those who were opposed to the Report of the majority of the Committee, and opposed to the proposition put forward by the gentleman from Lowell, did not submit another proposition? Well, Sir, I have to say for one, that I have not yet been convinced that it is proper, that it is expedient, that it is honest, or that it is right to submit this proposition to the people; but, notwithstanding that opinion, I have sat here in accordance with what I yesterday announced as the plan under which I came to this Convention, to say nothing unless it should become absolutely necessary—to make no set speech if I could help it. I have been willing to sit here day after day, and week after week, and hear others, and to draw what light I could from their experience and reflection. I am willing to acknowledge the fairness with which the debate has been conducted. I have seen no evidence of a disposition upon the part of the majority to limit the discussion or to force a vote upon any question connected with this subject. But I do believe that the small towns ask too much. I believe the people of Massachusetts—the good sense of the people of Massachusetts—is more ready to sanction a plan which shall secure equality of representation than they are to see the distinct representation of the towns preserved. But, Sir, if I believed, as many members of this Convention seem to believe, that whatever we do, whether right or wrong, the people are ready to sanction, I should have much less respect for the people than I have now. I do not believe the people are going to follow the dictates of this Convention without regard to the measures it recommends.

But, Sir, as I said before, having, with others, sat here without saying a word, but willing to see the Report of the majority of the Committee perfected as much as possible; willing that the friends of that Report should make what amendments they should think advisable, from time to time, as the discussion continued, rather than drive their friends into opposition to it; having deemed that the question would soon be taken; having seen that no scheme was to be presented by the friends of this Report; being satisfied by the course of the gentleman from Lowell, (Mr. Butler,) who has just taken his seat, and from that of the friends of his plan, that there was no disposition upon their part to force this amendment through, and not having seen any plan or scheme presented by which the different parts of the State—the different counties of the State—could secure anything like equal representation in the House of Representatives, it seems not improper to me that this whole subject should be committed to a committee consisting of one from each county. And without intending to endorse or to argue the views which have been presented by any of the various gentlemen who have spoken upon one side of this question or the other, in support of the country against the town, or town against country, and, without overlooking the arguments which have been presented to show why town representation should exist under our Constitution, or that exact numerical equality is impossible, and perhaps, not desirable, I would suggest that whatever may be the principles or

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the policy of gentlemen upon this floor, I do believe that this Convention have got to see to it that between the different sections of the State there is something like equality of representation, in proportion to the population, preserved. Gentlemen must look at this as a principle which cannot be left out of consideration, whatever their feelings may be with reference to separate town representation. They must look at it as a fact, and as a practical consideration. It is a principle that still exists, and if the Convention keep it out of sight, in the determination of this question, the people will not overlook it.

But allusion has been made to the county of Barnstable —

The PRESIDENT. It is not in order for the gentleman to discuss that subject.

Mr. DAVIS. I merely call the attention of the Convention to it as a reason why the subject should be recommitted. I am not arguing anything fully. I am only going to state, that under this proposition the county of Barnstable, with about thirty-three thousand population, is to have fourteen representatives in a year, while another county, with three thousand less, is to have twenty representatives. I ask gentlemen of the Convention whether this is not a fact which people will look at; and whether they believe that the people of the county of Barnstable or Bristol are to be blinded for the next six months. If that be the case, if there is an inequality apparent, I say that it is a reason —

The PRESIDENT. The Chair must remind the gentleman that he is not speaking strictly to the question.

Mr. DAVIS. I say that the reason I have given is a sufficient one for submitting this whole question to a committee, consisting of one from each county. I will trouble the Convention with no further remarks.

Mr. HOOPER, of Fall River. For one I am not in favor of the reference to the committee as proposed by the gentleman who made the motion, and before I sit down I shall move to amend that motion. It will be recollected, that on the very first day of the session of this Convention, a similar motion was made to raise a committee of one from each county, to which I then objected, and moved an amendment which was not adopted, and a committee of one from each county was adopted by an overwhelming majority. That set a precedent for committees to be raised here, and I presume my friend from New Bedford, (Mr. French,) acted in conformity to the precedent established upon that occasion. I am in favor of recommitting this subject to a special committee, for this reason, among others. In looking at the amendment of the gentleman from Lowell, (Mr. Butler,) I am unable to comprehend to its full extent precisely what it means, and I think that it should be recommitted in order to bring out precisely what the gentleman intends, so that we may all understand it. It seems to me that the language of the first paragraph is exceedingly obscure, so that it appears to be as capable of one interpretation as of another. Several amendments have been adopted, but I do not know really what they are, and for that reason, among others, I should hope that this subject might be recommitted. Gentlemen say that they have sat here day after day, waiting for a plan to be proposed from others as a substitute for this. What have we seen here? Have we not seen

every individual proposition voted down as it came in, simply because it was an individual proposition? Every man in this Convention may propose a plan and it will go through the same process. It will amount to the same thing.

The PRESIDENT. It is not in order for the gentleman to refer to the proceedings in Committee of the Whole.

Mr. HOOPER. I think I am in order—as the Chair will see when I come to make the application.

The PRESIDENT. The Chair suggests to the gentleman that the remark made by him, that the Convention will vote down any plan, is not strictly in order.

Mr. HOOPER. The object of the recommitment of this subject is this. It is not likely that any other plan will be presented which will change the views of the Convention. It will be seen that every plan has been voted down, and I have no reason to doubt that this will be the case with all the individual plans which may be presented. A report made by a special committee may possibly combine the views of a larger portion of the Convention, and that is one reason why I think this subject should be recommitted. I am exceedingly anxious that some plan should be presented upon which we can all act together—some proposition with which I can go home to my constituents and give them good and sufficient reasons why it should be adopted in preference to the plan already in existence. I should like any gentleman, just to show me what kind of an argument I can present in favor of the proposition which the gentleman from Lowell, (Mr. Butler,) has presented here, and which I can furnish to my constituents as a reason why it should be adopted in preference to the existing system. I believe, if gentlemen will suffer this subject to be recommitted, that a plan may be so combined out of the various propositions presented here, that it may be carried almost unanimously. The gentleman from Charlestown, (Mr. Thompson,) has presented a plan much more just and equal in every respect than that of the gentleman from Lowell, and I believe, if it can be presented by even a minority of the committee, would command the assent of a large portion of the members of this Convention. It is for this reason that I wish to see this matter recommitted, but I hope, if recommitted, it may not receive the fate of another matter, which I had the honor of reporting, and which was recommitted to a committee. I move to amend the proposition so as to refer this subject to a committee of one from each congressional district.

Mr. FRENCH, of New Bedford. I accept the amendment.

Mr. BATES, of Plymouth. Contrary to my determination not to address this Convention, I wish to say a word upon this question. For one, I hope that none of these representations with regard to the Old Colony, will have any effect upon this Convention. I assure the Convention that the Old Colony is a very harmless place, and the people there are a peace-loving people, and there need be no apprehension of danger from that quarter. In answer to the inquiry of the gentleman from Lowell, (Mr. Butler,) whether the representation of the gentleman from Freetown, (Mr. Hathaway,) is a representation of the reform members of the Old Colony, I say, emphatically, no. I have only a few words to

say upon this point, and they are strictly to the question. I will try not to trespass upon the rule. In the first place, it is proposed to recommit this whole question which has been under discussion three weeks, to a committee of one from each congressional district. How is that committee to be constituted? By the Chair, without doubt, and in two or three days we shall have that committee appointed. So much time has been lost. Then the different projects which have been presented here will go to that committee, and as many other propositions as individuals see fit to present. The result is, that after a deliberation of some week or two, the committee present a plan to the Convention. What course does the Convention take? The report is ordered to be printed, and then it is referred to the Committee of the Whole. We then go through the same process which has been repeated here for the last three weeks, and each individual case comes up in its turn to be considered, and be adopted or rejected. Then we are precisely in the situation in which we find ourselves at present. I hope that we shall go on with this matter now. This Convention is as ready to decide upon this question now, as at any other time. If this project is right or that one wrong, this Convention is just as competent to settle upon the one which is right, at the present, as at any future time. I regret, exceedingly, the course which this debate has taken within the last two hours, as it seems to be of a strictly sectional character in regard to the Old Colony, whether, under the Charter of William and Mary she had a certain proportion of her rights or not. This is a question which may be discussed at some future time. As it regards these intimations that there is to be any danger from the Old Colony if this subject is not recommitted, I can assure the Convention, that no fears need be apprehended upon that subject, and if any difficulty is anticipated from that section of our Commonwealth, those apprehensions have no foundation in fact.

Mr. GARDNER, of Seekonk. The other day, when the question of loaning the credit of the State was before the Convention, my excellent friend on my right, (Mr. Hooper,) entertained one opinion in regard to it, and the gentleman from Taunton, (Mr. Morton,) precisely an opposite opinion. Both of these gentlemen are from the same county as myself, and both of them represent, as they suppose, the views of the people of that county, and yet their opinions upon that question seemed to be entirely different. With regard to the question now before the Convention, I do not know the opinions of my colleagues from the county from which I came, any farther than they have been expressed by the gentleman on my right. I presume that they do not wish to obtain any advantage which the people have not in other sections of the Commonwealth. I believe that they are a free and liberal minded people, and the people of Bristol County and the Old Colony, in wishing justice done to them, would like to see the like justice done to the whole Commonwealth. I believe, notwithstanding the remarks of the gentleman from Freetown, (Mr. Hathaway,) that the county of Bristol would sooner lose a representative from that section of the State, than gain one surreptitiously or improperly from any other section of the State. Therefore, I cannot fully agree with the remarks which have been made by the gentleman from

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Freetown. I do not believe, that generally speaking, there can be the feeling manifested among the people which the gentleman supposes there will be, provided this amendment of the gentleman from Lowell shall be adopted. With regard to this proposition for recommitting this subject, I am rather in favor of such recommitment. I support it for the reason which has been expressed by other gentlemen upon this floor, because I have a sort of pet proposition of my own to offer. I submitted it the other day, but it happened to be at a very unfortunate hour, just before the Convention adjourned, and there was no time for any gentleman, if so disposed, to look at it all and see if it contained any merits. It was voted down instantly. For the sake of having that proposition referred to a committee, I would be in favor of the recommitment of this subject, if for no other reason. I hope, therefore, that the whole subject may be recommitment to a committee; but it seems to me it would be better to refer it to a committee of one from each county, instead of one from each congressional district, as proposed by the gentleman from Fall River, (Mr. Hooper).

The PRESIDENT. The gentleman from New Bedford, (Mr. French,) has accepted the amendment.

Mr. GARDNER. I think the first proposition was the best, because the committee would have been larger.

Mr. PHINNEY, for Chatham. Mr. President: I rise to oppose the motion of the member from New Bedford, (Mr. French,) because I believe it will greatly delay the business of the Convention to recommit the subject now under discussion to a Special Committee. Should the motion of the gentleman prevail, some days would be required by the committee to prepare another report, and then the whole subject of representation, which has been under discussion nearly ten days, will be presented anew, and it will be necessary to go over the whole ground again. And permit me, Mr. President, to say a few words about the great solicitude which seems to be felt by certain members of this Convention for the injustice done to the Old Colony, and more especially that portion of it which I have the honor to represent. I see no cause for the alarm manifested in the plan submitted by the gentleman from Lowell, (Mr. Butler,) and I shall support it, after being slightly modified.

My long and intimate acquaintance with the citizens of Barnstable County, convinces me that they are, first, in favor of town representation; and second, that their strong objection to the district system would compel me to oppose it as their humble representative, although it has received the support of some of the ablest members of this Convention. If the system of town representation cannot be agreed upon by a majority of this Convention, I hope some system will be adopted which will approximate the nearest to it. Very much of the sympathy which has been manifested for Barnstable and Plymouth, in comparison with Franklin, comes, it seems to me, from members representing the large towns and cities of the Commonwealth, and is not entitled to very great weight, while it has, apparently, for its object, the uniting the small towns into representative districts.

Mr. President: I am aware that I have not confined my remarks strictly to the subject under

consideration, which is that of recommitment; but I had reason to believe the Convention would indulge me in a few words, as I have not previously spoken upon this subject. I have much preferred to be a listener to the eloquence of others and profit by their experience. I shall therefore be content, for the most part, with giving a silent vote upon the great questions which are to be submitted to the people for their final decision.

The PRESIDENT. The Chair must remind the gentleman that he is not strictly in order, and that he should confine his remarks to the question immediately pending before the Convention.

Mr. PHINNEY. I rose merely to say that I was opposed to the recommitment of this subject, and that I believed the Report, as presented by the gentleman from Lowell, will meet the views of the section of country from which I come.

Mr. GRISWOLD, for Erving. The question immediately before us is, upon the recommitment of this subject to a Special Committee. Having had the honor to be chairman of the Committee to which this subject was referred, I thought it proper for me to say a word or two at this time. I wish to say here, so far as I am personally concerned, as a member of that Committee, or as chairman of that Committee, I am entirely indifferent upon this subject of the recommitment. I should like to have this matter take that course which will develop, by the discussion here, whether it goes to one committee or the other, the plan which will be most acceptable to the people of all portions of the Commonwealth. I have no other feeling or motive in this matter. But is it best to refer this subject to a new committee, the original committee, or any committee. It seems to me that such a course would not be advisable. The original committee, as is well known, had this matter under discussion some two or three weeks, the result of which was the presentation of the two Reports which have been under discussion here for two or three weeks. If this matter is sent back to a new committee, or any committee, in what situation will it be? Why, here are some seventeen propositions which have been liberally discussed by this Committee, either in Convention or Committee of the Whole. Now, I undertake to say, that this Convention will never be much better prepared to express their judgment upon this matter than they are today. Not that I am in favor of cutting short any debate; not that I am in favor of forcing one proposition beyond another; but there must be an end to this matter somewhere.

This is a great subject, confessedly the most difficult one which is to come before this Convention, and it must be met by us at some point, in some manner; and when and where are we to meet it? It is proposed, I suppose, that we shall, at some period during the summer, bring our discussions to a close and adjourn. Sir, if this subject goes back to a committee, and the various propositions come before that committee, they must either have time to examine and discuss these propositions, or they must send in a Report within one or two days. If they send back a proposition, without taking time to look over these different plans, and mature the best one they can from the whole, what advantage is gained from the committee? Nothing whatever. If that committee are to take these seventeen plans, which are now well and clearly understood by every member of this Convention, and to take

them up and discuss them, and eliminate from them some plan which will be acceptable to this Convention, how long will it take? Sir, in that committee you cannot prevent speech-making and discussion. We could not do it before; and in that committee men must be permitted to speak their half hour, or their hour, if they desire it. When are they to do that? Are they to hold sessions of the committee when the Convention is in session? I suppose it cannot be expected that they will do that? The Convention sits here from nine o'clock in the morning till nearly dark; and is it to be supposed that the committee will sit after the adjournment of the Convention? Most certainly the committee will not do that. Is this Convention to stop its labors to give that committee time to mature their plan? And even if the committee had full time, it would require a week to present a plan, unless you stop all discussion in that committee.

Then, again, where is the probability that they will unite on any plan? You find no two plans at all alike among those which have been submitted here, and your former Committee could not agree on one. The committee must then either bring back a divided report, or this proposition which they had before. Then where shall we find ourselves ten days hence? Just where we were when this Committee reported, and we shall have to commence and go over all this discussion again, and when the last day of July comes round we may find ourselves discussing this question.

That is the way the matter presents itself to my mind. If I supposed this proposition could be sent back to the Committee, and that it was in the power of fourteen or any number of men in this Convention, in a reasonable time, to mature a plan which would meet the approbation of this Convention and of the people, I would go for it most heartily. But I apprehend that after any labors which that Committee may expend upon this subject, we shall find ourselves precisely where we have been before, and all this matter must be gone over with again, and we shall not understand the subject any better than we can now.

This subject has been narrowed down to a few simple propositions. In the first place the question is between town representation and the district system. Is that question settled? If it is, one proposition is laid out of the case. Then the only thing left, if the district system is settled and out of the case, is, how much can you do for the small towns? It seems to me that the subject is narrowed down to so small a compass that it is unnecessary to go back to the committee. I started, in the proposition which I had the honor to submit, with a plan which I contend is based upon principle and on the entire practice of this State for two hundred years. But my friends have thought we must adopt the district system so far as cities are concerned, and that as an equivalent for this, the small towns must yield something, and I suppose we must do it although I dislike to. Is it necessary to go to a committee for that? We are balancing upon a narrow point to-day, and it seems to me that this Convention can meet the question as well to-day as at any other time. I do not know but gentlemen in this Convention are willing to take the responsibility of sending this question back to the committee, which must, I apprehend, result in at least two week's delay, if not in breaking up the Convention altogether.

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I want to do what is best in the premises; I want to do what is nearest right, if I know what that is, and what is nearest equal and fair to all portions of the Commonwealth. I may have occasion, when it is in order, hereafter, to make some reply to some statements which have been made in reference to the different counties in the Commonwealth; but I will not go out of my way to do it now, if I do it at all, as it may be anticipated by others.

But it seems to me that as a matter of business, if we will give ourselves to the consideration of this matter, we may settle it in Convention in three days as well as to send it to the committee again. There is no charm about a committee. The trouble is in the question itself, it being the most difficult of all questions upon which the mind can be brought to bear. Gentlemen must yield something and they must meet this question like men, because it must be met in some shape or another, at some time or other; and I apprehend it may be done, after the discussion we have had and the publication of the report we have had, in the course of three days here, by continuing the discussion; and that will be better than to jeopard the whole matter, and possibly jeopardize the whole question upon which the attention of the whole people of the Commonwealth is so intensely directed to-day.

Mr. STETSON, of Braintree. I will not detain the Convention long. My purpose in rising is to state, that if this question is recommitted, I wish the committee may be requested to report in a certain number of days—say two or three days. And as the plans which will be proposed, or may be proposed to this committee, are all matured, I trust that it will not, in the nature of things, occupy the time of the committee but a very few days, and that they will bring in a proposition which will meet the acceptance of a majority of this Convention.

Now, Sir, the gentleman for Erving says it will take two or three weeks. I think that if he will consider and reflect upon it, that he would not, in his judgment assert that it could take so long a time, and that the committee would not be able to report to this Convention in three days, as well as in three weeks. Now I trust that some plan—I would not have the Convention understand that I have one to offer, because I had one killed at its birth a few days since—which has not yet been acted upon in this Convention, will meet with the views of that committee, and that they will bring to its support a majority of this Convention. And if I may be pardoned, I will say that the Old Colony, to which allusion has been made in this discussion, is not alone in this issue. Sir, the county of Norfolk will sustain and support, so far as I know—I speak of the southern part of the county—what is right and just, and nothing else, whether the basis of representation be twelve hundred or any other number. I can only say I am in favor of the recommitment of this question, and I am in favor of having the committee ordered to report back a plan within three days. I think that since we have had a Majority and a Minority Report fully discussed here, the Convention may well be assured that after all these plans have had a fair hearing in the committee, and are reported back again to this Convention, there will be no debate of any consequence arise upon that report. The question has been argued fully, and I believe that when such a report is made, the majority of

this Convention will settle down at once upon what they would carry through and support after it is submitted to the Convention.

Mr. MORTON, of Taunton. Mr. President. Knowing the impatience of the Convention to take this question, I will assure you I will detain them but a very few minutes, and I will endeavor not to deviate from strict order, in the consideration of this subject.

I should not have arisen but to reply to a personal remark made by the gentleman from Lowell, (Mr. Butler). When he was addressing this Committee, and speaking of the delay of gentlemen in one section of the Commonwealth in presenting any plan for consideration, he referred to me, and said I had a plan, and that I had kept my mouth shut on the subject. Now, if any one imputes to me any intention to keep anything back, sick or well, I repel it. I profess to act in all cases with openness and frankness. I did intend to address the Convention on this subject long ago; but I was providentially prevented from doing it, and I think the gentleman knew it well; and that so far from withholding any plan, I presented it to as many members of the Convention as I could, and among others to the gentleman from Lowell himself. Now, when he alluded to me as keeping my mouth shut, I think he departed from that kindness and suavity, if not from that parliamentary decorum, which belongs to every gentleman in this Convention; and I presume he would be as unwilling intentionally to do it, as any body else.

Having made these remarks, and being up, I will say two or three words in reference to the motion to recommit this subject to the committee; and in that I trust I shall deal with perfect frankness. I believe my views on this subject are known, and it is supposed that I am in a minority. But I have come to the conclusion that there are but two courses which this Convention can pursue. One, I think, is founded in justice, equality, and righteousness. Other gentlemen have their opinions differing from me, I have no doubt. The other, I think, is founded on an artificial system, on a contrivance—I do not mean to use the word in any improper sense at all—to accomplish an object indirectly; an object which they, doubtless, think right. These subjects are before the Convention, if the district system is not repudiated, as I hope it will not be; and we have only left the town system, and it is said we have some ten or fifteen propositions distinct and separate in relation to that subject.

Now, a motion has been made to submit all these to a committee; and if I understand the question which we are now to act upon, with a view to a proper transaction, and the speedy transaction of business, it is whether a committee of eleven men, selected to compare and examine these several plans, exchange views and bring the plans together so as to form a system, can do it better than four hundred individuals sitting here. It seemed to me very plain, that the small number, who could, if you please, sit around a round table, and have the plans all before them, and make suggestions one to the other, would be more likely to bring their minds together and make the necessary concessions, and hit upon some plan among them, or form one out of all those submitted to them, that would be acceptable to all, and satisfactory to the whole Convention. I do not suppose that I shall vote for any plan

which they will recommend; but if they wish to get up this patch work system, I wish to give them an opportunity to exercise their taste and skill in endeavoring to present to us the most beautiful piece of Mosaic work they can accomplish.

The Old Colony has been alluded to, and it is a subject about which I feel a little sensitive, and I feel desirous of doing justice to them on all proper occasions. I shall not enter into the inquiry whether the gentleman from Plymouth, or the gentleman for Chatham, have known the Old Colony longer or better than I have; but I profess to know something in relation to the subject, and perhaps I should not differ from them. I think they are a pretty honest, intelligent, and very peace-loving community, and I think they have practised a Christian virtue for a good while; and that was, when smitten on the one cheek, they turned the other. But if my young friend, (Mr. Davis,) who, supposing that some injustice impended over them, got a little zealous, it is not very remarkable; but I think if they had had the experience which I have, they would have been a little more cautious, and it would be very apt to be supposed by every gentleman about us, who has seen us and known us, for many years, that we had been so used to being skinned, that we should not squirm under the operation. [Laughter.]

Mr. KEYES, for Abington. It occurred to me, Mr. President, that when this motion was made in the Convention this morning, it was a very proper one; but notwithstanding this, if it is believed by the gentleman for Erving (Mr. Griswold,) that it is a more expeditious mode to settle the matter in the Convention than in Committee, I shall coincide with him. I labor under this difficulty: I voted for the proposition of the gentleman from Lowell, (Mr. Butler,) in order that some one subject might be selected for consideration, upon which amendments might be submitted, and arguments be made, with some degree of certainty, as to their effect. Now the first reason which would induce me to favor the recommitment of this subject to the Committee, would be that we should thereby obtain a plan, not only showing the operation of the amendment upon the present census, but upon the future census. I am certainly contented with the gentleman's plan, so far as the present census is concerned, but I have not figured it out, nor do I know that it has been figured out by any one, to ascertain what will be its operation hereafter. In making a Constitution, we are to provide not only for the present, but for the future. For that reason I am, as yet, undecided how I shall vote upon it. I voted in favor of it in Committee of the Whole, because I was aware that I should have an opportunity to consider it when it should come up in Convention. I may be compelled, from the circumstances, to vote against the amendment, and I do not doubt but such will be the case with many other gentlemen.

A great deal has been said about inequality, but I submit that this is a matter which has nothing to do with the subject at all, and if the whole question on this point had not been entirely demolished by the able remarks of the gentleman from Northampton, (Mr. Huntington,) I would have endeavored, myself, to have said something about this great humbug of inequality. I could show where there are men in this Com-

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monwealth who have had sixty-six times the power that I have had, notwithstanding what our Constitution says to the contrary.

The reasons which were stated by my friend for Erving, (Mr. Griswold,) upon this subject, have been perfectly conclusive to my mind. He says that the question of districting has been entirely done away with. That is my opinion. That was the only ground for the long speeches which were made in his Committee; it was this that caused the division, and having been once settled I take it that no man is going into that Committee to try and establish it again.

The attention of gentlemen must, therefore, be confined solely to the making of some system by which towns will be represented as much as they can be, and in as equal a manner as possible, throughout the Commonwealth. With these various propositions before them, it strikes me that the committee to which the subject is referred would require but a very short time to accomplish an object so desirable. But whoever that committee may be, let me suggest to them in the consideration of each plan, to show its operation not only under the present census, but also its operations under the two succeeding censuses, according to the prospective increase of the population as it has been stated in the public documents. Then we can know whether we will adopt such a plan for the present as well as for the future. On looking at the Orders of the Day, I perceive that there is plenty of business to engage the attention of the Convention while all this is being done; and if it should happen that we should have disposed of all the subjects before us before that is reported back, we shall then have plenty of time to consider it and nothing else. I do not believe it will consume the time unnecessarily or unprofitably, but, on the contrary, it is my opinion that such a course, if pursued, will save several days of hard labor in the Convention.

Mr. ABBOTT, of Lowell. I did not intend to say a single word upon the question which has been mooted here to such an extent, whether the Old Colony has had justice done her in times past, or is to have justice done her in all time to come. It seems to me that it is a question which really has nothing to do with the matter now before the Convention. And if I may be permitted to speak of that section of the Commonwealth which I in part represent, I can assure the gentleman from Taunton, that it is the furthest from any desire in the vicinity where I live, to do injustice towards the Old Colony. I presume it is the feeling and the wish of the Convention, to have right done to all, though we have all come to the conclusion, I apprehend, by this time, that it is exceedingly difficult to get at and ascertain where that right is, that has been so greatly encroached upon; as is represented. Having trespassed upon the time of the Convention heretofore, I shall perhaps not have occasion again to allude to this matter, but I desire to call the attention of gentlemen to this subject for a moment, in a practical point of view.

Let us see, before going any farther, where we are historically, in regard to this matter, because we have been considering the details of this question, of the basis of representation, so long that it has really become a matter of history. It was originally, I believe, submitted to a committee, consisting of twenty-one gentlemen, and that Committee, I have no doubt, brought to bear

upon the subject all the learning, and knowledge, and industry which they possessed. They gave us two Reports, both of which have been considered in Committee of the Whole, and by the Convention, for two weeks or more. One of these systems reported by that Committee, after having been debated with all the learning and eloquence which could be brought to bear in favor of, and against it, in so large a body as this, after being amended, has been finally adopted in Committee of the Whole. And I may be permitted to say, in this connection, that during the entire deliberation of this body upon the subject, no human being in the Convention can say that he has been debarred from the privilege of suggesting such plans, and introducing his figures and results, as he may have deemed would meet the difficulty which existed. Why, Sir, I was surprised to hear my friend for Abington complaining that there had not been figures and results enough. Figures and results! I had begun to think that for the last ten days, we had resolved ourselves into a convention of arithmeticians, for we have been almost smothered in figures. One would almost suppose, from our transactions here, that we had assembled to settle questions of statesmanship by the rules of arithmetic. Every man who has desired it, has brought his plan, and submitted it, either to the Committee of the Whole, or to the Convention; nobody has held him back; no restraint has been exercised, but, on the contrary, he has been allowed to present his view and make his explanations, which have been entertained and considered by this body. And now I submit, if I may be permitted to use the expression without trenching upon the rules of order, whether it does not look very much like boy's play, after we have had the subject under consideration for so long a time, and after the Convention have gone into Committee of the Whole upon it, have discussed it there, and adopted, and rejected the amendments, and plans, and suggestions which have come from all directions and now, when it has been reported back from the Committee after being discussed over and over again, to send it again to be reconsidered and reported upon once more by a committee. After all this deliberation, let me ask where we are? Have we made an advance, have we made one step forward? No, Sir, we have arrived at the point from whence we started? And now it is proposed to send it back to another committee, and see if we cannot get from them something different from the very able Report which we received from a Committee of twenty-one, before we commenced the consideration of this question.

Sir, I apprehend that this body can just as well settle this matter in Convention, as a Committee of eleven, or any other number, can do it. If my friend from Freetown, (Mr. Hathaway,) has any plan which he desires to propose, in God's name let him have an opportunity to propose it. And if it should prove any better than the plan which has been submitted by my colleague from from Lowell, (Mr. Butler,) I, for one, will go for it with all my power.

If it is a plan that will do more justice to the part of the Commonwealth from which the gentleman comes, and do no injustice to another, I will go for it with pleasure. I do not believe there is any disposition in this Convention to prevent any gentleman who desires to do so, from

bringing forth any plan, or that there is an unwillingness to listen to any arguments that may be introduced in favor of such plan and its operation, and I believe, Sir, that we are capable of appreciating those arguments at this time. I think the Convention will bear me out in the statement, that no proposition has been submitted, that has not received its due consideration.

We have had on the one side, the Report of the majority of the Committee in favor of town representation, a plan that has certainly the past history of the Commonwealth in reference to this subject, in its favor, and which is based and founded upon the very political existence of the people of this State.

Then again, on the other side, you have the plan introduced by the minority of the Committee, a system which is based on another great principle of our government—the principle of political equality; this has been called the district system. The third plan submitted by the gentleman from Lowell is, I apprehend, a compromise, between the two. It is giving up something asked for by the gentleman for Erving, (Mr. Griswold,) and those who go for the towns, and it is taking something from the proposition of the minority, yet not detracting materially from the great principle of either. I think the Convention will bear me witness that I have stated the matter substantially as it now stands—a compromise and the two extremes. And, Sir, is it to be urged here, that after having brought to bear upon the question, all the learning and eloquence and industry of the many members of this Convention, that we cannot bring into shape in some way or other, either of these propositions? What we want to do is to come to some definite understanding in regard to the details of one or the other of these plans. I am not in the habit of making predictions, nor will I predict what conclusion the Convention may come to in the consideration of this subject, but I will say what I believe will be the course taken by certain gentlemen who are in favor of town representation; and it is this, that if the compromise of my colleague from Lowell, (Mr. Butler,) goes much further in a direction away from town representation, or much beyond it, I apprehend that the tread of many gentlemen in this House will be broad enough and long enough to stop over to the other extreme of district representation. I think we are as well able to decide upon the matter now, as we ever shall be, and I hope we shall be allowed to do so. But, suppose that we recommit it to the hands of a committee. That committee will, in all probability, take a certain plan, and comparing it with the history of the past in relation to this question, will decide it in accordance with that history. And do you believe when that system is reported back from the committee, that there will not be this man, and that man, and another man, where it happens to hit his particular town or section of the Commonwealth, who will not jump up and present another plan more in accordance with his feelings and interests? And shall we not, therefore, have to go over this same discussion again?

Laying these considerations aside, however, if this subject is to go into the hands of a committee again, I am in favor of allowing them all the time they desire to discuss and consider it, and I should be sorry to have any iron rule imposed upon them, as has been proposed, that they should report in three days. But when that report is

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made, whether it be sooner or later, depend upon it, Sir, the fire will break out anew. Gentlemen who have made speeches before will make them again. I, myself, may be a sinner, and yet the circumstances may warrant it; and in this way another fortnight will be consumed. I ask the good sense of the Convention, whether they believe we shall have any more real light after pursuing such a course than we have at present? I trust that we shall go on and finish this business now. If my friend from Freetown, (Mr. Hathaway,) as I before remarked, has a plan which he desires to submit, let him submit it in Convention, and I can assure him it will receive due consideration. If it is what we want we shall adopt it; if not, it will go down, where other plans have gone before it.

Mr. WEEKS, of Harwich. A great deal has been said in regard to the old counties of Plymouth and Barnstable. And it was just now remarked, by the gentleman for Chatham, that the people of Barnstable County were in favor of town representation; I should like to ask that gentleman what indications he can find to warrant this assertion. All of its representatives, with but one exception, have, I believe, voted for the district system, and they are all good democrats. The people of that county desire equal political rights with their neighbors in the other counties, and it is all they ask for. When compared with the people of the county of Franklin, we are, in fact, but half men, since that county possesses just double the political rights that we possess; and it is this of which we complain.

Now, Sir, a word in regard to the district plan. It is, in my opinion, the only plan that can be adopted by which equality of representation can be secured to all. And, although the people of Barnstable County have been represented to be in favor of town representation, yet if this district system is submitted to them for their decision, they will one and all unanimously vote to sustain that principle.

Mr. HATHAWAY, of Freetown. After the sharp rebukes, and the severe criticism to which I have been subjected in this debate, I beg the indulgence of the Convention for a few moments, while I shall, at once, reply to the gentleman and make an explanation. Sir, the gentleman from Lowell, let me say to him in starting, shall never place me in a false position, either before this Convention or the people, however much he may endeavor or desire so to do. But, to commence aright, it will be necessary for me to go back a little and repeat in part what I before said, and see whether I uttered any threat, as has been intimated. And in the first place I will say, that I did not threaten, nor did I, in the *refined and parliamentary language* of that gentleman,—for it was undoubtedly parliamentary, as it was permitted to be used,—talk about bullying; nor did I use any language of that character, because I deem it not only *unparliamentary*, but *ungentlemanly*, in the highest degree. But, to be strictly parliamentary myself, I ought not to say whether the gentleman used it or not; the Convention can decide upon that point. But let me examine the position in which I was placed, and what I said.

When I first addressed the Convention upon the question, whether this subject should be recommended to the Committee or not, I stated that my mouth had been closed, heretofore, and I had remained silent upon this question, and

that it was the first time I had spoken upon the proposition as to the basis of the House of Representatives. In the next place, I said, that I desired to have the subject recommitted to the Committee, because I felt that injustice would be done to certain parts of the Commonwealth, and especially to that part of it called the Old Colony, if either the original Report of the majority of the Select Committee, or the amendment of the gentleman from Lowell should be adopted. I felt the peculiarity of the position in which we were placed, who happened to be opposed to these propositions—to wit: that the small towns, that had but about one-third or two-fifths of the population or voters in this Commonwealth, had, on this floor, a majority, at least, if not three-fifths, of the delegates, and that the remaining three-fifths of the population or voters, had, on this floor, but about two-fifths of the delegates, and would, of course, be here in a minority, and if a vote upon the propositions was forced, they must yield to the three-fifths of the delegates, who, in fact, represented but two-fifths of the population or voters. I did tell an anecdote of a distinguished son of Massachusetts, but so far from intending any threats thereby, it was merely for the purpose of illustrating what would be his sense, if he now was living, of the great injustice which would be done, if either the amendment or Report shall be adopted. I went still further, and said, there was a power behind us, and that the three-fifths of the delegates who were elected, and who are now here, represented but about two-fifths of the population or voters, and that that *power*, which would see that no injustice should be done, was the *people*. The gentleman from Lowell, in his remarks, appealed to a higher law or tribunal, than the people. In my view, the people are the legitimate tribunal for making their organic law, without appealing to a higher power or tribunal.

The gentleman said, also, that I had intimated there was a conspiracy in this matter. I, Sir, made no such intimation. He went on, learnedly, to instruct us in reference to the conspiracy of Rachel and Jacob, and the goat skins with which they deceived Isaac, and the goat soup with which they fed him. But I can tell the gentleman from Lowell, that if he intends his proposition as one of the goat skins, we, of the Old Colony, shall not be misled or deceived by it; nor am I, or will the people in that part of the Commonwealth, as I believe, be deceived by, or in the least be inclined to sup with him any of his *odoriferous goat soup*, which he so highly prizes, and which is so palatable to his taste. He may have the whole of it; I do not choose to be a partaker of it with him, or from his hand.

The gentleman, also, in the course of his remarks, *perhaps in a perfectly proper and parliamentary manner*—I mean no disrespect to the Chair—

The PRESIDENT. The gentleman from Freetown will recollect that the Chair checked the gentleman from Lowell in his observations, and that the Chair said to the gentleman from Lowell, that he did not understand the gentleman from Freetown as having uttered any threats.

Mr. HATHAWAY. I am aware of that, Sir, and it was not to that I was about referring; but, in the course of his remarks, he took occasion to appeal to the “reform party” of the Old Colony, and to refer to the reform democracy.

Mr. BUTLER. I rise to correct a statement—will the gentleman yield the floor?

Mr. HATHAWAY. Certainly, Sir, for that purpose.

Mr. BUTLER. I said not one word in relation to the reform democracy, in any portion of the Commonwealth; I called upon the reform members of the Convention from the Old Colony.

Mr. HATHAWAY. The gentleman says he called upon the “reform members” of the Convention from the Old Colony, and thus limits his language. I appeal to the Convention, as to the correctness of that statement. But I should like to know, in the first place, what the gentleman means by “reform members;” I should like to have him tell me, if there is any member of this Convention who does not go for reform, provided it be the reform of a vicious or imperfect system. If there are any particular persons in this Convention, to whom he alludes, as being opposed to reforming or amending a vicious or imperfect system, I should like to have them pointed out. I have supposed that all the members in this Convention, whether from the Old Colony, or any other part of the State, were all for reforming everything that is wrong, and which had worked, or might work, disadvantageously in a community, or any part thereof, and that all of us were for introducing that which is right and proper, instead of that which was working evil and injustice to a part, if not the whole, community.

But the gentleman from Plymouth, forsooth, is the man who constitutes the “reform party” in the Old Colony, and who rises here, and claims to be the sole representative of the reform members or party from the Old Colony; for, when the gentleman from Lowell appeals to the reform members or party from the Old Colony, the gentleman from Plymouth arose, and said, in an emphatic manner, and in his *peculiarly dignified tone*, “I pronounce that the gentleman from Freetown is not one of the reformers, or of that party.”

Mr. BATES, of Plymouth. I rise simply to make an explanation. I made no such statement. When the question was asked by the gentleman from Lowell, if these were the sentiments of the reform members of the old colony, I answered emphatically, no! That is all.

Mr. HATHAWAY. I recollect very well, and the gentleman from Lowell recollects very well, the language that was used, and the Convention recollect whether that was the language of the gentleman from Plymouth, but even if it was, as the gentleman says, who set him up here as a judge in Israel? Who appointed him to answer for the Old Colony, or the sentiments of its members—will he tell me?

I expected, and therefore am not disappointed, Mr. President, when the gentleman from Lowell threw up his kite and called upon the “reform party” from the Old Colony to come to the rescue, that before it found a landing, I should find the gentleman from Plymouth attached to its tail, as a bob, or a tag, and dangling in the air. [Laughter.] Well, Sir, he has had his aerial flight in that position, which is his true one, and if he is satisfied with his exhibition of himself, I think no one will envy him in such an honorable exhibition and position, and the enjoyment he derives from it. He knows very well that I did not come here to bandy words with him or with any body else, and I never intend to do so; but I do protest against the authority of that gentleman, in setting

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himself up here, and with all the gravity of a pope, issuing his bull and reading us out of the political church, and declaring, with all papal pomp and dignity, that I "do not represent the sentiments of the reform party" as well as himself. There is a better place than this to test that matter, when this proposition shall go before the people, if ever the Majority Report, or the amendment of the gentleman from Lowell, in its present form; shall take that course. Nor am I at all disposed to bandy words with the gentleman from Lowell; it is not congenial with my tastes. I suppose, from the remarks of the honorable gentleman from Worcester, that he did understand my language as somewhat threatening, for I do not believe he would intentionally misrepresent me, but I will state, as I have already stated, that I used no threats or language that could be fairly tortured into a threat, but that he unintentionally and undesignedly misunderstood me. In reference to the figures alluded to by that gentleman, I understood from him, that if I would make the calculation, I should find that it required either more population or more voters for the election of a representative in the county of Middlesex or Worcester than it required in the county of Bristol.

Mr. ALLEN, of Worcester. I will explain to the gentleman what I meant.* I remarked, in the course of my observations, that he would find that the representation of his county was greater in proportion to the population than that of the large county of Middlesex, and not far from the representation of the county of Worcester, and further, that it afforded to the county he in part represents a greater representation in proportion to the population than would be allowed under the system submitted by the gentleman from Lowell.

Mr. HATHAWAY. Then I did not misunderstand what the gentleman said. Mr. President, I hold in my hand a paper, the correctness of the figuring on which I cannot, however, vouch for, because I have not carefully examined it, purporting to be a table showing the practical operation of Mr. Butler's plan. I will read from it, and I will take the counties named by the gentleman from Worcester, although there are other counties where the inequality is much greater. "He proposes to give a House of three hundred and ninety-one members, and distributes them as follows:—" The county of Middlesex, for instance, is allowed one representative for every 2,552 persons, whether voters or the population generally I do not know. The county of Worcester requires 2,127 persons for every representative, the county of Bristol requires 2,609 persons for every representative. Now, if 2,609 be less than 2,552, or 2,127, then, I confess, I have learned subtraction in vain, and forgotten the first rudiments in mathematics.

Mr. ALLEN. If the gentleman will examine the subject for himself, he will find no such results as are figured out in that table.

Mr. HATHAWAY. I cannot say whether the statement is right or wrong. I read from the paper which a few moments since I found in my seat, or rather, as I think, delivered to me, and the other members of the Convention, by the page or one of the document distributors of this House, though I am not positively certain that it was so distributed. It purports to be a table showing the practical operation of Mr. Butler's amendment.

Mr. BUTLER. I rise to a point of order. I

understood the gentleman to say that he was reading from a table that had been prepared by me.

Mr. HATHAWAY. The gentleman misunderstood me. I said I was reading from a paper which had been printed for the use of the Convention; and I read precisely what that paper contained. Whether the gentleman prepared it, or who under Heaven prepared it, I do not know or care.

Mr. BUTLER. I don't think Heaven had anything to do with it.

Mr. HATHAWAY. Probably not. I can only say it was distributed. I found a copy in my seat. But, Sir, as I before said, I have no disposition to bandy words with the gentleman from Lowell, he is so courteous, gentlemanly, parliamentary, and chaste in his language. But I must be permitted, however, to say that when he uses the word "bullying" in reference to me —

The PRESIDENT. The Chair heard no such remark.

Mr. HATHAWAY. The expression was used by him nevertheless.

Mr. BUTLER. I would ask if the gentleman refers to me as having used it.

Mr. HATHAWAY. I do.

Mr. BUTLER. I said I would not be bullied. That is what I said.

Mr. HATHAWAY. That, Sir, is a very nice distinction, and the gentleman is welcome to his extra refinement in this matter.

Mr. BUTLER. It is the distinction between the gentleman and myself.

Mr. HATHAWAY. I understand it, Sir. There are many ways of defining that distinction, and gratifying that extra refinement of the gentleman's taste. But let me tell the gentleman if he wishes to keep up this sort of discussion, I assure him he will find one that will meet him, and that he will not obtain a victory without first having a conflict and a struggle. Give us "a fair field and a clear sky," and if the gentleman wishes to try the temper of his steel, or shiver a lance, he will find an opportunity; but, Sir, I desire peace and not warfare within these walls, and especially during the time we shall be engaged in a work of so much importance to the public as that upon which we are now entered. Mr. President, I repeat, that I used no threatening language. Sir, I should deem that I was doing injustice to myself if I was to do so in the presence of this honorable body. I am not in the habit of using language that is objectionable, much less threatening; and I believe that gentlemen around me, and nearest to me, and who had the best opportunity to correctly hear me, will bear me witness that to-day, and during the time when I first addressed the Convention in reference to this matter, I used no threatening language, nor anything approaching to it. I may have shown some warmth in the discussion, for I feared that injustice was to be done to the Old Colony, and I now fear it, but I only intended to state the position of the Old Colony in reference to this matter as a reason why this whole subject should be recommitted to a select committee. No injustice by me was intended to be done to any one, much less to myself, as I should have done if I had used language that could have been justly tortured into a threat.

The question was taken on the motion to re-

commit, and upon a division, it was—by ayes, 116; noes, 178—decided in the negative.

Mr. BOUTWELL moved to amend the second resolution by striking out all after the word inhabitants.

Mr. BOUTWELL. I desire to state that this, to some extent, removes the limitation which the original resolution contains, and which operates of course against the large towns. That was a subject of conversation in committee, and it has been the subject of debate in the Convention, and I think very justly a subject of some complaint. If this amendment prevails it will, to be sure, to some extent, make an addition to the size of the House of Representatives, but it will relieve the provision from the charge of inequality which has been made against it in relation to the representation of the cities and large towns of the Commonwealth. It provides for an addition of ten representatives in each decennial period after the year 1860, and it seems to me from the examination I have given the matter that it is upon the whole a reasonable provision.

Mr. BUTLER. I wish simply to say that I was opposed originally to the amendment which was submitted and adopted to allow all small towns of fifteen hundred inhabitants which should be hereafter created, to be excluded from my proposition. I am in favor of the amendment, however, because I think that this provision for the increase of the House will relieve the proposition of the difficulty which my friend from Lowell, (Mr. Adams,) found in it. I cannot say that I accept the amendment, as that is for the Convention to decide, but I fully agree to it in principle.

The question was then taken on the adoption of the amendment and it was decided in the affirmative.

Mr. THOMPSON, of Charlestown. If in order, I desire to amend the amendment of the gentleman from Lowell. I move to strike out all after the word "Resolved" and insert the plan contained in Document No. 74, which I had the honor to submit to the Convention a few days since.

The PRESIDENT. The Chair desires to state that the amendment moved by the gentleman from Charlestown, presents to the Convention, a second substitute, which is not in order, as two substitutes for an original proposition cannot be entertained by the Convention at the same time. If no objection is made, however, the Chair will state the amendment moved by the gentleman from Charlestown.

Mr. BUTLER. I wish simply to say that I hope no objection will be made to the consideration of this amendment, as I am desirous that all propositions shall be fully deliberated upon before the final question is taken.

No objection being made, the amendment was read by the Secretary, as follows:—

Resolved, That the Constitution be so amended as to provide for an apportionment of the House of Representatives, as follows:—

1. Every town having less than fifteen hundred inhabitants, may elect one Representative every alternate year, or any five years in ten years; also each of said towns may elect one Representative on the decennial or valuation year.
2. Every town having fifteen hundred, and less than four thousand inhabitants, may elect one Representative annually.

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3. Every town having four thousand inhabitants, may elect two Representatives annually; the mean increasing ratio shall be four thousand.

The foregoing apportionment to be made upon the census of 1850, and at, or after each succeeding decennial census, the ratio of towns, and the mean increasing ratio, shall be so increased as to retain the same number of members of the House of Representatives as herein proposed.

Resolved, That each city entitled to more than three Representatives, shall be divided into Districts of as nearly equal number of inhabitants as may be practicable: *provided, however*, that no District shall elect more than three Representatives.

Mr. THOMPSON. In presenting this amendment to the Convention, I shall not think of making a speech or going over the ground which has been so well traversed by every gentleman who has preceded me in the consideration of this question. From the course which the subject has taken, it seemed to me very clear that the idea of adopting a system by which the Commonwealth should be districted in an equal manner throughout, the basis of representation being the people or the voters, was a foregone conclusion, and that any proposition of that character would not be entertained in this body. Hence my attention was turned to the necessity of attaining some end that should approximate nearer to equality than any one which had been proposed to the Convention. I have thought a considerable upon the subject, and having a strong desire to render to the small towns all that could be conscientiously conceded to them, it occurred to me that by starting from the medium towns, it would render more equal justice to all portions of the Commonwealth than had been proposed by any preceding system. And after stating the effect of the plan which I have submitted, and its operation upon the different sections of the Commonwealth, if it does not at once commend itself to the judgment and discretion of the Convention, I certainly have no desire to press it farther. My only wish is to attain to a system which shall combine the plan of corporate or town representation with the system of districting—the two extremes, the smaller towns and the large cities—in such a manner as to present to the people ultimately, a plan that will commend itself to their approbation when it shall be submitted to them.

It will be seen that my amendment proposes a smaller number of representatives than the plan of my friend from Lowell which has just been under discussion. It proposes a maximum, excepting in the valuation year, of three hundred and sixty-four and a half representatives; and the mean increase in ratio being about four thousand inhabitants, it carries an equal line throughout the population of all the towns of the Commonwealth.

Hence it gives a more just proportion to the denser and more thickly settled portions of the Commonwealth than any of the preceding plans, and will therefore be more liable to be accepted by the people than any other system which has yet been introduced here.

It will be seen, if gentlemen will examine the accompanying table, that the number of the representatives throughout the Commonwealth is much less than is provided for in other propositions, the difficulty of which is mainly in regard to the small counties. By comparing the number of inhabitants in the various counties who are entitled to a representative, it will be seen that

the smallest number of inhabitants entitled to a representative is in Dukes County, which requires but 1,766 persons; while the largest number will be in Suffolk County which requires 3,939 inhabitants to elect a representative. The other counties range between these extremes. On looking at the amendment submitted by the gentleman from Lowell it will be seen that the extremes are much greater, one extreme being the county of Suffolk which requires for the election of a single representative 4,690 inhabitants, and the other extreme being the county of Franklin which requires only 1,544 inhabitants to elect a representative.

So that the difference in the basis of representation between the extremes of the plan proposed by the gentleman from Lowell, and the extremes of the plan proposed by myself, is nearly one thousand. I think that my plan will therefore work much more equally in the distribution of political power in the House of Representatives, than the system of representation at present existing.

I have drawn up a few figures to show the difference between the system of the present day, and that proposed in this plan. By my system the representation in the county of Suffolk will be reduced from forty-four representatives to thirty-five, in the city of Lowell from ten to nine, in the two next larger cities from six to five, three towns of the next size being reduced from five to four, two towns of the next size from four to three, and one from three to two representatives.

Under the proposed apportionment,—

1 city that now has 44 rep's will be reduced to 35	
1 " " " 10 " " " " 9	
2 cities " have 6 " " " 5	
3 " " " 5 " " " 4	
2 " " " 4 " " " 3	
1 city " has 3 " " " 2	
3 towns that now have 7 rep's in 10 y's will have 5 in 10 y's	
19 " " " 6 " " " 5	
34 " " " 5 " " " 5	
10 " " " 1 rep. annually " 2	
29 " " " 4 rep's in 10 y's " 5	
26 " " " 3 " " " 5	
18 " " " 2 " " " 5	
146 " " " 1 rep. annually	
Average number 364½.	

Giving to the rural towns an addition of thirty-five representatives annually over the number they are entitled to under the present system.

As I have before remarked, the distribution of the representation among the people of the Commonwealth approximates nearer to an equality under my plan than under any other which has been submitted; but if there should be any other presented which will attain the object in question, or approximate nearer to equality under the conflicting views and feelings of the Convention, I shall go for it with pleasure. I proposed this plan with the hope that it might assist us in arriving at some understanding in regard to this much vexed and mooted matter of representation, and I trust that I may not be disappointed. With these remarks, I submit my amendment to the Convention.

Mr. BRIGGS, of Pittsfield. I would inquire of the Chair if it is order to offer an amendment to an amendment of this character.

The PRESIDENT. The Chair understands that it is in order to perfect an amendment before it is adopted. The Chair would state, however, that when the amendment of the gentleman from Charlestown was submitted, being a substitute

for a substitute of the original proposition, it was not in order, but on question being put directly to the Convention, it was admitted by unanimous consent.

Mr. BRIGGS. I was not aware, Sir, that you could amend an amendment beyond the second degree.

The PRESIDENT. The gentleman is correct in that, but he does not take into consideration the exact state of the various propositions which are now before the Convention.

The first proposition is the original plan reported from the Committee; the second is that which stands as an amendment, in the nature of a substitute for the Resolves of the Select Committee, and by general consent the gentleman from Charlestown, has had leave to introduce another proposition which he designs as a substitute for both. The Chair understands that it is competent to perfect either the plan reported by the Committee of the Whole, as a substitute, or that proposed by the gentleman from Charlestown; otherwise, being forced to a vote, the Convention is led into the difficulty of agreeing to or rejecting a proposition which cannot be amended either before or after the vote.

Mr. BRIGGS. I understand the proposition of the gentleman from Lowell, was offered as an amendment, not as a substitute. And that the proposition of the gentleman from Charlestown, is an amendment to that amendment. The Committee of the Whole rose and reported that they had adopted the proposition of the gentleman from Lowell, not as a substitute for the original resolves, but as an amendment. But if the Chair is right in calling it a substitute, then my objection goes for nothing. If it is an amendment, then the rule applicable to amendments applies to it.

The PRESIDENT. The proposition of the gentleman from Pittsfield, is perfectly correct; but the distinction which the Chair makes is this—and to this point the attention of the Convention was called, because the difficulty that would arise was anticipated—the amendment was reported to the Convention as an amendment in the nature of a substitute, that is, striking out all after the enacting clause, and inserting an entire and a different plan. The parliamentary law recognizes no such thing as a substitute, but treats all propositions to amend as amendments. The Chair therefore states the question to be on agreeing to the amendment as a substitute for the original resolves. When the gentleman from Charlestown submitted his proposition, the Chair stated that it was not an amendment to an amendment, but an amendment which was in the nature of a substitute for both the other plans, and that it could not be entertained without general consent.

It is by no means an agreeable duty which devolves upon the Chair to determine points of order, either in regard to motions, or amenities of debate, when such decisions are unsolicited, and the Chair is reluctant to enforce a rigid adherence to parliamentary rules governing motions, unless in accordance with the general wish. In regard to the proposition reported from the Committee of the Whole as an amendment, it is to all intents in the nature of a substitute for the original resolves, and the Chair holds that a motion to amend so as to perfect that proposition or the proposition of the gentleman from Charlestown, that being admitted by general consent, does not

Wednesday,]

HOUSE OF REPRESENTATIVES.—CADY—THOMPSON—KEYES—BUTLER.

[June 29th.

contravene the parliamentary law in regard to amendments in the third degree.

Mr. FRENCH, of New Bedford, moved that when the question on the amendment be taken, it be taken by yeas and nays.

The motion was agreed to, and the yeas and nays were ordered.

Mr. THOMPSON moved that the Orders of the Day be laid upon the table.

The question being taken, the motion did not prevail.

Mr. CADY, of Monson. I moved to amend the amendment by striking out of the third paragraph the word "four" wherever it occurs, and inserting the word "five," so that as amended it will read: "Every town having five thousand inhabitants may elect two representatives annually; the mean increasing ratio shall be five thousand."

Mr. CADY, of Monson. I propose further to amend the amendment offered by the gentleman from Charlestown, by striking out from the first line of the second paragraph the word "four," and inserting the word "five," so that the clause as amended will read: "Every town having fifteen hundred, and less than five thousand inhabitants may elect one representative annually."

Mr. HALE, of Bridgewater. If in order, I will move to strike out the words "fifteen hundred."

Mr. PRESIDENT. The amendment is not in order at this time.

Mr. THOMPSON. I have no particular objection to the amending of my plan in the manner proposed by the gentleman from Monson, but it seems to me that he will accomplish nothing by striking out these words. On the contrary, I think that the amendment will, if adopted affect a large number of the towns which are now entitled to one representative, and throw quite a large number into the class of small towns, which will only be entitled to a representative once in two years. It is true, that it will reduce the size of the House to some extent, but I apprehend that it will work very differently from what the gentleman supposes. By thus increasing the ratio one thousand, I am not now prepared to say how many towns it will reduce to a representative for every other year only, but I should think it would reduce some fifteen or twenty. It strikes me that it will not affect the large towns or cities, but, that it will affect the medium towns, which, according to my plan, are entitled to a representative annually. This is my opinion as to what will be the practical operation of such an amendment if adopted.

Mr. CADY, of Monson. It was no part of my intention to affect the small towns at all, but I had in my mind a plan for reducing the House of Representatives. It is my impression that this is principally what the people desire—certainly it is, so far as my communication with them will allow me to judge. It is no part of my wish to injure the medium towns at all, or to give the smaller towns advantage over the larger towns, but I simply desire that something shall be done by which the representation of the people shall be made equal throughout the Commonwealth, and the size of the House of Representatives decreased as much as it can be consistently with justice and propriety. And, if there is anything in my proposition which will tend to produce a greater inequality than will be produced by any other plan, I hope it will not be adopted. As I said

before, however, my object in submitting that amendment, was to provide for decreasing the size of the House of Representatives.

Mr. KEYES, for Abington. I hope that the amendment of the gentleman from Monson will not be adopted. And if it should not be agreed to by the Convention, I will move that the words "fifteen hundred" be stricken out, and the words "twelve hundred" be inserted, so that the amendment will be, in this particular, in accordance with the plan of the gentleman from Northampton, (Mr. Huntington). I shall then move to strike out, at the end of the third article, the words "four thousand," and insert the words "twelve thousand," so that the clause, as amended, will read: "Every town having four thousand inhabitants, may elect two representatives annually; the mean increasing ratio shall be twelve thousand." The meaning of that will then be, that towns having twelve thousand inhabitants may elect three representatives. I shall then propose to add another article: "That every town and city having more than twelve thousand inhabitants, may elect as many representatives as the number five thousand is contained in the number of the population." It seems to me, if the Committee had taken this matter in charge, they would have arrived at the same result which I have here proposed, but as that has not been permitted, as soon as the amendment of the gentleman from Monson is disposed of, I shall move the amendment which I have indicated.

The question was then taken on agreeing to the amendment of the gentleman from Monson, and it was decided in the negative.

The amendment was accordingly rejected.

Mr. KEYES. I now move that the words "fifteen hundred" be stricken out of the first article, and the words "twelve hundred" be inserted.

The question was taken on the amendment, and it was not agreed to.

Mr. THOMPSON. I would suggest here, and I do so at the request of several gentlemen around me, an amendment which did not occur to me when this plan was drawn up. It is, to take the second article of the first resolve submitted by the gentleman from Lowell, and insert it between the first and second sections of my plan. The article reads as follows:—

Any two of such towns may, by a vote of a major part of the legal voters of each, at legal meetings thereof, unite together in a district, which shall be entitled to a representative each year, and which shall continue for a period of not less than five years, excepting the year in which the valuation of estates is settled.

Mr. OLIVER, of Lawrence. I would inquire whether the effect of this would not be to require that all the voters should be present?

Mr. THOMPSON. I think that difficulty could be obviated by inserting the word present in such manner that it would read, "that all the voters present," &c.

I would remark, that this matter has been brought to my attention during the past few moments for the first time. Hence a little difficulty may arise from my not having considered the point in question more deliberately. I should not suppose, however, that a gentleman possessing the legal acumen and knowledge of the gentleman from Lowell, would have drafted a provision of the important character of this, which

would be liable to be applied in a different manner from that which he intended. If any difficulty should arise, however, it can be adjusted hereafter; my wish, now, simply being to provide a system of representation that shall be acceptable to all.

Mr. BUTLER, of Lowell. As this section, proposed to be taken from my amendment and inserted in that of the gentleman from Charlestown, was drawn up by myself, and as the gentleman from Lawrence has made an inquiry in regard to it, I may be permitted to say a word upon it. I am surprised that any legal gentleman, and much more so, that a military man should have asked such a question. The same inquiry arose some time ago in regard to elections of officers, and caused a great deal of trouble. It was finally submitted to the honorable and learned Attorney of the Commonwealth, who has since been elevated, or depressed, according as gentlemen may choose to consider it, from that office to the gubernatorial chair, [laughter,] and he gave an opinion which covers the whole subject, which may be found—for my friend's instruction—on the one hundred and fifteenth page of the Digest of the Militia Laws, a copy of which I brought here, expecting somebody to ask that question. [Laughter.] I should be happy to lend it to the gentleman.

Mr. OLIVER. I recollect the case, Sir, and I entirely dissent from that decision.

Mr. BUTLER. I will only say that I think this decision will be found to be governed by the decision of the supreme court, and that the majority of the legal voters—that is those voters who are present, not those who are a thousand miles distant on the ocean, but who are there—are the ones who *do the voting*, and elect the man of their choice. There is, therefore, no need of amending my proposition in the manner suggested; as it was drawn up with a full knowledge of all the facts.

Mr. GRISWOLD, for Erving. I do not precisely understand what is meant in the fourth paragraph of the first resolve by the phrase "ratio of towns." I would like to ask an explanation.

Mr. THOMPSON. My intention in drawing up that section, was to provide that on the increase of the inhabitants that might take place between one decennial period and another, the ratio of the towns would be increased, and the mean increasing ratio be so increased as to preserve the same relative proportion of political power, and the same number of representatives in the House of Representatives through all coming time, as is provided for by the plan now submitted.

Mr. GRISWOLD. From the explanation which the gentleman has given us of the proposition, I do not think it is as favorable as our present system of representation. For instance, if we take a town of fourteen hundred and ninety-nine inhabitants, we shall find, upon making the proper calculation, that it will be entitled to only six representatives in ten years. The small towns have more than that number under the present basis of representation which we have come here to correct. I hope the amendment, therefore, will not be adopted.

Mr. GARDNER, of Seekonk, moved to strike out, in the first and second sections, the words "fifteen hundred," and insert "one thousand."

Thursday,]

REPORTS FROM COMMITTEES, &c.—BOUTWELL—BRIGGS—ALLEN.

[June 30th.

The question being taken on agreeing to the motion, it was decided in the negative, so the motion did not prevail.

Mr. BOUTWELL, for Berlin. As it is rather late in the afternoon, and the seats are not all full, my own sense of respect to the proposition, and what I take to be the sense of the Convention also in this matter, as well as personal appeals from gentlemen who favor the amendment, impel me to ask that its further consideration be postponed until to-morrow. I dislike to have a question of so much importance as this taken without a fair opportunity for the expression of the views and opinions of members being allowed, and I therefore move that the Orders of the Day be laid upon the table.

The motion was agreed to.

On motion by Mr. WILSON, the Convention then, at twenty-five minutes past 6 o'clock, adjourned.

THURSDAY, June 30, 1853.

The Convention assembled, and was called to order by the President, at 9 o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read.

Reports from a Committee.

Mr. BRIGGS, of Pittsfield, from the Committee on the Encouragement of Literature, presented the following Reports, which were severally referred to the Committee of the Whole, and ordered to be printed.

On Female Education.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 30, 1853.

The Committee on the Encouragement of Literature, to whom was referred an order of the Convention of the 20th of May last, on the subject of female education, and the petition of Harriet K. Hunt on the same subject, have considered the same, and report that, in the opinion of the Committee, the existing Constitution confers upon the legislature as ample powers to provide for the education of females as it does for the education of males, and that it is not necessary to alter it so as to provide for the education of females. They, therefore, recommend the adoption of the following resolution.

GEO. N. BRIGGS, *Chairman.*

Resolved, That it is not expedient to alter the Constitution so as to confer any additional powers upon the legislature in relation to the education of females.

Relating to the School Fund.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 30, 1853.

The Committee on the Encouragement of Literature, to whom was referred an order of the Convention of the 31st of May, instructing them "to inquire into the expediency of so amending the Constitution, that the school fund belonging to the Commonwealth shall never be appropriated or applied to the support of any sectarian schools, or schools founded upon sectarian principles," have considered the same, and report the following resolution.

GEO. N. BRIGGS, *Chairman.*

Resolved, That it is expedient so to amend the Constitution as to provide that no public money in this Commonwealth, whether accruing from funds or raised by taxation, shall ever be appropriated for the support of sectarian or denominational schools.

Relating to the Union of the Boards of Education and Agriculture.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 30, 1853.

The Committee on the Encouragement of Literature, to whom was referred an order of the Convention of the 23d of May last, directing them to consider the expediency of so altering the Constitution as to provide that the Board of Education and the Board of Agriculture shall be established as permanent departments of the government, have considered the same, and report the following resolution.

GEO. N. BRIGGS, *Chairman.*

Resolved, That it is not expedient so to alter the Constitution as to provide that a Board of Education and a Board of Agriculture shall be established as permanent departments of the government.

Plan of Representation.

Mr. VILES, of Lexington, presented the following plan as the basis of the representation in the House of Representatives, which was referred to the Committee of the Whole, and ordered to be printed:—

Resolved, That the Constitution be so amended that the House of Representatives shall be apportioned as follows:—

Towns containing two thousand inhabitants may be entitled to elect one representative every year.

Towns containing five thousand inhabitants shall be entitled to elect two representatives; and five thousand shall be the mean increasing ratio, for each and every additional representative.

Towns containing less than two thousand inhabitants shall be entitled to elect as many representatives in ten years as the number two hundred is contained in the number of inhabitants in said town. Also, entitled to elect an additional representative every decennial year.

On motion by Mr. WILSON, of Natick, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Lord, of Salem, in the Chair, upon the Report relating to

The Reference of Legislative Acts to the People.

The Report was read by the Secretary, as follows:—

The Committee on so much of the Constitution as relates to the Frame of Government, &c., upon an order of May 17th, respecting the reference by the legislature to the people of legislative acts, for approval or rejection, report that it is inexpedient for the Convention to act thereon.

Mr. DAVIS, of Plymouth, moved that the Committee rise, and recommend to the Convention that the Report be accepted.

The motion was agreed to, and the Committee rose, and

IN CONVENTION,

The chairman of the Committee of the Whole reported, that they had had under consideration

the Report submitted to them, and that he was instructed to recommend to the Convention that it ought to be accepted.

The Convention accordingly concurred in the recommendation of the Committee.

On motion by Mr. ALLEN, of Worcester, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Earle, of Worcester, in the Chair, upon the Report from the Committee on the Frame of Government relating to

The Property of Married Women.

The Report was read, as follows:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, June 30, 1853.

The Committee on so much of the Constitution as relates to the Frame of Government, &c., to whom was referred an order of June 3d, instructing them to consider the expediency of securing to women, by constitutional provision, their property, acquired by devise, inheritance, or otherwise, and an order of May 20th, on the same subject, Report:—

That, in the opinion of the Committee, greater security than is now afforded by law, ought to be provided, for the preservation to married women, of the property acquired by them through the kindness of parents and friends, or by their own industry and prudence. The Committee have seen with much satisfaction, that, of late years, the course of legislation, and the decisions of enlightened judicial tribunals, have tended towards the alleviation of hardship and injustice resulting from the absolute control, which the husband and his creditors have had over most of the property of the wife. Evils still exist, which may be diminished or removed by legal enactment. But the Committee believe that the remedy can be most safely and beneficially applied by the action of the legislature, adjusting, in detail, the somewhat complicated relations, which result from the marriage contract. They therefore report that it is inexpedient for the Convention to act thereon.

CHARLES ALLEN, *Chairman.*

On motion, the Committee rose, and

IN CONVENTION,

The chairman reported, under instructions from the Committee, that the Report ought to be accepted, and it was accordingly accepted by the Convention.

Upon motion of Mr. ALLEN, of Worcester, the Convention went into

COMMITTEE OF THE WHOLE,

Mr. Whitney, of Boylston, in the Chair, for the consideration of the Report of the Committee on the Frame of Government, relating to

State Offenders.

The Report was read, as follows:—

The Committee on so much of the Constitution as relates to the Frame Government, &c., upon an order of June 9th, relative to the remuneration of persons tried for offences against the State and acquitted, report that it is inexpedient to act thereon.

On motion, the Committee rose, and,

Thursday,]

THE GOVERNOR.—STATE CENSUS, &c.—DAVIS—EARLE.

[June 30th.

IN CONVENTION,

Reported, through its chairman, that the Report ought to be agreed to.

The Report was accepted.

Upon motion of Mr. ALLEN, of Worcester, the Convention again went into

COMMITTEE OF THE WHOLE,

Mr. Wood, of Middleboro', in the Chair, upon the Report from the Committee on the Frame of Government, that it is inexpedient to act on

The Petition of Silas Lamson

And forty-four others.

The Committee concurred in the Report, without debate, and

IN CONVENTION,

The Report of the Committee of the Whole was concurred in.

On motion by Mr. WILSON, of Natick, the Convention went into

COMMITTEE OF THE WHOLE,

On the subject of

The Judiciary,

Mr. James, of South Scituate in the Chair.

The Report was read, as follows:—

The Committee on the Judiciary, to whom was referred an order of June 6th, relating to granting the subject "a certain remedy in law, prompt and without delay," and an order of June 6, relating to the codification of the laws, have considered the same, and report that it is inexpedient to take further action upon the same.

On motion of Mr. HALL, of Haverhill, the Committee rose, and,

IN CONVENTION,

The chairman reported that the Committee had concurred in the Report, and recommended its adoption by the Convention.

The Report was adopted.

Mr. WILSON, of Natick, moved that the Convention resolve itself into

COMMITTEE OF THE WHOLE,

for the consideration of the resolve reported by the Committee on so much of the Constitution as relates to

The Secretary, Treasurer, &c.

The motion was agreed to, and Mr. Davis, of Plymouth, was invited to take the Chair.

The resolve was read by the Secretary, as follows:—

Resolved, That it is inexpedient so to amend the Constitution as to require that "every person holding an office in or under the State government, shall retire therefrom at the expiration of six years' service."

On motion of Mr. JAMES, of South Scituate, the Committee rose, and,

IN CONVENTION,

The chairman reported that the Committee of the Whole had considered the subject referred to them, and recommended that the resolve ought to pass.

The Convention concurred in the recommendation, and the resolve was ordered to a second reading.

On motion of Mr. WILSON, of Natick, the rules were suspended, and the resolve was read a second time and finally passed.

On motion of Mr. WILSON, of Natick, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Sargent, of Cambridge, in the Chair, on the Report relating to

The Governor.

The Report was read by the Secretary, as follows:—

The Committee to whom was referred so much of the Constitution in chapter 2, sect. 1, (except articles 9 and 10,) as relates to the Governor; a resolve of June 22, relative to the 7th article in chap. 2d; a Report of the Committee of the 14th of June, relative to the 7th article; have attended to the duty assigned them, and submit the following Report:—

The Committee having ascertained, that the Committee to whom was referred so much of the Constitution as relates to the Militia, had reported to the Convention an article upon which the Convention have acted, that it becomes necessary to strike out of the Constitution, the said 7th article. They, therefore, report the following resolve:—

Resolved, That it is expedient to amend the Constitution by striking out the whole of article 7th, in section 1st, chapter 2d.

Mr. DAVIS, of Plymouth. I do not rise because I am opposed to the Report of the Committee, but because I believe that document is not yet printed; gentlemen here do not find it upon their files. I am of the opinion that the subject will cause some debate, and under the circumstances, I submit the motion that the Committee now rise, report progress, and ask leave to sit again.

Mr. DAVIS, of Worcester. I trust that that motion will not prevail. The Report has been printed, and it will be found in Document No. 88. The reason why the Committee have reported in favor of striking out this article, is, that the Military Committee, who have had the subject under consideration, have reported an article to the Convention which has been adopted by the Committee of the Whole and reported back to the Convention; and that article entirely supersedes this which it is proposed to strike out.

Mr. DAVIS, of Plymouth. I was not aware that this subject had been acted upon by the Convention, having been absent at that time. Since that is the case, I withdraw my motion.

Mr. DAVIS, of Worcester. I move that the Committee now rise, and report to the Convention that the resolve ought to pass.

The motion was agreed. The Committee accordingly rose, and the President having resumed the Chair of

THE CONVENTION,

The chairman, Mr. Sargent, of Cambridge, reported that the Committee of the Whole had had under consideration the Report of the Committee in relation to striking out article 7th in section 1st, chapter 2d, of the Constitution, and that the resolve which the Committee had reported ought to pass.

The Report was accepted, and the resolve was ordered to a second reading.

Mr. EARLE, of Worcester, moved that the resolve take its second reading at this time.

Unanimous consent being given, the resolve was then read a second time and passed.

Mr. EARLE, of Worcester, moved that the Convention resolve itself into Committee of the Whole upon the resolve reported by the Committee on the Frame of Government in relation to the

State Census.

The Convention accordingly resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Hooper, of Fall River, in the Chair, and proceeded to consider the said resolve, which was read as follows:—

Resolved, That the Constitution be so amended as to require that a census of the State be taken in the year 1855, and on every tenth year from and after that period.

Mr. EARLE. I move to amend that resolve by inserting after the words "census of the," the words "whole population of the," so that the resolve will read as follows:—

Resolved, That the Constitution be so amended as to require that a census of the whole population of the State be taken in the year 1855, and on every tenth year from and after that period.

The object of the amendment which I have offered, is, to provide that in taking the State census the entire population of the State shall be taken. Heretofore the practice has been to take that portion only upon which representation is based, and the effect of it is, that we do not get the entire population; therefore it does not compare with the census which is taken by the United States government. My object is to base it upon the same principle upon which the census is taken by the United States; and then the legislature may provide by law for any distinction or classification they please, or they may take the census as it is now taken, and in addition take all the other population. There has been a general desire, heretofore, that the entire census should be taken, because, as it is now taken, it answers but one purpose, the main purpose, it is true, for which it is taken, viz., to ascertain the number upon which representation is to be based. But here are a great many other objects in taking at census; while for any other purpose than that, the census is incomplete and imperfect, whereas, if the entire population is taken, as the United States census is, it will afford a comparison every five years as to the population of the State, and would be useful for every other purpose for which a census is taken, besides fixing the basis of representation. Heretofore, when it has been proposed that an entire census should be taken, the objection has been made by the assessors or those who take the census, that they had no authority to do it—they are usually paid according to the number of the population, provided for by law, and there is a little addition of time required if they take the whole census, in order to make out their returns, for which they would receive no compensation. For this reason, I propose that they shall be authorized by law to take a complete census, and I have therefore moved this amendment.

Thursday,]

STATE CENSUS.—LIVERMORE—WALKER—BRIGGS—WILKINS—BANKS.

[June 30th.]

Mr. LIVERMORE, of Cambridge. The Committee who reported this resolve intended that the census should cover the whole population of the State, and supposed that their Report would be sufficient to accomplish that object. I have no objection to the amendment which is proposed by the gentleman from Worcester, if it is thought that it will make the resolve more explicit.

Mr. EARLE. I ought to have remarked, and I intended to have done so before I took my seat, that this thing suggested itself to my mind, and I had no opportunity to consult with any member of the Committee except the chairman. I did consult with the chairman, and he requested me, in case he was not present when this subject came up, to propose this amendment, inasmuch as if the resolve should be passed as it is, it might be supposed that it was only intended to change the year when the census was to be taken, and did not intend to enlarge that census as it is proposed to do by this amendment.

Mr. RANTOUL. I would inquire of the gentleman from Worcester, what class of the population has heretofore been omitted in the taking of the census.

Mr. EARLE. Formerly, as I understand it, State paupers, persons in prison, persons in charitable institutions of various kinds, and students in our public seminaries, have not been included in the taking of the census. For this reason we find that in the census of all the towns in the State, with very few, if any exceptions, as taken by the State, the number is less than it is when taken by the United States government, making a difference of several thousands in the whole population of the State.

Mr. GRISWOLD, for Erving. I do not rise for the purpose of opposing this Report, but rather for the purpose of inquiring the object of taking the census at this intermediate period. This is a matter which would be attended with considerable expense. I have not heard anything said upon the subject, but I hardly know why the census which was taken in 1850 will not answer all necessary purposes until 1860. I should like to have a little explanation of this matter from the chairman of the Committee who reported this resolve.

Mr. LIVERMORE. I do not see the chairman of the Committee in his seat, but being a member of the Committee I will give what explanation I can. The object of the resolve, as I understand it is this: the census is to be taken by the United States in 1860, and every ten years thereafter; and if we have it taken by the State in 1855, and every ten years thereafter, we shall have the population of the State enumerated twice in every ten years. The expense of taking one census certainly could not be very great, and the Committee were of the opinion that it might be well to take the census soon after the adoption of the amendments to the Constitution by the people, and to continue taking it every ten years thereafter at intermediate periods with the United States census. There has heretofore been a great discrepancy between the census of the United States and the census which the Commonwealth has had taken, in consequence of the omission in the latter case to take the classes of population that the gentleman from Worcester has named; and I believe the Committee were unanimously in favor of the proposition to have it taken by the State in 1855 and every ten years thereafter.

Mr. WALKER, of North Brookfield. In 1845, a census was taken of the industry of Massachusetts. There had been one taken previously, and there was an understanding at that time, as I was told, that such an account or census should be taken every ten years. I believe it is well understood that that census is a very important one for the interests of this Commonwealth. It is the general opinion that such statistics ought to be taken once in every ten years, in order that we may see how our population is increasing; for it is increasing, and our industry also is increasing very rapidly. It is of great importance that the inhabitants of Massachusetts should know what her industry is, and what her interests are; this knowledge can only be derived from that document; and no document, as I can say from my own knowledge, is regarded with so much interest, both by persons in the Commonwealth and persons abroad, all over the world, who desire to know the condition of Massachusetts, as that document. It was supposed to be the policy of the Commonwealth to continue to collect such statistics, and it was thought desirable, in connection with them, to take a census of the population. If we take it in 1855, the United States will take it again in 1860, and thus we may by this arrangement have the census taken regularly every five years hereafter, and the census which is taken by the Commonwealth, will include all the industrial interests. For one, Sir, I feel that this is a very important matter, and I had supposed that it was regarded by every-body as the settled policy of Massachusetts, hereafter, every once in ten years to have a statement furnished of the industry and the progress of the State. It has a great and important bearing upon the legislation of the country, and will exert a powerful influence in sustaining the credit and the reputation of the Commonwealth abroad. I deem this a document of more importance than any other which has been issued by the State; and I hope, therefore, that the proposition which is reported by the Committee, will commend itself to the approbation of this body.

Mr. BRIGGS, of Pittsfield. I presume the whole object of this resolve is to change the year when this census is to be taken. It is not a new proposition, as gentlemen seem to suppose, but there already exists in the Constitution a provision for the taking of the census. The 13th article of the amendments to the Constitution provides that "a census of the inhabitants of each city and town on the first day of May shall be taken and returned into the secretary's office on or before the last day of June, of the year 1840, and of every tenth year thereafter, which census shall determine the apportionment of senators and representatives for the term of ten years." By the existing provisions of the Constitution, therefore, a census of all the inhabitants of the cities and towns is to be taken on every tenth year, beginning with 1840. I suppose the object of the Committee was to change it so as to give us two enumerations of the inhabitants every ten years instead of one, and that ours should be on the year 1855, 1865, and so on, while the United States government would continue to take it in 1860, 1870, &c. Ours will then come half way between theirs. It seems to me that the amendment of the gentleman from Worcester, is entirely unnecessary, but at the same time it will do no harm, because, by this provision of the Constitu-

tion, the census will be of the population of the State, and that certainly includes all the inhabitants of the State. When you take a census for the purpose of taxation, I understand that a discrimination is made by the law of the State under which it is taken.

Mr. WILKINS, of Boston. It strikes me, Mr. Chairman, that it is much better that this census or these statistical tables should be prepared on the decennial years 1850, 1860, 1870, &c., if we are going to continue the policy of having them taken by the authority of the State. I think it would be better to have it done on the valuation year, than to have it taken in 1855 to be used in 1860. I supposed we should continue to make these enumerations, as they have heretofore been made, at the time when we make our valuation, and then we can have all our statistics founded upon that, and connected with it, instead of having them taken on intermediate years. I think it would be entirely useless, except as a matter of mere curiosity; at any rate, it could not be of any permanent use to have two-censuses taken within this period of years provided in the Constitution. I have no sort of opposition to the general object of a census, and once in ten years it is very useful; but it seems to me that this is quite often enough, and when it is done, it ought to be done at the time of, if not by the same persons who have in charge, the valuation of the Commonwealth. I hope, therefore, that this proposition will be rejected, and that the whole matter will remain as it is now.

Mr. BANKS. It seems to me that the Committee determines that the time for taking the census or enumeration of the inhabitants of the State shall be changed from the year 1850 to 1855, and from 1860 to 1865, and so on; and that carries with it the whole proposition. It carries the subject which was introduced by the gentleman from North Brookfield, and it also carries the subject which was introduced by the gentleman from Boston, who has just taken his seat. The valuation of estates is fixed by order of the general court; and if the Constitution should require that a census of the inhabitants shall be taken in 1855, and every ten years thereafter, the general court, will of course follow the same rule in fixing the valuation of estates. If, therefore, we shall decide that this is the proper time for the census to be taken, it will cover the whole question. The provision in the Constitution with regard to valuation, is found in the last part of article 4 of the first chapter in relation to the frame of government, and the legislative power. It provides that "while the public charges of government, or any part thereof, shall be assessed on polls and estates in the manner that has hitherto been practiced, in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth, taken anew once in every ten years at least, and as much oftener as the general court shall order." It will therefore fall within the constitutional provision if the Constitution shall establish this rule.

Mr. WILKINS. If that is the design of this amendment, if it is only intended to change the period of the apportionment or the valuation year, it seems to me that it ought to say so, and it should be understood that this is a substitute for what is already there. But it does not do that. It says that a census shall be taken on these years

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which are designated, leaving it to be inferred that the old provisions of the Constitution shall be continued. There is nothing in this resolve that forbids, or even intimates that it is not intended, that a census shall be taken in 1860. Indeed, Sir, if I remember rightly, in some proposition upon which we have acted here, we have adopted the year 1860 as the next valuation year, and it was understood that the old system was to continue in this respect. I hope, Sir, that those who have the framing of amendments to the Constitution, will take care that there is no conflict between their various provisions—that one does not cross the track of another. As I understand by this resolve, we do provide for the taking of two censuses every ten years; and that I regard as entirely useless. All the census that we need should be taken on the valuation year; and if it is the intention to change that, the resolve should say so.

Mr. WALKER. I do not understand that this has the effect, at all, of changing the Constitution. It merely provides that a census shall be taken in 1855. If the statistics of industry are to be taken in 1855, it will cost next to nothing to take a census at the same time; and it will be very desirable that a census of the population should accompany the census of the industry of the Commonwealth. Then in 1860 the United States government will take a census of the population and all the industry of the State of Massachusetts; and of course we shall thus have a census, both of our population and of our industry, once in every five years, which is certainly a thing very much to be desired. Then, in addition to that, another census will be taken in 1860 by the State. So be it. We always have had it, and I suppose we always will have it.

I am just informed by gentlemen around me, that this resolve simply changes the time of taking the census, from the year 1860 to the year 1855. If that is so, I agree to it, and there will be no objection to that.

At any rate it seems to me that this resolve is proper, inasmuch as it provides for taking the census of the population at the same time that the statistics of the industry of the State will be taken. In 1852 the legislature authorized the Secretary of State to prepare an Abstract of the returns of the United States of 1850, combined with such other facts as he might deem expedient, to illustrate the progress in population, industry, and wealth of the towns and cities of the Commonwealth. Upon an examination of the subject, it was thought by the Secretary of State, and those he consulted, that it would be more for the interest of the Commonwealth, if the object proposed was deferred until 1855, when it was understood that the general statistics of the industry of the State would be taken.

Mr. EARLE, of Worcester. I am inclined to think, from remarks made by gentlemen around me, that this subject is misunderstood. They suppose that it is intended to have a census taken, as provided for by the Constitution as it now stands, and also to have an additional census taken, so that there shall be a State census taken every five years. I do not so understand it. I understand the object of the resolve to be, simply to change the time from the year 1860 to the year 1855, and then require the State census to be taken every ten years thereafter, for instance, in 1865, 1875, and so on. The design is to bring it

intermediate with the time of taking the United States census, which is in 1860, 1870, and every ten years thereafter. We shall then have a census every five years, one taken by the United States, and the other by the State. We are now at the expense of taking a State census the same year that the United States census is taken. It is an imperfect census, and therefore, except for special purposes of legislation, of no use whatever. Under this proposition, it will be taken in a perfect form, in 1855, 1865, 1875, &c. If taken at those periods, it will afford us data of comparison of the relative number of inhabitants, and of the industrial resources of the State, each recurring five years, and will be for all purposes of the same use as the United States census. This incurs no additional expense, above what is now imposed upon us. It has been spoken of by the inhabitants of other States with surprise, that we take our State census the same year with that of the United States, when we might as well take it at intermediate periods. In the State of New York, under a provision contained in their revised Constitution, similar to the one proposed here, they take their State census in 1855, and every ten years thereafter, so that it shall come intermediate between the periods of taking the United States census.

Mr. HALE, of Bridgewater. The amendment of the gentleman from Worcester, so far as I understand it, is merely to carry out the intention of the Committee which reported the resolve, which was that there should be an entire census of the population taken in 1855, and every ten years thereafter. It was not intended by the Committee, I believe, to take an additional census beyond that now required to be taken by the present Constitution, but merely to change the year from 1860 to 1855. It was considered that it might be necessary to take a census in 1855, in consequence of the alterations which may be made to the Constitution by this Convention. It seems to be objected that the valuation of the estate of the Commonwealth is required to be taken in the years 1860, 1870, and every ten years thereafter. But I believe that, by this Constitution, the legislature is required to provide for taking that valuation the same year that the census will be required to be taken, if this amendment is adopted. If it is not so now, this amendment may be so modified as to require that the census of the population, and the valuation of estates, shall be taken in the same year.

I believe that it will be acceptable to the people to have a new valuation taken as early as 1855, for I believe it is generally admitted that the basis of the present valuation is unequal, although a great deal of time was spent by the legislature in arranging that basis. I have not looked at the Constitution, but as I heard it read by the gentleman from Waltham, it is competent for the legislature, without our making any provision, to change the time of taking the valuation. As I understand it, the legislature is required to provide that the valuation shall be taken every ten years, or oftener. So it is not necessary, if I am correct in my supposition, to make any provision in the Constitution to change the time of taking the valuation.

Mr. ALLEN, of Worcester. I apprehend that no difficulty can arise from the proposed amendment to the Constitution. It is apparent that the object of this proposition is, to require that

the census shall be taken in the year 1855, in the place of the one which is required by the present Constitution. The Committee on the Frame of Government, had not that part of the Constitution before them, as it was not committed to them. That provides that the census shall be taken every decennial period, and it was not within their province to make a special report, to alter that part of the instrument. But when they reported upon the matter which was submitted to them, that this Constitution should be amended, and that the decennial census should be taken in 1855, 1865, &c. It was supposed by them, that it would be understood by the whole Convention, and by the Committee, upon whom should devolve the duty of putting into form the resolves which shall be adopted by this Convention, that it was intended that that census should be a substitute, and not an additional one. But, in order to remove every possible doubt as to its meaning, as soon as the present amendment is disposed of, I shall move to add to the resolve these words, "instead of the decennial census, now required by the Constitution."

There must be many reasons why we should change the time of taking the decennial census. The Constitution as amended, if it shall be adopted by the people, will go into effect immediately. There will, probably, be some change made in regard to the basis of representation in the House of Representatives, and, undoubtedly, in that of the Senate of the Commonwealth, and there must be a propriety in basing them, at the earliest period, upon the present population, and not upon that which has been determined by the former census. Undoubtedly, the legislature will make the valuation year conform to that in which the census shall be taken.

The question was then taken upon the amendment proposed by the gentleman from Worcester, (Mr. Earle,) and it was decided in the affirmative.

So the amendment was agreed to.

Mr. ALLEN. I now move to amend the resolve as amended, by adding thereto the words "instead of the decennial census now required by the Constitution" so that the resolve shall read:—

Resolved, That the Constitution be so amended as to require that a census of the whole population of the State be taken in the year 1855, and in every tenth year from and after that period, instead of the decennial census now required by the Constitution.

The question was then taken, and the amendment was agreed to.

Mr. BRIGGS, of Pittsfield. I suggest to the chairman of the Committee, if he thinks it worth while to do so, that he shall make the provision conform to the present Constitution, so as to define the mode and manner in which the census shall be taken. As it now stands it is simply a general provision that a census of the population shall be taken once in ten years.

The gentleman from Worcester, (Mr. Earle,) says, that under the present law, the whole population of the State is not taken, but that public paupers and criminals confined in the prisons of the State, are left out. I apprehend, if such be the case, that it has arisen from this fact. The Constitution provides that a census of the inhabitants of each town and city shall be taken.

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Under that provision, when the census of the county of Worcester, shall be taken it would not include persons then imprisoned, or, perhaps, persons in the asylum, who are inhabitants of other towns. The census of the towns or counties where they belong should include them as inhabitants of those towns, but they being absent, are probably omitted in the enumeration.

Now my proposition guards against what may be an evil. Under the general terms of the resolve, these persons may be taken twice over. The inmates of a prison in the county town may be taken in the town where the prisoner is, and then they may be taken again in the town where they belong. And so with persons in the county poorhouse.

I do not know that it is important that such a provision should be made, and if it is not, I certainly would not press it. But it seems to me that it would be a little more certain and specific to adopt the existing provisions of the Constitution, so as to provide that "the inhabitants of each city and town" shall be taken in 1855, &c., instead of at the present decennial year.

Mr. EARLE, of Worcester. I suppose that the resolutions of amendment which we shall pass, when they come to be put into form in the new Constitution, are not to be followed out literally. They can be put into the form which may be necessary to carry out the intention of the Convention.

Now if what the gentleman from Pittsfield suggests, is true, I would ask why it is that the returns under the State census, of the population of almost all of the towns of the Commonwealth, fall considerably below those which are made under the census taken by the United States? As I understand it, under the United States census, no more people can be returned than there are, because a list of the names of every person is taken, and if they get duplicate names, it is ascertained from a comparison, and the error is corrected. By comparing the returns of the State census with those of the United States census, the former is often found to fall many thousand below the latter, and it has always been attributed by the assessors, to the fact that certain portions of the population were excluded in the towns, as well as in the cities. Take, for instance, State paupers, who have been paupers for years, and residents of the towns where they are, almost from their youth, and, perhaps, always will be. They are excluded from the census. Therefore, it appears to me that the amendment is a proper one.

As to the form in which the amendments shall appear in the Constitution, that matter can be attended to by the Committee upon whom that duty devolves. At any rate, a provision which shall guard against the taking of any portion of the population twice, is certainly within the province of the legislature to regulate, and it can be guarded against by them, much better than it can be done by us, by inserting a provision to that effect in the Constitution.

Mr. GRAY, of Boston. There was a point raised by the question of the gentleman from Pittsfield, (Mr. Briggs,) to which I attach more importance and consequence than he does. It seems to me, that at some point of time, and at some branch of the business of the Convention, it is well worth while to consider whether the Convention will not go a little more into detail as to the mode of taking the census.

In reference to another matter, I may be permitted to say a word, and that is the subject of representation. It is only necessary to say that all the schemes that have been presented to us—whatever their merits or demerits may be—have had reference, somewhat, to population, and yet not one of them has undertaken to define what the word "population" shall mean; neither do we define it now. I recollect, that in 1840, when the last act was passed, touching representation, that point was a matter of some debate, and finally the census was taken in the manner prescribed by statute. The same statute was followed in taking the census of 1850.

My friend adverts to the liability of taking the same person twice over. The prisoners in the house of correction, for instance, may be taken in the town where the house of correction may be located, and also in the town where he belongs. But as was suggested by one gentleman, they do not belong, and never will belong, to any place but the one where they are kept in confinement, except those of them who may be reformed.

I throw out these suggestions that the Convention may keep in mind whether it be not expedient here, or somewhere else, when they speak of taking the census, to define, in some degree, what part of the population that census shall include. I am not prepared to make a motion upon the subject, but am satisfied with bringing it to the attention of the Convention.

On motion of Mr. HALE, of Bridgewater, the Committee rose, and the President having resumed the Chair of the

CONVENTION,

The chairman, (Mr. Hooper, of Fall River,) reported the resolve with amendments.

The PRESIDENT stated the question to be upon concurring with the Committee of the Whole in inserting in the second line of the resolve, after the word "the," the words "whole population of," and in adding, at the end of the resolve, the words "instead of the decennial census now required by the Constitution."

Mr. BRIGGS, of Pittsfield, moved to amend the amendment by striking out the words, "whole population of," and inserting the language of the present Constitution, viz.: "all the inhabitants of each city and town."

The amendment was agreed to.

The question then recurred upon the adoption of the amendment as amended, which, if adopted, would make the whole resolve read as follows:—

Resolved, That the Constitution be so amended as to require that a census of all the inhabitants of the State be taken in the year 1855, and on every tenth year from and after that period, instead of the decennial census now required by the Constitution.

The question was taken, and the amendment, as amended, was adopted.

The resolve, as amended, was then ordered to a second reading, and

On motion of Mr. EARLE, of Worcester, the rule having been suspended for that purpose, was read a second time and passed.

Mr. STETSON, of Braintree, moved that the Convention resolve itself into Committee of the Whole upon the Report of the Committee upon the expediency of granting the loan of the State credit to private corporations.

Mr. WILSON, of Natick, said he hoped that the motion would not prevail, but that the Convention would proceed to consider the unfinished business of yesterday relating to the basis of representation.

The PRESIDENT remarked that the motion was not debatable.

The question was then taken, and the motion of the gentleman from Braintree, (Mr. Stetson,) was disagreed to.

On motion of Mr. WILSON, of Natick, the Convention then proceeded to the consideration of the

Orders of the Day.

The PRESIDENT stated that the first business in the Orders of the Day was the Report of the Committee of the Whole, upon

The Basis of Representation.

The Committee had reported an amendment, it being the proposition submitted by the gentleman from Lowell, (Mr. Butler,) for which the gentleman from Charlestown, (Mr. Thompson,) had moved a substitute; the question pending was therefore upon the adoption of the amendment of the gentleman from Charlestown.

Mr. DAVIS, of Plymouth. It seems to me, that although opposed to the amendment of the gentleman from Lowell, as it now stands, it would be more expedient for us, that is for those who are opposed to that amendment, to endeavor to perfect it before any substitute is offered, the effect of which will be to destroy it altogether.

I stated in the Convention yesterday that I was opposed to the proposition of the gentleman from Lowell, as it now stands, but it was not then in order to state my reasons for that opposition. I propose now, before I sit down, to offer an amendment, not to that of the gentleman from Charlestown, which I confess I prefer to that of the gentleman from Lowell, but to the original amendment reported from the Committee of the Whole, the object of which is to perfect that proposition before the question is taken upon the motion to strike it out. I think such an amendment is in order.

I had occasion, Mr. President, yesterday, to state that I believed the small towns demanded too much. I still adhere to that opinion. I concur entirely with the gentleman from Northampton, (Mr. Huntington,) in the very able and statesmanlike speech which he made upon this subject, in Committee of the Whole yesterday. I agree with him that the Convention ought not to adopt any plan which makes the minimum of representation less than 1,200 inhabitants. The question has been asked, victoriously, apparently, by those who have taken part in this debate, what this Convention was called for? Whether it was not solely, or almost solely, on account of the question of representation? I admit that it was. But then they ask whether it was not called for the purpose of giving to the small towns full corporate representation? Here, Mr. President, I am compelled to take issue with them. I say it was not called for that purpose, but, on the contrary, I say that what was claimed before by the people, what was claimed by me as one of the people, and what was claimed by those with whom I acted, was, that under the present system the small towns would finally be destroyed, and that it was necessary to call a Convention to put a stop

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to that sliding scale in representation provided for under the existing system which would ultimately entirely destroy the representation of the small towns. Another reason for calling the Convention was because, under the present system of election by general ticket in the cities, the individual voters at the polls possessed a much greater power in the cities than in the small towns in the country. These were reasons at any rate sufficient to induce me to advocate the calling of a Convention, and to induce me to vote for it, whatever other reasons may have existed in the minds of others who were friends of this Convention.

I ask, then, Mr. President, whether it is reasonable, knowing as we do, the almost universal wish of the people to have the number of members of your House of Representatives diminished as much as possible; I say, is it reasonable, or was it expected beforehand that the small towns should come here and demand the right to send a representative every year from each town, however small in population? I certainly heard no such doctrine plainly and openly advocated before the election. But the Convention was called. These small towns came forward and demanded a full representation every year. That demand was acceded to by the majority of the Committee to whom the subject of representation was referred, and a Report was brought in by them, making such a provision.

But it has been stated that the amendment reported by the gentleman from Lowell, (Mr. Butler,) is a compromise, a kind of "go between," a half-way plan between the Report of the minority of the Committee, which was the district system, founded solely upon population, and the Report of the majority, which was founded upon absolute and complete town representation. Now, Sir, I contend that there is no compromise in the proposition of the gentleman from Lowell, which has been presented here for our adoption. I will admit, that as far as the amendment goes, the doctrine of town representation has been abandoned. I do not mean abandoned, in the sense in which the gentleman from Northampton, (Mr. Huntington,) used the term in his remarks yesterday when he alluded to a certain decision of the supreme court, but I mean to say that the amendment of the gentleman from Lowell has abandoned the right—the absolute right—of the towns to yearly representation. And I mean to say upon the other side, what must be sufficiently apparent, that this Convention has decided, by a vote which cannot be mistaken, that no clean district system of representation founded upon population shall at this time be presented to the people of the Commonwealth.

Now, under these circumstances, what is just and reasonable for the small towns to ask at the hands of the Convention? If they get, by the action of this Constitutional Convention, or by the amendments which we shall propose for the adoption of the people, a division of the cities, or if they shall get what is to them still more important, an anchorage ground, a ground which will put an end to that sliding scale, resulting from the system under which we now exist; if they get ground upon which they may cast anchor, so that the towns having twelve, fifteen, or eighteen hundred inhabitants, are sure of sending a representative every year hereafter, as they do now; if they can have a provision about which there can be no misunderstanding; that shall forever destroy

this sliding scale; if they can gain such a system as that, ought not the small towns of the Commonwealth to be satisfied? Is it reasonable that they should ask for more? To be sure, it does not assert the principle of absolute town representation but it secures to all the towns with that number of inhabitants, a yearly representation for all time to come. And while upon this point, let me say that I concur fully with the position of the gentleman from Boston, (Mr. Giles,) who spoke upon this subject yesterday from the other side of the House, that the people of these small towns are entitled to be represented every year. I admit the principle, but I believe this Convention has decided that the people of the towns do not want a district representation, and if the people of these towns prefer corporate representation a fractional part of the time, to representation by districts the whole time, why I should not object to their claiming it as their right, but they come forward and claim it as a right that they should be represented here as towns, every year, to the prejudice of all the larger towns, as well as the cities, and with the certainty of an unwieldy House staring them in the face. I admit that in proportion to their population they are justly and fairly entitled to representation all the time. But that is not what it is proposed to give them. If I understand this amendment, it proposes to give to all the small towns containing less than 1,000 inhabitants the right to send six representatives every ten years. Now, Sir, there is no principle in that.

But this Convention having decided that there is to be no district system founded on population submitted to the people, it seems to me proper that we should amend the amendment of the gentleman from Lowell before we proceed to vote upon such other propositions as may be offered as substitutes, and before we are compelled to vote against it as I should certainly do if driven to vote upon it in its present form. I prefer a district system founded upon voters, but will not vote for it until all hope of perfecting this amendment is gone. The system set forth, in that plan, I contend operates unjustly and unequally upon the different portions of the Commonwealth. I tell this Convention that no such system as that, even if it is received favorably by the people at present, can continue in favor, I care not upon what principle it is founded, for any length of time with the people. In this connection I care not what its effects are upon the county of Plymouth one way or the other. I, for one, would not return to my constituents and say to them we have adopted a system of representation in the House and the Senate which destroys the power—not of any particular neighborhood, but of four or five of the counties of the Commonwealth and gives that power to the other portion of the Commonwealth, yet that is the practical effect of the system which is recommended by the gentleman from Lowell.

I say, it is a fact which I am obliged to look at as an honest man, as a friend of this Convention, and as a friend, I hope, of the Constitution which this Convention may frame. It is stated, and in this respect the statistics of the gentleman from Lowell are very ingenious, that if we found this system upon votes as they were given in 1850, these inequalities do not appear. I submit, that such statistics as these do not form a fair statement by which men of sense can judge of the

operation of this system. There are various causes which might operate. It might rain on election day in one part of the Commonwealth, while in another part of the State the weather might be fair and pleasant. Local interests might exercise an influence in one part of the State, and the passions of men be greatly excited in consequence, while such a state of feeling would not exist in another part of the State.

Now, I ask gentlemen of the Convention to look at another fact, and that is, that whether you take, in point of fact, the actual voters of the south-eastern counties, or take the population, according to the amendment of the gentleman from Lowell, (Mr. Butler,) there is a proportionate loss upon the present system as compared with the whole number of members, a loss upon the population by the district system as proposed by the gentleman from Boston, (Mr. Hale,) and a loss by any system which has yet been proposed, unless, perhaps, it be that of the gentleman from Charlestown, (Mr. Frothingham.) I understand that some of the western counties, with a population of four thousand or five thousand less than the south-eastern counties, are to have a representation of ninety, whereas these south-eastern counties are to have a representation of about seventy. I repeat it, that you must consider the fact that you cannot get this amendment ratified by the people, that the people, not only of these south-eastern counties, but of other counties of the State, have sense of justice enough not to ratify any such system. I find all around me, out of the Convention, gentlemen of my own party and gentlemen of other parties, who have looked into this system, who say uniformly that the plan offered by the gentleman from Lowell is unfair, although they don't take the trouble to say that they will not vote for it; that follows as a matter of course. Without intending to make a set speech upon this question, let me merely state, in this connection, with regard to the arguments used by the gentleman for Manchester, (Mr. Dana,) in his extemporaneous but very able speech, and those used by the gentleman for Berlin in his instructive speech upon the subject, I am not fully convinced that they prove an actual necessity exists for town corporate representation. I will say that the arguments, authorities and illustrations which they have adduced should be strictly investigated. What do they prove? I understood one or both of them to say that at one time in England, and at other times upon the continent, municipal corporations were the safeguards and the very citadels of liberty. I ask, Mr. President, if it proves anything if it does not prove too much, because the fact is that when liberty was protected on the continent and in England by these corporations, it was protected generally by the large cities and walled towns. I do not believe that any comparison can be made between the cities of Europe and the cities of this country, between the peasantry of Europe and the yeomanry of New England. And farther, I do not believe, because the municipalities on the continent or the provinces of France or the districts in England, have been of great assistance to liberty and republican institutions heretofore in cases where free principles were first introduced, that it follows, by any means, that in this Commonwealth, where republican institutions have been established for more than two hundred years, born with our birth, grown with our growth, where free princi-

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ples have been imbibed with our mothers' milk, it is vital to our liberties or a republican form of government, that representatives should be sent from the towns. Neither do I believe it is a fact because you take away the right of a town, as a town, to send a representative, that you destroy municipal rights and privileges, or that you do anything necessarily to blot out that spirit of liberty which, I admit, is breathed more purely in the small towns over the hills and valleys of New England. I do believe that the argument adduced upon this floor, so far as it went to show that large cities should not be entitled to an amount of representatives proportionate to their population, was a sound one; but with regard to that I have nothing to say at this time. If the amendment is to be carried I merely wish to offer this amendment, to strike out the first paragraph of the amendment of the gentleman from Lowell, and insert the following, which will not greatly alter the result, but declares a rule which has more of reason to support it:—

Each and every town having five hundred inhabitants or less shall be entitled to five representatives in ten years. Each town having between five hundred and fifteen hundred inhabitants shall be entitled to an additional representative in ten years for every two hundred additional inhabitants, and each town having less than fifteen hundred inhabitants shall have an additional representative in every ten years for valuation year: *provided*, that no more than one representative shall be sent in any one year.

I think it proper I should state, that the amendment I offer is strictly a portion of the amendment offered by the gentleman from Winchendon. If gentlemen will consider the effect of the amendment, they will perceive that it gives a town having 1,300 inhabitants a representative every year, and it gives a town with less than 500 inhabitants a representative six years in ten, by which they will have more representation than they have under the present system. It gives every town of 1,200 inhabitants a representative nine years in ten, by which they get more representation than they now have.

The PRESIDENT. Does the gentleman move this as a substitute for the amendment of the gentleman from Charlestown, (Mr. Thompson)?

Mr. DAVIS. I understand the amendment of the gentleman from Charlestown to strike out the whole of the proposition of the gentleman from Lowell, and insert his amendment in the place thereof. I wish, at present, to strike out only the first clause of the amendment of the gentleman from Lowell, and insert what has been read by the Clerk.

Mr. HOOPER, of Fall River. I rise to a question of order in relation to that amendment. I would inquire of the Chair, if the question before the Convention is not the Majority Report, and whether, pending that, the gentleman from Lowell, (Mr. Butler,) has not offered an amendment, as a substitute for the Majority Report, and which the Convention has not as yet adopted? To that amendment the gentleman from Charlestown, (Mr. Thompson,) has offered an amendment, and now it seems that the gentleman from Plymouth offers an amendment to that of the gentleman from Charlestown.

The PRESIDENT. The gentleman from Fall River, (Mr. Hooper,) renews the question which was decided during the session of last evening.

The position of the question before the Convention is this. Resolves upon the basis of the House of Representatives, were reported by the Select Committee appointed to consider that matter. The resolves were referred to the Committee of the Whole, and were reported back to the Convention with an amendment, which stands in the nature of a substitute for the original resolves. The gentleman from Charlestown, (Mr. Thompson,) then moved an amendment to the amendment, which was in fact an entire substitute for the amendment reported by the Committee of the Whole. The Chair ruled the amendment out of order, upon the ground that a second substitute could not be admitted, as an amendment, pending the question upon the amendment reported by the Committee of the Whole, as a substitute for the original resolves. It could, at that time, be received only by unanimous consent. That consent was given, and the question upon the amendment to the amendment, was stated by the Chair. The proposition being admitted as an amendment, striking out the amendment of the Committee of the Whole, and inserting a substitute, it is in order for the gentleman from Plymouth, (Mr. Davis,) to move an amendment, in the way of perfecting the part proposed to be stricken out, or that proposed for insertion.

Mr. BRIGGS, of Pittsfield. I have no wish to embarrass the Chair, or raise any nice question of order. As to the matter of parliamentary law upon this point, I really wish some little information. The Chair makes a distinction between a substitute and an amendment, and yet I observed, that before he gets through with his sentence he calls it an amendment.

Mr. BATES, of Plymouth. I would like to inquire, if it is in order to discuss a question of parliamentary law unless there is an appeal taken from the decision of the Chair?

The PRESIDENT. Strictly speaking, the Chair supposes that the gentleman from Pittsfield is not in order, objection being made.

Mr. BRIGGS. The Chair understood me, I presume, as respectfully making a suggestion for his consideration, and unless objected to, it is in order.

The PRESIDENT. It is in order, unless objection is made.

Mr. BRIGGS. If the gentleman objects, I will sit down.

The PRESIDENT. The Chair will state, that this amendment, proposed by the gentleman from Plymouth, (Mr. Davis,) is in order only upon the ground that the unanimous consent of the Convention was given, to the introduction of the amendment moved by the gentleman from Charlestown. In reply to the remark of the gentleman from Pittsfield, the Chair does not make a distinction between a substitute and an amendment, but, on the contrary, the Chair understands, that parliamentary law recognizes no proposition as a substitute, but every proposition which pertains to the original question, is in the nature of an amendment. That amendment, however, may take such a form as to be a substitute, in fact, for the whole proposition; as by striking out all that follows the enacting clause, and inserting an entire new proposition, as a substitute for the part stricken out, and the amendment taking that form, then it is a substitute for the entire proposition; and, upon every principle of parliamentary law, and by the prac-

tice of all deliberative assemblies, it is in order to amend the original proposition in the way of perfecting it, before the Convention can be called upon to strike out or affirm it by a vote. The Convention will find itself in this position, if the proposition reported by the Committee of the Whole, be affirmed or rejected as a whole, without the privilege of amendment, that they must stand by that vote, and cannot improve or change that proposition in any way, at this stage of the question, and if, at the succeeding stage, the previous question should be moved immediately upon the second reading of the resolve, then the Convention would be obliged to pass upon it without being able to change or modify it in any manner whatever.

The Chair understands, according to the practice of all deliberative assemblies, when an amendment is reported as an amendment to the original proposition, which is in fact a substitute for the whole, that it is the right of any member of the Convention to propose to perfect that original proposition then to be stricken out or retained. Therefore, upon that principle, the Chair rules that the amendment of the gentleman from Plymouth, (Mr. Davis,) is in order.

Mr. BRIGGS, of Pittsfield. I will take an appeal from the decision of the Chair, for the simple purpose of stating my views upon this subject. I understand the parliamentary law to be this: that when a proposition is pending, it is open to amendment; that it may be amended by striking out all parts of it, leaving nothing to which an amendment can be attached, and that when such proposition is made, it is an amendment—really, strictly, and technically an amendment—though it strikes at the whole body of the proposition. I agree with the Chair, that parliamentary law recognizes no such thing as a substitute. The proposition of the gentleman from Lowell, (Mr. Butler,) was this: to amend the original resolution by striking out all after the word "Resolved." Then what was it? It was an amendment, reported as such, and come up before the Convention as an amendment. That amendment was open to amendment, and the gentleman from Charlestown, (Mr. Thompson,) proposed to amend it, as he might do, by striking out a part and leaving the residue; by striking out a part and substituting something, or by striking out the whole and substituting something in its place. That would be an appropriate and ordinary motion, conforming to parliamentary law upon the subject of amendments. That would be an amendment to an amendment. Now, I understand the Chair, that if he rules so, and that this was properly and strictly an amendment, then the Convention have got to vote upon the entire proposition or on the question as between the two propositions, or if they adopt it they must take it as it is, and thus get something which they do not want; and therefore they have a right to perfect it before the vote is taken. I concur with the Chair, that in one stage of the proceeding this is so. When an amendment is offered to a bill, to strike out and insert, you have a right to make either part perfect. But that is an amendment to an amendment. But when we have two amendments pending, the parliamentary law says you shall not move another amendment, or an amendment in the third degree. That is the law, and you must take the consequences of that law. Now,

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to avoid that law, I understand the Chair to say that this is to be regarded as a substitute, and being regarded as a substitute, it is open to amendment.

But I understood the Chair to say—and I agree with him—that parliamentary law recognizes no such thing as a substitute; it is an amendment. Then, by that parliamentary law, if two amendments are pending, a third amendment is not in order, because you cannot move an amendment in the third degree. Therefore, unless the Chair makes a distinction between an amendment and a substitute, I do not see how he is sustained by parliamentary law, in his decision in this case. If there is such a parliamentary law and usage as to recognize any distinction, I agree with the Chair.

Sir, I said I took the appeal for the purpose of expressing my views, and not for the purpose of embarrassing the Convention, and because I was not permitted to express my views otherwise. I withdraw the appeal.

The PRESIDENT. The Chair will suggest, that the gentleman from Pittsfield is right in one point of view: considering the substitute as an amendment to an amendment. But this is not the fact. The gentleman from Charlestown had no right to present his proposition to amend without the unanimous consent of the Convention. The Chair so ruled. The gentleman from Pittsfield assented to its reception. That being assented to, any member has a right, first, to perfect the proposition of the gentleman from Charlestown, which was introduced by unanimous consent; and secondly, he has a right to perfect the proposition adopted by the Committee of the Whole. Otherwise the effect would be that it might be introduced without the possibility of amending it, or if it was affirmed, the Convention would be held to it without the possibility of amendment. The difficulty originated in admitting it. But if it is admitted without opposition, the Chair understands, by the uniform procedure,—both of this body and the House of Representatives of the United States, which is the leading authority, of course, upon American parliamentary law,—any member of this Convention has the right to perfect the amendment introduced by the gentleman from Charlestown, although it stands, *pro forma*, as an amendment to an amendment. Being admitted, it must be treated as in order.

Mr. HOOPER, of Fall River. I understand that the proposition of the gentleman from Charlestown is before the Convention.

The PRESIDENT. It is. His motion is to strike out certain words and insert others; and now the gentleman from Plymouth moves an amendment to perfect the first proposition. The question is on the proposition of the gentleman from Plymouth.

Mr. GARDNER, of Seekonk. I do not know that the county which I have the honor to represent in part, will be affected one way or the other by this amendment; but I feel, at present, opposed to the amendment. It seems to me that the amendment offered by the gentleman from Lowell, is better, standing as it is, than it would be to insert the amendment proposed by the gentleman from Plymouth as a substitute. The gentleman from Plymouth says, that in his judgment, the small towns ask too much. Sir, from every side of this hall, almost every gentleman has spoken in favor of the rights of the small towns, and I

have heard from various quarters that the most just and equitable system would be to have the small towns all represented. I concur in that opinion. I think these small municipalities should be preserved, if possible. But, Sir, we have a proposition to allow sixty-four towns to elect five representatives in every ten years. Now, the gentleman from Plymouth, notwithstanding all these eulogies, and all that has been said in favor of these small towns, and notwithstanding his love of the small towns, and his desire that they should have a due influence on this floor, says that they ask too much, and he is opposed to the proposition of the gentleman from Lowell on that ground. I feel as though the terms of the plan made with regard to the small towns, by giving them what is proposed by the gentleman from Lowell, are as near right as we can make them, unless we adopt the district system. If it is finally concluded by this Convention to go into the district system, and take the most just and equitable course for the whole Commonwealth, I, for one, will go for it. If we adopt any one of the systems which has been presented, it does seem to me that the proposition of the gentleman from Lowell, or at least the principle contained in the first paragraph of his proposition, ought to be accepted. It is the same which I have proposed in document No. 78. Therefore I wish to express my approbation of the proposition of the gentleman from Lowell, and my entire disapprobation of the proposition of the gentleman from Plymouth. As to the great disparity and discrepancy with regard to the large towns, and the fear that they will not have their full share of representation, I think that there is no danger but they will be satisfied. I hope the proposition of the gentleman from Plymouth will not prevail.

Mr. DAVIS, of Plymouth. I rise to make an explanation. I did not say that, under the proposition of the gentleman from Lowell, the large towns would not have a sufficient representation. I am in favor of restricting the representation so far as the large towns are concerned, by increasing the ratio.

Mr. MARVIN, of Winchendon. I wish to say a single word, as gentlemen have an idea that the proposition which is offered will increase the representation from the small towns to a great extent. The difference is only one and a half. According to the plan of the gentleman from Lowell, the towns having less than fifteen hundred inhabitants will have ninety-nine representatives, and if this amendment is adopted, those towns will have one hundred and one-half. The advantage will be this; if you aggregate the small towns, according to this plan, a town which has nine hundred inhabitants will have no more representatives than a town which has only five hundred, and I offer this as an improvement, and not because it makes any difference in the aggregate.

Mr. BROWN, of Medway. I do not claim an hour, and will not occupy more than ten minutes. The proposition of taking representation from each town has been tried in other places, and I would draw the attention of the Convention to the State of Vermont, for a moment. For a long time they had been in the habit of electing one representative for each town, whether it be large or small. Recently, I believe, the law has been altered so that for a limited time the towns having a certain number of voters, may choose

two representatives, and after that limited time they choose only one, forever. This system, in the State of Vermont, has certainly operated well, for we all know that there is no State in the Union which has prospered better than Vermont, and especially since she has been brought nearer market by her railroads. There is a very great advantage in this system, it is so simple, so easily understood by every-body. Their statute laws, based upon this system, are so simple, so plain, so easily understood, that every man in Vermont knows the law and is a judge of the law. It is very different in this State. When you go to a lawyer in this State—and I would not speak disrespectfully of that honorable body, especially those with whom we are associated in this Convention—and ask his opinion on a case which you have, he cannot tell you, he must go and search his books, and he must go and look up reports and decisions on similar cases, before he can give any opinion on the case. Now this is not the case in Vermont. Their laws are so simple to be understood, as I said before, that every individual, so far as my acquaintance extends, in Vermont, knows as much about her laws, as our lawyers know about our laws here. I think that we need not be afraid of the large towns and the cities. It is the glory of the country towns that they have such places as Boston, that they have such places as Charlestown. Mr. Webster said, in his great speech in answer to Mr. Hayne, in speaking of Massachusetts: "There is Concord, there is Lexington, there is Boston, and there is Bunker Hill; there they stand, and there they will stand forever." I hope that the system, whatever it is, that we adopt here, will be one which will give the most representatives, and the most power, if you may so call it, in our legislature. The country towns are certainly not enemies to the cities, or to the city of Boston and its vicinity. The city of Boston, and the circumstances connected with it, are the glory of the small towns, and it will be their pride and their glory to deal out justice to them.

Mr. KEYES, for Abington. I offered an amendment, yesterday, to the proposition of the gentleman from Charlestown, in order to find out a fact; and I think I did find it out—that is, Sir, that the proposition now before us, offered by the gentleman from Lowell, is the one upon which this Convention are to act. I did not offer it to the other proposition, however, because the Committee seemed to think that could not be amended, and I would not introduce it in opposition to that. Now, Sir, here is an amendment that, in my opinion, is directed to the right quarter, and what is it? The great argument has been constantly upon the ground of inequality; and the effect of this amendment, as I understand it, is, to destroy that inequality, and to establish equality, if it has not that effect, it has no effect at all. It does not add to or diminish from the number of representatives, to any appreciable degree whatever. The only operation of it, which I can perceive, is, to introduce the principle of equality. Now, if the proposition of the gentleman from Lowell is correct in all respects, I ask, why this amendment is not improving it, because the inequality between towns of five hundred inhabitants and those of fifteen hundred, is just as appalling and monstrous as any of these other inequalities which have been talked about so much. The effect of that amendment, if I understand it, is, to destroy

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that inequality; because, if the minimum is 1,500, then a town of fourteen hundred would have no more right of representation than a town of four hundred has. So, it is just as monstrous and just as unequal in one case as in the other—just as much so in the proposition of the gentleman from Lowell, as all these other things which have created such a *furor* about inequality here. Now, I ask, why you do not take this amendment, which only makes it as nearly equal as it can possibly be made, and allow towns of five hundred inhabitants to have a representative every year, and add another every ten years, for the increase in their population?

The amendment could have no other possible effect than to establish an equality among the small towns; and if there is any serious objection to that, I should very much like to know what it is.

Mr. CROWNINSHIELD, of Boston. I had not intended to address any remarks to the Convention upon this subject; but if any apology is necessary for my not adhering to that determination, it must be found in the great interest which my constituents have and feel in this important question. Here we are, in what we have so often been told, is "the middle of the nineteenth century;" and the people of Massachusetts have met in Convention, through their delegates, to effect great reforms in their fundamental law, and to cure sundry evils in the Constitution, which have pressed with heavy weight upon the people of the Commonwealth. The gentleman from Greenfield, who represents Erving in this Convention, (Mr. Griswold,) opened the debate upon this subject which is now before us; and allow me to say, that probably that gentleman had as large a hand in bringing together this assembly, and perhaps even greater, than any other individual in this Convention, or in this Commonwealth; for it is well known, that several years since, in the legislature, he first broached the subject of making an alteration in the basis of representation, which he pressed with zeal and pertinacity, but failing in his object there, turned his attention to a Convention, which, with a like zeal, he has, at last, brought to pass. From the length of time which has already been consumed upon it in this Convention, and from some other circumstances, we know that this was one of the great and important subjects that has brought us here. Now, the gentleman for Erving, in his opening remarks, stated that here was a great evil to be corrected—here was an important principle involved. What was the principle? It was, that during a considerable portion of the time, a large number of the inhabitants of the small towns of this Commonwealth were wholly unrepresented. This, it seems, was one of the great things that had led to the calling of this Convention, and this is one of the great evils that remains to be corrected here; and now, how does that gentleman, and how do those gentlemen who sustained him in calling this Convention, propose to remedy that evil? what is the effect of the amendment which they propose? I ask that gentleman, or I ask any other gentleman in this body, who is in favor of the proposition before us, to tell me wherein it differs, in principle, from the provision in the existing Constitution. Sir, by the amendment now before the Convention, are the small towns represented every year? Is it proposed that they shall be represented every year? Not at all, Sir. Is there any principle of equality about it? What

is the principle which is embraced in the amendment, that the Committee of the Whole have reported to this body, which differs in substance from the provision in the present Constitution? It differs only in this—that it takes away from my constituents a large portion of the equal and just rights which have been guaranteed to them by the Constitution of the Commonwealth, and by the Bill of Rights, and which are inherent in every man who is a freeman, and who lives under a republican government.

I had intended to say something in relation to the history of this question, and refer to times long gone by, for it is there gentlemen seem to look for the largest liberty and the greatest democracy. They base their arguments upon that which is ancient and venerable, and to sustain them in their reforms here. The gentleman for Erving, the other day, told us that this system of town representation was ancient and venerable, and that it forms no objection, in his mind, to anything, that it is ancient and venerable, provided it is good; and that is one argument in favor of town representation, because it is both ancient and good. The difficulty is, he gives us no standard by which we may judge and determine what is good, and he begs the question when he says it is good. I was somewhat astonished, Sir, by a remark which fell, the other day, from the gentleman from Natick, (Mr. Wilson,) in which he spoke of those who opposed this proposition, as being among those who were the opponents of the calling of this Convention. I suppose I may as well admit, that I am among that number, and we have had it flouted in our faces, that we were the opponents of the Convention, as though, for that reason, we were not entitled to any consideration. I think another statement, made by that gentleman, spoke volumes upon this subject; for he told us, that it was with the greatest difficulty that the people could be got to agree to the calling of a Convention; and he admitted that it required an amount of labor almost unheard of, to wake up the people of Massachusetts to the assertion of their rights, which had been trampled upon, and to redress the great grievances under which they had been suffering. And is it so, that in this boasted "nineteenth century," the people of this Commonwealth should be under such a necessity for a Convention to reform the Constitution, and yet should require so large an amount of labor and energy operating upon them, to induce them to call that Convention? We have been authoritatively told, again and again, that "the people would do this," and "would not do that,"—that "they wanted this," and "did not want that;" and the gentleman from North Brookfield has regaled our ears with the managements and arrangements of party—that it is the politicians who make all the trouble, and not the people. Now, Sir, if I may be permitted to express an opinion in this matter, the people do not need any great and essential changes in the Constitution—they are very well satisfied with it, in general, as it is, and that accounts for the labor and effort required to call us together.

Mr. WALKER. Mr. President.

The PRESIDENT. Does the gentleman from Boston yield the floor?

Mr. CROWNINSHIELD. Yes, Sir; I will yield the floor for any purpose except for a motion for the previous question.

The PRESIDENT. The Chair will remark that the rule is positive, that no member shall interrupt another member speaking, except to raise a question of order; although the courtesy is usually extended to allow interruptions for the purpose of making explanations. The gentleman from North Brookfield will state for what purpose he rises.

Mr. WALKER. I wish to ask if the gentleman from Boston alluded to me in his remarks.

Mr. CROWNINSHIELD. I did. I know no other member from North Brookfield.

Mr. WALKER. I understood the gentleman to say that the gentleman from North Brookfield stated that it was the politicians, and not the people, who called this Convention. Did I understand the gentleman correctly?

Mr. CROWNINSHIELD. Not at all. I remarked that the gentleman from North Brookfield had repeatedly told us, in his usual emphatic and authoritative manner, what the people did or did not want, and what they would or would not approve, and what the politicians were always contriving against their interests. I believe that the people do not desire a large House of Representatives. So far as I understand what they do want, and I have taken some pains to find out, if the House is brought down to a convenient size, so as to conduct public affairs in the best manner, that will satisfy them.

Let us advert for a moment, if I may be pardoned for alluding to the matter after the able and extended remarks of the gentleman from Salem, (Mr. Upham,) to the historical view of the question. The country was settled under a Charter obtained from royal authority, which was granted to an association formed for that purpose. At length the Charter was brought over, and formed, as it were, the Constitution of Government. Every free man in the corporation had equal rights and equal power, and the elections of governor and other officers, were made by the body of freemen assembled in Boston. It was as pure a democracy as, perhaps, ever existed, where every man was equal to every other man. Soon it was found inconvenient for all the inhabitants to assemble together for such purposes, and so they had representatives and districts established. The reason why this was done, has been stated by the gentleman from Salem; and the system of representation which then grew up was not a representation of towns in their corporate capacity, exercising a corporate right, but of freemen who were as equally represented as possible. So far as I know, there was no census of the inhabitants at that early day; but from each town was sent, as it was convenient, "two or three" representatives, who had powers delegated to them to act for the whole number of freemen. This state of things went on until the Restoration, when the republican government was overthrown, and royal authority was established in England. Presently the king of England found that he had too free a government existing in his colonies, and took away their Charter. After that great outrage, things went on for a time under Andros, until the Revolution in 1688, when our fathers hoped that the Charter of which they had been robbed would be restored to them, as many Charters of cities in England, which, in like manner had been taken away, had been. But they hoped in vain. The Charter that they had at first, allowed them a too republican form of government for

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the time, and the best thing they could obtain was the Charter of William and Mary, or the Province Charter, which took away from them many of their rights, and deprived them of the right of choosing their own governor; and a royal governor was sent over here, and they lived under royal governors for nearly one hundred years, until the Revolution of 1776 established a different order of things. It was not a representation of towns even under the Royal Charter; but supposing it were, is that any authority for us? When the Revolution came, "old things passed away, and all things became new." The people of this Commonwealth, when they framed the first republican Constitution under which they have since lived so happily, well understood the fundamental principles of a republican government. Let me read to this Convention a few extracts from that Constitution as they established it. Those men who were then at the head of affairs, who took a leading part in forming the Constitution of Massachusetts—such men as John Adams—did they know nothing about republicanism and the rights of the people? I fancy that this question needs no answer from me. Let us look at the Constitution which they established, and see what it says upon the subject of equal rights of members of the community. In the first place let me read the preamble:—

"The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic; to protect it; and to furnish the individuals who compose it with the power of enjoying with safety and tranquillity their natural rights and the blessings of life; and whenever these great objects are not obtained, the people——"

Not the towns, but the people.

"The people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness. The body politic is formed by a voluntary association——"

Of what? Of towns? No! but of people.

"The body politic is formed by a voluntary association of individuals; it is a social compact."

The gentleman for Manchester, (Mr. Dana,) tells us that he does not believe in the doctrine of a social compact; and although I can very well understand upon what principles the gentleman for Manchester takes his position—and I respect him for uttering them boldly and manfully as he does—yet there are certain other gentlemen, in this Convention, who are very well known to entertain very different opinions from those of that gentleman, on all subjects connected with government; and I cannot easily conceive upon what ground they want the House of Representatives to cease to be a popular branch of the government, while the Senate, which we have always looked upon as an aristocratic feature in the Constitution, and the chief executive magistrate who has only the veto, are to be, *par excellence*, the representatives of the people. Why, Sir, if this provision should be adopted, as those gentlemen desire, in the Constitution, hereafter a member of the body which shall assemble within these walls cannot rise up and say without a blush, "representatives of the people." Will they be in any sense representatives of the people? No, Sir! they will not; they will be representatives of the municipal corporations. They will cease to be the representatives of the people; and if we ever

wish to see the representatives of the people, we must go to the other end of this building, where we shall find forty gentlemen gathered around the Senate board—they are the representatives of the sovereign people. So we are informed by the gentlemen of the majority. But let me revert to this Constitution once more. It says:—

"The body politic is formed by a voluntary association of individuals; it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good."

We have heard a good deal said here about the social compact, and the gentleman for Abington, (Mr. Keyes,) with whom I am happy to agree in many things, has commented upon it, and says that it is not so—that many people dissent entirely from it, and do not agree to its terms. Certainly it is a social compact—not that we have made a written compact with every individual—for gentlemen know that that is not true. When we say that it is a social compact, we mean that we agree to abide by it, and we yield our assent to it. All who live under this compact, give a silent assent to it, and the great mass of the people do heartily assent to it, as I believe, with the exception of some fanatics, as I must insist upon calling them, who deny the authority of government, and who petition the legislature for all sorts of strange and absurd things. The great mass of the people do give their hearty assent to it, and it is, in substance, a compact between every individual citizen, and the whole body of the people. But let us read on:—

"It is the duty of the people, therefore, in framing a Constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and faithful execution of them; that every man may, at all times, find his security in them. We, therefore, the people of Massachusetts, acknowledging with grateful hearts, the goodness of the great Legislator of the Universe, in affording us, in the course of his providence, an opportunity, deliberately and peaceably, without fraud, violence, or surprise, of entering into an original, explicit, and solemn compact with each other," &c.

This is the preamble to this great instrument, and now let us go on into the Bill of Rights. And I ask gentlemen if they purpose to strike out this provision from the Bill of Rights, which says in the first words of the first article, that "all men are born free and equal." Here is the great principle of the Declaration of Independence; and is it an idle form of words that is to be read over on Monday next to the people of this Commonwealth, when they come together to celebrate their emancipation from thralldom, and their entrance into liberty—the overthrow of the royal authority, and the formation of a republic? Are these words idle words, or are they the words of truth and soberness, that "all men are born free and equal?" And, Sir, if they are not equal they cannot be free. We read in section 4, of the Bill of Rights: "The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent State." And we read in section 5: "No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services

rendered to the public." Then what right have the individual small towns and corporations in this Commonwealth to a greater representation than I, a citizen of a large one, have? What services have they rendered to this Commonwealth, which entitle them to a greater right or a greater voice in this House of Representatives than I have, or than my constituents have?

Let that question be answered. I see gentlemen around me smiling because, as I know, they think that this provision was introduced into the Constitution for another purpose, and with another meaning. So it was, mainly; for it never was dreamed of that a Convention would meet in 1853, and that gentlemen would stand up here and astonish us with such doctrines as have been announced upon this question in this Convention.

Again, the ninth article of the Bill of Rights says:—

"All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments."

Will this Convention strike out that provision of the Constitution, or will they let it stand there? Will they let it remain there, in strange inconsistency with the provision which has been reported by the Committee of the Whole, and which a majority of this Convention seem about to adopt? A hundred and fifty or a thousand years hence, when we shall have passed away, and when many generations shall have passed away from all earthly scenes, and the memory of most of us shall have been forgotten, what will the future historian of Massachusetts say, when he looks at the provision of this Constitution which I have just read, and sees also in that same Constitution, a provision by which the city of Boston—of which I have the honor of being a humble representative—and the cities and large towns, were robbed of their equal rights? How will he be able to explain it? He can give no rational account of it.

When I go to my constituents, and they ask me what has been done here, and I tell them that a provision has been adopted whereby four or five men in this city are only worth as much, politically, as one man in the central part of the Commonwealth, or away upon Connecticut River or the Berkshire hills, what reason shall I assign for it? What answer can I make? I am dumb, and can make no answer.

There are many other passages of the Constitution, of the same import, which I might read, but I have read enough to satisfy gentlemen that we raise here, in one hand, in the Constitution, a declaration of liberty, equality, and equal rights, among all the inhabitants of the Commonwealth, and then present in the other a proposition for an amendment of it, which robs a large portion of the inhabitants of their just and equal right to participate in making the laws.

Now, it has been said by the gentleman for Erving, (Mr. Griswold,) and also by the gentleman who represents Manchester, (Mr. Dana,) that exact equality is impossible. I quite agree with them in that, and that government, of all things, is a practical subject, and we must deal with it practically, and not carry off any principle in reference to it to an extravagant extreme. But

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we must establish great principles, and carry them out as nearly as we can. That is all we ask or desire. In any system of representation you may adopt, in any mode of districting that you can establish, you cannot bring together an exact equal number of inhabitants in each district. And if you could do it to-day, they would be unequal to-morrow. Nobody asks such an absurdity as that there shall be a strict and exact equality. All we ask is that there should be an honest, fair, just, and righteous attempt to make it as nearly equal as the nature of the case will admit. There will be fractions, and larger fractions in one place than in another. And I may as well say here,—what I am surprised has not been adverted to by any gentleman upon this floor on any side,—that as to the matter of fractions, I hold that where there is a fraction greater than half large enough to entitle a town, or district, to a representative, the place having this fraction ought to have that representative. That was the great principle established by Mr. Webster in 1832, if I remember right, when the question was before the Senate of apportioning members of the House of Representatives of the United States for that decennial period. And here I take pleasure in stating, that it happened to me about that time, in company with a friend, a delegate in this Convention from Roxbury, to be in the city of Richmond, and in the study of that eminent man, Chief Justice Marshall. I talked with him upon that very subject, and alluded to the speech which Mr. Webster had recently made upon that matter. General Jackson was reported to have said that the principle which Mr. Webster had laid down was not a sound one. Chief Justice Marshall remarked that that was also his own opinion when the principle was first announced, but that the argument of Mr. Webster was so conclusive that no room was left for doubt, and his mind was entirely convinced by it. When I pleasantly reminded him of what General Jackson had said, that this principle was not sound, he replied in the same vein, that he thought General Jackson would find it hard to answer that argument.

Now, the principle for which I contend here,—though I hear it said around me that “it is too late,” yet I desire to place upon the record, if any poor remarks which I may submit, in support of my position, be thought worthy of being recorded,—the principle for which I contend here is exact equality of representation to all, so far as it is practicable. Therefore it is, if I understand the proposition submitted by the gentleman from Boston, (Mr. Schouler,) the other day, that I go for his proposition, and nothing short of it, and “to this complexion we must come at last.” As the gentleman from Abington, (Mr. Keyes,) said the other day, you may talk as much as you please about it, and make what provision in the Constitution you please, and still the result must be, that the Commonwealth of Massachusetts must be districted for the choice of representatives. If we do not come to that in these ten years, we shall in the next, for it is the only just principle that can be established. You may make as many mathematical calculations as you please; you may legislate with reference to this party or that party, or combination of parties; you may legislate with an eye to temporary purposes; but you must come to that complexion at last. The Commonwealth is rapidly increasing in population, and

any system which provides for town representation cannot last.

The great difficulties have been overlooked. The gentleman for Erving, (Mr. Griswold,) told us that the vital defect in the existing Constitution is, that it takes away from the small towns the right of representation every year. I am free to confess, that I consider it unfair and unjust to the people of the small towns. I hold that every individual in the Commonwealth has a right to be represented every time the legislature assembles to make laws, which may possibly affect him in his person or property; and every time that they make laws imposing taxes which fall upon him. Every man in the Commonwealth has always, and at all times, an equal right to be represented; and I say, that any system which prevents the inhabitants of the small towns from being represented during any portion of the year, is wrong, unjust, and unfair, and I cannot support it, unless I am driven to that as the best thing I can get. I have no hesitation in expressing my opinions upon that point.

My objection to any system which has been proposed here, except those of my colleagues from Boston, (Mr. Hale and Mr. Schouler,) is this, that there is no principle or standard by which they can be gauged. One gentleman tells us that a House of so many members is about right. Now, the number of representatives of which the House shall be composed, is altogether an arbitrary number. When the amendment as to the number of representatives was introduced into the present Constitution, what was the great and ruling motive in the minds of the people which induced them to adopt it? Does not every gentleman know that they considered the great evil to be a large House of Representatives, too large conveniently to transact the public business which came before them, and which compelled them to assemble and remain together too great a length of time, at an enormous expense? That was the great evil, and the people of the Commonwealth wanted to get rid of a large House. That is what they want still.

If gentlemen will put this question to their constituents, whether they want a large or a small House, they will find that they are in favor of the latter. I do not affect to know more than other gentlemen, but my calling has obliged me to come in contact with a great many people, of all classes and conditions, and I have taken occasion to sound them upon the subject. These people belonged both to the large and the small towns. I have talked with gentlemen from a small town in the county of Plymouth, and I asked them whether they wanted a large House. They answered “No.” The gentlemen with whom I have conversed, were not politicians. They were men who had other business to attend to than continually attending caucuses and town-meetings. They said, also, they were in favor of district systems, by which several of the small towns might be united to choose a representative, and with all their hearts, because they believed that in the long run, they would be better represented than they now usually are.

Now, the gentleman for Erving, (Mr. Griswold,) told us that the amendment which was introduced into the Constitution of 1840, was not proposed by a Convention. That is true. But was it not proposed and discussed before two

successive legislatures? Was it not pending two years before the legislature and the people? The provisions of the Constitution require that a proposed amendment shall be passed by two successive legislatures, and that provision was two years before the legislature, and it was discussed by the people, and it was approved of by a large majority—much larger than that which sanctioned the amendments of the Convention of 1820, a majority of nearly two to one. Did not they know what they were doing? They did it, not because they apprehended that it was the very best system, but because it in some measure cured what was then the great, the grievous, and the principal evil.

Now, Sir, as I was saying, I object to the propositions now pending, because there is no rule or standard by which they can be measured. What reason is there for cutting off from annual representation all towns with less than a certain amount of population, and stopping when you get to one thousand inhabitants? Simply because it is a round number? Why stop there any more than when you get to twelve hundred, fifteen hundred, or ten thousand? Can any gentleman answer me the question? I want something more than a mere arbitrary rule. When you have determined to abandon the system of town representation in any degree—and you give up the whole principle if you adopt these amendments, which leave some fifty or sixty towns of this Commonwealth unrepresented for a part of the time—I want gentlemen to lay down a rule of right upon this subject. The matter is entirely arbitrary, and every gentleman upon this floor who has made a speech upon the subject—which speeches foreshadow the wishes of the Convention—has discussed it with reference to the manner in which it would affect his own constituents. And I rise here to discuss it upon the same principle. It is right that they should do so. Every gentleman, before he comes to a vote ciphers it out to see how it will affect his constituents, and how, perhaps, it may affect himself, and perhaps I may do so myself, for I do not pretend to be wiser or better than my neighbors.

We have heard a great deal said about the intelligence of Massachusetts. We do not want to take an example from other States. We are wiser or better than they. I am the last man to abate one jot or tittle of the credit which is due to Massachusetts; but I have been strongly impressed with the idea that the sort of language which has been used in reference to this matter, would better come from some other source than from us. I do not think it betokens a great deal of modesty. I am impressed with the force of the old saying that “Self-praise goes but little ways.”

And I remember, too, what Fuller, the author of “The Worthies of England,” has said when speaking of the famous Captain John Smith, the early voyager along the shores of New England, and whose history is so closely connected with the early history of Virginia. After giving some account of his wonderful exploits, he says: “they seem to most men above belief, to some, beyond truth;” yet we have two witnesses to attest them—the story and the pictures, both in his own book; and it soundeth much to the diminution of his deeds, that he alone is the herald to publish and explain them. He then adds a story of two captains being at dinner; one of them

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fell into a large relation of his own achievements, concluding his discourse with this question to his fellow and pray, Sir, said he, what service have you done? to whom the other answered, "*Other men can tell that.*"

So I prefer, when the morals and intelligence, and glory of Massachusetts are to be told, that the praise should come from abroad rather than from home. But if Massachusetts, and her reputation, character, morals, and intelligence are attacked from any quarter, then for want of a better champion, one may be found in me. But until that is done, I think it more decorous to sit quietly and say nothing at all about it.

Now I have said that I go for the doctrine of equality. I go for it, because I believe in the sacred doctrine contained in our Declaration of Independence, and in our own Bill of Rights, "that all men are born free and equal," that "they are entitled to an equal voice in making their laws." That is a natural, inherent and inalienable right. Now, I ask any gentleman to tell me, what natural right any town has to be represented? Gentlemen undertake to ground their arguments in favor of it, upon the fact that they have always possessed and enjoyed it. Has any gentleman told us how many towns there were when the Constitution of 1780 was formed? What natural right exists in an aggregation of men, because they are enclosed within artificial lines, to entitle them to a representative greater than in another great aggregation of men upon a smaller territory? I deny that it exists, and I defy any gentleman to show it. We all have, naturally, equal and just rights. Now, let any gentleman, who here proposes to cut up the Commonwealth, so as to rob two-thirds of its people of their equal rights, state upon what principle he does it, and what arguments he can bring in favor of it? The gentleman for Erving, (Mr. Griswold,) told us that the present system is a bad one. I can say "amen" to that. But I ask him how it differs in principle from the amendments proposed here? It cuts Boston and the large towns a little more, and not a little either. But the gentleman tells us, that although the proposition was not his, and although he believed his plan to be a better one, yet, as there must be a compromise among so many propositions, he gives in his adherence to it. Upon what principle does he do that? If he says that he does it, because it takes away a piece from us, or from you, I can understand it. If he can give any fair, and honest answer to it, I am ready to hear it, and be convinced by it.

The next objection to the existing provision was that it is complicated,—that the people cannot well understand it,—that it requires a good deal of ciphering and figuring. Will the gentleman tell me how this proposed amendment is any less so? Does it require any less knowledge of mathematics or of figures to understand it? Sir, we have been overwhelmed and deluged with figuring, showing the practical operation of these amendments. That objection, then, I must consider as rubbed off the slate. One gentleman, at least, has told us that he wanted no system founded upon mathematics. Another, that he does not wish to have the State run out by a surveyor into districts, as France was divided at the first Revolution.

Why, Sir, will any gentleman tell us how the principle of representation by the small towns

and the large towns as municipal corporations, differs from that by districts? Are not the towns separated by purely artificial lines? Do not the legislature, every year, and year after year, emancipate some three or four of these towns from their connection with the towns to which they have heretofore belonged, and create new towns? And how do they do it? Are the boundary lines of these towns natural boundaries? Are they rivers or mountains? Sometimes they are, but more frequently they are mere artificial divisions. I well remember when the town of Ashland was created, a number of years ago, out of some three, four, five or six other towns. I well remember the time which was spent in the consideration and the reconsideration of that question in this hall, and that one of the strongest arguments used in opposition to its creation, was that of one the lines of the new town went straight through Mr. Pierce's barn. [Laughter.] The divisions do not, and cannot, from the nature of things, grow out of any natural boundary. They are merely a matter of convenience, to bring together a certain number of people conveniently located, or arbitrarily, and form a town.

You well remember, Mr. President, for you took a prominent part in that transaction yourself, when a few years since, it was proposed and carried, to set off a part of the town of Newton to the town of Waltham. In that case the boundary of Newton was not an artificial, but a natural one. It was bounded upon three sides by the Charles River, which in fact nearly surrounded it, and had constituted the boundary of that town for more than two hundred years, but that natural boundary was disregarded and a portion of the town of Newton was carved out by purely artificial lines. Sir, these municipal corporations have no natural right of representation. They are wholly artificial divisions, as much so as if the Commonwealth had been divided by the surveyor of the United States into mathematical squares, sections, quarter sections and townships, for town lines. And there is no more reason why your towns, as municipal corporations, should be represented, than there would be in the case I have supposed, that the squares which had been marked out by the surveyor should be represented as such.

But various gentlemen upon this floor, and particularly the gentleman for Manchester, (Mr. Dana,) eulogized very highly, these "little republics and democracies." Why, Sir, I apprehend the gentleman for Manchester was never in a town-meeting in his life. Although for twenty years past I have been a resident of this city, yet the early part of my life was spent in a town; and being then a somewhat younger man than I am now, and being a somewhat ardent politician, even before I was one-and-twenty years old, I attended the town-meetings and used to check off the voters, as they came up to the polls, upon the check list; gentlemen will see, therefore, that I know something of the proceedings of a town-meeting, and I must confess that I was a little astonished when the gentleman for Manchester alluded to the debates and deliberations which take place in these town-meetings as to the qualifications of Mr. A. or Mr. B., or of the qualifications of this candidate or that for the office of representative. Why, Sir, such a thing, I apprehend was never heard of at any town-meeting for the choice of representative, in the Common-

wealth of Massachusetts, as for a debate to arise upon any subject touching that election, unless it were the subject of whether they should send a representative or none at all, and where they are entitled to send two, three or four, they debate the question whether they shall send three or four, or one, or none at all. When one party finds the other in the majority, and in a position to elect all the representatives, they will sometimes manage to prevent any at all from being elected, by moving, when a larger number of their party happen to be present, than of the other, to send a smaller number than that to which the town is entitled, and so place the majority party in a trying position, with more candidates on their tickets than they can elect, without knowing which to select and which to leave out. I remember an incident connected with this subject, where a very distinguished gentleman, a resident of this Commonwealth, who for a considerable time occupied a seat upon the bench, but who was at that time an ardent and impulsive politician, belonging to the majority party in the town in which he resided, played a conspicuous part. It was at a period of considerable excitement in political matters. That town—it was Salem—was entitled to send ten or twelve representatives, and the voters belonging to the majority party came to the polls with their votes all written—for they used written votes in those days, and not printed, and it was a matter involving a good deal of labor to prepare the votes. But a sufficient number of the minority party collected together at the opening of the meeting to overbalance the others, and a motion was made that the town should only send, I think, three representatives; the effect of which, if carried, would have been that the voters belonging to the majority, would not have known which of their candidates to vote for, and some would have voted for one and some for another.

Well, Sir, the gentleman to whom I alluded rose to speak to the motion, and after he had spoken in opposition to it for some time, and having exhausted what was to be said about it, finding that the voters on his side did not come in, like the minister of which my friend from North Adams, (Mr. Dawes,) told us, he began "to scatter," and went on in his speech thus: "Mr. Moderator,—Some philosophers have doubted whether there was such a thing as matter," [laughter]; and then he went on at great length to prove that this theory of Bishop Berkeley was unsound and fallacious, and so continued until he found that voters enough upon his side—whom he had sent out friends to rally and bring in—had come to defeat the motion, when he closed with, "Mr. Moderator, having now accomplished the purpose for which I rose, I will conclude my speech." That is the kind of debate which took place in that town-meeting, and no other debate or deliberation ever occurs in the town-meetings for the purpose of electing representatives to the general court. Now, Sir, I ask gentlemen to look at this subject, and tell me if it would work any serious disadvantage to the towns of the Commonwealth, to apportion them into districts, for the purpose of electing representatives? I ask any member of this Convention who is acquainted with the character of these municipal corporations, to say if, by dividing the State into representative districts, as nearly equal as may be, you would effect any serious inconvenience, or in any way destroy the character of those municipal institutions? Sir,

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those who know best, know that it would not. It would not hurt a hair of their heads. They were not created for, and do not exist for, the purpose of choosing representatives. The electing of a representative in one of those towns is nothing more than a mere opening of the polls for the voters to deposit their votes, and the same thing will be done precisely under a district system. The people will have the same opportunity of voting as now, and the same opportunity of discussing the same questions in town-meetings that are discussed now. They can discuss the qualification of voters, and the merits of the several candidates, precisely the same as now, that is, not at all, there. They can levy and collect their taxes, arrange their school-districts, elect their constables and other town officers, the same as now, and quarrel about their local affairs as much as they please. Why, Sir, I remember one occasion, when the people of my native town were thrown into a state of the most tremendous excitement—yes, Sir, greater than ever occurred at any presidential election—upon the question whether a bell which had been taken down from the “old east school-house,” where it had stood many years before my time, should be put back again. It had been used for a long period for the purpose of calling the scholars into, and dismissing them from, school. At this time there happened to live in the neighborhood a very respectable woman, who had lived to a great age. The bell made a great noise, and disturbed the old lady so much that she applied to the committee, and had it taken down. This raised a very great excitement among the good people of the town. Several town-meetings were held to consider the question. At last some one was so unwise as to say that the mechanics of the place wanted the bell to ring at eleven o’clock to give them notice of the time to go out and take a drink. [Laughter.] That settled the question—the consequence was that the bell was at once re-established.

Now, Sir, if you establish the district system, the people can quarrel among themselves just as much as they please, and just as much as they can now. There may be the same number of town-meetings, those schools, as gentlemen call them, in which your governors for the Western States and for California are reared, as now. But I apprehend the governors which are reared here will not be needed in those States. I apprehend that the governors of California, New Mexico, and of the great empire of Mexico itself, when we shall have reduced her to our subjection, will not come from New England. They will come from a latitude a little farther South than this, and they will be raised to their positions too, by the votes of New England men, as they are in California to-day. There are a multitude of men born and educated in New England, who have gone out there and abandoned all the principles and habits of their early education; all those maxims instilled into their minds in the schools in your towns, and when some dashing Southern politician, who can outstrip them in making stump speeches, sets himself up as a candidate for office, he will carry away all their votes. I apprehend the gentleman indulged a little in the fanciful when he spoke of the governors of these territories being educated in and by our system of municipal corporations.

But, Sir, the gentleman from North Brookfield, (Mr. Walker,) and the gentleman from Manchester,

(Mr. Dana,) have a great horror of caucuses, and the caucus system. They say that if you provide for dividing the State into districts, it will greatly multiply the number of caucuses, and throw the whole system of our elections into their hands. Now, Sir, it seems to me a little strange that they should begin to use this argument at this stage of our proceedings, when they have already provided for twelve or fourteen caucuses every year for the nomination of your county officers, sheriffs, commissioners, treasurers, and the like; when they have provided for forty more caucuses for the nomination of a senator in each of the forty senatorial districts into which they propose to divide the State. There can be no difference in this respect between the town and district system, unless it be the difference in the number of representatives provided for by the different systems, and as the number of districts would be decidedly less than those of the towns, there would be fewer caucuses under that system. But again. I want those gentlemen who see so great evils and so much corruption resulting from the caucus system, to tell us what they would substitute in its place? How are you to conduct the elections—how are you to provide candidates for your governor and State officers unless you have a caucus to nominate them? They are nominated by conventions of the people which are nothing but caucuses. Now that you have multiplied your officers to be elected by the people, I want to know what plan you are going to adopt to provide candidates for those offices? How will you get your candidates for your attorney-general, your treasurer, your secretary, your auditor, and your councillors, (unless you determine to abolish them)? If you are going to abolish the caucus system I want to know what you are going to substitute for it? Sir, is there any reason for this great outcry against caucuses? Can you carry on the business of the Commonwealth without caucuses? Has it ever been carried on without them? Can the people of this Commonwealth elect these officers without them? It cannot be done and every-body knows it cannot be done. I am very willing to admit the correctness of what the gentleman for Manchester, (Mr. Dana,) has said of the manner in which these conventions are held and their business is conducted, making some little allowance for the coloring. I am ready to bear testimony of my own party in that respect that it has not always been an exception to the general rule, but unless some one can bring forward some system which will accomplish the same good results without the evil, I can see no reason for rejecting them. How many men were elected to this Convention without caucuses? Was this Convention organized or has its business been conducted without caucuses? We know it has not. How many men have been elected to your House of Representatives without caucuses? When was the governor of this Commonwealth elected without caucuses, except it may be during the era of the Revolution and a little time afterwards? How can your elections go on without caucuses? They cannot. There is no system that can be substituted for it which will answer any better purpose, and therefore I say that all the talk about the dangers of the caucuses that are to result from the adoption of the district system, amount to just nothing at all, for they will not be affected at all by the system, and gentlemen know it as well as I do.

Then there is a great humbug—I can call it nothing else—raised here about “centralization.” Well, Sir, that is a term, as it has been applied, that I could never thoroughly understand; I certainly cannot comprehend it, as applied to this subject. But gentlemen gravely tell us, that if this district system is adopted, it will not be very long before the political power of the State will all be concentrated in the cities; well, Sir, if the people of the Commonwealth collect in the cities to that extent, I see no reason why it should not be concentrated there. I go for the equal representation of the people, and I apprehend the people know their own business better than we can instruct them, and if they find it for their interest to come to the cities to live, I see no reason why they should be disfranchised for it, or why their political rights and importance should depend on their social habits. If three-quarters of the people of the Commonwealth choose to come to live in the city of Boston, and the other quarter in the city of Lowell, or that of Worcester, who is to say them nay? and why should they lose their political rights for that reason?

Again, we have been told something about Boston and Boston influence. I believe we have never heard the words, but I am surprised that I have not, of Boston aristocracy and Boston centralization. Well, if the people choose to centralize themselves here in the city of Boston, is there any one to forbid it? Sir, if there is a man here, who will stand up in this hall and tell me that the people of the city are not equal in intelligence, and should not be politically equal to the people of any other portion of the Commonwealth, I stand here to deny it. And how much have we heard of the rich men of Boston. I have not forgotten the remark of a gentleman upon this floor, that you might take a thousand of these rich men—I am not sure that he said of Boston, but from what followed he must have meant so—and lay them quietly in the classic shades of Mount Auburn, their money would be left behind, and they would not be much missed. Let me tell that gentleman, that within the year past, there have three of the rich men of Boston been laid in those classic shades. I allude to the late Amos Lawrence, Robert G. Shaw, and Thomas B. Wales, and if the gentleman will point me to three men in the Commonwealth of Massachusetts, who were more honorable and beloved in their lives, or who have left a more noble and glorious reputation behind them, I will fall down and worship them. Sir, their names will be remembered with honor when we have passed away and most of us are forgotten, and be deservedly bright, because they were faithful in their day and generation, and calling. Who are they that have endowed most liberally your universities, your colleges, your hospitals, and other charitable institutions? Have the rich men of Boston contributed less, in proportion to their means and ability, than the people of any other portion of the Commonwealth? I should be glad to see the men who have done it. No, Sir. Boston is as proud of her rich men as she is of her political men. I need not go over the names of her Perkinses, her Lowells, her Phillipses, her Lawrences, her McLanes, her Lymans and her Lees—but I almost owe an apology for enumerating these names, for I should scarcely know where to stop were I to undertake to go over the long catalogue of those Boston worthies.

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Sir, I should hardly know what to say, when I go to render an account of my stewardship to my constituents, the shipwrights, the seamen, and that great influential class, the intelligent mechanics of Boston. When I go to the foreign population, to the Catholic population of Boston, if the gentleman pleases, what am I to say to them? Must I tell them, that in this land to which your laws have invited them; this land, which, on an occasion not more than three or four days distant—the 4th of July—we shall hear lauded to the skies, as the home for the exile and the asylum for the oppressed, is not a land of equal rights and privileges? What am I to say to this large class of foreigners? Must I tell them that they may come here, but they must be disfranchised as soon as they come. And may they not reply, “Do not your laws promise to protect us in all our rights? Are not we industrious? Do we not do your work which there is nobody else to do? Are not we striving to rise, morally and intellectually, from that condition to which we have been reduced by ages of wrong and oppression, as much as possible, and if we are not able to elevate ourselves to a level with you in this respect, in our day and generation, do we not look forward to see such a position obtained for the rising generation through the aid of your public schools, and the means of education which you have made free to all, and must we be disfranchised for this? Are we to be deprived of all participation in the affairs of government for this? Sir, there is a delegate in this Convention from the good city of Boston, not now in his seat, who resides in South Boston, and employs a very large number of mechanics, and there are several other equally worthy gentlemen, his neighbors, whom I could point out in this city, and who also employ large numbers of mechanics in their machine shops, in their founderies, in their engine establishments, on railroads and the like, who, with their workmen, are among the most intelligent and worthy portion of the people of the Commonwealth, with all due respect to your agricultural interest, of which we have heard so much in this Convention. I am not afraid to make the comparison with even them, and they are men who know their rights as well as any body else, and they are entitled to as much political power as any other portion of the people of the Commonwealth. The gentleman from Lowell, (Mr. Butler,) said, let them be represented by the old homestead, by their fathers and brothers who they have left in the country. Well, Sir, a great many of them have no old homestead, and never had any here.

Very many of them came from other States, from the democratic State of New Hampshire, and are they to be told, by these democratic gentlemen, when they come down here to seek employment, that they should leave the political power in the hands of their fathers. We, in this “nineteenth century,” have the old American prejudice of preferring to vote for ourselves. We have something left of that old spirit of 1776, which did not care to have their fathers, who lived across the waters, make laws for them, and which did not like to have their great father send his royal governors over the water to take upon them the right to make laws for and govern them. We want the power in our own hands, and we have a right to it, and mean to exercise it.

Here the hour having expired, the hammer fell.

[Cries of go on, go on, go on.]

The PRESIDENT. The gentleman's hour has expired, but as the Chair hears no objection, the gentleman will be allowed to proceed.

Mr. CROWNINSHIELD. I had nearly finished what I intended to say, and I hardly, like, by the indulgence of the Convention, to consume more time, but I will be very brief in what I have yet to say, and I am not quite sure whether the few remarks I shall now make will be strictly in order.

I was about to say, that we have adopted several propositions in this Convention. In the first place, we have adopted the secret ballot, and we have told the town of Berlin to elect a delegate in a certain way. In the next place we have pretty much decided that the present plan of representation needs amendment, and that the town representation is the true system, and that the smaller towns shall not be entitled to an annual representation. We have established the principle that there shall be no payment of a tax required as a qualification of voters in some things, and that it may be required in other things. What I have to say is this, I do hope, before we shall go away from here, that we shall lay down some principle to which we shall adhere, and which can be adopted and fully carried out and maintained. In regard to the election in the town of Berlin, we invited the town of Berlin to send a delegate here, and requested that they should elect him in a totally different manner from that in which a large number of delegates from this city and other cities and towns were elected. Does not every member of this Convention know that the delegates from the city of Boston were elected without any reference to the secret ballot, and that it was scarcely used at all in our election? Why not carry out the principle adopted in the case of the town of Berlin, and send us all home to our constituents. In regard to this secret ballot, I should be exceedingly puzzled to answer my constituents the questions which they might see fit to ask me in regard to it. For my own part, I am free to say that I care but little about it. If gentlemen will let me vote my own way and manner that is all I care about. If my constituents should insist upon knowing whether it was a good measure or not, I should be obliged to tell them that a majority of the Convention, I suppose, thought it was good. But why, they would ask, apply it in the municipal elections of the cities, and not apply it to the municipal elections of towns? Will any gentleman of the Convention put an answer in my mouth to give them upon that subject. Why do they not carry out the principle in all its bearings, and why do they establish the principle as to some elections and not as to others, and why are we of the cities blessed with more than our fair share of this good thing? Is it a compensation for the loss of our equitable share of representation? If so we do not thank them for it, or consider it an equivalent. Then they will say that you have established a principle of representation that is upon the hypothesis that what has been recommended by the Committee of the Whole is to be the system established. I shall tell them there was one difficulty in our present Constitution to be remedied, that there were many small towns during certain years that were not entitled to be represented at all. Do you not think that is an evil? I think it is. Does your new Constitution contain the

same provision? I believe it does, but not to the same extent perhaps! [Laughter.]

Some gentlemen think that 1,200 is about the right number that should entitle a town to send a representative, while others think that 1,000 is about the right number. And some again prefer another standard. It all reminds me of a nursery story which I used to sing to my children, or rather which my children used to sing to me:—

“Little Johnny Pringle had a little pig,
It was not very small and it was not very big.”

I think that will apply very well to the proposition now pending before us, which will cut off several towns from annual representation, and which contains a standard of population by which towns are to have an annual representation, which is neither very small nor very large, but which is just about right, as some think. Then as to the principle of requiring payment of a tax as a qualification for voters. The gentleman for Berlin, (Mr. Boutwell,) told us, and I took a note of it at the time because I thought it an extraordinary statement, that if you only made provision in the Constitution that there shall be no tax qualification required in the election of governor, lieutenant-governor, and the other officers of state, these being the *major* things, that it will be well enough to make no provision in regard to the town officers, but leave that to the legislature to determine, as those are the *minor* matters. I differ from the gentleman entirely in that respect. In the first place, I say that there is no principle at all established. I remember when I was a student at law at Cambridge that we were taught to say that there should not be one law at Rome, another at Athens; one law now and another hereafter, but one law, both eternal and immortal, shall have force among all nations and in all time. I believe that it is Cicero whom these gentlemen have quoted so much, who is its author. He says:—

“*Non erit alia lex Romæ alia Athenis, alia nunc, alia posthac, set et omnes gentes et omni tempore una lex et sempiterna et immortalis continebit.*”

I believe these are the words of Cicero, if not, those gentlemen will correct me, and they are a great deal better than any words I can say. Gentlemen say, if we establish the rule as to the qualifications for the governor, lieutenant-governor, and senators of the Commonwealth, we can leave the *minor* matters to the legislature, who will make them all right. That is the statement about which I wish to say something. I agree that the question who shall be governor of the Commonwealth is an important question, and that the questions relating to the other State officers, are of an important nature; but I humbly submit that the questions with which the people of the towns have to do in their town affairs, are of as far more importance to the true interests, welfare and happiness of the people, as it is possible to conceive. The business of small municipalities and great municipal corporations, comes home to us every day of our lives and every step we take. They provide for the education of our children. They lay our taxes, light our streets, lay out and repair our highways, build our school-houses, and have to do with the most important every day affairs of our lives; but it may be ten years or half a century before any law is passed

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in the legislature, which very nearly affects any particular man. I am not disposed to undervalue the importance of either, but I do think the gentleman for Berlin, (Mr. Boutwell,) was in a great error when he said that the important offices of the State were of more consequence than these minor ones of our towns. In regard to the town of Berlin, we have said, that the secret ballot ought to prevail. In regard to the city of Boston, I stated that we came here without reference to the secret ballot. Are we here by sufferance or are we here by right? If the former I would not stay a moment, but take my hat and walk out. The Convention did not choose to meet that question. Is the secret ballot law a good measure? The gentleman from North Brookfield, (Mr. Walker,) tells us that it is a most excellent provision and claims it and rightly so, as his thunder. Why does he not carry it out?

I have already said what I intended to say in regard to the principle of representation. One word more upon the 'great principle of centralization, which is supposed to be exerted by the large cities, and I have done. In regard to that matter, I appeal to the experience of every gentleman in this Convention, who has had any legislative experience at all, to lay his hand upon his heart, and tell me whether he believes the city of Boston, Lowell or Salem, have ever exercised an undue influence in the legislation of the Commonwealth. Since I have had anything to do with public affairs, it has been directly the reverse. If, when a measure has been pending in the general court, that seemed likely to succeed when it started, it could be satisfactorily shown by its opponents, that it was a Boston measure, down it went at once. We come here, thirty or forty representatives from Boston, many of us strangers to each other, and I venture to say there is not a man here representing the city of Boston, who knows all his colleagues. For my own part I say, that there are several gentlemen representing the city, whom I do not know even by sight. I was introduced to one of my colleagues for the first time in my life a day or two since in an omnibus, and although I had become familiar with his face, sitting near him as I did, yet I did not know him even by name. And so it is always in the legislature. We come here strangers to each other. We are not much in the habit of practising a system of caucusing. I have found it uniformly to be the case, that the delegates from the city of Boston possess less influence than those of any other part of the State, in the House. How is it with members from the country? Country gentlemen come down here, and remain in the city during the greater part of the session. They meet together at the hotels and their boarding-houses, and they hold sort of a caucus every night while they are here. The course of legislation, when I was first a member, before I was let into the secret, used to puzzle me exceedingly. We would carry or reject a measure one day by a decided majority, and the next morning some one would move a reconsideration, which would be carried by one hundred majority, perhaps, without a single syllable being said by any body. The fact was easily accounted for when I understood the true state of the case. It was done by private caucusing at the boarding-houses. I dare say, if I lived thus in a boarding-house when I was a member, I should

have spent as much time in this way as any other. If they can get more information by talking out of doors among themselves, it is so much the better; but when gentlemen make the charge here, that the city influence is a pernicious influence, which overawes and controls the legislature, I undertake to say, from the experience of four years, that it is not true. Then there are several cities of the Commonwealth represented in the legislature. Will gentlemen tell me that all their representatives that come here are of one mind? How is it in this Convention? Do the cities of Boston and Lowell unite to effect any common object? No! Do the cities of Boston and Worcester? No! Salem and Boston? I believe we happen to be agreed, and we have been, for a great many years, since that old association and acquaintance which was formed in the times that tried men's souls, when the city of Salem stood up so nobly to support the inhabitants of Boston, in the time of their distress, and refused to avail themselves of the advantages so artfully offered to them by the royal government. I believe the association then formed, has never been severed from that time to the present. The cities of the Commonwealth never have, or never will unite upon any common object. Therefore, when gentlemen talk about the centralizing influence exerted by cities, I ask, do they not continually counterbalance each other? We all know that is the case, as experience shows. Let me say a word about the statement made here of Boston owning Lowell. It may do very well to say so, but every-body knows that it is not true. That Boston capital, wealth and enterprise, in a great measure, established a prosperous business on the banks of the Merrimac, from which grew up that great city of Lowell, nobody will deny. A large portion of the capital and the enterprise which founded the city of Lowell, did come from Boston. So Waltham, which you represent, Mr. President, has grown up and flourished under the influence of the capital and energies of Boston men. Would the gentleman from Lowell desire that the property which belongs to Boston should be withdrawn from that city, and her wheels stopped, and her shuttles stand idle in the looms? Do you, Mr. President, as the representative of the good town of Waltham, desire that the property which is owned by Boston men, in that town, should be withdrawn and her wheels, shuttles and looms, stand idle? I apprehend not. Do the people of this Commonwealth desire that the capital of Boston, or that of any other city and town in the Commonwealth, should be annihilated and swept away? Do you want to see your public improvements stopped? The gentleman from Lowell would be the first man to turn around to me and tell me no. But I have already trespassed upon the indulgence of the Convention too long, and it is time I should conclude. Thanking the Convention for the great patience with which they have listened to my desultory remarks, I will now take my seat.

Mr. FOSTER, of Charlemont. Mr. President, I rise to answer the fifty questions which the gentleman from Boston has just asked, upon the single point of numerical equality in representation. I answer them in one word, and that is the word "majority." Sir, the majority of the people supersede equality. That is the answer, Sir. Refer this, or anything else to the people of Massachusetts, and what the majority say shall

be, that is the law of the land, by the general consent of all parties, and by the principle of state governments. That is a full answer to the talk about equality. You may talk about what may be done, but the people decide what they will have, and that decides the question. That is exactly it; and it is the first great truth that I brought from home with me, to vote for that which I think the people will sustain. What is the use of spending hours and days theorizing upon equalities, when the people will not accept such theories and systems of equality? No, Sir, they will not take it, and why spend our time here theorizing about it till the sun goes down on the last day of July? No, Sir, let us act like men of common sense; let us look at the thing which we can do, and not at what we would do. The question here is not what we would do, but what we can do, and nothing else.

If all the people of Massachusetts were to come down here together on a sudden, from up somewhere, a new and fresh creation, then we might legislate and say what we would do, but we have a history behind us, and public opinion and the heart of the people behind us, and we must consider what is to come in the future. Now, Sir, I am ready to do what I can do. I will vote any way that will be suitable to the condition of this State, so far as I think the people will accept it. I must say, that I am very sorry, and I have now to express my regret, that the member from Waltham, (Mr. Banks,) said in his seat, there was one thing we must accede to; and the gentleman from Pittsfield, (Mr. Rockwell,) said the same thing; and the gentleman from Boston, (Mr. Crowninshield,) said the same thing. I cannot think that it is so. These gentlemen say—the district system must come; I cannot believe that.

I wish to say one word on that point, by way of giving a reason for my opinion. If the people of the country must receive this, they will of course, submit to it. I was at Inversnead, on Loch Lomond, in Scotland, the night on which the intelligence came that the American yacht had won the prize in the British waters. There were present English, Scotch and Americans, in considerable numbers. The subject engrossed the conversation of the evening, and went round with great glee. As usual, I was a silent listener. It was concluded by the English and Scotch that the race had been fairly won, and there was no use in making up wry faces about it—"we will take it with a quiet countenance and give the Americans all due praise," said they. Now, I say, if the country members must take this district system, they will at last take it in good heart when it comes. But, is it true that the district system must come? The large cities—and I will name Boston—I believe are resolved that the district system shall come, and they will conquer us if they can. I remember when I was in the State of Georgia, a good member of that State, said he had a brother who had married a woman who was determined on the supremacy in the family. Well, Sir, he said that his brother had all along demanded equality, and that that had been the strife with them for seven years. He said, that the mother of this good wife was overheard one day giving her daughter a little private and useful counsel, and she was heard to say, "Stick to him, daughter, it took me twenty years to conquer your father." [Laughter.] "Stick to him."

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I wonder if the members of this Convention are ignorant of the past, and indifferent to the future. Can we not read the past and foresee the future, to some extent? Do you not know that Ninevah was the capital of the first universal empire, and Babylon the capital of the next, and that finally Rome conquered the whole world? Perhaps Boston aspires to something like the same position in the State of Massachusetts. This reminds me of Peter's keys, and leads me to inquire where they came from. They are hanging up in the citadel in the centre of Rome. The priest obtained these keys because he was bishop of the metropolitan city. They were gained by city supremacy. I remember once having a conversation with John C. Calhoun on that subject, and he said to me this idea of Peter's keys is the most curious piece of history in all this world. How came he to obtain them? That is the curious question. And I do not know how Boston is to get the supremacy with regard to this district system. I do not think they understand exactly the character of the people of Massachusetts. I am a countryman at heart, and I know how the hearts of countrymen beat throughout the State. It seems to me that things have changed with the common people since Rome conquered the world. Bonaparte's schoolmaster once ordered him to burn a letter which he had written. When the old schoolmaster was introduced to Napoleon, after he became Emperor of France, he said to him, "The times have changed since the burning of the letter." The people of Massachusetts are a deliberating people, they are a people of attachment to forms, and I have no doubt they will hold on to their town representation.

The hour of adjournment having arrived, the Convention adjourned.

AFTERNOON SESSION.

The Convention reassembled at 3 o'clock, and resumed the consideration of the

Orders of the Day.

Mr. FOSTER, of Charlemont, resumed his remarks. He said:—

Perhaps, Mr. President, I should rather listen to those distinguished gentlemen to whom I referred this morning, than to undertake to express my own peculiar views. I know that many of those gentlemen agree with me. The distinguished gentleman from Northampton, (Mr. Huntington,) did not directly enter into the argument on the point upon which I was speaking when the Convention adjourned this morning, yet the whole of his remarks went to sustain the idea that the people of the country will adhere, and succeed in adhering to town representation. Now the country people, as I have had occasion to say in this house a few days ago, love Boston, and will never cease to love Boston. There are, however, some interesting thoughts respecting the working of this country feeling. And one idea which seems to me to be particularly working in the minds of the people in the country, is the conventional idea. The gentleman from Waltham, (Mr. Banks,) took occasion to say that the smaller towns would of themselves come together in the district form. That result will not come in my opinion. The time is not coming

within ten years, when they will act together in a conventional manner in electing members of the House of Representatives. The truth is, towns love location. It cannot be so much the case where the population of the towns are of a sea-faring character. My sympathies are strongly with the men of the sea; but, in all the towns west of Boston, the people love their corporations and their towns,—and they have been accustomed to elect their own members, and cannot agree to work together under the district system. It is not according to their views; they cannot do it, and they will not. It is with our country towns as it would be with an army of ten thousand men, divided into companies, which had always marched and fought together,—if you should decimate each company, by taking every tenth man in each company and forming a new company, and then by taking every ninth man, to form another, and so on, they would not be fit for the battle the next day. They could not go shoulder to shoulder as strangers. Our country towns are in the habit of seeing their representatives return among them, and converse with them, and sympathize with them. It is not so with our members of congress,—they are men at a distance from the towns, men unknown to many of the people who vote for them; but the representatives of the people here in this Convention, and in the legislature, are our neighbors, and our friends and associates, and this town representation will continue to adhere to the feelings of our country people all the way through their history.

Then there is the religious idea. All of us have our religious feelings, and religious associations, and all of us have ideas of reform which we must contend for in some shape, while we meet the different ideas of others. We wish the cheapest, and at the same time the most radical, reforms. Possibly, Mr. President, you and some gentlemen in Boston have no idea of the interest which the last session of the legislature excited in the minds of the country people respecting what we have to hope for or to fear hereafter, from certain city ideas of reform. The city members on this floor are not to blame for any of these feelings in the minds of the country members, in consequence of city opposition to reforms which are very clear to the country people.

Now, Sir, if Rome conquered the world it was in an age of little inquiry in the country. It is now very different in the country. The country people think, they reflect, they meditate and act uniformly for their own interests. They will adhere to their own interests and will work out their own systems, and adhere to the principles on which they have already established their corporations. This Convention is not a crisis in this State. It is not what we shall do here that will decide the question for the people of Massachusetts as to continuing their system of town representation. This is a question which will still go on, in spite of what we do, and work out its own idea among the people of Massachusetts hereafter. I am of opinion that the motion of the member from Plymouth, or something like it, will answer for the country. I am of the opinion that there are two hundred and fifty members on this floor who will be in favor of something in that form.

Mr. SHELDON, of Easton. This is the first time that I have asked the indulgence of this Convention on any subject, save to move an ad-

journment once or twice. Thus far I have been a silent listener, and a silent voter. And, Sir, I have been highly edified and instructed by the discussion which has passed in the Convention. Quite likely it would be for my interest, and the interest of all concerned, for me to remain silent through the whole term of the Convention in all its debates.

But, Sir, after having, with a good degree of patience, listened to the eloquence and argument of others, I have concluded that I also will show my opinion. I have not the vanity, Sir, to suppose I shall add materially to the eloquence or arguments given here. Already, I hear it said the climax of the one and the profoundest depths of the other have been reached. Yea, Sir, and that the whole subject in its length, breadth, height and depth, is fully and more than fully exhausted. It may be so. And I duly appreciate the feeling of those who thus think. I suppose the minds of all, or nearly all, are made up on the subject before us.

Then, it may be asked, why prolong the debate? Sir, I would not do it if I supposed the Convention were ready to take the final question. Perhaps I may, as well as others, take a share in the crime and responsibility of wasting the time, if it be thus. Besides, by uttering my views, I may derive some benefit from the animadversions of others. If wrong, I may, by their superior wisdom be set right. I have also, a vote to give on the pending question. I would give a just vote, and I would have it appear just to others. Differing, however, somewhat in my opinions of justice from some gentlemen who have taken part in this debate, I feel it my duty to express them, hoping in this way to gain light and knowledge in relation to duty. I ask, therefore, the indulgence of the Convention for a few moments.

Now, Mr. President, as I view the subject, our object should be to form a basis of representation which will be just, and one which will best secure the interests of all concerned—a basis of representation which will most equally distribute the governing power over the whole State. These are the objects which I shall endeavor to attain, and which I verily believe this Convention should labor to attain in their debate upon this question. I say, in the first place, our course should be just and right. This, Sir, is what I preach, and this is what I *should* practice, and this is what we all *should* practice, whether we preach it or not. The great question before us is, what is necessary to do justice to all? But, if I mistake not, a reply has been already given. Population, numerically considered, is the only basis of a just and equal representation of the whole people. That is one prominent sentiment which has been presented and advocated by nearly every one in the Convention who has spoken upon this question. If this be the only true basis of representation in the Commonwealth of Massachusetts, it should be adopted, let the consequences be what they may. But, Sir, is it so? The question is whether numerical population is the only just basis. If it is, I submit whether we have now, ever had, or ever can have, a just and equal basis of representation in this State, or in these United States. Has any city or town in this State ever been represented equally, as to its population, when compared with the population of other towns in other sections of the State? Can you find two towns that are equally represented as it respects

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population? There are some towns containing only a few hundred inhabitants, while others have a thousand or two thousand, and yet each sends the same amount of representation. Can you establish an equal representation in this manner? Suppose you take a town with five hundred inhabitants, and you decide that that town is entitled to one representative. If you give equal representation upon the basis of numerical population, you must give one representative to every five hundred inhabitants in every town and city in the Commonwealth. If you do not, Sir, you depart from and give up the numerical population as the only just basis of representation; and the first instant that you depart from the strict numerical basis of population, you depart from the principle that representation is to be based upon population entirely. Now, I ask again, have we any equal representation upon the ground of population? Can there be any? How will your proposed senatorial districts be? Are they to be divided into so many districts, and the number of inhabitants in each and every district counted out, equally and precisely the same? If they are not, they are not represented equally upon numerical population; just so far as you depart from the equality of numbers, just so far you depart from this principle. How is it in relation to congress men? How is it in relation to the representatives, and every department of the government where the officers are appointed? You are necessarily obliged to depart from this basis, and the same is true in relation to the general government of the United States. The very smallest of the different States has an equal number of senators with the very largest State of the Union. Their representation is not based in this respect upon numerical population. The object of this was said to be that it was designed to form a government of states on account of their relation to the general government as states. Very well; but is it not a departure from that principle which has been announced here as the only equal and just principle of representation? I care not what reasons you may give for that departure; the argument is, that true numerical population is the only just foundation for a proper representation. Suppose it was equally divided throughout the whole Commonwealth, and the inhabitants were all exactly counted out, giving to each town and city an exactly proportionate representation, I ask how long would it remain so? How long would it be before the births and deaths, and the influx of population from one place to another would destroy this equality? If population numerically is the only just and equal basis, then, I submit whether the whole framework of our State and the United States governments is not unequal and unjust, even at the present time. I submit too, Sir, whether they ought not to be overturned, and the idea of ever having a righteous government abandoned. Why, Sir, that class of men who have been styled fanatics, because they wish to overturn our government on account of its injustice, are in fact right, on this principle. If there is "monstrous injustice" when our government is not based upon an equal representation, then this government stands upon injustice and ought not to remain—it is contrary to right, and contrary to the best interests of the community.

Well, Sir, if we are obliged to give up the strict numerical population, not as a basis, but as a

only basis of an equal and just representation, then the question arises, how far may we, and how far do circumstances require that we should depart from the principle of numerical population in order to get a good basis of representation? All seem to agree that there is a departure, and that there must be a departure—there will continue to be a departure; and the question is, when shall we arrive at the proper point to stop? How far is it expedient and best to depart from this principle? If it is a good and a practical principle, we should adhere to it; but if we cannot adhere to it strictly, how far may we deviate from it and give it up, and what shall we fix as the true standard, to enable us to secure the best interests of the community? What must come in to aid and relieve us in this situation? It is evident that there is a great difficulty in fixing a basis on numbers, because we cannot agree as to the manner in which we shall regulate these numbers, so as to give satisfaction to the people in all parts of the Commonwealth. I answer, in the next place, the interests of the people as individuals and associated communities. I admit the importance and the necessity of founding, in a measure, the basis of our representation upon numbers. I am perfectly willing that we should carry that as far as we can, but in connection with that system we must consider the interests of those who are to be represented. Your representatives ought to be so elected and distributed through the State as to secure and promote these interests in the highest degree. These interests are various. You have your merchants, your bankers, your manufacturers, your capitalists, your railroad companies, your printers, your mechanics, your farmers, your seamen, and numerous other interests. You also have, Mr. President, your cities, towns, and corporations, and your civil and religious rights and privileges, and innumerable interests besides, connected with the position and the circumstances of the different localities and sections of the State. Well, Sir, these interests are in your cities and towns all over the State—not in your cities alone, but in your towns also. They are in every body corporate in this Commonwealth, and in each as a corporate and a separate community. The cities would not be willing, neither ought they, to give up their interests wholly or unduly to the care of the towns; we do not ask it or desire it. No method should be adopted which will take from the cities their just rights; neither should the towns be deprived of their rights for the benefit of the cities. In these respects there should be a mutual action, a mutual concert, a mutual effort, to promote the interests of the cities and the towns together. Now, Sir, what shall be done? I answer, that we should elect so many representatives, and distribute them over the State, as is needful to look to and secure the interests of the whole community. Now, I take it, from the statements of all the gentlemen here, that our government ought to provide for the interests of all the different portions of the community. Will not the city of Boston, with the number of representatives which we propose to give to her, have representatives enough to look to and secure her interests? I put the question to any gentleman who represents that city, if thirty representatives are not a sufficient number to promote the interests of the city of Boston, and could they not do it as well as fifty or a hundred members? And

so with every other large city and town, or even the smaller towns; do we not propose to give them a representation which will secure their interests? And certainly this they ought to have—all of them. If nothing but the true and necessary interests of the people were cared for,—and these on equitable principles,—the population basis might be disregarded altogether, and yet each city and town might have that number of representatives which is necessary to secure its interests. But as things are, it is needful that both come into consideration as elementary parts of the same system. We have a population, and that population have personal rights and interests also; and both of these being inseparably connected, must come into our calculations upon the representative basis. Nor is this all. The people and their interests need regulating. They must be so managed as not to conflict with each other in their various aspects and circumstances. Hence the importance and the necessity of government. A people diverse in their feelings, opinions, pursuits, and objects, need a general government. In order for this they must compromise some of their personal rights and privileges for the good of the whole. Unless they are willing to do this; unless the cities and the large towns are willing to compromise some of their personal rights and privileges, there could be no union; there could be no general government organized or sustained. This compromise may be as to their numerical rights, or their interests, or both; doubtless both. This may be requisite in order to a just and beneficial administration of government; and if so, it is fit and proper. The highest individual good is secured by being so connected and governed. Thus, the people being too numerous to conduct their concerns in an assembly of the whole, relinquish this personal right, and delegate their power to a part of the people. Hence comes a representative government, as it is termed. To these representatives the power of making and directing the execution of the laws is committed.

Now, Sir, as this government has to do with the persons and the interests of the whole, in their individual and social relations, it should be so distributed as to secure the persons, rights, and interests of the whole. Here another question arises. How shall this be done? It seems to me that this may and should be effected by distributing the administrative power of the government over the whole State as equally as possible.

Here comes in another element, which will materially affect the basis of representation. If I do not greatly mistake, it will do much to justify, and even require a considerable departure from numerical population, as the only basis of a just representation. Where, then, lies the power of the government? Solely in its numbers? I think not, Sir,—at least not wholly, by any means. Where does it lie, then? In certain localities and circumstances of the community to be governed, in a very considerable measure. I venture to say, Sir, that ten men, in certain positions, may exert more influence and power in and over every government, than twenty or thirty in other circumstances and locations. Central locations, wealth, talent, corporate privileges—these, with many other things, have a mighty power in directing and controlling the government in various respects. This power passes more or less by steam, by water, by money, by relative associations, through all our towns and villages, over the length

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and breadth of the State. Take, for instance, if you please, and only as an instance, the city of Boston, or any other large city, where is concentrated wealth, talent, and influences of this description. The influence of the social relations, the influence of wealth and talent, goes out into all parts of the community, and bears upon the towns, and especially upon the leading portions of many towns of the Commonwealth. They exert an influence not only at home but abroad, an influence unspeakably more extensive than other localities of a similar nature can exert. In whatever portion of the State these exist, they give an almost overwhelming advantage over those sections of the State where similar or less influential localities exist.

Now, Sir, should the sources of power become corrupt and corrupting in their influence, they would soon poison and destroy the vital energies of the body politic. It is through the instrumentality of these corrupt and corrupting influences, that almost all the republics of the world have been overturned and destroyed. Now, Sir, how is this devastating tide to be checked and regulated? I do not say that it does now exist, but only speak of it as a thing which is possible, and one to which we ought to look, in the progress of things, in this, as well as in other governments. I see nothing to be put against this but numbers. There is not the wealth, there is not the local position, there is not the talent, there is not the powerful influence in the outer sections in the State, that there is concentrated in the city, and in the central localities. It must be acknowledged, and doubtless will be, that there is nothing to oppose to these corrupt and corrupting influences, but the numbers which can be sent up from those towns. Besides, Sir, the governing power of the small towns is much lessened by their different opinions, interests and merits. The argument seems to have been founded on the supposition, that these towns are to exert their combined strength and influence in opposition to the larger towns and cities. But it is not so in fact. For various reasons—differences of opinion, interests and measures, in the various small towns scattered all over the State, divide them, and some are of one party, opinion and feeling, and some of another. They, therefore, in a great measure, counteract each others' power, influence and efforts, in the management of the affairs of the government. Other sections are more powerful, by their union, in this respect. Take some of the large cities, and their representatives upon this floor, or upon the floor of the legislature, may all be of one political opinion, perhaps. That I do not object to. I do not speak of it as being wrong, if the people choose to elect them. Well, they come here, and they may not know each other, but I venture to say, that if an object of interest comes up before the legislature, they will know each other, and many others will know them. A common interest will bring them together. But I do not object to this. It is perfectly natural, and perfectly right, if they act upon right principles. Each town and city has a right thus to act, if they act righteously in what they do. Now, Sir, I submit, that these things ought to have an influence in determining the question before us; and it appears to me, that with the impartiality and entire destitution of party feeling and designs, which gentlemen have here professed, they will be willing to act upon

such just and honorable principles. Sir, I do not profess to come here without party feelings. I come here as connected with a party that had an object to accomplish, knowing that there was a party in opposition to that object, and calculating righteously and justly to carry out that object, in connection with the party with which I associated myself, so far as they acted justly and rightly, and no farther. I disclaim all unjust party feeling, but that I am not in favor of something in particular, I do not pretend to say or acknowledge. I had an object in coming here, and I wish to carry it out, and I hope it will be accomplished, if it is right, but if not, I hope it will be defeated. Let the numerical population, the interests of the community, and the administrative power of the government be duly regarded by each individual, each town, and each section of the Commonwealth of Massachusetts, and then, I think, they would apply and act on the pure and heavenly principle, adopted by one of the gentlemen representing Boston, as the ground of his efforts here—"Whatsoever ye would that men should do unto you, do ye even so unto them."

These views, Sir, will help us to determine the number of representatives which are needful. They should be as many as are required to secure the personal safety, interest, and equitable government of the whole people. If a large number is requisite, then a large number is the proper and best one. If a small number, is the number which will best secure the personal safety, interest, and equitable government of the whole people, then a small number of representatives will be the best one. On this basis we ought to rest.

The present number is supposed to be too large. The number proposed in this amendment which has been proposed here, is also supposed to be too large. This is a matter of opinion, and we can determine upon it only by expressing our opinions, drawn from what we see exists now, or that may exist in future. There are two general objections to a large number of representatives. One is the expense attending it, and the other is the delay or hinderance in legislation which results from it.

The first objection, is the expense. Well, Sir, we would all, undoubtedly, avoid expense if we could; we would have our government conducted without any expense, either to the government or individuals in the State, if it were possible; but we cannot. That is out of the question. Then the question arises, how much expense is needful? Just as much as is required to sustain that legislation which is needful to secure the personal safety, interest, and proper government of the people, and no more. Who makes this expense? Why, in the first place, the people lead to it by electing the number of representatives they choose to elect; and by the election of that number they say they are willing to bear the expense. What has been done in electing delegates to this Convention? Was not every town and city anxious to elect as many delegates as they could; and having elected them, are not they willing to pay them. If the people are willing to have a large House, they will be willing to pay the expenses of such a House. But I ask again, to whom is this expense paid? Who receives it? To be sure, it is shifted from one portion of the community to another. As respects the amount of wealth, there is an abundance, a superfluity in different parts of the

State, to pay any expense which will be made here at any time in the legislature? Besides, who receives the benefit of the expenditure? The people, either directly themselves, or through the instrumentality of the individuals they send here. I ask you, how money can be better expended than in promoting the interests, and protecting the rights of the person and property of the people?

As to the complaint of delay or hinderance in the business of legislation, who causes that delay? Who hinders progress in our deliberative assemblies? Whoever else may do it, I think, Sir, none of us will attribute it to the members generally from the small towns. That is not generally the case. No, Sir, the members from small towns are, generally speaking, only like silent-jurors, with all long-suffering, patience and forbearance, they listen to the eloquence and arguments of the sapient attorneys, longing ardently for an opportunity to give their verdict. So it is with them, and finally and often they are driven to the disagreeable necessity of demanding the "*previous question*," in order to close up what has become a tedious and useless discussion, and I allow myself to be engaged in the same. I speak not of this body particularly, but of legislative action.

But let me revert to the point of reducing the size of the legislative body. Where shall we begin? Are the cities willing to begin with themselves? Are the large towns willing to cut off a portion of their number? Are the small towns willing to restrict themselves? Is any county willing to do this? Do we not hear objections from all quarters and all parts, that you are going to take from us our rights, and give them to others? All ask for a reduction, but the moment the work is begun each one asks himself how it will affect his own community?

Fix this basis as you may, and I feel sure that the cities and large towns will have their full share in the administrative power of the government. I do not think there is the least danger under any system of representation that you may establish, that the cities and large towns will not have their full share of influence and power—at least equal to that of any other portion of the Commonwealth in proportion to their population. For instance, suppose the city of Boston. I take this city merely as an example. I say, suppose this city has nominally thirty representatives. Are these representatives the only persons who exert power in and over the action of the legislature, while it is in session in this city? No, Sir, no, Sir. I do not forget what the gentleman from Boston, who addressed the Convention this morning, has said, that the representatives from the small towns had, vastly more influence over the legislature than the representatives from the city of Boston. I understood him to say that it is not true that individuals in the city exert an influence over the members from the country in relation to their conduct in the legislature. Sir, it will require pretty strong evidence to convince me that such an influence is not exerted. I believe it is thrown in and around the legislature by the citizens of Boston enough to overbalance the votes of many country members. I may be in an error, but I submit whether the power of Boston in the legislature is not more than a hundred per cent. over her numerical representation? While passing to and from the city, in the cars, I have met with lobby members of

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the legislature, who were telling how they had been here in the city, and how they had operated upon and influenced such and such members of the legislature to vote for this or that measure. Well, Sir, if this has been done in the past, I do not know why it will not be done again in the future. At any rate, I think we ought to make provision for as large a country influence in the legislature as we can without interfering with the rights of the city. Thus it is proportionately with the large and central portions of the Commonwealth. The distant small towns cannot be here in anything like equal proportions; and if they were, their influence would be comparatively trifling. Why, Sir, here are our merchant princes, with their elegant and powerful bearing, our wealthy capitalists, with their all-controlling banking system and operations; our immense railroads, and manufacturing corporations; an *empire*—yes, Sir, an *EMPIRE* of business men—are here in the city of Boston. Why, Sir, gentlemen have told me, in conversation, that they were influenced in consequence of their connection with individuals in the city of Boston, in matters of business. Sir, it is natural, perfectly natural, to be influenced by such considerations. We cannot rid ourselves of that influence. Sir, their power, in this respect, is incalculable, and they know it. I do not hesitate to say that they know it. I am willing that they should know it. I do not object. And they must be something more than men, if they do not labor to sustain and use, too, what they consider their advantage. If they do it not, I think they are different men from what exist in any other part of the State, or any other State with which I have any acquaintance. I blame them not for this. I blame them not for using their influence. I blame them not for using every proper means to promote their business interests. I am not blaming them for anything they have done. I only wish that the credit for what they have done shall go where it appropriately belongs.

Now, Sir, we want some checks and balances upon this power. It does exist. Let it exist. I am willing it shall exist; but while it does exist, we want some power behind it, by which we may check it whenever it shall not keep itself within proper limits. We want it for the good of the State; we want it for their own good. Sir, I believe the city of Boston, and other cities, are as dependent upon the country for their support as the country is upon them, and I think they need some protection. They need these checks and balances to protect themselves against any undue influence, for, in spite of themselves, notwithstanding their general intentions to deal honestly and uprightly with all men, there is a tendency, as there always has been, in every age, and in every section of the country, and in every age and section of the world, to depart from right principles and right purposes. And therefore it is, that we all need checks and balances to regulate our conduct in all respects, and these cities and large towns need them to regulate theirs, especially in this respect; and our only resort, in this emergency, is to numbers. This, Sir, I think, must be our safety ballast in the noble ship Massachusetts. Sir, will you retain this ballast, or throw it overboard; cut her cable, and let her drive before the tempest of overwhelming centralization. You may start at the word centralization, you may reject it; you may repudiate it,

but what is the history of the world? What is the history of our own republic, of our nation? Is not the tendency to centralization everywhere manifest? Is it not apparent in every portion of the country, and is it not apparent in Massachusetts? Our only safety is in numbers, and I am therefore in favor of a good sized legislature, I believe the safety and interest of the people demand it. And I believe the people are willing to sustain it at any reasonable expense. I believe they will be disappointed if many of the towns are deprived of a direct share in the legislation of the State.

But, gentlemen say, they are not afraid of the people of the towns. What then is the trouble? What is the trouble in this Convention? If they are not afraid of the people of the towns, why not give every town a representative, and let them come up here with the representatives of the large towns and attend to the interest of those towns. If gentlemen are not afraid of them, why not let them come up here every year by their representatives, without objection? I ask again, then, what is the trouble? Why, they say the trouble is not with the people of the towns or with the representatives, but with their political aspirants. Sir, I am afraid of the small and the large towns both. I am afraid of all the different sections and localities in the Commonwealth. So long as I know the selfishness of man and his proneness to do evil, I shall distrust them, without a proper system of checks, regulations and balances upon their conduct. I am afraid of any town whether it be large or small. And still more am I afraid of their political aspirants. Whenever an election approaches, they always make their appearance, and I say I am afraid of them from the city as well as the country. I am afraid of their influence in the management of the government, and for that very reason, I would mingle in the legislature, a good share of honest, stable, intelligent, working farmers, who are not political aspirants; who come to do the business of the people, to secure their persons and to promote their interests, to administer the government in a manner that shall be equitable, just and righteous to all. I, therefore, go for town representation as far as possible, and as far as is justifiable in connection with numerical representation. Sir, I believe a just and equal representation will require us in fixing our basis to depart materially from strict numerical population. Such an one as the district system will not allow us to adopt. I shall therefore go for some plan founded on population, interest and power justly distributed, if such an one is proposed—or can be obtained. I hope, therefore, that we shall be enabled to fix on some one of the many propositions which have been presented here; such an one as will furnish security to the persons and interests of the people, and which shall secure power and prosperity to the Commonwealth. And so far I have seen no one to which I would more readily give my consent than to that now before you, as reported from the Committee of the Whole.

Mr. GRISWOLD, for Erving. I suppose there is a very general disposition throughout the Convention to take the question upon the various amendments which have been, or may be proposed to the question now under consideration. I think, perhaps, in view of the protracted discussion in Committee of the Whole, and in Convention in relation to it, it will not be worth

while to delay longer than this evening or tomorrow, in coming to some definite result upon it. I had intended to have made some general remarks, but I am willing, for one, to have the question taken upon the various propositions before us, immediately. I think, after the discussion we have had, the general proposition is understood perhaps as well now as it will be at any future time.

I wish merely to say in reply to a remark made by the gentleman from Boston, this morning, in reference to my own course, that I have not publicly advocated the amendment of the gentleman from Lowell, (Mr. Butler). I was originally in favor, and I am still in favor of giving to every town a representative in the House of Representatives every year. But it has been urged very strongly that it was necessary to district the cities. The plan proposed by the Majority Report, carried the principle of town representation throughout, and therefore it did not district the cities. But if you divide the cities into districts, it was thought that the towns must yield something. Now, Sir, if I cannot get precisely the proposition I want, why, of course, I must yield something in order to compromise the matter, and although it is not perfectly in accordance with my wishes, I am willing to, and shall vote for the proposition introduced by the gentleman from Lowell, (Mr. Butler). It seems to me that this is as far as the small towns can go, or will submit to go; and on the whole, if we are to compromise the matter between the two extreme propositions as presented respectively by the Majority and Minority Reports, I think this is as far as anything that can be arrived at. At any rate, it seems to me we may as well take the question upon the various amendments which have been proposed, and for one, I am willing to commence taking them at this time, without extending my remarks as I had proposed to have done.

Mr. ALLEN, of Worcester. I think no one will think it unreasonable that the sense of this Convention should now be taken as to the expediency of continuing this debate any longer upon this subject. I have listened to the speeches that have been made, *pro* and *con*, upon this question, and it seems to me that we have had the substance of all that can be said relative to the question now before us. With a view, therefore, of bringing the matter to the test, I move the previous question.

Mr. SCHOULER, of Boston. I agree with the gentleman from Worcester, as to the propriety of terminating this debate, but I hope we shall proceed to vote without the previous question, because I think there are many gentlemen here who have propositions upon which they desire to have the vote of the Convention, and if the previous question is carried, of course that will cut off all except those which are now pending. No others can be entertained.

Mr. ALLEN. I understand the practice to have been to allow propositions for amendment to be made after the previous question has been ordered. It certainly was not my desire to prevent gentlemen from offering their amendments.

The PRESIDENT. That has not been the practice after the previous question has been ordered. Propositions for amendment may be entertained by general consent, but not otherwise.

Mr. ALLEN. Well, Sir, I know of no other mode of reaching a vote upon these propositions.

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I presume, by general consent, the Convention will allow a vote to be taken upon each of the various propositions that may be offered.

Mr. BRIGGS, of Pittsfield. If any one man in the Convention objects, it cannot be done. I hope this Convention will not act upon the supposition that what the Convention decided against by a majority will be allowed by common consent. I hope the gentleman from Worcester will withdraw the call for the previous question. It seems to me manifest that the debate upon this proposition is concluded, that no gentleman desires to continue the debate, and I hope, therefore, we shall be allowed to go on and vote upon such propositions as may be offered without resorting to the previous question.

Mr. WILSON, of Natick. I would suggest to my friend from Worcester, that by common consent, we had better not press that question now, but let us proceed to vote upon the several propositions that are offered. We have spent already fifty-six hours and listened to one hundred speeches upon this subject, and I think no gentleman will desire to consume more time in discussion. But it seems to me that the best way is not to force the previous question. If we will proceed at once to vote, we can take several votes to-night before we adjourn. But if we adopt the previous question, some gentleman may object to propositions being offered, and in this way others who have plans upon which they desire a vote of the Convention may fail of obtaining an opportunity.

Mr. ALLEN. If it appears to be the wish of the Convention to proceed to a vote without farther debate, I should be disposed to withdraw my motion, as it may be made at any future time, if it becomes necessary. It certainly appears to me to be important, that in some way we proceed to a vote upon the question before us. I withdraw the demand for the previous question at present.

The PRESIDENT. The question now before the Convention is upon the amendment proposed by the gentleman from Plymouth, (Mr. Davis).

Mr. WHEELER, of Lincoln. I do not propose to take up the time of the Convention upon this matter. I merely wish to make an inquiry of the gentleman from Plymouth to see if I understand the operation of his amendment. It proposes that every town having five hundred inhabitants shall choose five representatives in ten years, and that it may choose an additional representative in ten years for every two hundred additional inhabitants. I want to inquire what effect this provision will have. If I understand it, that town which has thirteen hundred inhabitants will have nine representatives in ten years. I may be mistaken about it. It will have, according to my understanding, five representatives for the first five hundred inhabitants, and it will then have for an increase of eight hundred, four more representatives which makes nine.

Mr. DAVIS, of Plymouth. If the gentleman will refer to the last paragraph of the document which has been printed and circulated, he will find the remainder of my amendment, which has been separated from the two first propositions, and I think the gentleman will find that he is incorrect in supposing that these towns will have more than one representative in a year. A town of 700 inhabitants would have seven representatives in ten years; a town of 800 would have eight; a

town of 1,100 would have eight; a town of 1,300 would have nine, besides one for valuation year, which would make ten in ten years. It makes the basis essentially 1,300.

The question was taken upon Mr. Davis's amendment, and it was rejected.

The question then recurred on the amendment offered by the gentleman from Charlestown, (Mr. Thompson).

Mr. SCHOUER. Is my amendment now in order?

The PRESIDENT. It is not in order, inasmuch as it is a substitute for other propositions. The first question is upon the amendment offered by the gentleman from Charlestown, upon which question the yeas and nays have been ordered.

Mr. ALLEY, of Lynn, moved to reconsider the vote by which the yeas and nays were ordered.

The question was taken upon Mr. Alley's motion, and a count being had, there were—ayes, 188; noes, 80.

The PRESIDENT. The question now recurs upon the motion for the yeas and nays, demanded by the gentleman from Charlestown, (Mr. Thompson).

The question was taken, and it was decided in the affirmative.

So the yeas and nays were ordered. The question then recurred upon the amendment of the gentleman from Charlestown, (Mr. Thompson).

Mr. THOMPSON. I wish the Convention may be apprised of the fact, that a section has been engrafted into my amendment, taken from the plan submitted by the gentleman from Lowell, (Mr. Butler,) authorizing towns to unite, which reads as follows:—

Any two of such towns may, by a vote of a major part of the legal voters of each, at legal meetings thereof, unite together in a district, which shall be entitled to a representative each year, and which shall continue for a period of not less than five years, excepting the year in which the valuation of estates is settled.

The question was then taken upon the amendment as modified, and there were—yeas, 129; nays, 199—as follows:—

YEAS.

Abbott, Alfred A.
Aldrich, P. Emory
Allen, James B.
Allen, Joel C.
Aspinwall, William
Atwood, David C.
Austin, George
Barrows, Joseph
Beach, Erasmus D.
Beal, John
Blagden, George W.
Bradford, William J. A.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Brouson, Asa
Bullock, Rufus
Bumpus Cephas C.
Carter, Timothy W.
Chapin, Chester W.
Childs, Josiah
Churchill, J. McKeen
Cole, Sumner
Conkey, Ithamar
Crockett, George W.
Crosby, Leander
Crowell, Seth
Cummings, Joseph
Davis, Charles G.
Davis, John
Davis, Robert T.
Davis, Solomon
Dean, Silas
Dehon, William
Denison, Hiram S.
Duncan, Samuel
Easton, James, 2d
Ely, Homer
Farwell, A. G.
Fowler, Samuel P.
French, Rodney
Gardner, Henry J.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Haskins, William
Hathaway, Elnathan P.
Hayward, George
Heard, Charles
Hersey, Henry
Hewes, William H.
Hillard, George S.

Hooper, Foster
Houghton, Samuel
Howland, Abraham H.
Hubbard, William J.
Hunt, William
Huntington, Asahel
Huntington, Charles P.
Hurlburt, Samuel A.
Jackson, Samuel
James, William
Johnson, John
Kellogg, Giles C.
Kellogg, Martin R.
Kinsman, Henry W.
Kuhn, George H.
Ladd, John S.
Littlefield, Tristram
Livermore, Isaac
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marvin, Theophilus R.
Miller, Seth, Jr.
Mixer, Samuel
Morey, George
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Noyes, Daniel
Ober, Joseph E.
Oliver, Henry K.
Orne, Benjamin S.
Parker, Adolphus G.
Parker, Joel
Parsons, Thomas A.
Perkins, Daniel A.
Perkins, Jonathan C.
Plunkett, William C.
Preston, Jonathan
Rantoul, Robert
Read, James
Reed, Sampson
Sargent, John
Schouler, William
Sherman, Charles
Sleeper, John S.
Souther, John
Stetson, Caleb
Stevens, Charles G.
Storow, Charles S.
Sumner, Charles
Talbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thompson, Charles
Tileston, Edmund P.
Turner, David
Tyler, William
Upham, Charles W.
Walcott, Samuel B.
Wales, Bradford L.
Wallace, Frederick T.
Walker, Samuel
Waters, Asa H.
Weeks, Cyrus
Wetmore, Thomas
Wilbur, Joseph
Wilder, Joel
Wilkins, John H.
Wilkinson, Ezra
Williams, Henry
Winn, Jonathan B.
Woods, Josiah B.

NAYS.

Abbott, Josiah G.
Adams, Benjamin P.
Adams, Shubael P.
Allen, Charles
Allen, Parsons
Alley, John B.
Allis, Josiah
Alvord, D. W.
Andrews, Robert
Ayres, Samuel
Ballard, Alvah
Ball, George S.
Bancroft, Alpheus
Bartlett, Russel
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Bliss, William C.
Boutwell, George S.
Booth, William S.
Boutwell, Sewell
Breed, Hiram N.
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Carruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Daniel E.
Chapin, Henry
Clarke, Alpheus B.
Clark, Ransom
Cleverly, William
Cole, Lansing J.
Cooledge, Henry F.
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Curtis, Wilber
Cushman, Henry W.
Cushman, Thomas
Dana, Richard H., Jr.
Davis, Ebenezer
Davis, Isaac
Day, Gilman
Doming, Elijah S.
Denton, Augustus
Dorman, Moses
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fiske, Emery
Fish, Lyman
Fitch, Ezekiel W.
Foster, Aaron
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Samuel
Gale, Luther
Gardner, Johnson
Gates, Elbridge
Gilbert, Wanton C.
Giles, Joel
Gooch, Daniel W.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Harmon, Phineas

Thursday.]

HOUSE OF REPRESENTATIVES. — WILSON — BUTLER.

[June 30th.]

Hawkes, Stephen E.
Heath, Ezra, 2d
Henry, Samuel
Hewes, James
Hinsdale, William
Hobart, Henry
Hobbs, Edwin
Hood, George
Huntington, George H.
Hurlbut, Moses C.
Jacobs, John
Kendall, Isaac
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Leland, Alden
Lincoln, Abishai
Little, Otis
Loomis, E. Justin
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Meador, Reuben
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, William S.
Nash, Hiram
Newman, Charles
Nichols, William
Nute, Andrew T.
Orcutt, Nathan
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Jesse
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pomroy, Jeremiah
Pool, James M.
Powers, Peter

Putnam, John A.
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Ross, David S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sheldon, Luther
Sherril, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stevens, Granville
Stevens, William
Strong, Alfred L.
Swain, Alanson
Taft, Arnold
Thayer, Willard, 2d
Tilton, Abraham
Tilton, Horatio W.
Tower, Ephraim
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Weston, Gershom, B.
Wheeler, William F.
White, Benjamin
White, George
Whitney, James S.
Williams, J. B.
Wilson, Henry
Wilson, Milo
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wright, Ezekiel

ABSENT.

Appleton, William
Baker, Hillel
Banks, Nath'l P., Jr.
Bartlett, Sidney
Beebe, James M.
Bell, Luther V.
Bigelow, Jacob
Bliss, Gad O.
Bradbury, Ebenezer
Braman, Milton P.
Brown, Hiram C.
Brownell, Frederick
Bullen, Amos H.
Choate, Rufus
Clark, Henry
Clark, Salah
Clarke, Stillman
Coggin, Jacob
Cogswell, Nathaniel
Cook, Charles E.
Copeland, Benjamin F.
Crowninshield, F. B.
Cutler, Simeon N.
Dawes, Henry L.
DeWitt, Alexander
Doane, James C.
Easland, Peter
Eaton, Calvin D.
Eaton, Lilley
Eustis, William T.
Fellows, James K.

Foster, Abram
French, Charles H.
Frothingham, R., Jr.
Gilbert, Washington
Giles, Charles G.
Gourgas, F. R.
Greenleaf, Simon
Hall, Charles B.
Haskell, George
Hayden, Isaac
Heywood, Levi
Hobart, Aaron
Holder, Nathaniel
Hopkinson, Thomas
Howard, Martin
Hoyt, Henry K.
Hunt, Charles E.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jenkins, John
Jenks, Samuel H.
Keyes, Edward L.
Langdon, Wilber C.
Lawrence, Luther
Lawton, Job G., Jr.
Lincoln, F. W., Jr.
Lord, Otis P.
Mason, Charles
Morse, Joseph B.
Nayson, Jonathan
Norton, Alfred

Osgood, Charles
Paige, James W.
Park, John G.
Parker, Samuel D.
Parris, Jonathan
Parsons, Samuel C.
Payson, Thomas E.
Peabody, George
Perkins, Noah C.
Prince, F. O.
Putnam, George
Rockwell, Julius
Rogers, John
Sampson, George R.

Stevens, Joseph L., Jr.
Stevenson, J. Thomas
Stiles, Gideon
Stutson, William
Sumner, Increase
Taber, Isaac C.
Thomas, John W.
Train, Charles R.
Turner, David P.
Tyler, John S.
Upton, George B.
Whitney, Daniel S.
Wilbur, Daniel
Wood, William H.

Absent and not voting, 90.

So the amendment was rejected.

Mr. WILSON, of Natick. I wish to amend the amendment proposed by the gentleman from Lowell, (Mr. Butler,) by adding, at the end of the fourth paragraph, which reads as follows: "Every town of 4,000 inhabitants, and of less than 8,000, shall be entitled to two representatives each year," the following words: "and the mean increasing ratio shall be 4,000;" and to strike out the fifth, sixth, and seventh paragraphs.

Mr. BUTLER, of Lowell. I would inquire of the gentleman if he did not mean to move to strike out the last paragraph but two, which provides that the House shall not exceed three hundred and seventy. Because if he does not, he will have two provisions which will clash with each other, and he will get a House of four hundred and fifty, with a provision that it shall not exceed three hundred and seventy.

Mr. WILSON, of Natick. Mr. President, I ask the indulgence and attention of the Convention for a few moments. I shall be very brief in what I have to say in favor of the amendment I have proposed.

The amendment to the Report of the Committee proposed by my friend from Lowell, (Mr. Butler,) will, I am quite sure, be sustained by the Convention. The votes already taken clearly indicate that a majority of the Convention is in favor of the provisions embodied in the amendment now pending. A majority of the Convention is evidently in favor of town representation. If town representation is to be the system, the amendment moved by the delegate from Lowell, (Mr. Butler,) is by far the best one proposed to attain that end. I have given this plan my vote in preference to all other plans proposed, but I voted for it with the hope that the mean increasing ratio would be changed from five thousand to four thousand. I voted against the amendment proposed by my friend from Charlestown, (Mr. Thompson,) with the fullest expectation that the gentleman from Lowell and his friends would readily assent to the change I now propose. Other gentlemen, I am sure, voted as I did. I am not a little surprised at the opposition of the gentleman from Lowell to the amendment I have moved. The Convention, I trust, will sustain the amendment, even should the gentleman from Lowell persist in his opposition to it. Justice and sound policy alike demand its adoption.

I am in favor, personally, of the district system. If I had the power I would make a House of three hundred members, based on legal voters, in single districts of contiguous territory, preserving town lines as near as practicable. We have based the Senate on population; I would base the House upon legal voters. A House of three hundred would be large enough, and if chosen in

single districts the members would represent fully the sentiments and opinions of the people. Such a system would secure equality of representation and simplicity of arrangement, now and in the future.

I have not pressed my own views upon the Convention. I have yielded to the wishes and judgments of others,—of gentlemen who have taken an active and leading part in favor of the Convention. Having, by your kindness, Mr. President, been placed at the head of the Committee on the Senate, and having had my opinions fully carried into effect by the almost unanimous voice of the Convention, I have, on this question of the basis of the House of Representatives, chosen to follow the lead of my distinguished friends who have addressed the Convention with so much power and eloquence. If I have erred in yielding up my own sentiments and opinions, and in following the lead of my friends, I shall have the consolation of knowing that I have acquiesced in the policy advocated by some of the most glorious names in our history, among the living and the dead, and sustained for more than two centuries by the voice of the people of this ancient Commonwealth. The time may not have arrived to adopt a district system, yet I cannot but think that if the delegate for Erving, (Mr. Griswold,) the delegate for Berlin, (Mr. Boutwell,) the delegate for Manchester, (Mr. Dana,) and other gentlemen who have advocated the mixed system with so much zeal and ability had come out for a single district system based on legal voters, and a House of three hundred members, that such a system would have received the support of the Convention and of the people. All parties would have accepted the system; a formation would not have been made against its adoption by any considerable portion of the people.

The Convention, by decisive majorities, has decided against all propositions for the district system. The mixed system of town representation is to be continued. The Convention stands committed to it by several votes already taken. This system should be made as just and perfect as possible. It must, in any event, be unequal, measured solely by the standard of population. I think we should do justice to all sections of the Commonwealth, as far as we can do so and preserve town representation. The distinction between the towns and the cities is now too broad. The inequality is so glaring that it will shock the sense of justice. Therefore, Sir, I have proposed to amend the amendment of the gentleman from Lowell by substituting four thousand for five thousand, as the mean increasing ratio. This will increase the House eight—six in Boston, one in Lowell, and one in New Bedford. My friend from Walpole, (Mr. Bird,) suggests that it will give a House of three hundred and ninety-nine instead of three hundred and ninety-one provided for by the proposition of the gentleman from Lowell, (Mr. Butler). If it be necessary to take off the limitation of three hundred and seventy, I am willing to take it off altogether or enlarge the number to three hundred and eighty-five or four hundred. If gentlemen, if the people, wish to preserve town representation, they must take the consequences of town representation—a large House of Representatives. If the people want the House reduced, let them abandon town representation and go for an equitable district sys-

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HOUSE OF REPRESENTATIVES.—WILSON—STETSON—HALLETT.

[June 30th.

tem. Town representation and a large House must go together in the future, as in the past. When the people are ready to abandon town representation, they can have a reduced House of Representatives, and a district system based upon legal voters or population.

If, Mr. President, the amendment I have proposed, to make the increasing ratio four instead of five thousand is adopted, I shall vote for the amendment now pending. If we are to have a mixed system, let it be liberal and just to all sections of the State—as liberal and just as it can be made and preserve town representation. If the amendment I have proposed is rejected, I shall feel constrained to vote against the proposition made by the member from Lowell, (Mr. Butler). It will be unjust towards the cities—grossly unjust; and I cannot vote for a plan that is so unequal and unjust. Adopt the amendment I have proposed—take off the limitation of three hundred and seventy members, if necessary, as I think it is, and the amendment now pending will be adopted by the Convention and by the people.

The plan now pending, introduced by the gentleman from Lowell, (Mr. Butler,) if amended as I propose to amend it, will be substantially the plan introduced some time ago by my friend from Quincy, (Mr. White). If gentlemen will read the proposition carefully, as it will stand if the amendment I have proposed is adopted, and the limitation at three hundred and seventy taken off, they will see that it combines interests and influences enough to carry it triumphantly before the people. If gentlemen have any doubts about that, let them analyze the proposition and they will doubt no longer.

In the first place, it takes sixty-four towns which have now only about four representatives each in ten years, and gives to each of them six representatives in ten years, and it gives them this number perpetually, no matter what may be the increase of the population of the Commonwealth. It gives these towns, whose representation was vanishing at every decennial period, a position of power, influence and permanency in the House of Representatives. It is therefore for the interest of these sixty-four small towns to go for this proposition.

In the second place, it gives to seventy-five towns, which now have about the average of six representatives in ten years, a full representation now, and it secures it to each of them in the future, unless any of them should fall below one thousand in population. At every decennial period the representation and power of these towns in the House would diminish, so that in a few years, they would be almost powerless. This plan restores to them annual representation and secures it to them in the future.

In the third place, it secures to nearly one hundred towns, between 1,560 and 2,100, that now have a representation each year, but which would be reached and reduced by the census of 1860 and 1870. Most of these towns would be reduced in their representation in 1860, nearly all of them in 1870. It is therefore for the interests of these towns to go for this proposition.

In the fourth place, there are several towns that have between 4,000 and 4,700 inhabitants that will gain one representative each. It is for the interest of the people of these towns to go for this plan, and they will be quite likely to follow where interest leads the way.

In the fifth place, this plan districts the large towns and cities. This will meet the warm commendation of the minorities of those towns and cities and of the masses, even of the majority parties, who will obtain by its adoption greater power and influence in the nomination and election of their representatives.

I think, Mr. President, that gentlemen of all parties err altogether, who apprehend that this plan of representation will fail before the people. The friends and opponents of this measure had better unite, and make it as perfect, just, and equitable as possible. If we are to have town representation, we must have inequality, more or less. Let us then try to make a system as equal as is practicable.

Mr. STETSON, of Braintree. Mr. President, I had no intention of addressing the House at all on this subject. I do not now intend to say but a word or two. I voted for the amendment of my friend from Charlestown, (Mr. Thompson,) because, in the first place, it was the fairest and most just proposition which has been before me to vote upon. I think, Sir, that with the amendment of the gentleman from Natick, I would vote for this proposition; and the reason is, because it makes the proposition more just, more equal, and more proper, and will present to the citizens of the State one that is not so unjust as other propositions. As has been said before I came into this House in favor of the district system; but as that matter is not to be heard, I take the next best proposition, and that which will be most satisfactory to the people of this State. Therefore I think the amendment ought to prevail.

Mr. HALLETT, for Wilbraham. I desire to say, Mr. President, that I am in favor of this amendment, but I wish the gentleman to modify it in a form which I think will make it more correct in its expression. The proposition as it now reads, is as follows: "And the mean increasing ratio shall be four thousand." I would suggest whether it is sufficiently definite; whether it should not be: "And the mean increasing ratio for a representative of each town and city, shall be four thousand." I suggest that form of expression, as otherwise it might seem to apply only to towns of four thousand inhabitants.

Mr. WILSON. I will accept the modification suggested by my friend for Wilbraham.

Mr. HALLETT. Mr. President, I desire to say, in this connection, that it seems to me this amendment, fixing a progressive ratio of four thousand for an additional representative, removes an objection which does exist to every kind of proposition which undertakes to absolutely limit the increase in the large towns and cities; and that is a difficulty that I have always found in relation to any proposition that did not give a fair progressive ratio of increase over a fixed number. I have stood, from the beginning, in the conviction, and I so stated when I had the honor of addressing the Convention on the 17th of June, that we must find a medium proposition which would give the sixty-four towns that had a population of less than one thousand a representation, so that every town should have at least one representative each alternate year, or unite, and have one every year, for two towns in a district, as they saw fit. Then we must give to every town of a thousand inhabitants, and under a given number, (say 4,000,) one representative

yearly, and to all over four thousand, a progressive ratio to the extent of their population. That is clear, explicit and simple, and that combines the two principles which have, from the beginning of our Commonwealth, and always, been the foundation of our representation in the House. It is a rule consistent with original, existing, and progressive rights, and, therefore, perfectly equal and perfectly just. It carries out precisely that rule that was so anxiously labored after by the gentleman from Boston, who was in his seat this forenoon, (Mr. Crowninshield,) and who came here at the end of nearly three weeks, after we had been elaborately discussing this matter in all its bearings, and rushed into it with great eloquence and earnestness, as if it had been a new and untried topic upon which nobody had said or thought anything. That rule I have desired from the beginning to see laid down, and it conforms precisely to the platform of representation plainly established, but which that gentleman could not find, or passed over, in the Constitution of 1780; for while he exhorted us to follow the fathers and the Bill of Rights, he strangely omitted to cite from the Constitution which contained that Bill of Rights, the precise rule of town representation which we now propose.

Now what was the representative rule of 1780, and what is the rule which we now propose to adopt? The old Constitution provided that, "Every corporate town, containing one hundred and fifty ratable polls, may elect one representative; every corporate town, containing three hundred and seventy-five ratable polls, may elect two representatives; every corporate town, containing six hundred ratable polls, may elect three representatives; and proceeding in that manner, making two hundred and twenty-five ratable polls the mean increasing number for every additional representative. *Provided, nevertheless,* that each town now incorporated, not having one hundred and fifty ratable polls, may elect one representative; but no place shall hereafter be incorporated with the privilege of electing a representative unless there are within the same one hundred and fifty ratable polls."

That was the representative rule then. It had been the rule from 1634 down to 1775. It was solemnly reenacted in 1775. It went into the Constitution of 1778 and 1780, and was reaffirmed in 1820, and we are now called on to reestablish it, and because we are doing just what has been the rule for two hundred years, all this clamor is raised about inequality and injustice, as though there had never been uniform and universal town representation.

Here stands the proposition, the rule of centuries in the Constitution of 1780, that every town should have at least one representative, and then that there should be a mean increasing ratio for every additional representative, but that no town thereafter should be incorporated with representation without a population of one hundred and fifty ratable polls. The proposition of the gentleman from Lowell embraces that same provision, by providing that no town shall hereafter be incorporated, with the privilege of representation, having less than fifteen hundred inhabitants. A town may be incorporated with less inhabitants, but not a representative town.

Now I say, taking the proposition adopted as an amendment by the gentleman from Natick, for a mean increasing number of 4,000 for every

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HOUSE OF REPRESENTATIVES.—HALLETT—WALKER—WHITE.

[June 30th.]

town over 4,000 inhabitants, and we carry out precisely the parallel of the representative rule laid down in the Constitution of 1780. The only difference is they took ratable polls for the basis, and we take inhabitants. Gentlemen may talk as much as they please about inequality, and about one man counting more than another in a different county; they may attempt to ignore town representation as if it never existed; I say, Sir, if we put the Constitution on the same principle as to representation upon which the Constitution of 1780 was based by the inhabitants of all the towns of the Commonwealth at that time, we will carry it through with a strong expression of the popular will, and the district system will find no favor with the mass of the people.

And what was that principle? What was the Massachusetts rule of representation? Every town in this Commonwealth was represented in that Convention of 1780, or every town was invited to send a delegate, and though they did not all send, they might have done so. Then three hundred towns were entitled to representatives, and that Constitution declared that every town in the State should be entitled to have at least one representative, and accordingly every town did or might ever after have had one in the general court. They then fixed upon one hundred and fifty polls as the basis for one representative. Now we propose to adopt a population of one thousand as the basis for one representative. That is precisely parallel to the rule of 1780, only increasing the number which forms the first basis. They said two hundred and twenty-five polls should be the mean increasing ratio, and we say four thousand inhabitants shall be the ratio of increase to entitle to an additional representative. That is precisely parallel, and disposes of all towns and cities from one thousand inhabitants and upwards. Then, as to the small towns, they made a proviso in 1780 that each town of less than one hundred and fifty polls should nevertheless have one representative. We say that towns under our basis of one thousand inhabitants, shall have a representative once in two years, and one each valuation year. And in this we do not go the full length of the rule of 1780 for the small towns, which makes our rule so far operate against the small towns, and in favor of the cities and large towns.

With this exception, every basis, every rule, and every principle now introduced into our proposition as proposed to be amended, will be perfectly parallel throughout; and there is the rule and the doctrine of 1780, and I say that we can carry a proposition of this kind before the people, upon every principle of common usage and common right. Why do gentlemen keep out of sight the great fact that the Massachusetts House is, and always has been, a representation of *communities* and not of *aggregate population*? The Constitution of 1780 could not have been framed or adopted without the principle of giving every town a representative, any more than the Constitution of the United States could have been agreed to without giving every State a representation in the Senate. Let that fact be remembered. And this proposition of compromise, between towns and cities, which we now propose, is carrying out the same rule, and the same principle. The three hundred towns were there in the Convention of 1779, and were each a body corporate and politic, and they made the Constitu-

tion of 1780; and it never emanated from the people in the aggregate, as has been said here. It was an assembly of representative *communities* called towns, which made that Constitution; and you cannot get around that first and foremost *fact*, in the element of the constitution of this branch of the government of Massachusetts, the House of Representatives in 1780. And we are now here to renew the Constitution in 1853, and we propose to renew it precisely on the same principle, and in precisely as good faith, and common honesty and fairness to the small towns.

Gentlemen come here from the great cities and towns, and because they have grown large and rich, say "obliterate the small towns. Take from them all they have and give more to us, and reduce the House." The small towns are here and say "No, we call on you, if the House of Representatives is too large, to reduce the number of your representatives from the cities and large towns; you can afford to be reduced, for you can be reduced without losing your representation in a corporate capacity, but we cannot afford to lose our last representative and die." Now this is the question, and the small towns have rights you cannot take from them justly. The small towns must therefore yield something and the large towns must yield in the same proportion. We have no legal or moral right to exterminate the representation of the small towns against their solemn protest. When we are here representing as delegates, these separate communities, the three hundred and thirty towns in this Commonwealth, I cannot understand how we can exterminate them, with any pretext of common honesty or justice.

The only point to which I can come, to lead me to agree to the curtailment of their annual single representation in any degree, is that they voluntarily surrendered a part of that ancient right in 1836, and, therefore, we will give back all we can, if we cannot give back all. Why is it not fair both for the cities and the country? Let us then terminate this conflict between towns and cities. There is nothing adverse if you will only give the towns and country a voice here. Better a large House than great injustice and wide dissatisfaction. If the cities say we will come in with you, who are less favored in wealth and population; we would rather have a numerous family than to exclude any from the homestead, and if we cannot sit quite so comfortably we shall all be satisfied, and we will all stick together as our fathers did before us, and be governed by the same principles which have always prevailed from the earliest settlement of the Colony.

If we will all frankly come to that point, we can secure to these sixty-four towns a representation alternately, or enable them to relieve themselves from alternate representation, by uniting with each other if they see fit. Then we next provide for the two hundred and nineteen towns which have a population over one thousand and under four thousand, and give them each a representative. And we say to the large and increasing cities, New Bedford, Lowell, Salem, Lawrence, Boston, and all the progressive cities, we will not cut off their natural and proper increase, and that whenever they add four thousand to their population, they shall have an additional representative, with a relative increased ratio, to prevent excess after 1860. That is fair, and that, I believe, can be carried.

Now let me say, if I can have any influence, if my voice can have any force to any extent, in producing a concentration of opinion here, let us come up and stand firmly together on this plan, and then this proposition will go out to the people as a union compromise proposition; as neither this man's proposition nor that man's proposition, to be carried before the people, and held up so that any one can say, "I did this, and you did that." Let us unite upon this proposition, and carry it through the Convention, and it will be carried through by the people.

Mr. WALKER. I hope the amendment of the gentleman from Natick will prevail. I think this renders the first proposition more just, and therefore it will be more satisfactory to all the people of the Commonwealth, not only to the cities but to the towns, and to the majority of the people. I believe we have come together here, to make a Constitution for Massachusetts, and not for any particular section of Massachusetts, or any particular interest in Massachusetts, or any particular party, but for the whole Commonwealth. I think, therefore, that this is an amendment which I shall be in favor of; and I shall be in favor of any other amendment which will render this more just and more perfectly adapted to the wants of the Commonwealth. I hope, therefore, that the amendment of the gentleman from Natick will prevail.

Mr. WHITE, of Quincy. On turning to document No. 49, it will be seen, that certain resolutions, which I had the honor to submit to the Convention about three weeks ago, contain the same general principle respecting the basis of representation, which the amendment of the gentleman from Lowell, (Mr. Butler,) embraces. In those resolutions to which I refer, it was proposed to make one thousand inhabitants the number which should entitle a town to one representative; four thousand the number which should entitle a town to two representatives; and every additional four thousand inhabitants should entitle a town or city to an additional representative. It was further provided, that all towns of less than one thousand inhabitants respectively, might elect representatives five years in ten, or that any two of such towns might unite themselves in a Representative District, and elect a representative every year. It was likewise provided, that cities should be districted into equal Representative Districts of contiguous territory, and that no city of less than one hundred thousand inhabitants should have less than four Representative Districts, and no city of more than one hundred thousand inhabitants should have less than eight Representative Districts.

The amendment of the gentleman from Lowell, which is in the nature of a substitute for the Report of the majority of the Committee on Representation, contains the same general features. In two particulars it differs from those resolutions. It provides that all towns of less than one thousand inhabitants respectively, may elect representatives in the years when the valuation of estates shall be settled—which is to say, that all such towns shall have six representatives in ten years, one more than was proposed in my resolution.

The second modification consists in this: that the number which shall entitle a town or city to five, six or more representatives shall be five thousand instead of four thousand.

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HOUSE OF REPRESENTATIVES. — WHITE — BUTLER.

[June 30th.

The amendment now submitted by the gentleman from Natick, (Mr. Wilson,) proposes to change the number five thousand to four thousand. I hope it will meet the approval of the Convention, not only because it will reduce the amendment of the gentleman from Lowell, in that particular, to a likeness with my resolutions, which is a mere personal matter, but because it will remove, as it seems to me, a discrimination in favor of the small and middling towns, altogether uncalled for, and which will not diminish the number of the House more than six or eight members.

Mr. BUTLER, of Lowell. I am constrained to oppose this amendment, and for the reason that I do not believe it is well to increase the size of the House of Representatives, as at present advised, while I do not pledge myself to any special course hereafter. So far as I have examined the subject, this amendment proposes to increase the House, which is already too large, at once, to four hundred members. Then, if you leave the restriction, you say that the House "is to be apportioned according to the mean increasing ratio;" which is language which I cannot understand, when there is but one number. One number may have a proportion to another number; but one to one is such a proportion as I never heard of. But this is a criticism upon the language. There are other incongruities which may be seen, and which show the haste with which the amendment has been thrust upon us, and the want of consideration bestowed upon it; because the language is open to very decided criticism, and if we adopt anything of the kind, the proposition of the gentleman from Quincy, (Mr. White,) is much better, in my judgment.

Upon that view of the matter, then, and according to what we may justly estimate the next census to be, what do you propose to do? You adjust the question of representation upon the proportion of giving in the cities one representative to every four thousand inhabitants. And upon that proportion what do you cut into? You cut into the medium sized towns; and, in the year 1860, Boston, according to the figures upon your table, will have fifty representatives, and Lowell will have, how many? Why, Sir, she will have thirteen; and other medium sized towns in proportion. Now, if gentlemen are content to live in that way, all well and good. I suppose I can submit to it if others can. Well, you are asked to put your ratio upon that proportion. What then happens? You have to raise the ratio accordingly in the small towns, and accordingly as you raise that ratio you deprive them of representation. For what purpose? Why evidently that you may confer it upon the cities.

If gentlemen are ready for that I am content. As I said to my friends all round, if they can find it worked out so as to show that, in 1860, it will be a good proposition, I will cheerfully give it my support. But has any gentleman yet told us how it will operate in 1860? If he has not,—and I have not yet heard anything of the kind from any gentleman here,—and if any gentleman is prepared to do it, I will sit down and listen to him. What I want to see are the figures. It is very easy for gentlemen to rise up here and present a proposition, and jump at just such a conclusion as for the time being may coincide with their wishes, without the least idea where they are going to, leaping like a cat in the dark, without

seeing the ditch into which they will inevitably fall; but I ask gentlemen, as reasonable men, to look a little before they leap, so as to see where they are going to land. I do not know but that hereafter I may come to that proposition myself; but I want gentlemen first to cipher it out, to get the figures, so that we may see them,—not that I have any great faith in mathematics in such cases. How is it to be in the year 1860? How is it going to affect Bristol, and Berkshire, and Franklin, and Middlesex, and other counties? I want gentlemen to consider that, and tell me how all this will end. Why, Sir, no man can tell anything about it; and by and by you will see that the small towns will begin to think that, if they are going to be cut up in this way, they would have been much better off with the district system. Unless gentlemen can show us the reasonableness of this proposal, and to what it is likely to lead us, we do not want to be hoodwinked in this way. I protest against this jumping in the dark. Ought we not, as reasonable men, to stop to inquire? You cannot make even a horse put down his foot in the dark unless he knows where he is going; and shall we, here, evince less sagacity than horses? That is the whole difficulty with me. I do not say whether I shall vote for this proposition hereafter or not. I may or may not. Besides, there is another stage through which this proposition will have to pass; and if, upon careful investigation, it should appear best to adopt this amendment, I do not know that, when the question comes up on its final passage, I would have any objection to make the motion myself; but, until I can see the full bearing of it, I must declare here that I will commit myself to nothing. Between this and the next stage of the question, I will sit down and endeavor to solve the problem; and if it commends itself to my judgment I will vote for it; and if it does not, I shall, of course, be under the necessity of opposing it. At all events I desire to know something more about it, if I can by any accident. If any gentleman can tell me its effect I wish him to do so; and if he cannot, why of course I don't want him to say anything. As I am at present advised, I must vote against this amendment. I hope, therefore, that it will not be pressed at this moment. If it is necessary to be pressed now I must vote against it. But I would rather it should be delayed until the next stage of the question, and we can then vote it up or vote it down, as may seem most likely to conduce to the public good.

Mr. WHITE, of Quincy. I had determined, after consultation respecting the proper time of moving amendments, with gentlemen better acquainted with proceedings in deliberative bodies than myself, to propose two amendments, one of which is the same in substance with that now offered by the gentleman from Natick. I was advised that the third reading of the resolves would be the most proper time.

But the gentleman from Natick has introduced it now. It is for the Convention to decide upon it. What I wish to say is, that I shall vote for the amendment, because it will tend to perfect the scheme of representation, now before us. I have given some attention to it, and have endeavored to form some opinion of its probable future operation. I have a table of statistics showing its probable results in 1860 and in 1870.

Mr. BUTLER, (interposing). I am very glad

to hear that. I hope we shall have the benefit of them now.

Mr. WHITE. I do not have them by me at this time,—they are in the drawer of my seat. I did not refer to them with any expectation of reading them at this time.

I rose merely to state the fact, that I, for one, had considered the probable future operation of this amendment. If it is desirable that I should present the result of my calculations, I have no objection to doing so. By changing the number from five thousand to four thousand, we shall increase the number of the House eight, and no more. In 1860, a new apportionment will be made.

Mr. BUTLER. In 1835.

Mr. WHITE. So much the more favorable.

Sir, the amendment of the gentleman from Lowell makes a discrimination in favor of the small and middling towns altogether unnecessary. It proposes to diminish the representative power of cities—to require more inhabitants to elect a representative in large cities than in the middling towns and small cities.

The proposed basis of representation is very liberal to the small towns. Of the one hundred and thirty-nine towns now deprived of a yearly representative, it restores seventy-five to their original corporate privilege of an annual representative. Of the sixty-four towns, under one thousand inhabitants each, seven will gain four years of representation in ten years, eleven will gain three years in ten, twenty-six will gain two years in ten, and twenty will gain one year's representation in ten.

In 1860, taking as a basis of calculation the schedule of towns and cities with their respective population, prepared in 1850 by the secretary of state, (Hon. Amasa Walker,) I find that nine of these sixty-four towns will have a population of one thousand and more, respectively. These nine towns will then be entitled, each of them, to a representative every year. In the same year, two of these towns, which in 1850, according to the State census, contained more than one thousand inhabitants, will fall below that point, and will therefore lose their yearly representative. So that the House in 1860 will be increased, from that cause alone, seven members.

There are several small towns already incorporated which now vote with the towns from which they were set off, for representatives in the general court, which in 1860 will be entitled to yearly representatives. The House will be increased correspondingly. If the proposed limit to the number of the House shall be insisted on and shall be incorporated in the Constitution, then the number of representatives of the large towns and cities, in 1860, will have to be diminished exactly in proportion to the increase of towns entitled to one representative each, from the two causes to which I have already referred.

I will here give the reason which operated chiefly on my own mind, in determining the number which shall entitle a town to one representative. There are one hundred and thirty-nine towns now without an annual representative. By requiring one thousand inhabitants as the number which shall entitle a town to a representative, it is found that seventy-four towns will regain their lost corporate privilege of a yearly representation, and sixty-four towns will not come up to that number. As the number twelve

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HOUSE OF REPRESENTATIVES. — WHITE.

[June 30th.]

hundred was regarded as a compromise in 1839, between the small and the large towns and cities, so the number one thousand, is a fair and liberal compromise on this occasion, when it is very manifest that the supporters and friends of the small towns have a decided majority in the Convention.

There are two hundred and eleven towns of one thousand inhabitants and less than four thousand, which will be entitled to two hundred and eleven members of the House. These two hundred and eleven representatives, together with the representatives from the towns of less than one thousand inhabitants each, will have a majority of any House of Representatives which will assemble within the next thirty years, chosen on the basis of the resolves of the gentleman from Lowell, (Mr. Butler).

Sir, this view of the practical operation of the scheme of representation now before us, is very favorable to the small towns. Why, then, should we make any discrimination, however slight, the result of which will be to diminish the number of representatives of large towns and cities, merely to diminish the number of the House. Sir, such a motive cannot justify us. A large House is unavoidable in any system based on corporate rights of representation. If every town and city is to have one representative, the House will consist of three hundred and twenty-one members. If we are resolved to reduce the House, and, at the same time to adhere to town representation, we can vote that no town or city shall have more than two representatives, and in doing so, shall imitate the example of Connecticut. It would not be just or politic to do that. The people would never accept a proposition that would work so unequally and unjustly.

I have no sympathy with those who declaim against the cities. I shall not join in the hue and cry against them. I believe there is as much patriotism, as much love of liberty, and of devotion to the republic, in cities as in the country.

The tendency of modern civilization is to increase the number of cities, and to concentrate large masses of men in them. It is specially so in this country. One-fourth of the population of the State of New York dwell in its cities. In 1870, the majority of the population of this State will be in its cities. I shall be slow to believe that modern civilization is tending to corruption; and this is in fact what gentlemen would persuade us to believe.

I have never seen cause to impugn the patriotism or the love of liberty on the part of Boston or any other city in the State. I believe the inhabitants of Boston or of New York, are as patriotic as the inhabitants of the country, and would as willingly and as cheerfully give their property and their lives for the defence of our free institutions, and the defence of the country against foreign enemies, as those who dwell in the rural districts. A large portion of the population of cities is of foreign origin—refugees from the oppression and tyranny of the old world. They will be the last to join in any attempt to subvert the liberty or the constitution of the country.

This declamation against cities has no foundation in reason, and is not supported by history. We all know that in 1848, Paris, Vienna, Milan, Pesth, Berlin and Naples, gave evidence that the love of liberty was not extinct in the hearts of their

inhabitants. It has been suppressed, it is true, but it will break out again.

London has always been the abode of the spirit of liberty. From the time of Charles I., it has generally sided with liberty, in its contests with power. It has, in every generation, sent to parliament champions of the peoples' rights, and the cause of freedom in Europe and America.

In the middle ages, the cities on the Mediterranean, the Baltic and the North Seas, carried on a warfare with feudalism, and at last overthrew it, and, together with the Catholic Church, emancipated Europe from slavery.

When I said I had made calculations respecting the future result of the proposed scheme of representation, I should have said that those calculations were based not only on the amendment offered by the gentleman from Natick, but on another amendment also to the amendment of the gentleman from Lowell, which, at a proper time, I think I shall show to the Convention, ought to be made. I refer to the future apportionments of the number which shall entitle towns or cities to more than two representatives. It matters little, however, whether the amendment of the gentleman from Lowell shall be modified or not, in that particular. I think it will not vary the number of the House of Representatives more than ten or fifteen, whether it shall remain as it is, or be changed according as I propose. Instead of limiting the number of representatives of cities, or rather instead of diminishing it at every census, as will be the case with Mr. Butler's amendment, I think it would be simpler, and would operate more equally upon the large towns and cities, to say, that in all future apportionments after the first, the Senate shall increase the number which shall entitle any town or city to two or more representatives, in proportion to the entire increase of the population of the whole State. Such a rule would keep the House within a reasonable limit—would provide for the increase of towns which will be entitled to a yearly representation, from the incorporation of new towns, and the elevation of towns of less than one thousand inhabitants to that number—and will increase the number of representatives of the large towns and cities at each decennial census.

Sir, my calculations are based on these two amendments, which I am convinced the Convention will adopt, on a full consideration of their probable future operation. The following tables contain the results of those calculations.

I will also annex a table showing the practical results in 1870, of the present system under which the State is now laboring. It will be seen that no change that this Convention can make, can hardly be worse, and that it is not at all surprising that no member of this Convention has ventured to defend it.

[TABLE A.]

Table showing the number in the House until the next apportionment, under the amended amendment of Mr. Butler.

House will consist of 431 members on valuation year.				
	Pop.	Reps.	Inhab.	Total Reps.
216 towns on Valuation year,	291,093	1	to 1,347	216
105 Towns and Cities	692,632	1	" 3,175	215
321 Towns and Cities, . . .	973,715			
House will consist, on all other years, of 403 members.				
	Pop.	Reps.	Inhab.	Total Reps.
239 Towns,	319,553	1	to 1,581	202
81 Towns and Cities, . . .	654,162	1	" 3,269	201
321				403

[TABLE B.]

Table showing result on a basis of Legal Voters and Population.

Counties.	List Legal Voters.	No. of Reps.	Popu- lation.	Rep.	Legal voters.	Pop.
Suffolk, . . .	22,604	37½	145,758	1	to 602.7	3,886
Essex, . . .	24,282	46½	127,170	1	" 522.1	2,735
Middlesex, . .	27,411	62	155,762	1	" 442.1	2,512
Worcester, . .	25,488	60½	126,565	1	" 421.3	2,092
Hampshire, . .	7,358	20	34,290	1	" 368.9	1,714
Hampden, . . .	9,505	22½	50,224	1	" 422.6	2,232
Franklin, . . .	6,536	20	30,888	1	" 326.8	1,594
Berkshire, . .	9,744	27	48,937	1	" 360.8	1,812
Norfolk, . . .	13,865	30	77,441	1	" 462.1	2,581
Bristol, . . .	13,240	19½	74,979	1	" 448.7	2,541
Plymouth, . .	12,409	28½	54,509	1	" 538	2,319
Barnstable, . .	7,317	14½	33,997	1	" 395.6	2,344
Dukes, . . .	1,097	2½	4,416	1	" 438.8	1,766
Nantucket, . .	1,334	3	8,779	1	" 444.6	2,926
	399					

Counties.	Legal Voters.	No. Rep.	Rep.	No. Legal Voters.
Essex, Middlesex & Norfolk,	65,558	138½	1	to 474.5
Bristol, Plym'h, Barnstable,	35,997	73	1	" 4 4.8
Dukes and Nantucket, }				
Suffolk,	22,604	37½	1	" 602.7
Hampshire, Hamp'd'n Frank- }	33,143	89	1	" 372.4
lin and Berkshire, . . . }				
Worcester,	25,488	60½	1	" 421.2
	58,631	149½	1	392.1

[TABLE C.]

Showing the number of Representatives which the Cities and Towns will be entitled to in 1850, 1860, and 1870.

- 4,000—mean increasing number on census of 1850.
3968—rate of increase of all the inhabitants, between 1850 and 1860.
1,5872—product of mean increasing number into 4,000 rate of increase.
5,5872—mean increasing number for 1860, or number which shall entitle every town or city to two or more representatives in 1860.
4,000—mean increasing number for 1860.
1,603—rate of increase of all the inhabitants, between 1850 and 1870.
4,2412—product of mean increasing number, and rate of increase.
4,000
82,412—mean increasing number for 1870, or the number which shall entitle any town or city to two or more representatives in 1870.

	1850.	1860.	1870.
Boston,	35	41	46
Chelsea,	2	4	6
Danvers,	2	3	3
Lawrence,	3	3	2
Lynn,	4	4	4
Newburyport	3	3	3
Salcm,	5	5	4

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HOUSE OF REPRESENTATIVES. — WHITE — WILSON — SCHOULER.

[June 30th.

	1850.	1860.	1870.
Cambridge,	4	5	6
Charlestown,	4	5	5
Lowell,	9	10	10
Worcester,	4	7	10
Springfield,	3	3	2
Dorchester,	2	3	3
Fall River,	3	4	5
New Bedford,	5	4	4
Taunton,	3	3	3
Roxbury,	5	8	11
Nantucket,	3	2	1
	99	117	128

18 cities and towns.

	1850.	1860.	1870.
Andover,	2	2	2
Beverly,	2	2	1
Gloucester,	2	2	2
Haverhill,	2	2	2
Marblehead,	2	2	1
Natick,	2	2	2
Newbury,	2	2	1
Newton,	2	2	2
Waltham,	2	2	2
Blackstone,	2	2	2
Fitchburg,	2	2	3
Milford,	2	2	4
Northampton,	2	2	2
Ware,	1	2	2
Chicopee,	2	2	2
Palmer,	1	2	2
Medford,	2	2	2
Westfield,	2	1	1
Adams,	2	2	3
Pittsfield,	2	2	2
Dedham,	2	2	2
Quincy,	2	2	2
Randolph,	2	2	2
Stoughton,	1	2	2
Weymouth,	2	2	2
Attleborough,	2	1	1
Dartmouth,	2	1	1
Fairhaven,	2	1	1
Pawtucket,	1	2	2
Abington,	2	2	2
Middleborough,	2	1	1
North Bridgewater,	1	2	2
Plymouth,	2	2	1
Barnstable,	2	1	1
Sandwich,	2	1	1
Dracut,	1	1	2
Stoneham,	1	1	2
Brookline,	1	1	2
West Roxbury,	1	1	2
	69	67	71

	1850.	1860.
18 cities and towns,	99	Representatives.
30 towns, 2 each,	60	"
211 " 1 "	211	"
64 " 1/2 "	32	"
	402	"

	1860.	1870.
17 cities and towns,	115	Representatives.
29 towns, 2 each,	58	"
217 " 1 "	217	"
58 " 1/2 "	29	"
	219	"

	1850.	1870.
18 cities and towns,	133	Representatives.
27 towns, 2 each,	54	"
227 " 1 "	227	"
50 " 1/2 "	25	"
	439	"

[TABLE D.]

In 1870, under the operation of the present system, thirty-five towns and cities, now entitled to one hundred and forty-three members, will have one hundred and eighty-three members, gaining forty members in that time. The average number of the House, for the last ten years, was three hundred and eighteen. These thirty-five towns and cities will have forty-eight majority over the other two hundred and seventy-seven towns.

Essex County.

In 1870, Essex, Ipswich, Manchester, and West Newbury will lose yearly representatives, which they now have.

Middlesex County.

Billerica, Concord, Groton, Lexington, Pepperell, Sudbury, and Townsend, (seven,) will lose their present yearly representatives.

Worcester County.

Ashburnham, Athol, Barre, Charlton, Douglas, Grafton, Hardwick, Harvard, Holden, Hubbardston, Royalston, Shrewsbury, Sterling, Sturbridge, Sutton, Templeton, Warren, Westborough, and Westminster, (nineteen,) lose yearly representatives.

Hampshire County.

Belchertown, Chesterfield, Cummington, Easthampton, Enfield, Goshen, Granby, Greenwich, Hadley, Hatfield, Middlefield, Norwich, Pelham, Plainfield, Prescott, Southampton, Westhampton, Williamsburg and Worthington, have no yearly representatives.

Berkshire County.

Six towns only yearly representatives. Alfred, Becket, Cheshire, Clarksburg, Dalton, Egremont, Florida, Hancock, Hinsdale, Lanesborough, New Ashford, New Marlborough, Otis, Peru, Richmond, Sandisfield, Savoy, Stockbridge, Tyringham, Washington, West Stockbridge, and Windsor.

Franklin County.

Coleraine, Conway, Montague, New Salem, Northfield, Orange, Shelburne, Warwick and Whately, lose present yearly representatives. Deerfield and Greenfield only will have yearly representatives.

Norfolk.

Cohasset, Franklin, Needham, Walpole, and Wrentham will lose their yearly representatives.

Bristol County.

Dighton, Easton, Freetown, Norton, Rehoboth, Seekonk, and Westport will lose their yearly representatives.

Plymouth County.

Duxbury, Marshfield, Scituate and South Scituate lose their yearly members.

Barnstable County.

Every town but two has yearly members. In 1870, Barnstable, Dennis, Harwich, Provincetown, Eastham, Falmouth, Orleans, Wellfleet, Truro and Yarmouth, will lose yearly members. Nantucket only one after 1870.

Mr. WILSON, of Natick. I must confess that I feel some surprise at the indications I

have witnessed within the last few moments. I have endeavored, throughout the whole of this protracted discussion, to inform myself, as well as I have been able, in regard to all these matters. I am sure no gentleman can charge me with "much speaking." I have generally kept silent, and have not attempted anything like leadership, or to control the mind of any one. I voted against the amendment of my friend from Charlestown, (Mr. Thompson,) with the expectation and purpose of having the amendment of the gentleman from Lowell, (Mr. Butler,) thus amended. So, also, in regard to the proposition of my friend from North Brookfield, (Mr. Walker,) in the hope of making this proposition more perfect. I understand now that gentlemen generally are in favor of it, and think that the proposition, or something resembling it, ought to pass; but it seems that it is not offered at the proper time. Now, according to my judgment, the only proper time is the present, when the whole proposition is fully and distinctly before us.

If gentlemen suppose that I have any leaning in regard to any proposition of my own, merely on that account, all I have to say is, that they are mistaken; I want that which is most likely to meet with the approbation and concurrence of all parties, or, at all events, of that which will command the most general approval. If gentlemen wish this proposition to be adopted, I am willing to withdraw my amendment and leave any other gentleman to offer it who feels disposed to do so, and I will vote for it. I have no personal pride to gratify in the matter. But I certainly cannot vote for the amendment of my friend from Lowell, unless a vote is first taken upon the amendment I have offered, or some amendment resembling it. In order, therefore, that my friend may not take that dreaded leap in the dark, and that he may have time to make the calculations which he desires, I will withdraw my amendment.

Mr. SCHOUER. I am glad that my friend from Natick has withdrawn his proposition, because it was quite evident that something was the matter. Somebody's thunder has evidently been stolen, and the gentlemen from Lowell, (Mr. Butler,) has not had time to cipher out the result. I think, Sir, after all the figuring we have had here, and to such little effect, it would not be a bad move to order the Sergeant-at-Arms to furnish each member with a slate and pencil, and a ready-reckoner, so that gentlemen may try their hands again. I will now offer my amendment. I suppose it will be in order. I do not wish to occupy the time of the House; but I should like to have the yeas and nays upon it, and if necessary, even to have it debated. There are two or three verbal amendments which I have made since the amendment was printed, and with the permission of the Convention, I would like to have the proposition read as modified.

The PRESIDENT. This is a substitute for the amendment reported from the Committee of the Whole. The Chair does not consider it strictly in order, but no objection being made, the Chair will admit it on the same principle as the amendment of the gentleman from Charlestown was admitted.

The amendment, as modified, was read, as follows: strike out all after the word Resolved, and insert the following:—

That whereas, by the theory of our institu-

Friday,]

REPORTS FROM COMMITTEES, &c.—STETSON—BRIGGS—WALKER.

[July 1st.

tions, and the Declaration of Independence, all men are created equal, and have an inherent and inalienable right to an equal voice in electing their rulers, and in making the laws by which they are governed: *and whereas*, these are the fundamental maxims upon which every truly democratic government is founded, and by which a genuine democracy alone can be maintained: therefore, be it

Resolved, That it is expedient so to amend the Constitution of Massachusetts, that the popular branch of the government,—the House of Representatives,—like the Senate, shall be so constituted that all men shall be equal, in political power, and be equally represented, as near as may be, man for man, by districts based upon population, or legal voters, in the State government.

Mr. BOUTWELL. I perceive that the amendment contains more than one paragraph, and I would therefore ask to have a division of the question.

The PRESIDENT. In such case where a question is proposed to be taken upon a preamble and resolution, the question will be taken upon the resolution first, and afterwards upon the preamble.

Mr. CHURCHILL, of Milton, moved that the Convention adjourn.

The motion was agreed to, and the Convention, at six o'clock, adjourned.

FRIDAY, July 1, 1853.

The Convention assembled pursuant to adjournment, and was called to order at 9 o'clock. Prayer by the Chaplain.

The Journal of yesterday was read.

Incorporated Towns.

Mr. STETSON, of Braintree, submitted the following resolution which was referred to the Committee of the Whole, and ordered to be printed.

Resolved, That the Constitution be so amended that hereafter no town shall be incorporated with less than fifteen hundred inhabitants.

Reports from Committees.

Mr. BRIGGS, of Pittsfield, submitted the following Reports from the Committee on the Encouragement of Literature, which were severally referred to the Committee of the Whole, and ordered to be printed.

Relating to the School Fund.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 1, 1853.

The Committee on the Encouragement of Literature, to whom was referred two orders of the Convention, one on the 13th, the other on the 19th of May, on the subject of the school fund of the Commonwealth, with instructions to inquire into the expediency of so altering the Constitution as to provide for the increase of said fund, have considered the same and report:—

That in their opinion, the interests of our common schools would be greatly promoted by increasing the present school fund, which now amounts to about one million of dollars, to two millions.

They respectfully submit, that the permanent prosperity of those ancient, useful, and popular

institutions, in which all the children of the State are, in succeeding generations, to be instructed and nurtured, would be rendered more secure by such an increase of the school fund, and by providing that the annual income thereof shall forever be appropriated for their aid and improvement, and for no other purpose.

The Committee are persuaded that this very desirable object can be attained, in the course of a few years, from the avails of the public lands in Maine, and from the stock which the Commonwealth owns in the Western Railroad Corporation, without materially embarrassing the ordinary revenue of the State, or delaying the payment of its debts. They therefore recommend that the Constitution be so amended as to provide for the increase of the said fund, until it shall amount, at least, to two millions of dollars, to be preserved inviolate, and the income thereof to be annually appropriated for the aid and improvement of the common schools, and for no other purpose; and they therefore report the following resolution.

GEO. N. BRIGGS, *Chairman*.

Resolved, That the legislature shall, as soon as may be, provide for the enlargement of the school fund of this Commonwealth, until it shall amount, at least, to the sum of two millions of dollars; and the said fund shall be preserved inviolate, and the income thereof shall be annually appropriated for the aid and improvement of the common schools of the State, and for no other purpose.

The Cambridge University.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 1, 1853.

The Committee on the Encouragement of Literature, to whom was referred the second section of the fifth chapter of the Constitution, have considered the same and report, that in their opinion it is expedient to amend the first section, by striking out therefrom the words "University of Cambridge." They therefore report the following resolve.

GEO. N. BRIGGS, *Chairman*.

Resolved, That it is expedient to amend the second section of the fifth chapter of the Constitution, by striking out therefrom the words "University of Cambridge."

On the Petition of Francis Jackson and others.

Mr. WALKER, of North Brookfield, from the Committee on the Qualifications of Voters, submitted the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 1, 1853.

The Committee on the Qualifications of Voters, to whom was referred the petitions of Francis Jackson and others, that the word "male" may be stricken from the Constitution, and also of Abby B. Alcott and other women of Massachusetts, that they may be allowed to vote on the amendments that may be made to the Constitution, report that the petitioners have leave to withdraw.

The Committee feel that in making this Report, they should not do justice to themselves or to the intelligent and respectable petitioners, if they did not frankly state the reasons on which their conclusion is founded.

The petitioners ask that women may be allowed the right of suffrage, in matters pertaining to political affairs. The request is a novel one, and so far as known to the Committee, the first ever

presented to any government or other political organization.

At the request of the petitioners, a hearing was granted them at two different sittings of the Committee, and patient attention given to the arguments presented by persons of learning and ability of both sexes, who appeared in their behalf. These persons maintained the following propositions:—

1. That women are human beings, and therefore have human rights, one of which, is, that of having a voice in the government under which they live, and in the enactment of laws they are bound to obey.

2. That women have interests and rights, which are not, in fact, and never will be, sufficiently guarded by governments in which they are not allowed any political influence.

3. That they are taxed, and therefore, since taxation and the right of representation are admitted to be inseparable, they have a right to be represented.

4. That so far as education and general intelligence are concerned, they are as well qualified to exercise the elective franchise, as many who now enjoy that right.

5. That in mental capacity and moral endowments, they are not inferior to many who now participate in the affairs of government.

6. That there is nothing in their peculiar position, or appropriate duties, which prevents them from taking a part in political affairs.

Of the truth or fallacy of these several positions, the Committee do not feel called upon to decide.

All questions involving the rights and interests of any part of the human family, should ever be determined by some well-established and generally recognized principle or fundamental maxim of government; otherwise it cannot be expected that such decision will be regarded as reasonable or satisfactory.

Upon what principle, then, shall the present question be decided?

The Declaration of Independence asserts, that "all governments derive their just powers from the consent of the governed." By the "consent of the governed," the Committee understand the consent, either express or implied, of the persons concerned. At the present time, there are, within the State of Massachusetts, not far from 200,000, women, over twenty-one years of age. Of these less than 2,000 have asked to be admitted to the right of suffrage. From this fact, the Committee have a right to infer, and also from their personal knowledge of the views and feelings of the class of persons referred to, that a great majority of the women of Massachusetts, do willingly consent that the government of the State should be, as it hitherto has been, in the hands of their fathers, husbands, brothers and sons. Of the correctness of this conclusion, the Committee entertain no doubts.

It may be said, in reply to this, that it cannot be justly inferred from the silence of the women of Massachusetts, that they do consent to the present limitations of the right of suffrage. But the Committee do so infer, because they know that the women aforesaid, do now, and always have, enjoyed the right of petition, to the fullest extent, and have often exercised that right in behalf of the unfortunate and oppressed, and in aid of many noble and philanthropic objects of legislation. In one case, it is believed, that more

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than 50,000 women petitioned the general court for the enactment of a law for the suppression of the sale of intoxicating drinks.

It may be further urged, that by the same course of reasoning, it might be shown that those who are held in bondage, consent to the laws under which they live. But this is not true. Slaves have no right of petition. They cannot make known their wants to the government. They are speechless and helpless. Their whole existence is a stern and living protest against the wrongs they suffer, and they are kept in subjection only by the strong arm of power.

In view of these indisputable facts in relation to the right of petition, in this Commonwealth, enjoyed by all its inhabitants of both sexes, the Committee feel justified in deciding that a vast proportion of the women of Massachusetts do consent to their political condition, and therefore, that the powers exercised by the government of this Commonwealth, over that class of its population, are "just powers," and it is inexpedient for this Convention to take any action in relation thereto.

AMASA WALKER, *Chairman.*

Termination of Debate.

Mr. BOUTWELL, for Berlin. I may be allowed to make a single remark before I submit the motion I hold in my hand. The subject which was under consideration when the Convention adjourned yesterday evening, has been discussed for a great while. This is really the last working day that we shall have for some days to come, and we should do what we can on this occasion to forward the business as much as possible. I think that the Convention is ready to come to a conclusion upon the pending question at once, and an ample opportunity will be allowed for the consideration of whatever resolution may be selected by the Convention to pass and be adopted. Under these circumstances, and after a consultation with several gentlemen, I have thought proper to submit the following motion:—

That debate upon the Report of the Committee on the basis of the House of Representatives, and all pending questions thereon, cease at eleven o'clock to-day; but the amendments shall be admitted after debate upon the main question shall cease, and the mover of each amendment shall be allowed ten minutes to explain his amendment; and the same time shall be allowed to members of the Convention who shall obtain the floor to oppose such amendments, when the question thereon shall be taken without further debate.

Mr. EARLE, of Worcester. I would inquire of the gentleman who moved this order, whether it was his intention or not—for the language seems to be somewhat ambiguous, and may be misconstrued—that the opposition to any amendment shall be limited to a single speaker?

Mr. BOUTWELL. As the order was written, it was with a limitation to a single speaker, but I read it, "any member or members." It might be that an individual member could state his objection to an amendment in a single minute; my intention was, that ten minutes should be allowed to the opponents as well as to the friends of the different amendments.

Mr. EARLE. I was merely going to remark, that I understood that there was no limitation; and if the members who are opposed to an amendment are to be allowed to speak, an equal

privilege ought to be granted to those who may be disposed to speak in favor of it. If there is no restriction upon one side, there should be none upon the other.

The PRESIDENT. The Chair has stated the order, taking it from the written form. If the gentleman for Berlin desires to modify it, so as to make it conform with the intention he has now expressed, the language should be changed.

Mr. BOUTWELL. I desire to have it read in such a manner that ten minutes shall be allowed to the friends of any amendment—one or more—and ten minutes shall be allowed to those who oppose it.

The PRESIDENT. The order will be modified accordingly.

Mr. BRIGGS. I understand, Sir, and the gentleman will correct me if I am not right, that the intention of the proposition is, that ten minutes shall be given to the mover to explain, and ten minutes shall be given for reply—either to one person speaking ten minutes, or to two speaking five minutes each, or more, in no case to exceed ten minutes on each side. Am I correct in that? I make the inquiry because some gentlemen around me understood that each member who desired to speak should be allowed ten minutes.

Mr. BOUTWELL. The gentleman has stated it correctly.

Mr. BRIGGS. Well, Sir, I regard this as a very reasonable proposition after we have reached this stage of the proceedings, for it gives an opportunity for both sides to be heard briefly on any amendment which may be presented, and at the same time it is reasonable that we should try to come to some result upon this question.

Mr. HALLETT. There is one suggestion which I have to make in connection with this subject, and that is, that the amendments which are to be proposed shall be laid before the Convention, and then when the hour of eleven o'clock comes, they can be taken up and acted upon in the manner which the gentleman has suggested. I think it is very desirable and very important that the amendments which are intended to be offered shall be laid before the Convention long enough to enable members to have some time for reflection upon them. I am very desirous that the amendment of my friend from Natick, which he withdrew yesterday, rather unfortunately, as I think, and which is one that, as it seems to me, will compromise all these difficulties, should be laid before the Convention at an early period, in order that it may be considered beforehand; for I am apprehensive that if that amendment is left until the hour of eleven o'clock arrives, the Convention will be in such a hurry to take the vote, that it will not be fairly considered. If the gentleman will allow this and other amendments to be offered now, so that they may be before the Convention previous to the time when the vote is to be taken, I will concur in it.

The PRESIDENT. The Chair will state that the amendment which was submitted by the gentleman from Natick, or any other amendment, may be informally laid before the Convention, so that they will be in possession of the whole subject; and when the proper time shall come, they can be proposed in due form.

Mr. HALLETT. I understand that the policy of the gentleman is to go on with other business until eleven o'clock; and if the amendments are offered now, we should have an hour or more to

reflect upon them, and then they can be taken up and disposed of. If that course will be pursued, I have no objection to the motion of the gentleman; but, as I supposed, it was intended to run off all amendments until the hour of eleven o'clock.

The PRESIDENT. The Chair will inform the gentleman for Wilbraham, that the subject will be taken up whenever the Convention shall determine, and the order will not prevent the offering of amendments previous to the hour of eleven.

Mr. HALLETT. Then I am in favor of the motion.

Mr. WILSON, of Natick. I think the proposition of the gentleman for Berlin, is one which should be sustained, and I hope we shall proceed at once to consider this proposition, and see if we cannot come to a vote upon it. I believe we have already had some ninety-seven or eight speeches on this question, and have consumed forty-seven hours upon it; and I think that is about debate enough.

Mr. SCHOULER. I am in favor of the motion which is made by the gentleman for Berlin, if I understand it correctly. But the remarks of the gentleman for Wilbraham gave a complexion to it, different from what I understood when it was read. It is, if I understand it, that we can proceed, immediately after the adoption of that order, to consider the unfinished business of yesterday. As the gentleman for Wilbraham seemed to understand it, it would preclude us from taking up that subject until eleven o'clock. I wish to inquire whether I am right in my understanding of the effect of the order.

The PRESIDENT. The Convention may proceed to consider the unfinished business of yesterday, immediately after it shall so order. The order now under consideration does not affect that question at all. The Chair will state the question. The gentleman for Berlin moves that debate upon the main proposition shall cease at eleven o'clock this day, when amendments may be offered, and the mover of each amendment shall be allowed ten minutes to explain it; the same time shall be allowed to members of the Convention who shall obtain the floor to oppose such amendment, and the question shall then be taken without further debate.

Mr. HALE, of Boston. I beg leave to ask the Chair, if that order should be passed, whether there will be any opportunity to take the question upon more than one amendment, in case the first amendment, which is in the nature of a substitute, shall be adopted. For example, the proposition which has been most debated here, and which, if I understand it, stands foremost before the Convention at this time, with the exception of the amendment of the gentleman from Natick, is in the nature of a substitute for the Report of the Committee. If the question is taken upon the amendment of the gentleman from Natick, the motion of the gentleman from Lowell will then be in order; and that being in the form of an amendment to the Report of the Committee, if adopted, will cut off all votes upon other amendments. Am I correct in this, Mr. President?

The PRESIDENT. That question is not affected by this order at all, but the gentleman has stated the fact correctly. If the Convention should agree to that amendment which has been

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reported by the Committee of the Whole, it must stand in that form, and can be no longer open to amendment.

Mr. HALE. I am desirous, Mr. President, that the matter may stand in such a form that the question can be taken upon all amendments. A number of amendments have been offered which were designed to perfect the plan of representation, but they were amendments to the original Report of the Committee; whereas, the amendment of the gentleman from Lowell, being a substitute for the proposition of the Committee, if that substitute should be adopted, it will cut off all opportunity to take a vote upon the proposition submitted by the minority of the Committee on which there has been no vote taken in Convention, and, as gentlemen will remember, the vote was taken upon it in Committee in a thin House, and when it had been but partially debated. It has since been fully discussed, and gentlemen may have changed their minds; at any rate, one-third of the House were not present when the vote was taken upon it in Committee. The friends of that proposition are desirous to have a vote taken upon it, in Convention, by the yeas and nays; but, if this order should be passed, limiting the time to ten minutes upon each proposition, for and against, it appears to me that the friends of that amendment are shut off from any opportunity to take a vote upon it.

The PRESIDENT. The order moved by the gentleman for Berlin does not affect the question at all, which is raised by the gentleman from Boston. The amendment reported to the Convention, by the Committee of the Whole, being in the nature of a substitute for the original proposition, if the Convention shall agree to it, it must stand, at this stage of the business, in the same form in which it is agreed to; but, previous to a vote upon it, it is competent for the Convention to perfect it by amendments, and the Chair has admitted, in every instance, against the usual parliamentary law, and by the general consent of the Convention, other substitutes for the original proposition, and would admit the proposition named by the gentleman from Boston.

Mr. HALE. I shall not introduce that proposition myself, but, at the proper time some friend will submit it, and ask to have the sense of the Convention taken upon it.

Mr. BRIGGS. As I understand it, the proposition of the gentleman for Berlin is merely to stop debate at eleven o'clock, except upon amendments which may be offered; but it does not change the order of proceeding in any respect.

The PRESIDENT. That is the effect of the order.

The question being then taken, the order was agreed to.

Basis of Representation.

Mr. BRIGGS then moved that the Convention proceed to consider the Orders of the Day, being the unfinished business of yesterday; which was agreed to.

Mr. HALLETT. Mr. President—

The PRESIDENT. With the permission of the gentleman for Wilbraham, the Chair will state the question. The question before the Convention is the Report of the Committee upon the Basis of the House of Representatives, which is printed in Document No. 18 of the Convention. That resolve has been referred to the Committee

of the Whole, and the Committee of the Whole have reported a resolve to the Convention as an amendment, standing in the nature of a substitute, which is printed in Document No. 65 of the Convention, and which has been modified by a vote of the Convention. Pending the question upon the amendment reported by the Committee of the Whole, by the general consent of the Convention, the gentleman from Boston, (Mr. Schouler,) moves an amendment to the amendment, which is also in the nature of a substitute, and which is printed in Document No. 66 of the Convention. This amendment is as follows:—

Strike out all after the word Resolved, and insert the following:

That whereas, by the theory of our institutions, and the "Declaration of Independence," all men are created equal, and have an inherent and inalienable right to an equal voice in electing their rulers, and in making the laws by which they are governed: and whereas, these are the fundamental maxims upon which every truly democratic government is founded, and by which a genuine democracy alone can be maintained: therefore be it

Resolved, That it is expedient so to amend the Constitution of Massachusetts, that the popular branch of the government—the House of Representatives—like the Senate, shall be so constituted that all men shall be equal in political power and authority in the Commonwealth, and be equally represented, as near as may be, man for man, in the State government.

The gentleman for Berlin requested a division of the proposition, and the Chair stated, that although under the rules of the Convention it was not strictly susceptible of a division, yet, by general consent, it would be considered as two propositions—one being the preamble and the other the resolve; and the sense of the Convention will first be taken on the resolve. Upon that question, on motion of the gentleman from Boston, the Convention has ordered the yeas and nays; and the gentleman for Wilbraham is now entitled to the floor.

Mr. SCHOULER. Mr. President, I wish to modify my motion. I thought that I was entitled to the floor, as the mover of the amendment now under consideration; but aside from that, I wish to modify the amendment, and I do not wish the gentleman for Wilbraham to discuss a proposition which I intend to change.

Mr. HALLETT. I do not propose to discuss that proposition at all.

Mr. SCHOULER. I should like to have my proposition before the Convention in a modified form. I do not desire to occupy two minutes of the time of the Convention.

The PRESIDENT. The Chair will state that the gentleman from Boston was entitled to the floor, but he moved the yeas and nays and took his seat, and thus lost his right to the floor.

Mr. HALLETT. I understand that the resolution before the Convention is now open to amendment.

The PRESIDENT. Does the gentleman purpose to offer an amendment to the amendment?

Mr. HALLETT. Yes, Sir, if it is in order to do so.

The PRESIDENT. It is in order for the member for Wilbraham, to perfect the part to be inserted, or the part to be stricken out, by amendments. The gentleman from Boston claims the floor, upon the ground that he made the motion which is now the pending question. If he has

not had the floor, he is entitled to it by parliamentary courtesy; but the Chair understood that the gentleman had had the floor, moved the yeas and nays, and took his seat.

Mr. SCHOULER. I gave way merely to allow a motion to be made for adjournment.

The PRESIDENT. In that case the gentleman from Boston is entitled to the floor.

Mr. SCHOULER. After I offered the proposition, last evening, which is now before the Convention, the gentleman for Berlin, (Mr. Boutwell,) called for a division of the question. I wish merely to ask the Chair, so that I may understand it, as well as the Convention—for I believe a division of the question brought the vote upon the resolution, and not upon the preamble—I wish to ask the Chair whether, if the resolution should be defeated, any vote could be had upon the preamble. I understand that there could not.

The PRESIDENT. That is the fact.

Mr. SCHOULER. I therefore wish to withdraw that amendment, and substitute the following, which I have put into the shape of two resolutions:—

1. *Resolved*, That by the theory of our government and the "Declaration of Independence," all men are created equal, and have a right to an equal voice in electing their rulers, and in making the laws by which they are governed: and that, these are fundamental maxims upon which every truly democratic government is founded, particularly where the people, as in Massachusetts, are kindred and homogeneous, and by which alone a genuine democracy can permanently be maintained.

2. *Resolved*, That it is expedient so to amend the Constitution of Massachusetts, that the popular branch of the government, the House of Representatives, shall be based upon population, ratable polls, or upon legal voters, to the end that all men shall be equal in power and be equally represented, as near as may be, man for man, in the State government.

Mr. HALLETT. Mr. President—

Mr. MORTON, of Taunton. Mr. President, I rise to a question of order. I believe it is one of the rules of this Convention that no member shall be allowed to speak twice upon the same subject until others who desire it are allowed to speak once. Upon that ground I claim the privilege of addressing the Convention.

The PRESIDENT. The gentleman for Wilbraham first addressed the Chair, and he has not spoken.

Mr. MORTON. I thought he had spoken.

The PRESIDENT. The question now before the Convention, is on the amendment moved by the gentleman from Boston, and on that amendment the gentleman for Wilbraham, has not spoken.

Mr. MORTON. I supposed that the general subject was open to debate. If that is the only question before the Convention, I acquiesce in the decision of the Chair.

The PRESIDENT. The question pending is on the amendment of the gentleman from Boston; and that question has not been debated except by the gentleman from Boston himself. The Chair therefore awards the floor to the gentleman for Wilbraham, who first addressed him.

Mr. HALLETT. I desire, Mr. President, fully to understand this question, and hope it may be fully understood by the Convention before it is acted upon; and in rising to propose an amendment to the same effect as that which was advo-

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cated by me on Saturday, and very unexpectedly to myself, withdrawn by the gentleman from Natick. I can assure the gentleman from Taunton, (Mr. Morton,) that I am not desirous of occupying the floor except for that single purpose, and will give him time to be heard.

The gentleman from Boston, (Mr. Schouler,) offered an amendment to the amendment of the gentleman from Lowell, (Mr. Butler,) in the nature of a preamble and resolution, and, upon a call for a division of the question, at the last session, the Chair decided that the amendment being in the nature of a preamble and resolution, the question would be upon the resolution first. The resolution being first in order, it was competent for the Convention to amend it before being passed upon. The gentleman has offered a modification of his preamble; but I understand that the amendment as now offered, is a substitute for the Majority Report of the Committee on representation, and it is, therefore, I presume, first in order to perfect that proposition, before the question is taken on striking it out and substituting another?

The PRESIDENT. The gentleman from Boston, (Mr. Schouler,) has withdrawn that preamble and substituted for it another resolution. An amendment perfecting the amendment reported by the Committee of the Whole is now in order.

Mr. HALLETT. Then I propose substantially the amendment which was offered by the gentleman from Natick, (Mr. Wilson,) and withdrawn by him, and which I desire may be regarded as his amendment. I move to strike out the paragraph as it now stands:—

Every city or town of 15,000 inhabitants and upwards, shall be entitled to one representative, and as many additional in each year as the number of times five thousand may be contained in the whole number of the inhabitants thereof.

And insert—

Every city or town, containing over 12,000 inhabitants, shall be entitled to elect one additional representative for every four thousand inhabitants it may contain over twelve thousand.

I desire briefly to explain what alteration that proposition makes in the amendment of the gentlemen from Lowell, (Mr. Butler,) and its general bearing upon the whole question. I disclaim all personal interference in or with questions which have been agitated here. I have designed from the beginning, simply to lay down a principle which will best meet with our general views, and those of the people, upon this difficult question of representation, and then trust to the people to adopt it.

The suggestion contained in my amendment was originally the suggestion of the gentleman from Quincy, (Mr. White,) who I desire should have the merit of developing it; and, taking that suggestion and applying it to the proposition of the gentleman from Lowell, it is, in my judgment, as uniform, equal and perfect a system as can be arrived at without disfranchising the towns. It is a question of compromise, as far as common right and uniform principle is concerned, rather than a matter of originality of invention. In regard to who is the author of a proposition, I presume that that is a matter of trifling consequence, provided that we can mutually agree upon something that may be approved by the people.

The great question here, as has often been stated, is to determine whether or not we would retain and to some extent restore our system of town representation; if not entire, then as nearly as we can retain and restore it. I believe that we have agreed by general acquiescence, to be inferred from all the votes that have been taken, that we would not start from the position of a representation every other year for the sixty-four towns having less than one thousand inhabitants. I believe, also, that these sixty-four towns will be content with that, and this proposition gives them thirty-two representatives annually, besides valuation year. The other proposition is that all towns of one thousand inhabitants should not be disturbed in their representation, and that point is also settled. We then propose, by this amendment, to go on with a progressive increase in relation to the larger towns, of one for every additional four thousand. The proposition of the gentleman from Lowell, as it now stands, is to make a divisor of 5,000, to be applied to the inhabitants of any city having over 15,000 inhabitants, as the rule of increase. The amendment I offer, is to substitute for this divisor of 5,000, a ratio or "mean increasing number" of 4,000, for every additional representative over the basis of 4,000 inhabitants, up to which number the towns over 1,000 inhabitants are to have one representative.

Now, the amendment of the gentleman from Lowell embraces all these propositions except the last. After taking the sixty-four towns of less than 1,000 inhabitants and giving them thirty-two representatives, he preserves to the towns having 1,000 inhabitants and under 4,000, their representation annually. To towns of 4,000 and under 8,000, he gives two representatives; to towns of over 8,000 and under 12,000, he gives three representatives—and so he goes on up to 12,000. Then the ratio is changed, so that towns having over 15,000 shall have a representative for every time that the whole number of inhabitants thereof can be divided by 5,000. That seems to me to be an arbitrary proposition. It is of precisely the same character as the present mode of apportionment—though different in its ratio and results—which gives a divisor of 160 to be applied to the smaller towns; whereas it is now proposed that a common divisor of 5,000 should be applied to the larger towns and cities. Either of those principles, I think, are not well founded. Neither of them have any proper basis to rest upon, and I will say here that the only decided objection I have ever had to the proposition of the gentleman from Lowell has been to the absence of principle which I perceive in that arbitrary divisor, and the placing the larger towns and cities upon a basis of absolute limitation in the relative increase of representation and population.

The gentleman from Quincy, (Mr. White,) suggested originally, a different ratio, which to my mind, completely meets every objection, and when the gentleman from Natick, (Mr. Wilson,) offered this amendment on Saturday, though not in the same terms as I now submit it, I was satisfied that, had it not been withdrawn by him, it would have been adopted. The gentleman from Lowell, however, opposed its consideration at that time, thinking it had not been sufficiently considered. The amendment itself is a familiar one to me, because I have seen, and have tested the figures and illustrations of the gentleman

from Quincy, on the subject. The only substantial change made by this amendment, is by adopting "a mean increasing number," instead of a common divisor. The latter has no fixed rule, while the former involves a principle based upon a mathematical rule of progression, which is in direct conformity with the old Constitution of 1780, and which, by that rule, makes "the representation of the citizens of this Commonwealth founded upon the principle of equality," which that Constitution declared its design to establish. That Constitution, after fixing the number of polls for one, two, and three representatives, says: "and proceeding in that manner, making 225 ratable polls the mean increasing number for every additional representative."

The proposition embraced in the amendment I offer, conforms precisely to that; and, if it was justified and justifiable in 1780, why is it not so in 1853? And in farther conformity, they went on in 1780, and said, that every town having less than one hundred and fifty polls, should be represented, and we go on and say that every town having less than a thousand inhabitants, shall be represented at least every other year.

Now, with regard to the amendment I propose, the difference in the actual working between it and the proposition of the gentleman from Lowell, will be not very large, as to aggregate numbers, while that difference involved in the principle itself, is very material. The matter of representation, as it will stand under the proposition of the gentleman from Lowell, (Mr. Butler,) will be thus: there will be sixty-four towns having less than a thousand inhabitants, with thirty-two representatives annually; over one thousand and under four thousand, two hundred and nineteen towns with one representative each, which, added to thirty-two, gives two hundred and fifty-one representatives; over four thousand and under eight thousand, thirty towns, two representatives each, making three hundred and eleven representatives; then over eight thousand and under twelve thousand, you have eleven towns with three representatives each, in all, thus far, three hundred and thirty-two; then of towns over twelve thousand, you have nine, viz:—

		No. of Representatives.	
Towns.	Population.	Ratio of 4,000	of 5,000
Boston,	138,000.	35	29
Lowell,	32,000	9	8
Salem,	18,000	5	5
Roxbury,	18,000	5	5
N. Bedford,	16,000	5	4
Worcester,	15,000	4	4
Charlestown,	15,000	4	4
Cambridge,	14,000	4	4
Lynn,	13,000	4	4
Total,		75	67
To which, add the total for the other towns,		332	332
And you have the grand total of		407	399

Thus it will be seen, that the whole amount of difference at present, is eight representatives, of which Boston will have an increase of six, Lowell one, and New Bedford one; and this is simply giving to Boston in 1854, what you will have to give her after 1855, and I do not see that any

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sound objection can be raised, to giving to Boston this additional number two years in advance to which she will unquestionably be entitled at that time. The totals, as I have already stated, will amount, (except in valuation year,) in the one case to four hundred and seven, and in the other three hundred and ninety-nine representatives. We arrive at this representation, on the basis of three hundred and twenty-nine towns, as follows:—

	Population.	Towns.
Below	1,000	64
Between	1,000 and 4,000	219
"	4,000 " 8,000	30
"	8,000 " 12,000	7
Over	12,000	9
Total,		329

In valuation year this would give a House of four hundred and thirty-nine, if all were elected, but ordinarily and practically, as we see here in the Convention, and as is always the case in the legislature, and will be so, especially if the majority rule continues, the actual working number of the House will be much less. For the future, you have a ratio of limitation provided.

This proposition, I think, Sir, embraces a principle upon which we can all stand; and although it increases the size of the House some, though not over its present number, let it be understood distinctly, here and elsewhere, that that increase is for the benefit of the larger towns; and, if they come here and insist upon having a smaller House than that, then the decrease must be taken from them; because we can go no further in cutting down the representation of the smaller towns. It being conceded, that the sixty-four towns of less than a thousand inhabitants, are to have thirty-two representatives annually, amongst them, and the towns having one thousand inhabitants, to be entitled each to a full representation, whatever increase is made over that number, on a progressive ratio, must be made solely for the benefit of the larger towns and cities; and if they object, and insist upon a smaller House, theirs must be the loss. No town or city wants a small House at its own loss. If, then, they would not be willing to be excluded themselves, they must be content not to exclude others.

The proposition gives seventy-five representatives to these nine cities, instead of sixty-seven, making a difference of eight, and the whole effect of the amendment is to give an increase to the large towns, but it is nothing but right that they should have an increase as their ratio of population increases, or that the whole towns, having over one representative, should apportion among themselves, their representation after 1860, so as not to exceed a certain number or rate of addition to the House.

Now, we may be told that 1870 this will make an excessive House. But we may let that future, at least, take care of itself. I am somewhat of the opinion of Sir James Mackintosh—on a matter of mere calculations and estimates—as quoted by the gentleman from Boston, (Mr. Hillard,) the other day, when he said we should not attempt, in our legislation, to look too far into futurity. If we should go as far as twenty years, I think that is quite enough for us to provide for, in this matter of representation, and the people who may be then living, having had some expe-

rience of the effect of our work, can change it if they deem it necessary, so as to suit themselves. Taking, then, the operation of this mode of representation up to the years 1860 or 1870 even, I do not see that there is any likelihood of an increase sufficient to conflict with the principle contemplated by this amendment, and the customary size of a Massachusetts House of Representatives. By the proposition of the gentleman for Berlin, you are not to increase over three hundred and seventy-five, exclusive of the towns having less than one thousand inhabitants, which will give thirty-two more, making in all four hundred and seven. Then, exclusive of these small towns, your House will not exceed three hundred and seventy-five in 1860, and cannot exceed three hundred and eighty-five at any time, because, according to the subsequent contemplated ratio in the next decennial period, the number of representatives cannot increase more than ten; so that, up to 1870, you can have no apprehension of any considerable increase. Why, Sir, Boston would have to increase to 150,000 to give her two additional representatives; Lowell must increase to 40,000 for the same purpose; and the other smaller towns and cities of this class to 20,000 to gain one; so that in regard to these large towns there must be a larger increase of population than I can think it is probable we shall arrive at. It will make but an increase of ten representatives on which you can possibly calculate in ten years, and then the largest House that you can have will not number over four hundred and seventeen, and that is no real inconvenience, as we are dealing daily here in this Convention, and can easily be put up with.

I think, therefore, upon the whole, that this is a proposition which will commend itself to the judgment of the Convention, and that if we adopt it, we bring together on a principle, of reform of the Constitution, as many friends as we can expect to go out of this Convention with before the people.

There is another reason why this amendment should be adopted. The majority of the Convention has undoubtedly come to the conclusion that the basis of the proposition of the gentleman from Lowell is the one which is to be regarded as the most favorable; yet, notwithstanding this, gentlemen of large ability, friendly to reform, have pledged themselves here against that amendment as it now stands, according to the proposition of the gentleman from Lowell; and we cannot well expect of them to go before the people and take back their own declarations made here. Gentlemen in various parts of this House have expressed themselves as dissatisfied with the amendment reported from the Committee of the Whole; but if the proposition I have suggested, should be adopted, I cannot but think that its adoption as an amendment to the amendment of the gentleman from Lowell, will take from that amendment the principal feature which has given rise to the objections against it. It will bring together the friends of the new Constitution to a greater extent than it is possible to do upon the basis now proposed, and will, at the same time, take away from the opponents of the new Constitution—if there shall be any—the only substantial objection they can have, except that which relates to town representation; and upon town representation the people will show their strength.

Mr. MORTON, of Taunton. Mr. President,

I rise on this occasion with a great deal of reluctance, and under somewhat peculiar embarrassment. I had designed, at an early stage of the debate upon this subject, to express my views at length in relation to it, and accordingly had prepared minutes or notes in reference to many facts which might be important to notice in this discussion. I was prevented from doing that, and therefore, I am now constrained to throw myself upon the indulgence of the Convention, knowing, as I do, that their patience is worn out, and that what I shall say may be a repetition of what has been said heretofore.

I was anxious to get the floor upon this occasion, because it seemed to me to be the last opportunity that I should have, and having understood from the Chair that the whole subject was before the Convention, I supposed I was entitled to the floor, in preference to the gentleman who represents Wilbraham, (Mr. Hallett). I acquiesce, however, in the decision of the Chair, and wish to apologize to that gentleman, because, under any other circumstances I would not have interposed an effort to take his place, even if I had the right.

I have, Sir, a proposition which I wish to submit, and therefore I rise, more for the purpose of putting that in a proper situation to be acted upon, than for the purpose of discussing the subject. It brings up a proposition which many gentlemen have supposed had been settled by the Convention. But I assure you and the Convention, that if I supposed that the proposition, or the substance of the proposition, which I am about to make, had been deliberately decided by this Convention, nobody would be more ready to acquiesce in that decision, and nobody more unwilling to trouble the Convention with an attempt to reverse it, than I should be. It is true it is a proposition somewhat similar to the one offered by the minority of the Committee. That proposition was acted upon, as I learn—for I was not able to be present myself—in a very thin House, and at a time when the whole Convention had not an opportunity of expressing their opinion upon it. Therefore, it is that I propose to offer it at some stage of the proceedings, when, under the present rule or order of the Convention—in which I most cheerfully acquiesce—it may be deemed to be in order, and to ask the deliberate decision of the Convention upon it. But, Sir, I suppose that in my statement I may be allowed to read the proposition, so that the Convention may be apprised of the nature of it. Gentlemen of the Convention, doubtless, already understand that it relates to the question whether the Commonwealth, in the matter of representation, shall be districted or not. I have endeavored—though it does not essentially vary the propositions which have been offered—to put it in a form which, I thought, would render it acceptable to every gentleman who had any disposition to adopt the districting system. I have no predilection myself for the form in which I have placed it; but I present it in the shape I do, because it occurred to me that it would be more acceptable to the Convention. The amendment is this:—

The House of Representatives shall consist of — members, which shall be divided among the several counties of the Commonwealth, as nearly as possible, according to the number of — by the last preceding decennial census. As soon as may be, after each decennial cen-

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sus, the Senate shall divide each county into as many representative districts, as it may deem expedient, so that the basis of each representative shall be as nearly the same number as possible, without the division of towns or the wards of cities; provided no district shall be entitled to more than three representatives, and provided that Nantucket and Dukes Counties shall each form one district, and be entitled to at least one representative.

I have intentionally left two or three blanks in the amendment, in order that the Convention, if they felt favorably disposed to this plan, might fill them as they should think proper. The first blank relates to the number of members of which the House shall be composed; and the second refers to the basis upon which the ratio shall be ascertained; that is to say, whether it shall be inhabitants, legal voters, or ratable polls. My own choice would be inhabitants, but many gentlemen, and perhaps a majority, would prefer either legal voters or ratable polls, and I have no such predilections towards one or the other, as to prevent me from acceding to any proposition, in that respect, which shall be acceptable to the Convention. Perhaps I may as well say here, that I prefer inhabitants to either of the others, as a basis, because their numbers may be ascertained with greater ease and certainty. You have that in the census which is taken every ten years, and there can be no uncertainty or dispute about it. In relation to the number of legal votes or ratable polls, its correctness depends upon the action of town officers, who may or may not be faithful and honest, and especially, who may not be correct; for it is notorious to all of us, who have had much to do with political affairs, that no town officers, however desirous of ascertaining the exact number of ratable polls, or legal voters, can ever attain entire accuracy in that object, and therefore there is an uncertainty about it. Yet there may be an approximation to correctness, and if either of those is preferred as a basis, they come near enough to correctness to meet with my approbation.

Having stated my amendment, I should like to avail myself of this opportunity to make some remarks upon the general subject, which, I understand from the President, is now open to discussion. Almost all the gentlemen who have spoken upon this subject have said, in the outset, that this was an important and difficult subject. It certainly is important. The first important step in the establishment or formation of a government is to fix the qualification of voters. The second is to determine the ratio of representation. There is no doubt, therefore, that it is an important subject. It is true that it may be one of difficulty, but that depends upon the light in which we view it. In itself, it is not a very difficult subject. Here, in a Commonwealth compact in territory, settled all over, not sparsely, but densely; arranged into counties and towns, convenient for a division into sections of any shape, you may please, you have an intelligent, well-educated, and moral population to act upon. Taking these things into view, and the fact that the inhabitants are of the same race and kind, and in every respect homogeneous, that we have no moral or political line of division, with slavery on the one side, and freedom on the other, like Virginia, nor are divided by mountains, like Tennessee and many other States, but every part accessible to the people of the other, and the population of

every section more or less acquainted with the population of every other—taking these things into view, I say, it would seem that we need meet with no difficulty in settling a basis and executing it by drawing out the line of division. Sir, if such men as Franklin and Jefferson could be brought here to determine upon the representation of this Commonwealth, the only surprise they would feel would be that we should have occasion to call upon anybody to perform a service so easy and plain. They would sit down and determine deliberately what would be the proper number, and then, proceeding upon the republican doctrine of equality, apportion them among the people of the Commonwealth. The first question relates to the number of representatives. That is a matter which may not involve principle. It may be a matter of expediency,—though I reluctantly use the word,—but it would undoubtedly have reference to the amount of population, the extent of territory, the business of the inhabitants, the homogeneity of the population, and to the fact that, although some diversity of pursuit and interest might exist, yet that there was a general unity and community of feeling, taste, and principles. The inquiry would be, how many members would perform the public service in the best way, and best maintain and preserve the rights, and promote the interests and welfare of the Commonwealth? But I do not mean to express surprise that this subject is now surrounded with difficulties. That would be absurd after the efforts made here to determine upon some basis of representation. But what are these differences, and whence do they arise? not from the subject itself, as we have seen; Not from the inherent difficulty of performing the task, but from preconceived notions and prejudices, and perhaps from personal feelings and interests. In approaching a subject of so much importance as that of settling the principle upon which the government is to be administered, ought we not to lay aside those prejudices, and discard all preconceived opinions? Ought we not to cast behind us any political feelings, or interests, or aspirations which we may be supposed to have? In proceeding to the investigation of this subject, after we have determined in our own minds, what the right number is, and what should be the relative proportion between the two Houses, we ought to ascertain upon what principle this object should be accomplished. I do not hesitate to say, that all sound principle, that justice and right, point to equality as the only righteous basis upon which a democratic government can be established. But before we proceed to discuss this principle, I should be glad to ascertain from what point I am to start. It is impossible to go on and investigate a subject unless we have some data from which to reason, some postulatam from which to draw inferences. I am astonished to find how entirely we are afloat upon the subject, and how difficult it seems to be to find any common principle or basis upon which we can reason. If we say that justice—the eternal principles of justice—should govern us, we are told that this matter of government is one of expediency. Sir, I detest this notion of resorting to expediency as a guide in accomplishing any great object. Let us adopt principles and carry them out. True principles never can mislead. Principle, like truth, is ever consistent and eternal. No one truth, from the foundation of the world to the

present day, was ever inconsistent with any other truth, and no one principle was ever inconsistent with any other principle. No just principle, if followed out truly, will ever mislead, but will always tend to wise and just results. Talk about rights in this case, and about the rights of the people, and we are told that government is an artificial system, a mere matter of convention. Talk about the great principle laid down in the Bill of Rights, in the Constitution, and in the Declaration of Independence, that all men are born free and equal, and how are they regarded? Have you not been told here, to secure freedom first, and let equality follow it if it can, or else lag behind? I say you never can secure liberty unless it is based upon equality. Everybody loves power. It gives its possessors advantages. Let them belong to what class they may—I care not how honorable and upright they may be—they will use the advantages which power gives them, and they will not willingly yield it. I could illustrate it by facts in relation to this very subject. In a former distribution of representation we gave to some a disproportionate power, and to others less than their share, and now we come here as the representatives of the people upon the basis of that distribution. You find one county with 30,000 inhabitants with a representation equal to another having 75,000. I wish to be understood that I impute blame to no one, in this respect. But what is the consequence of that state of things? Those who have enjoyed more than their equal share of power, now claim and demand that it should not only be continued to them in the same proportion, but absolutely increased.

But to recur again to the doctrine of our Declaration of Independence, and of our Bill of Rights—the doctrine of equality and liberty which we have all learned from our infancy. What are they? Our Constitution says that our government is a social compact; that every man shall have an equal right to elect and be elected to office. Shall we allow this to remain as it is, or shall we refuse to re-establish the Bill of Rights by striking it out of the Constitution?

Well, Sir, shall we disregard these principles held so sacred by our fathers? I know how very liable we are to overlook principles when they stand in the way of our interests or our desires. The struggles of our friends to resist the application of the great doctrines of the Declaration of Independence and our Bill of Rights, may be illustrated by an anecdote which the view of my clerical friend before me has brought to my mind. I am tempted to offer this illustration, drawn from his profession, and I hope I shall not be considered irreverent, or as departing from proper dignity or decorum in debate, in relating the anecdote. We are told that in a certain part of the country there was a very orthodox congregation who had settled a minister very much to their minds. But, in the process of time that minister grew more liberal in his mode of thinking and he wanted to initiate his flock a little into his new doctrines. He began by little and little to show his liberality, and to try his flock he preached a sermon looking towards Unitarianism. Unluckily he selected for his text the exclamation of Thomas, "My Lord and My God!" His sermon from this text caused some disturbance in his congregation. Thereupon the deacons of the church waited upon him and questioned the

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orthodoxy of the doctrines which he had advanced in his sermon the Sabbath before. He of course defended himself and they went into an argument, and either because the deacons had the best side of the question, or because they were a little the most skillful in argument, they succeeded in entangling the reverend gentleman so much that he found it very difficult to extricate himself. At last, a little vexed, he says, "Well, my friends, to be honest with you, I really wish Thomas had not said it." [Laughter.] Now, when our friends in the Convention find it so extremely difficult to reconcile the doctrines which they find themselves constrained to adopt with the principles of our Declaration of Independence and Bill of Rights, I believe they really wish our fathers had not put such principles into these immortal documents.

But, Mr. President, we will look seriously to the highest source for information upon this subject. I do not refer to the "higher law," which has been so much talked about by politicians, but if we will look at the highest source of information—to the Bible itself, what do we find? I look there for the principles of democracy. It is there that we shall find the true principles of democratic institutions and in that book is the command, "Whatsoever ye would that men should do unto you do ye even so to them," and the command to love our neighbors as we love ourselves. Now, Sir, do the people of Franklin love the people of Barnstable as they love themselves? Do the people of Berkshire do to the people of Bristol as they would that the people of Bristol should do to them? Sir, I suppose I shall be told again as I have been told before, that the Bible is out of place in political conventions and that these principles are not applicable to constitutions of human governments—that we must resort to expediency.

I had prepared somewhat extended notes for remarks upon another occasion in reference to this subject, which I shall not now feel myself at liberty to enlarge upon as I had intended, and I fear I shall be compelled in making selections from them, to proceed in a somewhat desultory manner. However, before I enter upon this argument I wish to find some sound basis upon which we can stand, and whatever may be the views of other gentlemen, I know of no better way than to go back to the first principles upon which our government was founded. The Constitution recommends a frequent recurrence to fundamental principles. The gentleman for Wilbraham, (Mr. Hallett,) has told us—and I do not propose to go into that matter—that when the country was first settled, a pure democracy was established where every man was precisely equal with every other man. But they could not continue this form of government long. On account of the increase of population and the consequent inconvenience of the people acting *en masse*, they were compelled to adopt a different mode. They could not act in general assembly, and, therefore, they must adopt some other mode of expressing their opinions. And how did they proceed? Did any one give up his rights to others? By no means. They selected certain persons who should express the opinions of the whole, to transact such business as should become necessary to be done in the same manner as if the whole people had been assembled. It was not yielding any right, but each man was to have his opinion expressed through those who were selected to represent him,

the same as if he had expressed it himself. It was a principle of equal representation. And, Sir, that has been the doctrine upon which our government has been founded, upon which it has existed, and it is the doctrine of every free government which has ever existed. It was the basis upon which our government was instituted at that time, and it is the basis upon which I think the government should proceed in future. Now when you come to this point and admit that this is the true theory, the true basis of government, why can we not follow it out? I maintain that this is the only true principle, and when gentlemen say that when our fathers permitted themselves to be represented by delegates chosen by themselves, they gave up any natural right, I deny the doctrine. Sir, when men declare their views or vote, it is not by any grant from others, it is the exercise of their own natural inherent right. Who has the power to make such grant? If they do not possess the right by nature, whence do they derive it? Who can confer it? This right has been called a conventional right. The regulation of its exercise is undoubtedly conventional, but the right itself is inherent in man and was conferred by the Almighty when he created man.

The right of voting has also been called a privilege. A privilege! What is a privilege? It is a favor conferred; a peculiar benefit or advantage, right or immunity, not common to others of the human race. Whence was this peculiar advantage derived? Who, in a natural state, can confer it? If a man does not possess it himself, how can he confer it on others? I maintain, that it is a right which nobody can give, and nobody can take away. It is the province of government to regulate and protect it, but never to weaken or impair it.

But whatever may, in the estimation of any of us, have been its origin, it is an acknowledged legal right, recognized by law, and maintained and enforced by our courts. The right of voting has ever been held as sacred as the right of property, and a violation of the one right subjects the aggressor to punishment, and to a civil remedy just as much as the other. Would you, by any action of the Convention, deprive a man of his property? If not, how can you deprive a man of his right of suffrage? Many a freeman would surrender his property much sooner than the elective franchise.

And the question we are to determine is not to whom the right of voting shall be given, for that is a right which every freeman possesses, but to determine how that right can most fairly and freely be carried into effect? If private individuals or the selectmen of a town deprive a man of his right of voting, or essentially infringe it, they are liable to indictment for it; and he can recover judgment against them for the violation of this right, just as he can for impairing or destroying his property.

Sir, what right have we to say that one man shall have three or four times the power of another man? What right have you to say that the vote of one man shall count as much as the votes of three or four other men? It is just the same, if you give to one man four times the right of another, as if you actually took from that other man three-quarters of his right. As a matter of principle, you can neither do one nor the other.

I say you have just as good a right to deprive a man of his property as you have to deprive him

of his right to vote. But this Convention in its sovereign capacity is omnipotent and irresponsible. No other power can call it to account. Let it not be said, that there are no principles by which we are bound. Sir, I say this Convention is bound by the same rules of right and justice which bind a judicial tribunal or any other body, in deciding the questions before them. Suppose we were called upon to distribute the property of an intestate or insolvent, among his children or creditors, and we should deliberately give to one \$10,000, and to another only \$500, would that be in accordance with the principles of right and justice? Is there a man here who would consent to do it? Is it not as much a violation of duty to give to one man or the inhabitants of one town or county, four or five times as much power as we give to others?

You see, Mr. President, that my argument tends, or at least that my aim is to establish the principle that in the distribution of power, we are bound by the principles of equality and justice so to distribute political rights among all men that at all times and under all circumstances, one man shall enjoy the same right precisely as another man. I do not pretend to say it can be carried out with perfect accuracy. And gentlemen have undertaken to prove that it was mathematically impossible, and have reasoned therefrom that no such principle could exist in practice. Well, Sir, if we cannot carry out the principle with mathematical exactness, is that any good reason why we should not endeavor to approximate to it? Nothing is perfect in this world. And if we cannot attain perfect equality, shall we not endeavor to arrive as near to it as possible? And will any man pretend that to divide the State into districts as nearly equal as may be, in population, or legal voters, will not be a nearer approach to that principle, than to base your House upon town representation?

I concur entirely in the position assumed by the chairman of the Committee, (Mr. Griswold,) who made the first report to the Convention upon this subject, that you must adopt one system or the other. There is no other alternative, you must either have a district system or a town system of representation. I regret that the gentleman for Erving has seen reason to recede from that position, for so far as I can judge, I would much rather have the original report of that Committee, than the substitute of the gentleman from Lowell, (Mr. Butler,) because I think it violates fewer principles, and although the people of the Commonwealth would be unequally and unjustly represented by that, I should prefer it because it contains fewer inconsistencies and violations of principle.

Mr. GRISWOLD, for Erving, (interrupting). If the gentleman will allow me a moment, I desire to say a word of personal explanation. Several gentlemen have alluded to the fact of my yielding to the plan which was presented by the gentleman from Lowell, as a compromise. I wish to say in reply to those allusions, and in answer to the calls of several gentlemen for explanation, that I found, so far as I could ascertain by inquiry of the members of the Convention, and others, that the people of these sixty-four towns, with less than one thousand inhabitants each, would much rather be represented six years out of ten, than to be connected with other towns by any district system that you could make.

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Mr. MORTON, (resuming). Well, Sir, I am not disposed to dispute the gentleman's information, though some of the people from those towns have told me that they would much prefer the district system. But I have made no inquiries upon the subject, and, therefore, the gentleman may be better informed than I am.

But, Mr. President, we are met in the outset with the objection that the district system cannot prevail. It is said that it is in vain to bring it forward again, because it cannot be carried in this Convention. Well, Sir, I do not know whether it can or not. All I ask is that it should have a fair trial, and I will cheerfully acquiesce in whatever may be the will of the Convention. I have heard many gentlemen say that they were in favor of a district system, but that we had better give it up, because it cannot be carried in this Convention. Well, Sir, if gentlemen give it up, and will not vote for it because they believe it cannot be carried, it of course will not be carried.

But another argument was urged at an early stage of this debate, that if the Convention were to submit the district system to the people, they would reject it. There I must take issue with the gentleman. I profess to have no more knowledge in relation to the opinions of the people than is possessed by other members of this Convention, and perhaps I may have less, but I believe the moment you submit a plan for a district system to the people, they will adopt it by an overwhelming majority. My honorable and frank friend from Fitchburg, (Mr. Wood,) let us into the secret of this matter. He was of the opinion that a district system would not prevail with the people, because in every town there are some half dozen, or a dozen, or two dozen persons who are looking forward to an election to some Convention or to the general court, and they will go before the people and for good reasons, or bad reasons, persuade them that the district system ought not to be adopted. Sir, I have no doubt that there are a great many men who are influenced in their action by motives of this kind, but I do not believe they will carry the people with them in the settlement of a question of this importance, I think better of the intelligence of the people than to suppose that half a dozen or a dozen aspiring, ambitious men, seeking their own promotion could persuade the people of the different towns to act against the justice of the measure, their own equal rights, and the best good of the whole State. I believe the people will judge for themselves, and when we present them with a system which will secure an essential reduction in the House, and at the same time an equal and just representation, that they will go for it with a perfect avalanche. I do not speak in reference to this matter so much from personal knowledge, or from consultation with many people, as from very general knowledge of their convictions in relation to the principles of a basis of representation, and from what I know to be their desire to do justice to all parts of the Commonwealth. And I believe that you will even gain the support of many of that class of persons to whom my friend from Fitchburg alluded. I recollect the remark of a shrewd, practiced politician, who said that nothing was easier than to lead the people, all you had got to do was to see which way the current was running and to jump in before it, and thus lead them. [Laughter.] Now, Sir, I apprehend that a great many of these

aspirants to office, who are to control the wishes of the people would find that the current was running in favor of the district system and would jump in before it, lead the people in that direction and be its loudest advocates.

But, Sir, I must pass very rapidly over many points which it was my intention to have noticed more at length, and I am the more willing to pass over one very important branch of the subject because it was presented by the gentleman from Ipswich, (Mr. Haskell,) with more clearness than I should be able to present it. He laid down three propositions which I as sincerely believe in as I do in the justice of an overruling Providence. One was that people demand a large reduction of this House. Everywhere it has been called for. Another was, that every man should be represented, not in alternate years, but always represented. And the third was, that representation should be equal. But I will not stop to illustrate what my friend from Ipswich has done so well before me. I say then that there must be a very great reduction of the House and if I had time I should be very glad to illustrate that position by a reference to other States in the Union. Why is it that Massachusetts should stand up here differing from all the other States of the Union? Far be it from me to detract from her good name. I love her and I will defend her wherever and whenever she is assailed. But there are other States of the Union quite as prosperous and quite as respectable. And their business is just as well and just as honestly done with less than half the number of members in their legislatures that we have. And however wise and perfect we may esteem ourselves, I apprehend that we are not too wise and too perfect to improve by the example of others. Sir, we cannot claim to be exempt from the charges brought against others. We have seen various charges brought against the legislatures of other States, but we should remember that others can bring the same charges against us. Gentlemen talk about the legislature of New York being corrupt, but they should remember that New York talks about Massachusetts too; that she tells us about excursions on the Western Railroad,—excursion, not through the Hoosac Tunnel, but around it,—and that these circumstances will bear more than one construction. I make no complaint of them, but how do they look abroad? How are they construed? As a means of influence. And for what purpose? Why, Sir, when a railroad company wish to carry out a certain project and have not the money to do it with, it is a very easy matter to incur the expense of carrying two or three hundred representatives upon an excursion. I do not say for corrupt purposes, but every gentleman can see what influence it is calculated to have.

I wish to refer to some of the States to show the number of representatives which they severally have. I took the pains very early in the progress of this discussion, to prepare a table, showing the extent of territory and the amount of population represented by each member in every State in the Union; but, gentlemen need not fear that I shall trouble them with presenting anything of the kind now. I will merely say, that the great State of New York, unexampled in her growth and prosperity, with a territory five or six times as large as our own, and a population three times as large, has only one hundred and twenty-eight members. Pennsylvania, the Keystone State, as

she is called, one of the richest States of the Union, though imprudently involved in debt, twice as large as our own State in population, and four times as large in extent of territory, has one hundred representatives. Ohio, that great State, peopled by sons of New England, with her immense population and territory, has only one hundred members. Since we have been discussing this very matter, I had an opportunity of having a conversation with a distinguished individual from Tennessee, a State many times larger than our own in territory, and quite as large in population—and he tells me that that State has only seventy-five representatives. In answer to my inquiry, how the district system operated there, he said, that it gave great satisfaction, and that they had no desire to change it at all, and, that if they were to make any change, they would reduce their house rather than increase it. Although, I know my own views upon this subject will not meet the views of the Convention, and I do not intend to trouble the Committee by thrusting my opinions upon them in this matter. Yet, I must say, on my conscience, that if we could agree to reduce the House to one hundred and twenty members, I would be rejoiced at the result. I know that this statement will not aid my argument, because, I know that the opinions and prejudices of the people are against it; but, as an honest man standing here, I am willing to avow it, and let it be known. I have not thought proper to fill the blank in my resolution, leaving it to the Committee to insert such number as they should see fit to select. I do not propose any number, because I intend to accede to the wishes of the majority of this Convention, whether they should adopt a basis of two hundred, two hundred and fifty, three hundred or three hundred and fifty. I am in favor of the district system, because we can reduce the House, because we can fix upon a number the best calculated to perform the duties which devolve upon them, and because it insures equality. I have not time to enter into an argument upon this subject at any length, but I wish to refer to one or two other subjects before the hour arrives for closing the debate. There is one argument that I will take this opportunity to advance. I had, originally, as I thought, built a very strong and unanswerable argument upon a certain proposition, but, I confess, that this has been somewhat weakened by the course of argument which has been employed in debate here. I have always heard, not only in party meetings, but in many other places, that there was a centralizing influence exerted here in the metropolis, and that great danger was to be apprehended from it. That feeling has grown up with me, and I thought that great danger resulted from that source, and I think now, that there is great danger from it. But, I confess, the argument of my distinguished friend for Berlin, (Mr. Boutwell,) weakened my convictions upon this subject. He said that your talented ministers, your learned doctors, your eloquent lawyers, your enterprising merchants, the great body of your industrious laborers, all find their way from the country to the city. If this is the case, do they not bring with them the sentiments, feelings and sympathies of the country. I have some personal recollections upon this subject, and I cannot think of the homely place where I was born, without feeling a strong attachment for it, and those, feelings and impressions which were implanted

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then, still follow me, let me go where I may, in town or country. Therefore, as it seems to me, this argument goes far to show that the power of centralization is not quite so dangerous after all, as I once apprehended, and that there is not quite so much opposition between the city and country as I had been inclined to believe. I was very much obliged to the member from my own county, who represents Easton, (Mr. Sheldon,) who made an effort to show that there was an overwhelming tendency to centralization, and that it would govern and control the Commonwealth. I wish his argument had been stronger, I wish to make as much as I can of the danger of centralization, and then comes the duty to neutralize and guard against it. How can this be done? The district system does it completely. You do not want to array the country against the city. You do not want to bring a double representation from Berkshire or Franklin, or any where else, to vote down Boston. I am aware, that in Boston and its vicinity, on account of the compactness of its population there is a great deal of central power exerted, but I am aware also, that there is a great diversity of opinions, pursuits, interests and tastes, nay, that that diversity is altogether greater here than in any part of the country. All you have got to do to destroy centralization, is to make your districts equal throughout the State, and then be assured that one district will be played off against the other, and your centralization will be all scattered and annihilated. Let us look a little for example, in this matter. Look at the great city of New York, containing more than half as many people as this whole State of Massachusetts. Under the district system she chooses seventeen representatives, and is it not notorious to everybody who has read the newspapers, that there are no seventeen representatives in the legislature who have so little influence as these seventeen members from the city of New York. Look, too, at Philadelphia, a city larger by far, than Boston, and how is it there? We all know that Philadelphia exerts but little influence in the legislature of Pennsylvania, and the result would be the same here. I should like to say something more upon this subject, but I find that I have not the time to do so, and must hurry on to glance at one or two other topics. I desire to say a little something to my friends from Franklin, for I have very great respect for them, and I should like to say in this connection, that nobody has a higher respect for the farmers of the country than I have. I was brought up on a farm, and there are all my attachments. I know thoroughly, that class of people, and I was grieved to hear my honest friend in the gallery, (Mr. Whitney, of Boylston,) depreciate the farmers and mechanics of the country, by saying, that if you form districts, you will have none of them here. He did them great injustice when he made that remark. They will take care of themselves, and will see to it that they are duly represented. There is no danger in forming districts, because your independent, respectable and intelligent farmers will not be represented. I will say of them, what I intended to say when I began the sentence, that I consider the farmers as respectable, as intelligent, and more honest than any other class of the community. I hold, that, all classes are honest in proportion to the absence of temptation to which they are exposed, and I think that the farmers are more honest, for the reason that they have less temptation to be dis-

honest. I think that is a fact which can be easily established.

Perhaps I ought to make one exception, when I speak of the farmers being more honest than other people, and that is, in favor of the fishermen of Cape Cod, and the whalemens of Nantucket. The whalemen are upon the ocean more than half of the time, and they cannot be exposed to very great temptation there, while the fishermen pursue their occupation in small vessels, but few being associated together, and they have but very little temptation, and I presume you will agree with me, that these fishermen, when at their homes on Cape Cod, have quite as few temptations to dissipation and profligacy, as the farmers of Franklin. But I may not strike the balance between these two classes. I desired to say a word or two to my friends from Franklin, who have been a little disturbed at some sensitiveness exhibited on the part of the south-eastern section of this State. They thought that it showed an unbecoming spirit, and it was bandied about from one to the other, that there was caucusing to effect a certain object. I do not believe much in caucuses, nor do I proscribe them. In matters of this kind, we must all have consultations, and do we not all want some inducement to bestir ourselves, and try to claim our rights. I wish to look at this thing and see, if the younger branch of our delegation showed a little warmth, if they were not excited to do so by what happened between Bristol and Franklin. Upon principles of equality, we are entitled to two and a half times as many representatives as they are in Franklin. But, by the original Report which is but little varied by the proposed amendment, Bristol had just the same number as Franklin. If we have a just and equal representation, instead of having twenty-six members, we should have sixty-four. Barnstable with 35,000 inhabitants, has thirteen members, while Franklin with 30,000 has twenty-six—just double. The same ratio of representation which gives to Franklin twenty-six members, gives to Bristol sixty-four, and Barnstable twenty-eight. Is it strange that such gross inequality and injustice should produce some little excitement in those counties? Is it wrong that some few of their members should get together and try to make an arrangement by which something like equality should be secured? Their submission is much more remarkable. Let us reverse this picture, and see what word we should have heard from Franklin. I am going to pass over Plymouth, whose claims have been so well presented by the member from Duxbury, (Mr. Weston). Supposing there had been assigned to Bristol and Barnstable as great a proportional excess over Franklin, as Franklin has over those two counties. How would the account have stood? Gentlemen will hardly believe a statement so monstrous. I doubted it myself, when I made the computation; and I was not convinced of its accuracy, until I called in a mathematician to revise and test the calculation. If the same disproportion existed in favor of Bristol and Barnstable, which by the Report exists in favor of Franklin, while Franklin would have twenty-six members, Bristol would have one hundred and sixty, and Barnstable sixty-two. Now reduce these figures to comprehensible numbers, and Franklin would have five, Bristol thirty-two, and Barnstable twelve. If such a report had been brought in, what should we have heard from

Franklin? Would she have been as quiet and tame as was the Old Colony? No, Sir. The voice of my friend from Freetown would have been like the cooing of a dove compared with the thunder which would have come from the mountains. Erving, and Montague, and Conway, and Deerfield would have opened their batteries upon us, and Warwick would have carried our works by storm. [Laughter.] And I should forever have honored and respected them for doing it. Men who will not resist the invasion of their just and equal rights, are hardly worthy to possess them, and will not be likely long to retain them. Now is there a man here from Bristol or Barnstable who has so little regard to his just rights, and so little self-respect that he is willing to confess himself but one-half or one-third of a man compared with a citizen of Franklin or Berkshire? If there be one—

Here the President's hammer fell.

THE PRESIDENT. The Convention has ordered debate upon the main proposition, and the pending amendments, to cease at this time. The first question before the Convention is upon the motion of the gentleman representing Wilbraham, (Mr. Hallett). The Chair will state the position of the question. The first proposition is the Report of the majority of the Committee. That resolve was committed to the Committee of the Whole, who have reported it to the Convention with an amendment in the nature of a substitute. The question, therefore, is upon agreeing to the amendment reported by the Committee of the Whole. Pending that question, the gentleman from Boston, (Mr. Schouler,) by unanimous consent of the Convention, had leave to present an amendment to the amendment which is in itself in the nature of a substitute. Pending the question, the gentleman for Wilbraham, (Mr. Hallett,) moved to perfect the amendment by striking out the following words in the last paragraph of the first resolve:—

Every city or town of 15,000 inhabitants and upwards, shall be entitled to one representative, and as many additional in each year as the number of times 5,000 may be contained in the whole number of the inhabitants thereof.

And insert in lieu thereof the following words:

Every city and town containing over 12,000 inhabitants shall be entitled to elect one additional representative for every 4,000 inhabitants it may contain over 12,000.

The question is upon this amendment perfecting the paragraph in Document No. 65, which has just been read.

The question was then taken upon Mr. Hallett's amendment, and a count being had, there were—ayes, 149; noes, 67.

So the amendment was agreed to.

THE PRESIDENT. The question recurs upon the amendment moved by the gentleman from Boston, (Mr. Schouler,) which is to strike out certain words, standing as the amendment reported by the Committee of the Whole, as printed in Document, No. 65, and insert as a substitute, the words as printed in Document No. 66, as modified by the gentleman.

MR. BURLINGAME, for Northborough. Is it order, Mr. President, to offer an amendment?

THE PRESIDENT. The gentleman will state his amendment.

MR. BURLINGAME. I wish to move to

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strike out certain words, and insert the following:—

Resolved, That by the theory of government, and the Declaration of Independence, all men are created equal, and are endowed by their Creator, with certain inalienable rights, that among these are life, liberty and the pursuit of happiness, and that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, and that these are fundamental maxims, upon which every truly democratic government is founded, and upon which alone genuine democracy can be permanently maintained.

Mr. SCHOULER. I will accept that amendment.

The PRESIDENT. The question is then upon the resolution as modified.

Mr. DANA. I move to amend the second resolution, by inserting after the words "man for man," the words, "woman for woman, child for child, and irrespective of citizenship or residence," so that it will read—

Resolved, That it is expedient so to amend the Constitution of Massachusetts, that the popular branch of the government—the House of Representatives—like the Senate, shall be so constituted that all men shall be equal, in political power and authority in the Commonwealth, and be equally represented, as near as may be, man for man, woman for woman, child for child, and irrespective of residence, in the State government.

Mr. SCHOULER. I call for the yeas and nays on that amendment.

Mr. DANA. I will not take up the time of the Convention except to say that my desire is to perfect the amendment offered by the gentleman from Boston. [Laughter.] He has evidently an impression, that there is some principle which has been violated by the Commonwealth of Massachusetts from the beginning. As his resolution stood yesterday, it seemed to carry with it an inference that there was but one system of representation consistent with the Declaration of Independence and true democracy, and that was the district system. Well, inasmuch as we have never had a district system, of course it follows that we have uniformly violated the Declaration of Independence and the principles of democracy, from the beginning of the government to the present time.

But as he has withdrawn the preamble, nothing stands but his resolution, and I wish to perfect it and show that the only principle which our ancestors have violated and the only principle we shall violate, if we adhere to town representation, is not that of equality, not equality of citizens, but the equality of such numbers as the census counts. I did not mean to say a word, but I cannot avoid the temptation to say one thing which I think is legitimately connected with my amendment. I wish to call the attention of the Convention to what I believe a fallacy—an unintentional one, no doubt—on the part of those persons who contend that we violate by the principle of town representation, the true principle of equality. Now, I know that the democratic instincts of those members in this part of the House, who spoke yesterday, and the long and consistent democratic lives which they have led so many years, are very much agitated and distressed by the idea that the principle of town representation is to be adhered to. I feel for them. [Laughter.]

I have listened to the earnest appeals they have made, and the deep anxiety they have manifested, lest true democratic principles should not be adhered to in this Commonwealth, and I wish to administer some relief to my conservative friends on that point. I wish to assure them that, so far as I know, no democratic principle has been violated for two hundred years, and no democratic principle will be violated now. What is Democracy? If I have to learn what the democratic principle is, since I have never ranged myself in the Democratic party, they must pardon me if I do not go to my conservative friends, but rather to those who are older soldiers in the cause; but if I understand the democratic principle at all, it is not that political power must be based upon numbers merely, irrespective of what it is that you number, but upon numbers substantially, on the assumption that those numbers are composed of citizens.

We are in a peculiar state of things, such as the world never saw from the days of Noah to the present time. There is a tide of immigration setting into this country and especially into the Atlantic cities, such as was never seen. It is a transient population and an alien population. It counts in the census. Now I ask whether in this State of things, that is the kind of numbers to which the democratic principle of political equality in basing political representation, is to apply. I apprehend not. When Louis Napoleon was elected president, the soldiers voted by regiments and battalions and companies; and if a division of soldiers was stationed here, would it be counted in settling the basis of power? Would you count the tenants of the amphitheatre at the foot of the common, and all the people at the hotels? Would you count the transient alien population, as it passes over your stage in its course of emigration? You might as well count among the stock of a farm, the crows that alight upon his fields, and the wild geese that fly over them. It is unjust to seek to gain the benefit of this population in arranging the political power of the State. There, I take it, is the fallacy and the injustice respecting this extraordinary accident in the history of the world, this tide of immigration, and of transient population. If you count human beings, you get at numbers, to which the democratic principle never ought, in justice to apply. Here is the great difficulty.

In the State of New York, which is a democratic State, they do not base their political power upon numbers, but upon numbers exclusive of aliens; and by the consent of the city of New York, the entire alien population is excluded in making out the political power of the State. But we have included here, this transient population in making up the basis, of the Senate, and in making up the basis of the council; and in making up the basis of representatives in congress, our national power is founded upon counting in this alien transient population. Now, we are asked to extend it one step further, in order to get the benefit of it in breaking up the entire system of town representation, I mean to say, the political power of the towns in Massachusetts.

I beg my friends not to be deluded any longer with the idea that they are violating the principle of equality by adhering to the principles of town representation; and if they throw overboard this principle, I hope they will understand that they are throwing it overboard only for the purpose of

giving the benefit of the power of representation more fully to the great cities. New York has not the benefit of this alien population, and no city has so much of that population as Boston, except New York.

I desire to put this matter fairly before the Convention. I think it would be an injustice to every department of the government to reckon in this floating alien population. Would it not be an injustice thus to apply the democratic principle of equality to a system of numbers to which it was never intended to apply?

Now, in moving my amendment, I purpose to expose that fallacy. I hope the Convention will adopt my amendment. It will include all transient persons, staying for a day or an hour, irrespective of age or sex or anything else, and this will expose the fallacy contained in the amendment of the gentleman from Boston. It will carry it out to its legitimate conclusion. If, then, the gentleman from Boston approves it, I hope he will vote for it.

Mr. BRIGGS, of Pittsfield, asked for the reading of the amendments.

They were read by the Secretary.

Mr. BRIGGS. We have reached a point in the progress of this most interesting discussion, of very great importance to us and those whom we represent here. The great question to be settled this day, Sir, is between a just and equal system of representation, founded upon population, ratable polls, or legal voters, and the present system of town representation. The gentleman from Boston has introduced two propositions here, calculated to bring the mind of this Convention directly to the point; and he has declared in one of them the rights of men to participate in the affairs of government, man and man-like. And the gentleman from Manchester has introduced a proposition to enlarge this. Sir, if he believed in extending the principle to the length that he has proposed, would he have made his proposition, or is he playing with this Convention? Does he wish to sport with us, here? He proposes, in direct terms, the absurdity which he so fairly illustrates here. And why does he do it? Is it to defeat a grave and serious proposition, by engrafting upon it that which he himself says is an absurdity? Does he wish to enumerate in this population the company that are now performing at the bottom of the Common? He says he does; but does the proposition of my friend embrace them? No Sir; he says it does not; but the gentleman wants the proposition to embrace them, and yet he calls upon the friends of the towns to vote for his proposition. Sir, I have a respect for the towns and the representatives of the towns, and I hope that the representatives of the small towns will pause before they vote for such a proposition as this. Sir, let us seriously approach the main point in this case. The gentleman assures this Convention,—and that is something of an assumption for him,—“calm your fears; allay your apprehensions that this system of town representation violates the principles of equality and justice.” I see before me my friend from the little town of New Ashford, (Mr. Harmon,) one of those from my own native county, who represents two hundred and ten as good and true men and women as are to be found in any other town in this Commonwealth; and let me appeal to his sense of justice, and his notions of equality,—let me ask him, if he believes that it violates no such

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principle that he is to represent two hundred and ten inhabitants, and another town with one, two, or three thousand inhabitants, is to have only one representative. Where are we, Sir? We hear it asserted, day after day, that if one town, having five hundred inhabitants, has one representative, and another town, of two thousand inhabitants, has one representative, yet that violates no principle of republican equality. Tell me, Sir, if one man in Berkshire County, or in Franklin County, is worth three men in Boston. You talk about the "solid men" of the country; what is a solid man? He is a man endowed with all the rights of a man; and what is he when he comes into the city and takes up his abode here? Is he any the less a man? Sir, take a man from one of those corporate towns that my friend represented to us a few days ago, and which he so undervalues. He comes down from his native hills of New Hampshire, a man—one of the "solid men" of New Hampshire; he comes down to Lowell and takes his stand at a loom; but just as soon as he does that he loses the respect of my friend, or, at least, his political consequence, and becomes but one-half or one-third of a man; and yet they tell us this violates no principle of republican equality! Sir, I believe in no such democracy as this. I said once, upon another occasion, that I was born a Democrat, and that was a little too original for some Democrats present; but I know no other sentiment than that of true republican democracy, and that democracy dates back to the time when Jefferson raised the banner in the days when they reckoned all men as men. They say that a man in Berkshire, or in Middlesex, because he follows the plough, is a solid man; but when he removes his residence, and comes into a city, he becomes less of a man. Now, Sir, let us approach this subject at the point which we have now reached, seriously and gravely, and vote upon the propositions which are before us. They are sensible, direct propositions, intended to proclaim the true principle of the district system, based either upon population, ratable polls, or legal voters, as contrasted with the principle of town representation in any of the plans which have been laid before us. I came here, Mr. President, with the feeling, and I now entertain it, deeply and sincerely, that if any plan can be devised by which this system of town representation can be maintained with anything approximating to justice to the large towns and the cities, and at the same time keeping the House within reasonable limits, I would go for it, and go for it cheerfully; but unless it can be done, and done without violating the great principles of equality, and our Declaration of Rights, which was read yesterday by the gentleman from Boston, (Mr. Crowninshield,) and alluded to to-day by the venerable gentleman from Taunton, (Mr. Morton,)—planting myself upon that, I say, that if it cannot be done without violating that great principle, I cannot go for it. Sir, frankness leads me to declare, that in my estimation no plan which has yet been presented to this Convention, accomplishes that desirable object. I shall therefore be compelled to vote against them all, and if nothing better can be devised, I shall vote for an equal district system,—that system which shall give to every voter in the Commonwealth the same right every year, and which shall give to every district in the Commonwealth the same power.

Mr. SCHOULER, of Boston, called for the

yeas and nays on the amendment submitted by Mr. Dana.

Mr. DANA. I am informed that an amendment is now in preparation, which will accomplish my object as well, or better than the one which I have offered, and I therefore withdraw it. I wish the Convention to understand, however, that when I submitted it, it was with the intention of having the question taken upon it.

The question then recurred on the amendment submitted by Mr. Schouler.

Mr. GRISWOLD, for Erving. I now move to amend the second resolution proposed by the gentleman from Boston, by striking out the words "ratable polls or upon legal voters," and inserting instead thereof, the words, "as near as may be, by a system of town representation, adjusted in a manner as near equal and just as is practicable," so that the resolution will read as follows:—

Resolved second, That it is expedient so to amend the Constitution of Massachusetts, that the popular branch of the government, the House of Representatives, shall be based upon population, as near as may be, by a system of town representation, adjusted in a manner as near equal and just as is practicable, to the end that all men shall be equal in power, and be equally represented, as near as may be, man for man, in the State government.

So far as I can judge, from the resolution which the gentleman from Boston has offered, it seems to be his object to bring this Convention to a declaration of some naked principle upon this subject. I have no objection, Mr. President, to making that declaration, except that it is taking up the time of the Convention, perhaps somewhat uselessly. But I wish, if that declaration is to go forth, to have it qualified by a fact which has been settled, over and over again, by the votes of this Convention, viz: that they are in favor of town representation. Now, Mr. President, we hear a great deal of talk here about the principles of equality; and, although there has been no numerical equality from the first origin of our government—neither under the colonial or the provincial charters, nor in the Constitution framed by the greatest men who ever lived in Massachusetts, nor, since that time, by any amendments to the Constitution—gentlemen keep getting up here and talking about the principle of equality, numerical equality, as though that had always been the basis of representation, and as though men in Boston and men in Plymouth—men in Berkshire and men in Franklin—had always been precisely equally represented. Out, Sir, upon such hypocrisy and nonsense! It never has been so under our government, and the gentleman from Boston, (Mr. Crowninshield,) who made a very able speech, yesterday, upon this subject, in laying down the doctrine of popular rights—those great general principles which every man, woman and child in Massachusetts will endorse—and in passing a eulogium upon John Adams, and his democracy and love for equality, took great care to keep back the proposition which Mr. Adams, in his own handwriting, incorporated into that Constitution, of town representation which had no equality about it, so far as population is concerned. It was quite as unequal, if not more unequal than the proposition of the gentleman from Lowell; and quite as unequal, as the gentleman must admit, if he will

take the census and examine the population of the various towns at that time, as the proposition which I had the honor to submit. Sir, I make no objection to this; but, as this Convention have, by various votes, decided, as I think, upon the system of town representation in some form or other, it seems to me that we would better put forth this proposition, qualified as Mr. Adams put it forth, in the very able address which that gentleman drew up and sent out to the people of the Commonwealth, at the time when the Constitution was adopted—that they had fixed it equal as far as it was practicable. My friend from Pittsfield, (Mr. Briggs,) thinks that this is a very serious question; but, Sir, it is a mere naked proposition, and what is to be gained by adopting it in this form? I want to know what that gentleman desires, practically?—that is the question. It is all very well to talk about the naked theory of equality, but we want something practical, and what shall it be? I offer this amendment, Mr. President, because I think that its adoption will make the amendment conform more nearly to the provisions of the amendment submitted by the gentleman from Lowell, which, so far as I can judge of the feelings of this Convention, is more likely to be adopted than any other proposition.

Mr. SCHOULER. I supposed, Mr. President, that it was generally understood; that the proposition which I offered, was to be treated fairly, and that we were to have an opportunity to try the sense of the Convention upon it; but, instead of letting it come to a vote, and treating it fairly, the gentleman from Manchester gets up here, and, with all his legal ability, opposes it with something of the art of a pedagogue or a demagogue.

The PRESIDENT. It is not in order for the gentleman to use language of that kind in debate.

Mr. SCHOULER. I suppose the Chair considered it perfectly in order for the gentleman to speak about foreigners in this country as though they were mere beasts. That is the way that the gentleman for Manchester talks about us; for, Sir, I happen to be one of that class to which he alludes.

Mr. DANA. Mr. President, I rise for an explanation.

Mr. SCHOULER. I will state what the gentleman said, and then he may explain it, if he chooses. He said that these foreigners came over here, and that if we were to treat them as though they were born here, we might just as well take a catalogue or census of the beasts in a farmer's yard, or the birds which fly over his field.

Mr. DANA. If the gentleman will permit me, I will state, that he entirely misapprehended the purport of my remark. I said that the farmer might as well count, in the stock on his farm, the crows that alight upon his fields, as to have our representation based upon floating population. There was no relative comparison between them. One class are birds of passage and the other are birds of residence, relatively; they are, in other respects, the same. I thought that my argument would be understood.

Mr. SCHOULER. I am content then to let that go as he has reported it. Now, Sir, we have another amendment, proposed by the gentleman for Erving; and we know exactly what his proposition is. He wants to get a system of town

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representation; but why cannot he allow us to have a square and direct vote upon a plain proposition, which a large number of the members of this House desire to have a vote upon? I ask if it is treating us fairly? Does he not dare to let us have a vote upon that proposition? Of course he does not; because he offers his amendment here, which amounts to nothing. We understand what he wants; we all know that the equal representation that he speaks about, is the plan of the gentleman from Lowell; but we want to have a trial of the sense of this Convention upon the fair proposition, whether we shall have the representation in the House of Representatives based either upon population, legal voters, or ratable polls. If the majority of the Convention are opposed to it, they will say so; but we are now hampered with one amendment after another, and if we go on in this way, we never can get a direct vote upon that proposition. The gentleman says, that the Convention have already decided, over and over again, that they will have town representation. But there has been but one question submitted on the district system, and that was on the proposition reported by the minority of the Committee, which was voted down.

But it was not a single district system; it was a system in which the senatorial districts were to be cut up into two representative districts. I ask why we cannot have a vote upon this question? I ask why a majority of the Convention are afraid to let us have a vote upon it so that we may know whether or not we are to have a fair representation on the floor of this House?

The gentleman for Manchester spoke about the democracy. I believe that he belongs to the true democratic party. He is one of the democracy. But the other day he made a distinction among the people; and seemed to think that of all classes and occupations the farmers were the best, the mercantile the next best in comparison with the farmers, and the mechanic the next best in comparison with the merchant.

Mr. DANA. The gentleman has entirely mistaken what I said.

Mr. SCHOULER. Then I cannot understand the gentleman at all.

Mr. DANA. I am sorry for that for I generally endeavor to make myself understood when I have anything to say.

Mr. SCHOULER. I hold in my hand a paper of this morning called the *Boston Commonwealth*, and which, I believe, is the organ of the Convention, and in it they say:—

"Some Americans, called democrats, in virtue of their birth-place, (nothing else,) dislike the Hebraic terseness of 'ALL MEN are created free and equal,' and they would amend the phrase thus: 'A FEW MEN are created free and equal—the rest are only 'niggers,' in our country,—serfs in Russia.'"

Now the gentleman for Manchester, (Mr. Dana,) has spoken a great deal about the equal rights of colored persons, and I agree with him when we come to that; but when we come to consider the equal rights of white men, he is all flat, and argues that there must be a distinction, and that that distinction must be on account of town lines. [A laugh.]

But, Mr. President, I ask not to occupy the time of the House, but that the gentleman for Erving, (Mr. Griswold,) will withdraw his

amendment and let us have a vote upon the naked question as it is presented in the resolution I have offered, and not embarrass the question by having these amendments put upon it, so as to endeavor to destroy a reasonable proposition by ridicule.

Mr. GRISWOLD. I do not rise for the purpose of prolonging discussion upon this amendment, but simply with the view of inquiring of the Chair what will be the effect if the amendment I have offered should be adopted, and then the proposition of the gentleman from Boston, (Mr. Schouler,) should be adopted as amended? How would it affect the proposition of the gentleman from Lowell, (Mr. Butler)?

The PRESIDENT. The gentleman for Erving presents a very complicated question as to the effect of certain votes upon an amendment now pending, as reported to the Convention from the Committee of the Whole. The Chair can only intimate to the gentleman that he does not feel at liberty to go into an explanation of this kind because he might mislead members of the Convention.

Mr. GRISWOLD. I am inclined to think that, on the spur of the moment, I labored under misapprehension as to the effect of the passage of the resolution even if thus amended. I supposed that if my amendment was adopted to the resolution of the gentleman from Boston, and that that resolution, as thus amended, should be adopted, it would not be a substitute for the proposition of the gentleman from Lowell. In that I am conscious that I am mistaken. It would still be a substitute.

The PRESIDENT. In the present condition of business a strict enforcement of the rules must be observed, and the Chair can only ask the gentleman for what purpose he rose.

Mr. GRISWOLD. I rose to withdraw my amendment, and also for the purpose of asking the privilege of making an explanation.

The PRESIDENT. The gentleman can withdraw his amendment, but his explanation can only be made by unanimous consent.

No objection was made.

Mr. GRISWOLD. I offered my amendment honestly and in perfect good faith; but as I find that the effect of it will be somewhat different from what I anticipated, I shall vote against the amendment offered by the gentleman from Boston.

The PRESIDENT. The question then will be upon the amendment of the gentleman from Boston which is offered as a substitute for the amendment from the Committee of the Whole.

Mr. BUTLER. I call for a division of the question.

The PRESIDENT. The question then will be on the first resolution, and on that question the yeas and nays have been ordered.

Mr. BUTLER. In order to save time I will withdraw the call for the yeas and nays.

Mr. BIRD, of Walpole. Then I renew the motion for a division of the question.

Mr. CROWNINSHIELD, of Boston. Will it be in order to move a reconsideration of the vote ordering the yeas and nays?

Mr. BIRD. If the question is to be taken by yeas and nays on each of these resolutions I will withdraw the call for a division of the question.

Mr. SCHOULER. Is it in order to withdraw the first of these resolutions?

The PRESIDENT. It is in order.

Mr. SCHOULER. Then I withdraw the first resolution, and will ask for the yeas and nays on the next one.

The yeas and nays were ordered, and the resolution which was offered as a substitute for the Report of the Committee of the Whole was read as follows:—

Resolved, That it is expedient so to amend the Constitution of Massachusetts, that the popular branch of the government, the House of Representatives, shall be based upon population, ratable polls, or upon legal voters in this Commonwealth; that all men shall be equal in power, and be equally represented, as near as may be, man for man, in the State government.

Mr. JENKS, of Boston. Is it in order to amend the resolution before the question is taken?

The PRESIDENT. It is in order.

Mr. JENKS. Then I move to amend it by adding the following paragraph:—

Resolved, That it is expedient so to amend the Constitution as to provide that the several counties of the Commonwealth shall constitute representative districts, each of which shall be entitled to elect such number of representatives as may correspond with its voting population, to be apportioned as equally as practicable, so that the aggregate shall at no time exceed six times the number of senators authorized to be chosen by this Constitution; said elections to be made in such manner as may be prescribed by law; every representative so elected to be a legal voter in the district for which he is chosen; and not more than three representatives to be inhabitants of any one town, or of any one ward of a city within any district.

The PRESIDENT. Will the gentleman from Boston have the goodness to send his amendment to the Chair?

Mr. JENKS. On reflection I think I will withdraw it for the present, and will probably offer it in another form.

Mr. EARLE, of Worcester. I desire to make an inquiry of the Chair as to the effect of this amendment, because I apprehend that, to some extent it is misunderstood.

The PRESIDENT. It is not for the Chair to state anything in regard to the operation of this amendment. Gentlemen have heard the amendment read, and also the Report of the Committee to which it is offered as a substitute.

Mr. EARLE. It was not exactly on that point that I desired information. I wanted to know what would be the effect of the amendment as a substitute.

Cries of "question, question."

The PRESIDENT. If the gentleman from Worcester rises to a question of order he will state what his point of order is; but further debate is now out of order.

Mr. EARLE. I want to know whether if we pass the amendment of the gentleman from Boston, which is a substitute for the proposition of the gentleman from Lowell, (Mr. Butler,) we will not be adopting as a substitute for something which is substantial, and gives us a certain scale of representation, a proposition which is a mere abstraction, and which furnishes no scale at all?

The PRESIDENT. The proposition of the gentleman from Boston is to strike out, entirely, the amendment reported by the Committee of the Whole, which is printed in Convention Docu-

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ment No. 65, and which was substituted for the resolves reported by the chairman of the Committee on the House of Representatives, and to substitute in its stead the resolution he has offered, and on that question the yeas and nays have been ordered.

The question was then taken, by the calling of the roll, and resulted—yeas, 182; nays, 223—as follows:—

YEAS.

Abbott, Alfred A.
Adams, Benjamin P.
Aldrich, P. Emory
Andrews, Robert
Appleton, William
Aspinwall, William
Atwood, David C.
Austin, George
Barrows, Joseph
Bartlett, Sidney
Beach, Erasmus D.
Beebe, James M.
Bradford, William J. A.
Braman, Milton P.
Brewster, Osmy
Brinley, Francis
Briggs, George N.
Bullock, Rufus
Bumpus, Cephas C.
Carter, Timothy W.
Childs, Josiah
Churchill, J. McKean
Coggin, Jacob
Cogswell, Nathaniel
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Davis, John
Davis, Robert T.
Davis, Solomon
Dehon, William
Denison, Hiram S.
Doane, James C.
Eaton, Lilley
Ely, Homer
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Gardner Henry J.
Giles, Joel
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Greenleaf, Simon
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Haskell, George
Hathaway, Elvathan P.
Haywood, George
Hersey, Henry
Hillard, George S.
Houghton, Samuel
Howland, Abraham H.
Hubbard, William J.
Hunt, William
Hurlburt, Samuel A.
Jackson, Samuel
James, William
Jenks, Samuel H.
Kellogg, Giles C.

Kellogg, Martin R.
Kinsman, Henry W.
Kuhn, George, H.
Ladd, John S.
Lawton, Job G., Jr.
Lincoln, Frederic W., Jr.
Littlefield, Tristram
Livermore, Isaac
Lothrop, Samuel K.
Loud, Samuel P.
Marvin, Theophilus R.
Miller, Seth, Jr.
Mixter, Samuel
Morey, George
Morse, Joseph B.
Morton, Elbridge G.
Morton, Marcus
Noyes, Daniel
Ober, Joseph E.
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Park, John G.
Parker, Adolphus G.
Parker, Joel
Parker, Samuel D.
Parsons, Thomas A.
Perkins, Jonathan C.
Plunkett, William C.
Preston, Jonathan
Rantoul, Robert
Read, James
Reed, Sampson
Sampson, George R.
Sargent, John
Schouler, William
Sherman, Charles
Sleeper, John S.
Souther, John
Stetson, Caleb
Stevens, Charles G.
Stevenson, J. Thomas
Summer, Charles
Summer, Increase
Swain, Alanson
Taylor, Ralph
Thayer, Joseph
Thompson, Charles
Tilston, Edmund P.
Tyler, John S.
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wilbur, Daniel
Wilbur, Joseph
Wildor, Joel
Wilkins, John H.
Wilkinson, Ezra
Williams, Henry
Wilson, Milo
Winn, Jonathan B.
Woods, Josiah B.

NAYS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Allen, Joel C.
Allen, Parsons
Alley, John B.

Allis, Josiah
Alvord, D. W.
Ayres, Samuel
Ballard, Alvah
Ball, George S.
Bancroft, Alpheus

Bartlett, Russel
Bates, Eliakim A.
Bates, Moses, Jr.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Bliss, Gad O.
Bliss, William C.
Boutwell, Geo. S.
Boutwell, Sewell
Booth, William S.
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brownell, Joseph
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Caruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Chester W.
Chapin, Daniel E.
Chapin, Henry
Clark, Henry
Clark, Ransom
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Cole, Lansing J.
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
DeWitt, Alexander
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Edwards, Elisha
Edwards, Samuel
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fiske, Emery
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
Fowle, Samuel
French, Charles A.
French, Rodney
French, Samuel
Gale, Luther
Gates, Elbridge
Gilbert, Wanton C.
Gibert, Washington
Giles, Charles G.
Gooch, Daniel W.
Gooding, Leonard
Graves John W.
Green, Jabez
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hall, Charles B.
Hallett, B. F.
Hapgood, Lyman W.
Harmon, Phineas
Haskins, William
Hawkes, Stephen E.

Hayden, Isaac
Heath, Ezra 2d.
Henry, Samuel
Hewes, James
Hewes, William H.
Hindsdale, William
Hobart, Henry
Hobbs, Edwin
Holder, Nathaniel
Hood, George
Howard, Martin
Hunt, Charles E.
Huntington, Charles P.
Huntington, George H.
Hurlbut, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Johnson, John
Kendall, Isaac
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Lawrence, Luther
Leland, Alden
Lincoln, Abishai
Little, Otis
Loomis, E. Justin
Marble, William P.
Marey, Laban
Mason, Charles
Meader, Reuben
Merriett, Simeon
Monroe, James L.
Moore, James M.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Newman, Charles
Nichols, William
Norton, Alfred
Nute, Andrew T.
Orne, Benjamin S.
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Powers, Peter
Putnam, John A.
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Rogers, John
Ross, David, S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sherril, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooncr, Samuel W.
Stacy, Eben H.
Stevens, Granville

Stevens, William
Stiles, Gideon
Strong, Alfred L.
Taber, Isaac C.
Taft, Arnold
Talbot, Thomas
Thayer, Willard, 2d
Thomas, John W.
Tilton, Abraham
Tilton, Horatio W.
Tower, Ephraim
Turner, David
Tyler, William
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallace, Frederick T.
Wallis, Freeland
Walker, Amasa

Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
Wheeler, William F.
White, Benjamin
White, George
Whitney, Daniel S.
Whitney, James S.
Williams, J. B.
Wilson, Henry
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wood, William H.
Wright, Ezekiel

ABSENT.

Allen, James B.
Baker, Hillel
Banks, Nathaniel P., Jr.
Barrett, Marcus
Beal, John
Bell, Luther V.
Bigelow, Jacob
Blagden, George W.
Bradbury, Ebenezer
Brown, Hiram C.
Brownell, Frederick
Bryant, Patrick
Buck, Asahel
Bullen, Amos H.
Choate, Rufus
Clark, Salah
Cole, Sumner
Copeland, Benjamin F.
Crockett, George W.
Crosby, Leander
Dawes, Henry L.
Dorman, Moses
Easland, Peter
Easton, James, 2d
Eaton, Calvin D.
Ely, Joseph M.
Eustis, William T.
Freeman, James M.
Frothingham, Rich'd, Jr.
Gardner, Johnson
Gourgas, F. R.
Greene, William B.

Hapgood, Seth
Heard, Charles
Heywood, Levi
Hobart, Aaron
Hooper Foster
Hopkinson, Thomas
Hoyt, Henry K.
Huntington, Asahel
Hyde, Benjamin D.
Jenkins, John
Keyes, Edward L.
Knight, Joseph
Lord, Otis P.
Lowell, John A.
Marvin, Abijah P.
Osgood, Charles
Parsons, Samuel C.
Payson, Thomas E.
Peabody, George
Pomroy, Jeremiah
Prince, F. O.
Putnam, George
Rawson, Silas
Rice, David
Rockwell, Julius
Sheldon, Luther
Stevens, Joseph L., Jr.
Storrow, Charles S.
Stutson, William
Train, Charles R.
Turner, David P.
Warner, Marshal

Absent and not voting, 64.

So the amendment was rejected.

The PRESIDENT. The question now recurs on the proposition reported from the Committee of the Whole.

Mr. MORTON, of Taunton. I move a substitute for the report of the Committee, which is to strike out all after the word resolved, and insert what I will read—

Mr. BUTLER, of Lowell. I rise to a question of order. We have before us already a substitute for another proposition; and, as I understand that the gentleman from Taunton proposes to offer a substitute for a substitute, and as I further understand that such a proposition can only be in order by general consent, I must, without intending any discourtesy to the gentleman, object to its being received.

The PRESIDENT again stated the exact position of the question, and decided that, as the offer of the gentleman from Taunton was a substitute for a substitute, it could not be received except by general consent, and that as objection had been made it could not be offered at this time.

Mr. MORTON. With the permission of the Chair, I will state, that when the order was made

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this morning to close the debate at eleven o'clock, and to take the question at that time, I understood that the question would be upon amendments which might be offered, and that each individual would have ten minutes to explain the object and effect of his amendment, and that ten minutes would be allowed in reply. It was on the faith of that being the operation of the order, that I withdrew my motion before, expecting that I would have an opportunity to offer it, with at least ten minutes for its explanation.

Mr. BUTLER. I am very anxious to have the question taken, but in order to accommodate the gentleman from Taunton, I withdraw my objection.

The substitute offered by Mr. Morton, was then read, as follows:—

That the House of Representatives shall consist of _____ members, which shall be divided among the several counties of the Commonwealth, as nearly as possible according to the number of _____ by the last preceding decennial census.

As soon as may be after each decennial census, the Senate shall divide each county into as many representative districts as it may deem expedient, so that the basis of each representative shall be as nearly the same number of _____ as possible without the division of towns, or the wards of cities: *Provided*, that no district shall be entitled to more than three representatives, and provided further, that Nantucket and Dukes counties shall each form one district, and be entitled to at least one representative.

Mr. MORTON. I do not mean to make any speech or argument upon the subject, but merely to occupy about half of the time allowed me for the purpose of explaining the object of this amendment.

I believe, Sir, that there has been no direct proposition made or voted upon in Convention in regard to the district system; and I have drawn up this amendment with the view of bringing up the direct question in regard to that system in contradistinction from the town system; and finding the question once truly settled I will give the Convention no further trouble, however much objection there may be to my plan. As this proposition has not been printed, I fear it is not entirely understood by the Convention from my reading it. I will, therefore, occupy a few moments in explaining it.

In the first place, it proposes to fix the number of the House of Representatives. The number of which that house should consist was left blank, in order that the Convention might insert just such number as they might please. These members are to be divided among the several counties as nearly as may be, either upon the basis of ratable polls, legal voters, or inhabitants as the Convention may think proper. When they are to be districted, the districts are not to elect more than three representatives each. The reason is, that in dividing the counties into districts it is proposed to leave to the Senate to equalize the districts so that the counties may include one or two districts, and thereby obtain a more equal representation than they can gain in any other way. I have no particular attachment to this mode of districting the Commonwealth, but I merely wish to test this question fairly. I have intentionally left these blanks in the proposition, one of them in relation to the number of the members of the House. I leave it to the Conven-

tion to fill that blank, of course, and will accept any number which the Convention may see proper to adopt.

Then again as to the basis on which an equal distribution is to be made. I have left that blank also, so that the Convention may either adopt ratable polls, or legal voters, or population, as they please. I hope that the Convention will fill these blanks with such numbers of representatives, and such class of voters as may suit them.

As no yeas and nays have been taken on this question, I feel obliged to ask for the yeas and nays upon my amendment.

The yeas and nays were ordered.

Mr. BUTLER, of Lowell. When, Sir, the gentleman from Taunton, (Mr. Morton,) moved his amendment, I objected to its reception. I withdrew the objection in order that the business of the House might go on, but I supposed that if he came in with his amendment, merely as a matter of courtesy, he would not have insisted upon consuming the time of the Convention with a call for the yeas and nays upon a proposition which, if he is not satisfied that this Convention has voted down, everybody else is. Why, Sir, we have been obliged to vote against the amendment of the gentleman from Boston, (Mr. Schouler,) which as an abstract proposition, is well enough, and to which no man in the world could have any earthly objection, except that it is to be made a substitute for a matured plan. I voted against the proposition of the gentleman from Boston, because it was proposed to be substituted for a mature plan, and thus compel us to begin again to reconstruct the system. That being so, it involved the whole district system proposed by the gentleman from Taunton, and which he argued for an hour, yes, and the last hour given to us too, and then by a majority of nearly two to one, it went to the tomb of all the Capulets. Now, Sir, it is to be brought up again, and another hour of the valuable time of this Convention is to be consumed in its discussion.

The PRESIDENT. The Chair would suggest to the gentleman, that he is speaking against the past action of the Convention, which is not strictly in order.

Mr. BUTLER. I am not intending to reflect upon the past action of the Convention. I am content with it, and I did not vote against the yeas and nays upon the gentleman's proposition, for I hold that every man who calls for the yeas and nays has a right to have them. But I was arguing upon the effect of the motion, and it is to consume another hour of our time, and upon what? Upon the district system, upon blank districts, for a blank number of representatives, to be elected upon a blank basis. And are we to spend an hour on three blanks—nothing multiplied by three? There we have it, man for man, woman for woman, and child for child, for the gentleman says he wants us to fill up the blanks as we please. There is no proposition as to the number, of which the House shall consist, and in my judgment, it is only a firebrand thrown in among us; an endeavor if, by some means, it may not deceive the elect. [Laughter.] I trust we shall not be deceived by it. I trust we shall understand it, and whence it comes, and I am only sorry that I withdrew the objection, and that I did not insist that we should have no more of these propositions. But the gentleman will be satisfied with the call of the roll upon his propo-

sition, and I am ready for one, to meet the issue.

Mr. BEACH, of Springfield. I desire to offer an amendment to the proposition submitted by the gentleman from Taunton, (Mr. Morton). I propose, if it is in order, to fill the first blank with the number "two hundred and sixty-one," and the second and third blanks, with the words "legal voters."

This proposition, thus amended, meets my cordial approbation. It is, in my judgment, the only complete and effectual cure for the two great evils in the present provision—the great size of the House, and the great inequality in the distribution of political power—of which the people have most, and justly complained. The great size of the House, and the consequent great length of the sessions, has been matter of universal complaint.

I take this number because it gives one representative to every seven hundred voters and accomplishes a great reduction of the House. I should prefer, personally, a still smaller number, but as many gentlemen have expressed a preference for a large House, and feel that there is more safety in a large than a small House, I am content with the number proposed.

Several gentlemen have urged as of great importance, the necessity of establishing the House on a different basis from the Senate, to enable each to be a suitable check on the other. I do not share with them fully in the views and fears they express on this subject, but my proposition, basing the House on legal voters, secures this check, and thus answers the end they seem so much to desire. I think that legal voters constitute a just and proper basis. They are our immediate constituents. They are to pass on our acts here. They are the only safe depositories of political power. With them resides the sovereignty of the Commonwealth. This proposition distributes the political power of the Commonwealth with exact equality throughout its whole extent, favoring no class or section, and disparaging no class or section. The voter of Boston has the same voice, and exerts by his vote the same power, no more and no less, with the voter on the banks of the Connecticut in Franklin, and the voter on the glorious hills of Berkshire. A man is a man wherever in the Commonwealth he may chance to be. He makes nothing by going from Boston to Erving, and loses nothing by coming from Erving to Boston. Place gives no advantage, confers no merit. By this plan, justice is done to all throughout the Commonwealth. The cry of inequality—that cry, which more than anything else caused us to be summoned here—is forever silenced. It is republican in all its features and just in all its details. It enables every man to be equally represented every year of his life. Anything short of this, is neither republican nor just. Everything points in this direction. Sooner or later we shall, and must adopt the district system. Gentlemen affect to doubt if the people are ready for it, and present to the Convention the disagreeable alternative of the existing provisions or the plan before us. In my judgment the people are not only ready for the district system, but are expecting it from us.

Mr. President, let me for a moment glance at the plan proposed by the gentleman from Lowell, (Mr. Butler,) for the limited period allowed under

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the vote just adopted, will enable me only to glance at it.

When the debate was first opened on this subject, the gentleman for Erving, (Mr. Griswold,) portrayed to us the unequal and unjust provisions of the Constitution, in terms well calculated to arouse the Convention into a remedy which should cure the evil. That gentleman gave us as a remedy, a system ten fold more unequal and unjust. This was soon abandoned for the plan now before us, (Mr. Butler's,) which is termed a compromise between town representation and the district system. This too, is unequal, and consequently unjust. It surrenders at once into the hands of less than one-third of the people of this Commonwealth the right to elect a majority of the representatives in the popular or most numerous branch of the government. This is its operation now, the moment it is ratified by the people. It is infinitely more unequal and unjust than the present provisions. But its worst feature is its prospective operation. No one can calculate with certain accuracy the extent of this inequality ten and twenty years hence. But, Sir, from the best calculations I can make, this plan will give to about *one-fourth* of the people of this Commonwealth, according to the estimated census of 1860, the election of a majority of representatives; and in 1870, seventeen years hence, about *one-fifth* of the people will elect a majority of the representatives. This is the remedy offered, this is the cure for the *inequality and injustice* of the present system.

Constituted as this Convention is, it may find favor here, but gentlemen should not forget that whatever is agreed upon here, has to pass another ordeal infinitely more searching and more exacting than this. Men are tenacious of their political rights. They are jealous and suspicious of every proposition which surrenders in any degree their natural rights. They cannot be too jealous or too watchful in this respect, for every step in departure from perfect equality is a dangerous step, and is so far a departure from true republican principle.

What is the proposition proposed to be submitted to the people? Not the surrender of a mere *privilege*, but of a great political *right*. To abrogate, not in terms, but in fact, the ninth article in the Bill of Rights, which declares that "all the inhabitants of this Commonwealth have an *equal right* to elect officers and to be elected, for public employments."

Do you think, Sir, the people of Massachusetts are prepared to abolish from the Bill of Rights this article, and to surrender the great political right of electing and being elected? If they are just and true to themselves they will not. I go further, Sir. I maintain that we have no right, moral or political, to make this surrender for ourselves, much less for our children and their posterity.

I am aware that gentlemen have again and again declared on this floor that political inequality is not injustice, is not anti-republican, is not violative of the spirit of the Declaration of Independence and our Bill of Rights. If it be so, then, Sir, I have learned my moral and political creed to no purpose.

But, Sir, the plan of the gentleman from Lowell is not only more unequal than the present provision, which is its great objection, but it in-

creases the present size of the House, already twice as large as it should be.

There is but one effectual remedy for all these evils, and that is the plan, or something like the plan, submitted by the gentleman from Taunton, (Mr. Morton,) amended as I propose.

I have prepared a table showing the operation of this plan in the several counties. Seven hundred voters is the basis for each representative. Fractions are omitted:—

Suffolk,	32	Reps.,	or 1 to every	4,773	inhab.
Essex,	35	"	1	"	3,633
Middlesex,	39	"	1	"	3,993
Worcester,	34	"	1	"	3,514
Hampshire,	11	"	1	"	3,116
Hampden,	14	"	1	"	3,587
Franklin,	10	"	1	"	3,088
Berkshire,	14	"	1	"	3,495
Norfolk,	20	"	1	"	3,872
Bristol,	19	"	1	"	3,946
Plymouth,	18	"	1	"	3,027
Barnstable,	10	"	1	"	3,399
Dukes,	1	"	1	"	4,416
Nantucket,	2	"	1	"	4,389

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These tables show at a glance the just and equal operation of this plan throughout the Commonwealth. It reduces the House to a reasonable size. It favors no party or section of the State.

I fear it is to share here the fate of other plans presented, but I trust gentlemen will not reject it they have at least examined it.

Mr. PHINNEY, for Chatham. I rise to inquire if it is in order to move to lay the Orders of the Day upon the table?

The PRESIDENT. It is not.

Mr. PHINNEY. Then I move to extend the time of adjournment, for this day, from one to two o'clock.

The question was taken, and there were, on a division—ayes, 125; noes 142.

So the motion was not agreed to.

Mr. KINGMAN, of West Bridgewater. I rise to ask if it is in order to move to strike out the number "two hundred and sixty-one," and insert in lieu thereof "three hundred and twenty?"

The PRESIDENT. The rule of the Convention in filling blanks, gives to any member the liberty of proposing amendments in that respect: If the gentlemen proposes a larger number it will be stated by the Chair.

Mr. BEACH. I accept the amendment.

Mr. MORTON, of Taunton. I rise for the purpose of making a personal explanation. I understood the gentleman from Lowell charged me with introducing this proposition with the view of delaying and embarrassing the action of this Convention.

Mr. BUTLER. I said, and I repeat, that the introduction of this proposition was calculated to embarrass the business of the Convention, an almost precisely similar proposition having been voted down. That was what I said. I made no imputation as regards intention, for that would have been unparliamentary. I leave that to every man's conscience.

Mr. MORTON. Then I have nothing further to say in relation to it. Gentlemen of the Convention will judge of my course, whether I have attempted to do anything to delay and embarrass the business of the Convention. I desire to say,

however, that in offering this amendment, containing, as it did, blanks. I not only followed what I believe to be a parliamentary course, but the most parliamentary course that could be adopted.

Mr. BUTLER, (interposing). I rise to a question of order. If the gentleman is making a personal explanation, I have no objection; but if what he is saying is argument, I do object, unless I can have an opportunity of replying.

The PRESIDENT. The Convention has given the gentleman leave to make a personal explanation, and it is for him to judge what that personal explanation shall be. The Chair thinks the gentleman from Taunton is not travelling out of the latitude allowed him.

Mr. MORTON. I thought an insinuation was made, of which gentlemen will judge, that the blanks which were left in my amendment were left there for the purpose of embarrassing the Convention, and leading them into difficulty. All I wish is, to disclaim any such intention for this and every other action of mine during the session. I adopted that course because I thought the Convention would rather decide how the blanks should be filled, and because I thought it was the most parliamentary course which could be adopted. I was willing that the Convention should fill the blanks with whatever qualification and whatever ratio they thought proper. I have been requested to accept the amendments which have been proposed for filling the blanks, but I do not think I have the power now, and I prefer that the sense of the Convention should be taken upon that question.

Mr. KINGMAN, from West Bridgewater. It has been suggested to me that it would be better to modify the amendment which the gentleman from Springfield has been kind enough to accept, so as to provide that the House shall not consist of less than three hundred, nor more than three hundred and twenty. I suggest that modification, if the gentleman from Springfield is willing to accept it.

Mr. BEACH, of Springfield. I cannot accept that, and upon the whole, I prefer that my amendment should stand as I first offered it, with the number of two hundred and sixty-one.

Mr. KINGMAN. Then I move to substitute for that number not less than three hundred, nor more than three hundred and twenty.

Mr. MORTON, of Taunton. I rise to a question of order. Is that amendment in order?

The PRESIDENT. It is not. The gentleman can move to fill it with any specific number, if he pleases.

Mr. KINGMAN. I move then to fill the blank with three hundred and twenty.

Mr. BOUTWELL, for Berlin. I am opposed to the amendment because I am opposed to the whole proposition, and because I do not desire that the plan submitted by the gentleman from Taunton should be perfected, which is substantially an abolition of town representation. It seems to me, that although there may be some difference of opinion as to the precise application of the principle, a large majority of this Convention are in favor of sustaining town representation, and, therefore, I am opposed to the perfecting of any plan which leads to the abolition of this system, and this plan certainly does lead to its abolition. It is a district system with a basis, I think, substantially the same as that proposed by the gentleman from

Boston, (Mr. Schouler,) that of legal voters. Well, Sir, having had the judgment of the Convention upon a plan analogous to this, if not precisely the same, I do not think it worth while to perfect any other plan that leads to the same result. I see no difference between this plan and the one upon which the Convention last voted, except that the plan of the gentleman from Boston was a general one, and this goes into details. It is entirely immaterial so far as the character of the plan is concerned, whether we district the State by county lines, or by any other rule, if the basis of representation be that of legal voters. And if the plan reported by the Committee of the Whole as amended, shall stand as the judgment of the Convention, I think it will be in the power of its friends, when it shall again come upon its final passage, to show that in every particular, so far as regards legal voters, and so far as regards the rights of every individual in the Commonwealth, it is substantially just. It may operate to produce slight inequalities in some sections, but it is substantially just. If it cannot stand upon the principle of justice, with my consent, it shall not stand at all. Therefore, I desire now to say that the plan reported by the Committee of the Whole, if it shall meet the approval, finally, as I believe it will, of the Convention, may be sustained upon the principle of justice, while it maintains the principle of town representation, and I am opposed to the perfecting of any plan that shall look to the abolition of that town representation.

Mr. MORTON, of Taunton. At the request of gentlemen round me, I am willing to accept the amendment of the gentleman from Springfield, that the first blank shall be filled with the number two hundred and sixty-one, and that the second and third blanks shall be filled with the words "legal voters."

Mr. HATHAWAY, of Freetown. I regret that the number had not been left a blank so that we might have taken the question upon the naked proposition of the gentleman from Taunton, whether the State shall be districted as first presented. And now with reference to county lines of which the gentleman for Berlin spoke, I remark that it is a matter which the Convention can hereafter settle, if the proposition for districts shall be adopted, as it pleases. Whether county lines shall or shall not be regarded in the formation of districts. It is in this stage of the subject a matter of no consequence to me, so long as the principle is adopted. We can, hereafter, amend the proposition, if county lines should not be regarded.

Mr. BUTLER, of Lowell. I rise to a question of order. I understand that the time for debate allowed under the rule of the Convention upon this proposition has been consumed by the gentleman from Taunton and myself. I object, therefore, to the gentleman from Freetown, (Mr. Hathaway,) proceeding, unless I can have an opportunity to reply.

The PRESIDENT. The gentleman from Lowell, (Mr. Butler,) did not speak his ten minutes. He only spoke five minutes, and there are five minutes left for any one else to occupy. The Chair, therefore, thinks the gentleman from Freetown is perfectly in order.

Mr. HATHAWAY. I see the moment has arrived for adjournment, and as I suppose I can occupy more time in the afternoon, I move that the Convention do now adjourn.

The motion was agreed to and the Convention accordingly adjourned till this afternoon at three o'clock.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

Adjournment.

Mr. BRIGGS, of Pittsfield, moved that when the Convention adjourn, it adjourn to meet on Wednesday next, at nine o'clock, A. M. Mr. Briggs remarked, that he desired to give the country members an opportunity to go home during the coming anniversary, and had made the motion with the view of giving them time for that, as well as to attend to their own private affairs.

Mr. GRISWOLD, for Erving, said he hoped the gentleman from Pittsfield, would withdraw the motion, and allow the Orders of the Day to be taken up, otherwise he should feel constrained to move to lay it upon the table. He was satisfied that it would give rise to a long discussion. The Convention was now ready to take the vote upon the questions involved in the subject first in the Orders of the Day, and he thought we had better proceed at once to their consideration. If the members from the country were interested in the question of adjournment, they would remain and dispose of it in the evening. He appealed to the gentleman to withdraw the motion.

Mr. BRIGGS said he could not consent to withdraw the motion. He was satisfied it would give rise to no debate, and he hoped the gentleman for Erving would not make the motion to lay it on the table. It would require but a moment to dispose of it.

Mr. GRISWOLD said, that whenever the motion was to be acted upon, he had an amendment to propose. If the gentleman was anxious to press his motion at this time, he would move his amendment now, though if any discussion should arise upon it, he gave notice that he should move to lay it on the table. He moved that the word "Wednesday" be stricken out, and that "Tuesday, at ten o'clock, A. M." be substituted. The question was taken and the amendment of the gentleman for Erving, was adopted—ayes, 126; noes, 58.

The motion as amended, was then agreed to.

On motion of Mr. BREED, of Lynn, the Convention then proceeded to the consideration of the

Orders of the Day.

The PRESIDENT stated that the first business in the Orders of the Day, was the consideration of the Report of the Committee of the Whole upon

The Basis of Representation.

The question pending being upon the adoption of the substitute offered by the gentleman from Taunton, (Mr. Morton,) as modified by himself. Mr. HATHAWAY, of Freetown. When the gentleman from Lowell, (Mr. Butler,) interrupted me, this morning, I was proceeding to say that in reference to the matter of districting the Commonwealth by county lines, according to the plan proposed in this proposition, it is a matter that may be provided for hereafter, if the proposition should be accepted by the Convention, in a manner that would prove most acceptable to all parties.

But, inasmuch as the gentleman from West Bridgewater, (Mr. Kingman,) has made the motion to fill the blank for the number of representatives in the House, with the number three hundred and twenty, I desire to state what would be the effect if three hundred and twenty shall be the number of representatives, and their election based upon the legal voters, that being the basis which I prefer. The gentleman from Springfield, (Mr. Beach,) stated what would be the effect of adopting the number two hundred and sixty-one. Now, if the Convention should adopt three hundred and twenty as their number, it would give the following result:—

Counties.	Voters.		Representatives.		Population.	Representatives.		Aver. No. of Reps. in each town for the present Const'n. Sec. 372, ch. 7.
	For	About	For	About		For	About	
Suffolk, . .	22,604	39.6	145,755	47.9	46.4			
Essex, . .	24,292	42.5	127,170	41.8	44.7			
Middlesex, .	27,497	48.1	155,762	51.2	58.4			
Worcester, .	25,438	44.6	126,565	41.6	55.6			
Hampshire, .	7,401	12.9	34,290	11.3	15.6			
Hampden, .	9,505	16.6	50,224	16.5	19.3			
Franklin, .	6,968	12.2	30,888	10.2	16.2			
Berkshire, .	9,744	17.0	48,937	16.0	21.9			
Norfolk, . .	13,887	24.3	77,441	25.4	28.0			
Bristol, . .	13,240	23.2	74,979	24.6	26.5			
Barnstable, .	7,317	12.3	33,997	11.1	13.3			
Plymouth, .	12,409	21.7	54,509	17.9	21.4			
Dukes, . .	1,057	1.8	4,416	1.4	2.4			
Nantucket, .	1,334	2.3	8,779	2.9	3.0			
	182,743	319.6	973,712	319.8	372.7			

There is, Sir, a loss of the fractions in part in this statement, but it is substantially correct; and the gentleman from Lowell, in his dear Middlesex, would lose ten representatives and a fraction over; and Plymouth County, with a House of three hundred and twenty members, would have a fraction over her present representation in a House of three hundred and seventy-three members. The rural districts would generally gain in their relative power in this branch of the government, while the commercial and manufacturing districts would lose.

Now, Sir, gentlemen have said, in reference to this matter, that taxation and representation ought to go together. Well, Sir, I really have had to restrain myself from the temptation to offer a proposition that each town should be required to pay towards such State taxes as may be hereafter assessed, in proportion to its representation—so that taxation and representation might go hand in hand, and thus be equalized.

Now, Sir, a word in reference to the statement made by my honorable friend for Berlin, (Mr. Boutwell). That gentleman said he had no doubt that the proposition of the gentleman from Lowell, as amended, would be just to all portions of the State. Sir, gentlemen may cipher it out for themselves. I do not say that it would not be just, but there is, at least, a doubt upon that subject in the minds of many, even of its friends. Now, Sir, the proposition of the gentleman from Taunton is just and equal. No one doubts it for a

Friday,]

HOUSE OF REPRESENTATIVES.—BEACH—MORTON—DAVIS.

[July 1st.

moment; and I would submit, whether it would not be better to take it upon that ground, rather than to take another upon the same ground, but in relation to which there is at least a doubt?—

Here the hammer fell; the time allotted for debate under the order of the Convention having expired.

Mr. BEACH, of Springfield. I move to strike out "two hundred and sixty-one," and insert "three hundred and twenty."

Mr. MORTON, of Taunton. I am afraid that my proposition will fare very much like the parson's wig—there will be so much clipped from it, that I shall not be able to recognize it. My sole object is to test the question for the district representation; and although I am in favor of the small towns, I am very willing to agree to the proposition of the gentlemen from Springfield, (Mr. Beach).

Mr. DAVIS, of Plymouth. I rise to make an inquiry of the gentleman from Taunton. I understand him to say that he offers this proposition as a test question concerning the district system. I wish to ask him, Mr. President, whether, by testing the question for district representation, he means the district system in the abstract, or the district system founded upon voters, as against the amendment of the gentleman from Lowell, (Mr. Butler).

The PRESIDENT. The Chair must suggest to the gentleman that debate is precluded by order of the Convention. The question which the gentleman asks is in the nature of debate.

Mr. DAVIS. I understood the gentleman to say that it was a test question. I only ask for what purpose it is made a test.

The PRESIDENT. The gentleman is not in order, and the Chair must enforce the rules.

The yeas and nays having been ordered the question was then taken upon Mr. Morton's amendment, and the result was—yeas, 119; nays, 196—as follows:—

YEAS.

Abbott, Alfred A.
Adams, Benjamin P.
Aldrich, P. Emory
Allen, Joel C.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Austin, George
Barrows, Joseph
Bartlett, Sidney
Beach, Erasmus D.
Bradford, William J. A.
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Bronson, Asa
Bullock, Rufus
Bumpus, Cephas C.
Carter, Timothy W.
Childs, Josiah
Churchill, J. McKean
Cogswell, Nathaniel
Conkey, Rhamar
Coledge, Henry F.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Curtis, Wilbur
Davis, John
Davis, Robert T.
Davis, Solomon
Doane, James C.
Easton, James, 2d

Eaton, Lilley
Ely, Homer
Fowler, Samuel P.
French, Charles H.
Gardner, Henry J.
Gardner, Johnson
Giles, Joel
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Haskell, George
Hathaway, Elnathan P.
Heard, Charles
Hersey, Henry
Hewes, William H.
Hillard, George S.
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Hunt, William
Huntington, Asahel
Hurlbut, Samuel A.
Jackson, Samuel
James, William
Jenks, Samuel H.
Johnson, John
Kellogg, Giles C.
Kellogg, Martin R.
Kingman, Joseph
Kuhn, George H.

Ladd, John S.
Lawton, Job G., Jr.
Lincoln, Abishai
Lincoln, Fred. W., Jr.
Littlefield, Tristram
Livmore, Isaac
Loud, Samuel P.
Miller, Seth, Jr.
Mixer, Samuel
Morey, George
Morss, Joseph B.
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Ober, Joseph E.
Oliver, Henry K.
Park, John G.
Parker, Adolphus G.
Parsons, Thomas A.
Plunkett, William C.
Rantoul, Robert
Read, James
Reed, Sampson
Sargent, John
Schouler, William
Sherman, Charles

NAYS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, Parsons
Allis, Josiah
Ayres, Samuel
Ballard, Alvah
Bancroft, Alpheus
Bartlett, Russel
Bates, Eliakim A.
Bates, Moses, Jr.
Beal, John
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Boutwell, George S.
Booth, William S.
Boutwell, Sewell
Breed, Hiram N.
Brown, Adolphus F.
Brown, Artemas
Brown, Hammond
Brownell, Joseph
Buck, Asahel
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Caruthers, William
Case, Isaac
Chandler, Amariah
Chapin Daniel E.
Chapin, Henry
Clarke, Alpheus B.
Clark, Henry
Clark, Ransom
Clarke, Stillman
Cleverly, William
Cole, Lansing J.
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Day, Gilman
Deming, Elijah S.
Denton, Augustus
Dorman, Moses
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip

Sleeper, John S.
Souther, John
Stevens, Charles G.
Stevens, Granville
Stevenson, J. Thomas
Sumner, Charles
Sumner, Increase
Swain, Alanson
Taylor, Ralph
Thomas, John W.
Tilston, Edmund P.
Upham, Charles W.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Weeks, Cyrus
Wilbur, Daniel
Wilbur, Joseph
Wilder, Joel
Wilkinson, Ezra
Williams, Henry
Wilson, Milo
Winn, Jonathan B.
Wood, Charles C.
Woods, Josiah B.

Leland, Alden
Little, Otis
Loomis, E. Justin
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Meador, Reuben
Merriitt, Simeon
Monroe, James L.
Morton, William S.
Nash, Hiram
Newman, Charles
Nichols, William
Norton, Alfred
Nute, Andrew T.
Orne, Benjamin S.
Packer, E. Wing
Paine, Benjamin
Parris, Jonathan
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Phinney, Sylvanus B.
Pierce, Henry
Pool, James M.
Putnam, John A.
Rawson, Silas
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Rockwood, Joseph M.
Rogers, John
Royce, James C.
Sanderson, Amasa

ABSENT.

Allen, Charles
Allen, James B.
Alley, John B.
Alvord, D. W.
Appleton, William
Baker, Hillel
Ball, George S.
Banks, Nathaniel P., Jr.
Barrett, Marcus
Beebe, James M.
Bell, Luther V.
Bigelow, Jacob
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Bradbury, Ebenezer
Brown, Alpheus R.
Brown, Hiram C.
Brownell, Frederick
Bryant, Patrick
Bullen, Amos H.
Chapin, Chester W.
Choate, Rufus
Clark, Salah
Coggin, Jacob
Cole, Sumner
Cook, Charles E.
Copeland, Benjamin F.
Crowninshield, F. B.
Cummings, Joseph
Dawes, Henry L.
Dean, Silas
Dehon, William
Denison, Hiram S.
DeWitt, Alexander
Esland, Peter
Eaton, Calvin D.
Ely, Joseph M.
Eustis, William T.
Farwell, A. G.
French, Samuel
Frothingham, R'd, Jr.
Gooch, Daniel W.
Gourgass, F. R.

Greenleaf, Simon
Hall, Charles B.
Haggood, Seth
Hayward, George
Heywood, Levi
Hobart, Aaron
Hooper, Foster
Hoyt, Henry K.
Huntington, George H.
Hyde, Benjamin D.
Jenkins, John
Keyes, Edward L.
Kinsman, Henry W.
Knowlton, Charles L.
Lord, Otis P.
Lothrop, Samuel K.
Lowell, John A.
Marvin, Theophilus R.
Mason, Charles
Moore, James M.
Nayson, Jonathan
Noyes, Daniel
Orcutt, Nathan
Osgood, Charles
Paige, James W.
Paine, Henry
Parker, Joel
Parker, Samuel D.
Parsons, Samuel C.
Payson, Thomas E.
Peabody, George
Perkins, Jonathan C.
Pomroy, Jeremiah
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Rice, David
Ring, Elkanah, Jr.
Rockwell, Julius
Ross, David S.
Sampson, George R.
Sheldon, Luther
Stacy, Eben H.

Friday,]

HOUSE OF REPRESENTATIVES. — HALE — WHITNEY — HATHAWAY.

[July 1st.

Stetson, Caleb
Stevens, Joseph L., Jr.
Storow, Charles S.
Stutson, William
Taber, Isaac C.
Thayer, Joseph
Thompson, Charles
Train, Charles R.

Turner, David P.
Tyler, John S.
Upton, George B.
Vinton, George A.
Wallace, Frederick T.
Warner, Marshal
Wetmore, Thomas
Wilkins, John H.

Absent and not voting, 104.

So the amendment was rejected.

Mr. HALE, of Boston. I wish to ask the attention of the Convention to an amendment refused by the Committee of the Whole. It was offered in Convention before they went into Committee of the Whole upon this subject, by myself, with the concurrence of ten members of the Committee. It was made a subject of consideration in Committee of the Whole, but was voted down there. No vote has been taken upon it in Convention. I move it as an amendment to the amendment reported by the Committee of the Whole.

The PRESIDENT. As this is a substitute for the amendment, the Chair rules that it can be received only by unanimous consent.

Objection was made.

Mr. WHITNEY, of Conway. I rise to make a motion which I feel very reluctant to make. I believe we have arrived at that point of time.

The PRESIDENT. The Chair must inform the gentleman that debate is not in order.

Mr. WHITNEY. I move the previous question.

The previous question was seconded and the main question ordered.

The PRESIDENT. The Convention having ordered the main question, the first question is upon the amendment reported by the Committee of the Whole, and contained in document No. 65, being the amendment offered by the gentleman from Lowell, (Mr. Butler).

Mr. WEEKS, of Harwich, demanded the yeas and nays, and they were ordered.

Mr. HATHAWAY. I ask for a division of the question, as I would like to get an independent vote upon the last proposition.

The PRESIDENT. The question will first be taken by yeas and nays, upon the 1st, 2d, 3d, and 4th resolves. The Secretary proceeded to call the roll, and the vote stood—yeas, 206; nays, 112—as follows:—

YEAS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Allen, James B.
Allen, Joel C.
Allen, Parsons
Alley, John B.
Allis, Josiah
Alvord, D. W.
Atwood, David C.
Austin, George
Ayres, Samuel
Ballard, Alvah
Ball, George S.
Bartlett, Russel
Bates, Eliakim A.
Bates, Moses, Jr.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Booth, William S.
Boutwell, Sewell

Boutwell, George S.
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brownell, Joseph
Burlingame, Anson
Butler, Benjamin F.
Caruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Daniel E.
Chapin, Henry
Clarke, Alpheus B.
Clark, Henry
Clark, Ransom
Cleverly, William
Coggin, Jacob
Cole, Sumner
Coolidge, Henry F.
Crane, George B.
Cressy, Oliver S.

Crittenden, Simeon
Cross, Joseph W.
Curtis, Wilber
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Ebenezer
Davis, Isaac
Day, Gilman
Deming, Elijah S.
Denton, Augustus
Dorman, Moses
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easton, James, 2d
Edwards, Elisha
Edwards, Samuel
Fay, Sullivan
Fellows, James K.
Fiske, Emery
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
Gale, Luther
Gardner, Johnson
Gates, Elbridge
Gilbert, Wanton C.
Gilbert, Washington
Giles, Charles G.
Giles, Joel
Gooch, Daniel W.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Harmon, Phineas
Haskell, George
Haskins, William
Hawkes, Stephen E.
Heath, Ezra, 2d
Henry, Samuel
Hewes, James
Hobbs, Edwin
Holder, Nathaniel
Hood, George
Howard, Martin
Howland, Abraham H.
Hunt, Charles E.
Huntington, George H.
Hurlbut, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Leland, Alden
Lincoln, Abishai
Little, Otis

NAYS.

Abbott, Alfred A.
Adams, Benjamin P.
Aldrich, P. Emory
Andrews, Robert
Aspinwall, William

Loomis, E. Justin
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Meador, Rueben
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge, G.
Morton, William S.
Nash, Hiram
Newman, Charles
Nichols, William
Norton, Alfred
Nute, Andrew T.
Orne, Benjamin S.
Packer, E. Wing
Paine, Benjamin
Parris, Jonathan
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
PHELPS, Charles
Pinney, Silvanus B.
Pierce, Henry
Pool, James M.
Putnam, John A.
Rawson, Silas
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Rockwood, Joseph M.
Rogers, John
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sherril, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spoonor, Samuel W.
Stevens, William
Stiles, Gideon
Strong, Alfred L.
Swain, Alanson
Taber, Isaac C.
Taft, Arnold
Thayer, Willard, 2d
Thomas, John W.
Tilton, Abraham
Tilton, Horatio W.
Tower, Ephraim
Tyler, William
Underwood, Orison
Viles, Joel
Wallis, Freeland
Ward, Andrew H.
Warner, Samuel, Jr.
Weston, Gershom B.
White, Benjamin
White, George
Whitney, Daniel S.
Whitney, James S.
Williams, J. B.
Wilson, Henry
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wood, William H.
Wright, Ezekiel

Bradford, William, J. A.
Brewster, Osymn
Brinley, Francis
Briggs, George N.
Buck, Asahel
Bullock, Rufus
Bumpus, Cephas C.
Cady, Henry
Carter, Timothy W.
Chapin, Chester W.
Churchill, J. McKean
Cole, Lansing J.
Conkey, Ithamar
Copeland, Benjamin F.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Cummings, Joseph
Davis, Charles G.
Davis, John
Davis, Robert T.
Davis, Solomon
Denison, Hiram S.
Doane, James C.
Eaton, Lilley
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fowler, Samuel P.
Gardner, Henry J.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Hale, Artemas
Hale, Nathan
Hathaway, Elnathan P.
Hayward, George
Heard, Charles
Hersey, Henry
Hewes, William H.
Hillard, George S.
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Hunt, William
Huntington, Asahel
Huntington, Charles P.
Jackson, Samuel
James, William
Jenks, Samuel H.

ABSENT.

Appleton, William
Baker, Hillel
Banks, Nathaniel P., Jr.
Barrett, Marcus
Beebe, James M.
Bell, Luther V.
Bigelow, Jacob
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Bradbury, Ebenezer
Braman, Milton P.
Brown, Hiram C.
Brownell, Frederick
Bryant, Patrick
Bullen, Amos H.
Childs, Josiah
Choate, Rufus
Clark, Salah
Clarke, Stillman
Cogswell, Nathaniel
Cook, Charles E.
Crowninshield, F. B.
Dawes, Henry L.
Dean, Silas
Dehon, William
DeWitt, Alexander
Easland, Peter
Eaton, Calvin D.
Ely, Joseph M.
French, Charles H.
Frothingham, Samuel
Frothingham, R., Jr.

Gougas, F. R.
Greenleaf, Simon
Hall, Charles B.
Hammond, A. B.
Hapgood, Seth
Hayden, Isaac
Heywood, Levi
Hinsdale, William
Hobart, Aaron
Hobart, Henry
Hooper, Foster
Hoyt, Henry K.
Hurlburt, Samuel A.
Hyde, Benjamin D.
Jenkins, John
Johnson, John
Kendall, Isaac
Keyes, Edward L.
Kinsman, Henry W.
Knowlton, Charles L.
Lawrence, Luther
Littlefield, Tristram
Lord, Otis P.
Lothrop, Samuel K.
Lowell, John A.
Marvin, Theophilus R.
Mason, Charles
Nayson, Jonathan
Ober, Joseph E.
Osgood, Charles
Paige, James W.
Paine, Henry
Park, John G.

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SECRETARY, TREASURER, &c. — WILSON — DANA — BRIGGS — BATES — BISHOP.

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Parker, Joel
Parker, Samuel D.
Parsons, Samuel C.
Payson, Thomas E.
Peabody, George
Perkins, Jonathan C.
Pomroy, Jeremiah
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Rice, David
Ring, Elkanah, Jr.
Rockwell, Julius
Ross, David S.
Sampson, George R.
Sheldon, Luther
Souther, John

Stacy, Eben H.
Stetson, Caleb
Stevens, Joseph L., Jr.
Storrow, Charles S.
Stutson, William
Sumner, Charles
Thayer, Joseph
Train, C. R.
Turner, David P.
Tyler, John S.
Upton, George B.
Vinton, George A.
Wallace, Frederick, T.
Walker, Amasa
Warner, Marshal
Waters, Asa H.
Wilkins, John H.

Absent and not voting, 101.

And the resolves were adopted.

The question recurred on the passage of the remaining portion of the resolves, and being taken, there were, upon a division—ayes, 189 : noes, 27.

So the amendment was agreed to.

The resolves were then ordered to a second reading.

Mr. BOUTWELL, for Berlin. I move that the resolves as amended, be printed, and their further consideration be made the Order of the Day for Wednesday next, at half past ten o'clock, A. M.

The motion was agreed to.

Reconsideration.

Mr. WILSON, of Natick. I see that the two gentlemen are here, on whose account the subject of the reconsideration of the vote on the final passage of the third resolve in Document No. 30, relating to the Secretary, Treasurer, &c., was laid upon the table. Those gentlemen, the gentleman for Manchester, (Mr. Dana,) and the gentleman from Lenox, (Mr. Bishop,) being now present, I move that the motion for the reconsideration of the vote, by which that resolve was passed, be taken up for consideration.

The motion was agreed to.

The PRESIDENT. The resolves are those reported by the Committee to whom was referred so much of the Constitution as relates to Secretary, Treasurer, and Attorney-General, &c. The resolves were ordered to their final passage on the 13th of June. On the 14th of June, the gentleman for Manchester, (Mr. Dana,) moved the reconsideration of the vote by which the Convention had passed the third resolve, and the question is on the motion to reconsider that vote.

Mr. DANA. Mr. President, this is not a very favorable time to occupy the attention of the Convention, for our minds are exhausted with the subject we have just been considering, and this is far less interesting; but I would like to have the favorable attention of the House for a few moments, upon Document No. 30, which is now before the Convention. The last resolve but one of that document is as follows:—

Resolved, That Judges of Probate, Clerks of the Courts, Commissioners of Insolvency, District Attorneys, Registers of Deeds, County Treasurers and County Commissioners, be elected triennially, by the people of their respective counties and districts.

I asked for the reconsideration of that resolution, for certain reasons which I will take the

liberty of now placing before the Convention. The Convention will perceive that it is purposed to make the district attorneys and clerks of the courts elective, as well as the judges of probate, and to elect them once in every three years; and the sheriffs also are to be elected once in three years. I would like, first, to ask the attention of the Convention to the subject of the election of the sheriffs. The Constitution of Massachusetts is divided into three departments: legislative, judicial and executive. The governor is responsible for the executive department. He is the great executive officer, and his duty is to see to the execution of the laws. 'It is nothing, Mr. President, to have laws passed by the legislature, and it is nothing to have laws interpreted by the court. If they are not executed what are they good for? And what are they made for but to be executed? The governor is to see to the execution of the laws, and, to a great extent, the sheriff in each county is the active executive officer. The duty of the sheriff is not by any means limited to the serving of writs and processes between man and man, but in the exigencies of a State, when the very existence of a State is at stake, in times of insurrection and civil disturbance, these great crises which are liable to occur—for in times of perfect quietness you can get along without any government, almost—in times of storm, of peril, then the sheriff and his deputies are the chief executive officers of the county. Now it strikes me that these sheriffs should be persons over whom the governor, as the chief executive officer of the Commonwealth, should possess some control. Imagine an army, with officers in the field over whom the commanding officer possessed no control. If the officer is unfaithful or timid in a moment of danger, and fails to discharge his duties, the commanding officer ought to have the power to remove or suspend him immediately; and there never was an army in the world where that power did not exist. Now I submit to the judgment of every gentleman in this Convention, whether that should not be the case in regard to sheriffs? Whether the governor ought not to have power to put his hand on an unfaithful sheriff in a moment, to remove him from office, or suspend him? Now you have adopted, or you will adopt, a provision by which a sheriff can hold his office for a term of three years, in spite of the governor, whatever his conduct may be, subject to nothing but impeachment; and that remedy, of course, would be too late. Now I put it to the judgment of every gentleman here, what he thinks of the action of an unfaithful sheriff in a time of peril, being entirely independent of the chief executive officer of the Commonwealth. He will say that he was elected for three years, that his time is not out, and that he cannot be touched. You have not conferred upon your governor power to remove him, and he has not the power even to suspend him, or to appoint a temporary sheriff in his place. Here you put the entire executive power of the State, in times of peril, in the hands of a sheriff and his deputies, who are entirely independent of the governor. Now I cannot believe that this Convention means to do any such thing. I admit that the exigency is not likely to occur, and I pray that it may never occur, when we may want a sheriff to aid in sustaining an unpopular law, at the peril of his life or fortunes. But it may occur; and, when we are laying the

foundations of government, we should lay them so that they will stand in times of danger. We should not be like the man who builds his house upon the sand, and thinks it well enough because it happens to be fine weather the day when he lays the foundation.

Mr. CHAPIN, of Worcester. If I may make a suggestion, I wish to state, that I understand the motion to reconsider was to reconsider the vote by which the first resolve was passed.

Mr. DANA. I intended to have my motion apply to all the resolves.

Mr. CHAPIN. The election of sheriffs is provided for in the first resolve.

Mr. DANA. I supposed the motion related to the whole of the resolves.

The PRESIDENT. If that was the motion, there has been a mistake in the record; but if there is no objection, the Chair will so state it.

Mr. DANA. It may be that I did not look carefully enough into the details of the resolutions, but I meant to include the portion which related to the sheriffs.

Mr. BRIGGS. I will state, that soon after the motion was made, the gentleman for Manchester suggested to me that he had made the motion in the form which he now suggests.

Mr. BATES, of Plymouth. It appears to me there can be no question about this matter. The gentleman for Manchester, in the first place, discussed the matters contained in the third resolution for two or three hours—

The PRESIDENT. The question is, the Chair would suggest, whether the record is made correctly, whether the gentleman for Manchester moved the reconsideration of the vote by which the resolves were put on their final passage. If there is no objection made, inasmuch as the gentleman for Manchester states that that was his proposition, the Chair will state that the question is upon the reconsideration of the vote by which the resolves were put upon their final passage.

Mr. DANA. I will not undertake to say that that was the form in which I put the motion, but that was my intent. I hope the Convention will not regard the consideration of this question as needless.

You have made no provision authorizing the governor either to remove or to suspend these executive officers. It strikes me that it is an oversight. I am not opposed to the election of the Sheriffs by the people triennially, so much as I am to their being entirely independent of the governor, in his office of the chief executive of the State.

Mr. BISHOP, of Lenox. There are resolves which are about to be reported, authorizing the executive officer of the State to remove a sheriff and other officers at any time, for good cause; so that when the resolutions in relation to this subject shall have all come in, it will be seen by the gentleman for Manchester that ample provision is made for the removal of the sheriff in case of any dereliction of duty or malfeasance in office of any kind, and that, too, immediately upon an exhibition of proof made to the executive officer that such malfeasance or any delinquency in duty exists. That is our purpose. But by these resolves we meant to make the sheriffs elective, and proceed no further. We did not intend to make them irresponsible to the executive, subject to no removal in case they departed from their duty; but after being elected by the people, we propose

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to place them where they should be placed—directly under the control of the executive. If the gentleman for Manchester will wait till those resolves are in and explained, he will find ample provision made for the exigency to which he refers. I do not wish to stop the force of the gentleman's argument, however.

Mr. DANA. I am much obliged to the gentleman. He has answered my objection entirely. I have no objection to the mode at all. I would ask whether any provision is made to authorize the courts to suspend a clerk under similar circumstances.

The PRESIDENT. The Chair would suggest that any reference to the course of committees, is not proper at the present time.

Mr. BISHOP. Provision is made for the removal of all officers in case of delinquency of duty. With regard to the particular case to which the gentleman refers, I will not determine. When the matter is presented—and it is already presented—the objection of the gentleman may possibly be obviated.

Mr. DANA. I will take the liberty to suggest that there would be propriety in giving the judges of the courts power to remove a clerk, in case he should refuse to sign a paper or fix a seal to a document, in the same manner that there would be in giving power to the governor to remove a sheriff.

I was so unfortunate as not to be present when the subject of the Judges of Probate was under discussion, and I do not know but that what I am about to say on that subject, has been already presented in a better manner than I am able to present it. But I think that the time when that subject was under discussion, was the only whole day that I have been absent from the Convention since its commencement, except I was prevented from attendance by sickness, and I would like very much to impress again on the minds of gentlemen, the importance of the office of the Judge of Probate. I do not object so much to his election as to his re-election. That is, I object to the Judge of Probate being a candidate for the office as often as once in three years. It is not the source from which he obtains his power to which I object, but it is to his being dependent upon influential persons for the renewal of his office. I cannot agree with my learned friend from Lenox, (Mr. Bishop,) that the first requisite of a Judge of Probate is urbanity. I do not know, in fact, that he considers it the first requisite; but the very highest requisite of a Judge of Probate in my opinion should be absolute integrity and then we should clothe him with power to maintain his integrity. He must start honest, and you must keep him honest. It is not enough to say you have an honest man, for a knowledge of human nature should teach us not to lead ourselves or others into temptation. A Judge of Probate is clothed with great discretionary power; he has to approve the bonds of all trustees, guardians, executors, and administrators; and he must approve or disapprove officially without fear, favor, affection or hope of reward. He is to examine the accounts of executors, trustees, guardians, and administrators, and he must cut down these accounts if necessary. He must be entirely independent and fearless.

There is another peculiarity in the office of the Judge of Probate. He stands between the strong and the weak. On the one hand are women, children, wards, minors and widows; persons

without political power and influence of any kind; and on the other hand are the executors, guardians and trustees, who are the influential men of the county. In other words, the Judge of Probate has to stand and deal with the influential men of the county, with their bonds and accounts on the one side; and on the other he has the powerless and uninfluential persons in the community whom he is to protect. Now, it appears to me you are placing him in circumstances of great temptation. You are putting him in the power, substantially, of these very men upon whom he is to exercise this oversight. I would not put the custody of the estates of minors and helpless people in the charge of those persons who must necessarily look to the powerful for their continuance in office if they are subject to re-election.

It may be said that the people will judge correctly. I have no doubt that they will generally judge correctly when they have the means of doing so. But re-election will depend upon re-nomination, and re-nomination will depend upon a few influential men. When you take the whole State, a few persons have not influence enough to overturn a judge in office; but in a county, some three or four or five active, influential men may prevent the re-nomination of a judge; and the very men who go to the judge with accounts to be approved, are the men on whom he depends for continuance in office.

Now, believing there is this real peril, I suggest that we should protect the judge and these parties who need protection against the powerful. Why make this proposed change? Has there been any complaint made against the present system? I have heard of none. They may be removed by impeachment if they behave badly; and they may be removed by address. It takes no more power to remove a judge than to change a man's name. A simple majority in the two houses of the legislature may do either. I ask gentlemen if this is not enough? If removable by impeachment and by address, is not that enough? We have a judge now, who is entirely independent, and at the same time, he is not irresponsible. He is responsible to both branches of the legislature, and to the Senate on impeachment. He is as responsible as any man can be, and at the same time be independent. You propose, without adding to his responsibility, to diminish his independence. I think there is where we ought to draw the line. I cannot see any objection to judges of probate going on as they have gone on; and I believe the people, when they consider the nature of the office of the judge of probate, as they will consider it, will be perfectly willing that he should remain as he is. I cannot conceive that we have such a determination to vote for officers in all cases as to gratify that purpose at the expense of those persons who are to be placed under the custody of the judge of probate; and it seems to me it would be carrying out the principle of election at the expense of the Commonwealth and of those persons who need to be protected.

I know I present these views under a disadvantage, because under the circumstances of the case, as there has been a discussion once had upon the subject, gentlemen may have made up their minds, and they may think that it is tedious to renew the discussion. But it strikes me to be of importance that the subject should be con-

sidered; and I hope the Convention will think with me so far at least as that we shall endeavor to protect the rights of persons who have no other protection than the independence of the judge.

Mr. SUMNER, for Otis. I do not understand, Mr. President, that there is any motion upon this question distinctly before the Convention.

The PRESIDENT. The motion is to reconsider the vote by which the Convention orders the resolves to their final passage.

Mr. SUMNER. And those resolves provide for the election of judges of probate once in three years. I am in favor, Mr. President, of the election of the judges of probate by the people, but I am opposed to that election once in three years as is proposed by the resolutions before us. I think the people of the county in which the judge of probate has his jurisdiction, are pre-eminently qualified to make a selection and elect a judge. I am in favor of extending the time of election beyond the period which is provided in the resolution, which it seems has been passed in the Convention. I prefer to extend the term of the office of judge of probate from three to six years. There is, in my opinion, a very great difference in relation to the election of the judiciary from that of the other officers which are merely ministerial in the character of their offices.

When the office is judicial it of course requires a greater degree of study and examination with regard to the duties which are incumbent upon them; and it requires a longer tenure of office, in my opinion, than that which appertains to officers of a different order. This is peculiarly true in relation to judicial officers. I would not have any judicial office founded upon the same tenure as that of offices of a ministerial character; and in relation to judges of probate, theirs is pre-eminently, from beginning to end a judicial office. There is no doubt about that. It is one of that kind of offices, however, although judicial in its character, the duties of which, may be performed by those who do not belong to legal profession; and this is not true of other judicial offices. This may not be true in relation to the judges of probate in counties embracing cities, where the duties devolving upon the office are of a more complicated nature, owing to the different kinds of business questions which arise in cities; but in the country the duties of the office are more simple, and they may be performed, and indeed they have been performed in some cases, by persons who are not of the legal profession. For instance, in one of the western counties of this State, for more than a quarter of a century, the duties of judge of probate were performed by a gentleman who was not of the legal profession; he was a farmer, but he performed those duties with great skill and ability. But if you limit the tenure of this office to the term of three years, it will be impossible for men who are not of the legal profession, in the town or the country, in the cities or the rural districts, to become sufficiently acquainted in that time with the duties of their office so as to render themselves acceptable to their constituents, or in such a manner as to show their competency, that they can acquire sufficient learning to discharge their duties. I hope, Sir, that the tenure of the office of judge of probate may be fixed at six years instead of three, and I hope therefore, that the motion for reconsideration will prevail.

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Mr. HILLARD, of Boston. I am well aware, Mr. President, that this is not a happy time for addressing the Convention upon any subject; and I should have held my peace now, because I know that there is a wall between the Convention and any speaker, but that I feel so deeply and so strongly upon this matter that I flatter myself that my words and my thoughts may overleap this wall of division. I am opposed to this mode of electing a judge of probate by the people, and I ask the Convention to reconsider their steps on this subject. I am opposed to it not merely because of its operation upon this particular office, but because this is the beginning of an end—because this is an entering wedge which opens the way to the introduction of a principle which I consider fatal to all that is valuable in the judiciary. First of all, I take issue with my brother from Berkshire upon the character of the functions of a judge of probate. I contend that that office requires a particular training and a measure of learning such as ordinarily cannot be acquired except in the legal profession. It is no answer to tell me that here and there a man of an uncommon legal understanding becomes qualified to perform the duties of that office.

Mr. SUMNER, for Otis. If the gentleman will allow me, I will state that I said it required a member of the legal profession to perform the duties of judge of probate in the cities, and especially in the city of Boston; but that in the rural districts a man who was not a member of the legal profession could discharge the duties of the office acceptably, and I gave an illustration to show that this had been done.

Mr. HILLARD. I cannot perceive the difference in principle; the only difference is in the extent of the field on which the accomplishments and training are to operate, and therein there is no difference in principle. I say that in ordinary circumstances a measure of legal learning such as cannot be acquired except by practice at the bar, is requisite for a proper discharge of the functions of a judge of probate; and, Sir, I do not put the scale of general qualifications so low as many gentlemen are disposed to do. I think that the action of a judge of probate is important within his sphere; that sphere, to be sure, is not the very highest. I admit that you do not want eloquence—you do not want original genius or profound learning, although the more learning in a man is better, other things being equal; but what you do want is good sense and experience—you want conscientiousness, and above all you want firmness and independence. Now, Mr. President, I say that the qualifications which enable a man to discharge the functions of a judge of probate are not those which win popular favor and which are likely to secure to a man a liberal harvest of votes. Popularity is the result of a facile character and a flexible nature. That man is a popular man whose sympathies are ready but not deep—who has no deep and strong convictions, such as readily yield to the touch of outward circumstances. A popular man is a man who has no enemies, and in my opinion a man who has no enemies deserves to have no friends. Independence and firmness, Mr. President, are the cardinal virtues of a judge, whether he be judge of the supreme court or judge of probate. Independence is to a judge what courage is to a man, and what chastity is to a woman; it is the guardian virtue that

keeps watch over all the rest, and without which we have no security in any other one. The great Sir Thomas Moore, speaking of the motives which guided him, in a discourse to a member of his family, says: "If there came before me, on the one side my father, whom of all men I most love and honor, and on the other the devil, whom of all beings I most hate and abhor, yet if the justice of the case lay with the devil, he should have right at my hands." I do not suppose that the devil will ever appear before a court of probate, either in person or by attorney; but I do submit that there may be occasions which put the virtue of a judge of probate to something of a severe test. I will suppose that on the one side there is a widow, poor, friendless and unprotected; and on the other side a man of powerful influence in the party which has put that judge into office. I will suppose further, that the day of re-election is near at hand, and that his circumstances are such that it is of great importance to him that he should be re-elected. He may have a son at college; he may be about to marry a daughter; he may be building a new house or refurbishing an old one, so that the abstraction of his salary may be felt to be a great inconvenience. With that pressure upon him, perhaps the judge will not yield; if he be an angel he certainly will not yield, but we cannot have angels for five, six, or seven hundred dollars a year. Being a man, with the infirmities and liabilities to temptation of humanity, although I should look forward to the result with something of hope, yet it would also be with something of fear.

But further, Mr. President, I contend that in devolving the selection of the judges of probate upon the executive, we do no more than follow out the analogy which runs through the whole of life, in all our business relations and in our political administration; and that is this: wherever peculiar functions are required, wherever a peculiar training is necessary for the proper discharge of the duties of any office, the selection of that office is devolved upon a smaller body—either upon a particular individual or upon bodies of two or three or more. Take, for instance, this very Convention, with regard to the selection of the committees, to whom we are intrusting all these important questions. Should we have done, so wisely if we had elected them all ourselves? We never could have attained a satisfactory result; but we chose you, Mr. President, and one of the motives that induced us to vote for you was the confidence that we reposed in the discretion which you would exercise in the selection of these committees. By so doing we have done far more wisely than if we had elected them ourselves. How is it managed in a bank? The shareholders come together and choose a board of directors, because their functions are such as most men can discharge; but they do not choose a teller or book-keeper, because peculiar qualifications are required for those stations. The selection of these officers is devolved upon the directors, and by them it is usually given to a smaller committee, upon whom personal responsibility is brought as it were to a focal point; the stockholders in a bank would act with a great want of wisdom if they were to take such things into their own hands. So it is with a railroad corporation. The shareholders select the board of directors, and the directors themselves choose the engineer because his functions require peculiar qualifications.

So, if we should want to select an artist to paint a picture or to carve a statue, would the legislature be wise to make the selection themselves? No! they would devolve it upon a smaller body, and throw such responsibilities upon them as would compel every man of the committee to give his mind seriously and exclusively to the subject.

I am arguing now, upon the supposition that this is a question between the executive and the people; but, Mr. President, it is no such thing. I wonder that any man can ever maintain, with a sober countenance, that such is the case. If the executive were to nominate a committee composed of discreet men in each town and county, that they should come together and choose a judge of probate, I might yield some of my objections. But we know perfectly well that the result of this thing will be that the judge of probate will be nominated by a caucus, and we know perfectly well that the men who will compose that caucus will be men not remarkable for their discretion, not remarkable for their judgment, not remarkable for the amount of interest which they have at stake, but rather remarkable for their zeal and activity, and for the personal interests they have in serving as apprentices and journeymen in the great trade of politics. I submit that if you devolve the nomination of this officer on a body like that, which merely sends forth its edicts and they are conformed to by the people, you will be abandoning an excellent system, one which has always worked well, for one which contains too many dangerous elements for any wise State to adopt it.

I do not know that I have anything further to say. I concur entirely in what has been said by the gentleman for Manchester. I suppose that the result is a foregone conclusion; but in view of the fact that no petition has come up from any part of the State for a change, but all are content with the present system, and in view of the dangers which lie in trying any new path, I will ask this Convention whether, in regard to this officer at least, they will not pause and retrace their steps.

Mr. BUTLER, of Lowell. I wish to say a few words upon this subject, and but a few, because it is a subject that needs not from me, certainly, much talk; but the premises being granted from which, the gentleman from Boston will excuse me if I say, he suggests that men ought to act, I will agree with him that judges ought not to be elected by the people; but, the radical difference between us is, that we disagree upon the premises. He sets out, if I understand him—and I would not do him injustice—with the belief that men ought to act in conformity with the desire of "the hands that feed them." Sir, that puts an end to all independence. I do not set out with that belief, and, therefore, I think that judges may be independent, although elected by the people—and much more independent than if they were appointed; but, even if I agreed with him that a man ought to look to those who feed him for his rules of action, I should still be unwilling to have this judge appointed; for, although I would not expect to have him an angel, yet I think that, on the other hand, a man should have what has been not inaptly expressed a "supremacy over his accidents,"—that he should stand up wholly independent of, and looking beyond any considerations of what may be about him; and believing, Sir, that men will do so, I am con-

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strained to believe that judges of probate may be elected, and yet be reasonably independent men. But, Sir, there seems to have been one thing overlooked by the gentleman for Manchester in his argument; and that is, that the judge of probate is but a subordinate office after all, and in case of corruption, partiality, or any undue influence being allowed to control his actions, those who feel themselves aggrieved can at any time make it the subject of an appeal to the supreme court, as a supreme court of probate is always open and the decision can at once be corrected. On the other hand, his acts of discretion are so guarded that no injury can be done. My friend, who is so well "posted up" in all these matters, to use a cant phrase which I know I ought to be ashamed of—my friend, who so well understands this thing, speaks of the approval of bonds as an instance of the exercise of this discretion. Now, Sir, what earthly inducement can a judge of probate have to approve a bad bond? Will you tell me, Sir, where you can conceive a motive for his doing it? I hold that men will not act wrongly unless they have a motive for it; and it should be constantly remembered that if a judge of probate should be guilty of any improper act in regard to the administration of estates, every decree he may make is examinable in the supreme court, and subject to be reversed by that tribunal.

Another thing my friend from Boston seems to be afraid of, is that if you make the office of judge of probate elective, it will be an office which will at once come into the political arena, and which will always be subject to change in the incumbency on the occasion of every election. These fears may do very well to speak about, but it so happens that we rarely see them realized; because in this case particularly, the people in the election of such a judge, are looking immediately and at once to their own interests. Let me speak a little from experience in regard to this matter. In the county of Middlesex, in which, as gentlemen know, we carry politics quite as far as is good for ourselves, and certainly a little too far for the benefit of our opponents, the best and most lucrative office in the gift of the people—that of county treasurer—has been held by one man as long as I can remember, and the office is elective annually.

A MEMBER. There have only been two county treasurers in Middlesex during the last thirty years.

Mr. BUTLER. I am reminded by a friend near me that there have only been two treasurers in that county during the last thirty years. At all events, as long as I can remember, that office has been filled by one man; and, pecuniarily considered, it is the best office in the gift of the people of Middlesex. It would be the highest prize in point of remuneration, that a man could win in our county elections; and, although there have been from time to time, nominations of opposition candidates, these nominations have been formal, merely, as the nominees could not secure an election.

—So, also, in regard to our register of deeds; the result at elections has been precisely similar. When the people get a good man, they keep him in office; and so unquestionably it would be with judges of probate. If he is a bad judge the widow and the orphan will be his accusers; if he is a good judge they will be his friends, and his

re-election will be secured. If he should abuse his office, then there would be no hope for him, and there ought to be none. He does not and cannot separate himself from the people.

Now, I agree with what was said by the chairman of the Committee—that good manners and unity are requisites which strongly appertain to a judge of any court. I am almost inclined to say that they are the first and most essential requisites—and above all in the case of a judge of probate. Urbanity, good manners, kindness of temper, and a disposition to be obliging as well as just, are among the great prerequisites in any judge, whether high or low. I have seen in my time—and who amongst us has not seen the same thing?—judges who marred their great ability by their want of these qualities, whose lack of them was as notorious as their legal attainments were great; so that while we almost worshipped the lawyer, almost all of us despised the gentleman. These qualities, are doubly requisite in a judge of probate. Why, Sir, the judge of probate in our county has quite spoiled all business in relation to the administration of the estates of the deceased—so far as the profession of the law is concerned—by taking it into his own hands; that is to say, he is ever ready to give the best advice to administrators and widows in regard to their duties. He takes care of the whole of it; does everything honestly and pleasantly; so that, in that business a lawyer is like a fifth wheel to a coach. He sees to it that all the business is properly done, and the legal profession find nothing whatever to do in his court. The gentleman is no particular friend of mine, and there are certainly no personal reasons subsisting between us, why I should pay him a compliment; but what I have said is but just. He is a man of very accomplished manners, and of gentle and obliging disposition; and hence, this is added to business habits and strict integrity. If he has these qualities, and having to appeal to the electors for their suffrages, his re-election would be always a matter of certainty. Besides all this, Sir, I cannot but think that one of the best methods of polishing the manners of some of our judges is to subject their office to the popular vote. "While I am far from believing that it would alter their integrity, I cannot but think it would have the effect of rounding off some of their rough corners, or, to speak in more polished phrase, to smooth some of the asperities of their conduct. I would not sleep less soundly o' nights, nor sell any piece of property I might possess, one cent cheaper, even if our supreme judges were subjected to the ordeal of a popular election annually. I should have no fear of consequences in regard to the common welfare, if all our judges from the highest to the lowest, were made elective—but I have a little fear of the arguments of my friend, (Mr. Dana,) for Manchester. [A laugh.]

Now, to show how much we differ, I will say that I think there is a good deal more danger in making the office of sheriff elective, although that does not appear to strike my friend from Boston, (Mr. Hillard,) as being the case. Yet even in regard to sheriffs, I have no objection to their being made elective. Still he is strictly an executive officer. He has to execute the hard sentence of the law. On him devolves the duty, under the decisions of our courts, not unfrequently to turn the widow and the orphan from their homestead; to seize not only the property,

sometimes the persons of men; and, there is in my mind much more danger that he might be subject to influences and biases in the discharge of his duty, in order to secure his re-election than there is in the case of a judge of probate, or any other judge. I trust, therefore, that the motion to reconsider will not prevail if the only object of the motion is that intimated by the gentleman from Boston, to move to amend by making the office of the judge an office for life, or even as desired by my friend for Manchester, to make the tenure of the office a tenure of six years. I do not see that even this latter suggestion would mend the matter at all; for, during the last three years the judge would be in precisely the same position in which we place him by the resolution as it now stands.

In neither case do I think there is any danger in trusting the people with the election of those officers who are to protect their liberties, and take care of their estates. The people themselves, are most interested in these matters, and are the best judges of whom it is proper to trust in the discharge of these important duties.

Mr. BISHOP, of Lenox. The question before the Convention is two-fold; or, rather I should say two questions have been presented by the gentlemen who are opposed to the election of the judges of probate. In the first place they are opposed to the election of these officers by the people; and in the few remarks which I intend to submit to the Convention I shall confine myself strictly to the election of this judicial officer. This matter was fully and deliberately considered by the Committee which had it in charge.

Mr. DANA, for Manchester. Will the gentleman from Lenox allow me to interrupt him one moment for the purpose of explanation?

Mr. BISHOP. Certainly.

Mr. DANA. I did not put my motion on the ground of election in the first instance, but on the question of re-election at the expiration of three years.

Mr. BISHOP. That question has been frequently discussed, and I may say, perhaps, more freely than any other connected with this topic. I was stating that this matter had been under the careful consideration of the Committee, and was not passed upon by them until they had entered into the most scrutinizing investigation of the subject. Sir, what is a judge of probate? He is an officer of limited jurisdiction, and is responsible not only to the people for the faithful discharge of his duty, but amenable also to a higher tribunal to which appeal may be made. Being then a local officer, whose jurisdiction is limited by county lines, the question is, where does the proper legitimate appointing power reside—by whom should it be exercised? Should he be appointed by the people, or by the executive? The Committee thought, and I concurred with them entirely, that the proper legitimate appointing power is the people of the county over which he has jurisdiction and should be by them exercised; and for this reason, the people of the county are supposed to be intimately acquainted with every prominent individual within the county qualified for the office. They are presumed, and not without good reason, to know the qualifications of those who may be proposed as candidates for the office; and I venture to say, that there is not a county in this Commonwealth whose inhabitants are not intimately acquainted with the character

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and learning, integrity and accuracy in business, of any individual who may be proposed as such candidate. The executive is not, and from the very nature of things cannot be, thus well advised of the most fit and suitable persons to fill such positions. He may be a wise and good man; his acquaintance with the people of the Commonwealth may be extensive; he may be acquainted with all the prominent professional men in the Commonwealth; and possibly may be better able than the people to select judges of the supreme court, and other judges having general jurisdiction, but I deny that this is the case in reference to judges of probate. The people of the several counties know the qualifications of their men for this office better than anybody else can know them; they know better than anybody else who is competent to discharge the duties of this office—and I admit that these duties are very important ones—therefore, I contend that the appointing power is well and wisely left to remain in the people themselves—in other words, the power being originally in its full extent with them, this is a proper case in which they should directly exercise it.

One word further? What is the objection to this? It is this—judges made elective are dependent. I deny this. It is an unsupported assertion. No connection between the premises and conclusion is shown. On the contrary, I contend that, if they are made elective, they are made independent, so far as the discharge of their duties and the maintenance of their integrity are concerned. I do not admit that they must necessarily be “popular men” in the low sense which has been given to that phrase by my friend from Boston. They must most certainly be popular men; but in order to this they must be independent. They should be anything but “facile or obsequious” men—for I can assure my friend that “facile and obsequious” men are not popular with the people. The independent men, who are the friends of the people, and whom the people befriend. The independent, who are such because they are firm and intelligent, are the men who command the people's votes—the men who stand true to their principles. These are the men who are respected and supported by the people, and the “facile” are the men whom the people despise, and whose honesty they distrust and whose services they reject—men quite as little trusted and quite as much despised by the people as they would be by my friend from Boston himself. No, Sir, these men will never become the elect of the people. The firm and independent men will be their elect—men who discharge their duty fearlessly. The slight acquaintance which I have with the people justifies and vindicates this opinion; and, if my friend from Boston will mingle a little more with the people, my word for it, he will exercise a more charitable and just view in relation to them.

Now, Sir, what further? It is said that in the probate courts the strong and the weak come in conflict with each other. I do not understand what is meant by the strong and the weak in this respect; but I admit that the widow is weak; that the orphan is weak; and that the guardian and administrator may be strong and influential men. If these parties come in conflict, any individual who is to judge between them thinks to secure himself in his office by yielding to the temptations which may be offered him by the stronger, I can assure him who thinks by such yielding to re-

main quietly in place, that he will find himself most deplorably mistaken. Everything officially done in his office is placed upon the record; and if a widow is wronged by an executor or administrator, that wrong becomes known, and that widow is stronger in her wrongs, than the strongest man armed. Let it once be known that she is injured by unrighteous judgment, and she immediately acquires a strength and power which neither wealth nor influence can impart. If she is wronged these records show it; and weak as the widow and the orphan may be, their interests are not only under the supervision of their guardians and administrators, but of their friends and relatives, who watch those guardians and administrators, and will soon discover and understand full well if any injustice has been done; and, if it has been done, the whole matter will be on the record; and that record will be disclosed to the people, and known by every-body interested, and become the death warrant of any judge of probate shown by it to have departed from the right line of his duty.

Sir, gentlemen mistake in regard to this matter. Place the judge of probate under the supervision of the people of his county. Make him answerable to them, and not to an executive who is nominated by a caucus, and elected by a party; make him answerable to those whose business he is transacting; make him answerable to the widow who has strength in her tears, to the orphan who has strength in his weakness, and to the friends of both, who feel bound by every consideration of consanguinity and duty to look to their interests. And election ahead, and his eligibility to re-election, will form the strongest inducement which can be presented to the judge of probate, not to pervert judgment, but to show himself the fearless, uncorrupted and incorruptible friend of the widow and the fatherless.

I go further, Sir. The people of their own counties know their own men full well. There is no one of prominence enough to be selected for any county office, who is not either well known personally, or by reputation, by every man of the county. His capacity, integrity, and fitness for the office for which he is selected, will be thoroughly canvassed, examined and discussed. Close inquiry will be made, and if he cannot stand its scrutiny, he will be rejected—certainly, inevitably rejected. There are no political services which he may have rendered, that will save him. The people see clearly the difference which often exists between the wishes of partizan leaders and their own interests,—between the claims of political adventurers, and their own right and claims to be faithfully and ably served. They will never stop to inquire whether the candidate has been an active organ of his party, till after they have determined whether he be fit to serve them in the important work of the office. False, dishonest, and incapable men, never have been, and never will be popular favorites. They may occasionally steal the march of the people, but are sure of being reached and sent back again to obscurity, if not disgrace. In almost every county in the State, will be found officials, who have sat quietly in their places amidst all the shifts and violence of party; caucus nominations and chicanery have never been able to displace them. The approbation and confidence of the people have been their safeguard and reward, as I trust they always will be, of inflexible uprightness and tried

capacity. When the people shall have been bereft of the love of virtue and intelligence, and the intuitions which perceive, and the sound sense which justly estimate them, then, and not till then, should they transfer their appointing power to agents and attorneys.

In relation to the judge of probate, there is a security, which the records of the probate jurisdiction furnish. No executor can defraud the legatees of his testator,—no administrator can wrong the widow and heirs of his intestate, if it be seen to, that the estate effects and credits are placed upon the inventory, the accounts are fairly stated, and the records accurately kept. Those who have the administration of property of deceased persons, are constantly under the supervision of watchful creditors and jealous expectants. No decree, affecting the interest of every one, is passed till after due notice, and not only the doings of the administrative agents, but the orders and decrees of the judge in relation thereto, are matters of careful inspection. There is no danger from the sources which the gentleman has suggested.

I fully agree with my friend for Otis, (Mr. Sumner,) that every man is not competent, although a man of good sense, to discharge the duties of judge of probate as they should be discharged. These duties have become various and complicated, and are becoming more and more so, as business and social relationships increase in number and complexity. A capacity and talent to examine long and involved accounts,—to detect the errors which often occur in such accounts, and so to classify the statements, that they may be easily seen and fully understood, are very necessary to this officer. If he be not a lawyer, an intimate acquaintance with those branches of the law which relate to the construction of wills, the duties of executors, guardians, and trustees, the marshalling and distribution of assets, &c., is indispensable. These are matters which require a sound judgment, no little learning, and a good deal of critical examination. Now, I ask, will the people of the several counties, who are so directly and largely interested in the able and faithful discharge of these duties, be likely to select either careless, or dishonest, or incapable men to perform them. Will they be controlled in any considerable degree, by political considerations in their selections? When they become so reckless, so wild; so insane, as to throw away their regard for a good name after death, and their love and affection for their children, they may do so; but not till then. Instances are by no means rare, they are very frequent indeed, where political considerations have been entirely absorbed by the much greater considerations of faithfulness and capacity. That this will be the case in relation to all officers to whom are committed the charge and control of the business of the people, I have no doubt. It is unwise, in my opinion, for the people to make an assignment of their appointing power, in any case, where they have the opportunity and ability to exercise it themselves. All human experience shows that agencies to create agencies, are avoided by prudent men, and associations of men, whenever they can be. It is a trust-power which cannot be prudently transferred and imparted. The mass is governed by the same motives which direct the individual. That business should not only be done, but well done, is quite as important, and quite as much regarded, in the one case as the

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other. The people would no sooner appoint to an important office, where the candidates are known, and their qualifications canvassed, a man unsuited to it, than my friend from Boston, had he a temple to erect, would select for the drawings of the plan and the supervision of their execution, an ordinary house-carpenter from the country. The people will act very much as he would—select the very best man they can find. As with individuals in this respect, so with the people in mass. It is said that this will be made a purely political matter. Party politics may enter into it, but, I believe, to no dangerous or mischievous extent. I have satisfaction in the conviction that the people, collectively, care very much less about party organization, and party victory, than of the public good and prosperity. Indeed, if I mistake not, in local matters, the time is at-hand, if not now, when the first inquiry will be, not to what party he the candidate belongs, but who is he, what sort of man, and what he does believe in—is he morally trust-worthy? It is to draw these county officers as far away from politics and its agitations as they can be taken, that I would make them elective. They are now subjects of executive appointment. Who is the executive? Is he no partizan? Was he not thrown out of the boiling chaldron of party strife? Is he not the product of party fermentation? Is he not often both the cause and the effect of party bitterness and violence? Is the standard bearer of the party influenced by no party considerations in his appointments to offices of trust and honor? Will he not do what he has promised to do, and for which he was chosen? Does the history of the past leave a lingering doubt? No, Sir; a man nominated by a caucus, puffed by caucus appointees for that purpose, sustained by one party, opposed bitterly by the other, will be true to his prejudices, true to the expectations which he has raised, until the standard of political morality becomes more elevated than it is at present. Hit or miss, he will discharge his obligations to his friends, and it may be often irrespective of the interests of the people. I concede, that he may pick out, if he can discover him, the very best man of his own party. He can go no further, without incurring the disapprobation, and may be the bitter vituperation and vindictive persecution of his political friends. The people are not thus straightened and circumscribed. They can, if they will, and they will if they can, select from any and all parties the man of their choice,—and who can cite them to account? Their appointee is independent, not an appointee accountable to an appointee compelled to answer over. Such, Sir, is the appointing power, and such the appointments, which your Committee would have.

A word, Mr. President, in relation to the tenure of county and district officers.

The Committee have reported in favor of their election triennially. I do not regard this particular limitation as a very important matter. It may be enlarged without affecting the principle which governed your Committee; yet, I think, the period recommended a proper and judicious one, and, perhaps, the wisest limitation which can be made, not because the judge of probate, whose term is sought to be enlarged, will become thoroughly and intimately acquainted with all the duties of his office in the course of a year or two, but because in the time limited in the report his capacity and fitness can be ascertained, and

if the people have made a mistaken choice, if they discover they have selected a man for the office, incompetent to the discharge of its duties, or unqualified in any respect, or faithless to the trusts committed to him, they may have an opportunity to rectify the mistake. Three years is long enough to test and try him in, and if he be found wanting, the people should not be required, he should not require them, to endure him longer.

If, on the other hand, he be found learned, faithful, capable and competent to the discharge of his duties, and I will also add,—though perhaps of less moment,—if he be found courteous and gentle, kind and friendly to the widow and the orphan, over whom, by law, he is appointed the overseer; if he do not repulse them by an impatient frown, as they approach him, but meets them with the sympathetic cordiality which should characterize their legal protector and guardian; he will be selected over and over again. It has been my pleasure, for a quarter of a century, to look on such judges, and no other; to admire, and covet, too, as one of the things most worth living for—the love, confidence, and respect which they received. I would ask for no other earthly reward, no higher felicity, than the thanks and gratitude of the widows and orphans of the dead, who have been faithfully looked after and kindly cared for, and I venture to predict that, he who now exercises the probate jurisdiction in my own county of high hills and large hearts, will sit where he is just so long as he chooses to do so.

When the people have found a man *popular*,—in the sense in which I would use that word, not *popular* in the sense given to it by my friend from Boston, that is, a facile man, fawning and obsequious to the people,—when they have found a man straight, erect, capable, prompt, always ready and willing to discharge his duties, they will stick to him, re-elect him, and never, till obliged, incur the hazards of change. How is it with our sergeant-at-arms, now in this town? He has stayed here for years, amidst all the changes and agitations of party, and why? Because he is the very man to perform the duties of that office which he fills to the entire satisfaction of all men, cliques, and parties; and here, I venture to say, he will stay, if God spares him, legislature after legislature, be its political complexion what it may, because, first, he is a man of integrity; second he is equipped for his duties; third, he is not a facile and obsequious, but a firm, decided man; and last, a courteous and urbane man. One with such a combination of qualities is too high and strong to be pulled down even by disciplined party violence.

Sir, I maintain that there is little danger of political influence or interference with the election of judge of probate; little, indeed, with that of any other county officer, whose duties are not of a political character, and do not connect him, necessarily, with the leaders of political parties. A good man, a faithful and a wise, is sure of his reward. The people will reward him. They are disposed to do so. It is for their interest to do so; and if that reward is re-election, he is sure of it.

Mr. LORD, of Salem. I do not think, when these resolves were under discussion before, that any particular objection was made to the manner of electing these officers; and, I propose now not

to discuss the question how the judges of probate should be put into office, whether by the people, or by the executive, because I deem that to be comparatively an unimportant matter. I am willing to agree with gentlemen that upon the original selection of persons for local offices, the people are quite as likely to make a wise choice as the executive is; but, this is not a question of original appointment. The difficulty does not lie in that at all, but in the dependence of the officer. I care but little about the manner of the election of these judges, or of any judges, provided you make them independent, and put them out of the way of temptation; provided you put them in a position where women's tears cannot affect them. That is the place where we want a judge. If you make a judge of probate eligible for only three years, do you not recognize again the principle that men are influenced by the hand that feeds them. And has not this Convention not only recognized that principle, but have they not also determined that poor human nature requires protection against it—that it is our duty to render man, in the discharge of important functions, entirely independent of the hand that feeds him. Will they tell me what their secret ballot is made for? Is it not because there is a class of men, a class of voters, who have not the independence to act contrary to the wishes of the hand that feeds them? Have we not, by putting that provision into the fundamental law of the land, acknowledged that human nature is so constituted that men will yield to the hand that feeds them? Now, Sir, my doctrine is, that men ought not to yield to the hand that feeds them, and the man who is not capable of withstanding that temptation, is not fit to exercise the duties which devolve upon him. I care not who the judge is, whether he be a judge of probate, or any other judge, if he cannot perform his duties without yielding to the hand that feeds him, he cannot perform them well, and ought not to be intrusted with them. I want the judge of probate—and I deem his office one susceptible of great abuse—elective, in the sense in which I use that term. I would not make the incumbent dependent upon the caucus for his continuance in office. I do not speak of the original appointment. I agree with the eloquent speech of the gentleman from Lenox, (Mr. Bishop,) in that there is nothing so powerful as a woman's tears. I agree in that, and you may put Gabriel in the place of a judge of probate, and send before a caucus, to nominate a successor, a woman in her tears, with her professed and apparent wrongs, and Gabriel cannot so far sustain himself as to be re-nominated.

Well now, Sir, I know the tendency of the minds of men are always sympathetically inclined to the widow. The widow and the orphan are always powerful before any tribunal. It is because of the abuse of that power, and because it will be wielded not for right, but for wrong, that I do not want the continuance of the judge of probate to depend upon that. We all know that the exercise of the power by the judge of probate is so delicate, that with all his sympathy, and all his disposition to mete out justice to the widow and to the fatherless, there will be cases where exact right, and exact justice, is apparent wrong, and that cases of apparent wrong will hurl a just magistrate from his place, and put an unjust one in. It is for that reason that I would not have

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been a magistrate, dependent for his continuance in office, upon a widow's tears.

But, Sir, I have not yet said, and I am not quite prepared to say, how I would have the original selection made for the office of the judge of probate. I am quite prepared, however, to say, that the tenure of his office shall be an independent one, and one in which he should not be moved by the cries of distress which the gentleman from Lenox has portrayed.

I agree that it is a court of inferior jurisdiction, but every act of discretion of a judge of probate may be reversed upon appeal. I do not agree with the gentleman from Lowell, (Mr. Butler,) and with the gentleman from Manchester, (Mr. Dana,) that the acts of discretion of a judge of probate cannot be revised. I believe they were led away by a false analogy. They supposed, that because the supreme court, having appellate jurisdiction in matters of law, cannot revise the discretionary acts of the court of common pleas, therefore, they cannot revise the discretion of the court of probate. But the analogy does not hold and the supreme court may revise the judgment of a judge of probate upon the sufficiency of a bond, as well as upon a decree of distribution, or any other decree. Whatever act is discretionary may be revised by the supreme court, it being the supreme court of probate.

But is it an argument that, because, when you put an unfit man into office, there is a remedy for the wrong which he will do, therefore, you will take such a course as will lead to the selection of a man who will be likely to do wrong? Although I agree with the gentleman from Boston, that it is desirable to have a judge of probate who is learned, not only in all the mysteries of the law, but in all departments of science, yet it is not really necessary. In the good old county of Essex, we never had but one judge who was a lawyer. I mean a lawyer by profession. Other things being equal, the cultivation and pursuits of a lawyer are of much advantage to a judge.

But, Sir, while I consider it important that the Judge of Probate should hold his office independently, I do not consider that his office is, by any means, the only important one that needs to be carefully guarded in relation to its independence. Nor do I consider that his independence is, by any means, the only one that may be interfered with. I think the gentleman from Lowell, (Mr. Butler,) was right when he said that the office of sheriff was a very important one, and in some respects quite as deserving serious consideration in reference to the manner of selection and tenure, as that of judge of probate. And, Sir, the deputy-sheriffs may also be placed in the same category. I do not know why we should not have our deputy-sheriffs placed upon the same basis with sheriffs, if simply because they are public officers to do the work of citizens, the people should choose them. They are no more and no less executive officers than the sheriffs, and the general line of argument here in favor of the selection of persons to all places of trust or duty as well applies to deputy-sheriffs as to sheriffs.

But, Sir, there is another officer which is also a very important one—I mean the County Treasurer. A gentleman says he is always re-elected. Well, Sir, I believe that is a fact, and I believe it is also a fact that the county treasurer is always from the time he is elected, the most popular man

in the county, and why is it? Probably because he never has anything to do with the people of the county except to pay them money. Sir, if you will give me a chance to pay the people all the money I want to, as unpopular as I may be, I will be elected to the Convention to the legislature, or anywhere else. [Laughter.] That is the secret of the county treasurer's popularity. But, while the treasurer is all the time paying money, and doing nothing else, the sheriff is all the time grasping money or grasping men, and you will find the result very different in respect to popularity. I doubt if you can find an instance where the sheriff is re-elected year after year. If you will show me such an instance I will agree that I am mistaken in the considerations which in my judgment will influence the popular mind in elections to offices of this character.

A MEMBER. Registers of deeds are elected, and the people are always paying them instead of receiving from them.

Mr. LORD. Yes. Registers of deeds are officers who receive money from the people, as my friend by me suggests, but the people do not pay them money until they have received from these officers something which does them more good than the money did, for there is nothing gives a man more pleasure than to know he is recorded as a holder of real estate. I believe it is the best feeling in a republican community. I believe there is nothing that makes an individual feel so much his importance and dignity as a man, as to know that he has a deed recorded, showing that he is the possessor of real estate. Well, Sir, he must go to the register of deeds to get his deed recorded, and that makes this officer popular. I am sorry to say that, I have not quite arrived at the dignity of a holder of real estate to any very considerable amount, and I cannot, therefore, speak so much from experience as from observation, nor with quite so much enthusiasm; but, I think the experience and observation of every member of the Convention will testify to the truth of the remark, that the moment you make a man interested in the soil, that moment you make him a good man, and a good public man.

Now, while I think of it, I will say what I have not said before, that I am not at all afraid of the small towns. [Laughter.] I do not care how much you talk about them, they will come out all right in the end, because, almost every voter in them is interested in the land.

Now, take the case of county commissioners, I believe in one county there were only some fourteen or fifteen, or perhaps, nineteen hundred votes cast for them at the last spring's election, out of some seven or eight thousand who usually vote in elections. Well, Sir, what were the reasons which operated to secure their election? Was it the qualifications of the man for the office? No Sir, that consideration was not taken into account at all. It was in some cases, because a particular road was laid out, and in others, because a particular road was not laid out. Now, will any gentleman in this Convention tell me of a single case where county commissioners have been elected upon any other than a mere sectional or local issue—some matter purely local in its character? I believe there are no exceptions, though, possibly there may be some. The elections ordinarily turn upon some considerations of that nature.

We have elected our county commissioners

since 1836-7 or '8, I do not recollect precisely the time, and at the last election by the aid of two roads, one bridge, and by two towns wanting to elect a particular man, we made out to re-elect the old commissioners in the county of Essex, but this is the first instance of a re-election of the whole board in that county. There has always been a change in that board. And how does this happen? Do the people come out and canvass the matter? Do they inquire of the qualifications of the candidates? Not at all. Some particular man happens to be out of employment at that particular time; his friends think the old commissioners have made a great blunder with regard to a particular road; that it will be best for their interests to put this man in, and so they go to work to get him elected. That is the way it is done.

As a general thing we have had pretty good county commissioners, but they have been chosen wholly on account of their particular views of a particular road or on account of some matter of mere local importance, and I do not think that is a good principle upon which to act.

Then the office of commissioner of insolvency, is one, in my opinion, of more importance and one from which more danger may be apprehended than that of judge of probate. The general object of insolvents in selecting a commissioner of insolvency to whom to present their petitions, is to get a man that will put them through. Well, Sir, these gentlemen who want to be put through, as a general thing, are pretty active at the caucuses. I do not mean to give them any undue influence there, but they generally act pretty briskly. The only question to be asked, when a man comes to vote for a commissioner of insolvency is, did he put my friend through well? Because, if he did, he is a man of good feelings and a kind disposition; he is disposed to treat the unfortunate leniently. But, if he put the man through rather doubtfully, then the controversy is between the friends of the creditors and the friends of the insolvent. So it is, all these officers will be likely to be chosen from merely local, or partial, or personal considerations.

If a man feels himself crowded by the action of a local tribunal of this kind, he immediately sets himself to work to bring the action of the machinery of a political caucus to bear upon that man. Now, Sir, if the people are to select such an officer as that, I would make him independent, and not obliged so to gauge his conduct so as not to stir up a hornets nest about his ears. We, all of us, know the management of caucuses in relation to these officers. If a commissioner of insolvency, in the honest performance of his duty, refuses to discharge a debtor, the friends of that debtor, or the insolvent himself, and probably both, will almost certainly go privately about, working the wires for packing the caucus so as to prevent the re-election of the commissioner. There is not a man in this House who does not know that it is a matter which can be very easily accomplished in any county where there is nothing to draw public attention to it. Half a dozen men determined to do it, can, at any time, pack a caucus, and out goes the commissioner of insolvency a good deal easier than he came in.

Sir, this is an office of a great deal of importance in the administration of the affairs of this government. The commissioner of insolvency is not only an officer to whom is intrusted the adjudication

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SECRETARY, TREASURER, &c.—FROTHINGHAM—FAY—COGSWELL.

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cation of matters of the highest importance, but of the most delicate nature; matters of a character most likely to excite very strong feelings upon the part of the parties connected with them.

In this view of the case, it seems to me a matter of the first importance, however the appointment of these officers may be originally made, whether by the people or by the governor, that we should endeavor to make them as independent as possible. I do not doubt that these offices may be well filled, even where the tenure is a short one. Fix it at three, five, seven, ten or twelve years; fix it at any limit you choose, but say that the officer shall hold his office during that term, unless he does something for which he may be impeached, and then in no case allow him to be a candidate for re-election,—do that, and I think that many of the evils which some of us apprehend from making so many officers elective for short terms, may be avoided. I do not care to whom is intrusted the original selection of these officers, so that they are made independent.

But, Mr. President, I did not intend to have detained the Convention so long. I thought when I began that I should scarcely occupy the attention of the Convention for five minutes, but I have unconsciously been drawn into what may seem to have been intended as a speech upon the general subject—I feared there was some danger of confounding the original filling of these offices with their subsequent tenure, when the original appointment seemed to me to be the least dangerous part of the matter, and I rose merely to call attention to the distinction.

Mr. DANA, for Manchester, remarked that he wished to reply to some of the suggestions which had been made, and he was ready to do so now if it was the desire of the Convention to take the question to-night; but, upon the suggestion of members around him, that it would not be desirable to vote upon it this evening, he moved to lay the whole subject on the table.

The motion was agreed to.

Report from a Committee.

Mr. FROTHINGHAM, of Charlestown, from the Special Committee to whom was referred the subject of Granting Special Charters for Banking purposes, having considered the same, reported the following resolve:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 1, 1853.

Resolved, That it is expedient to insert into the Constitution articles providing:—

1. That the legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any charter bank; but corporations may be formed for such purposes, or the capital stock of charter banks may be increased, under general laws.

2. That the legislature shall provide by law for the registry of all notes or bills authorized by general laws to be issued or put in circulation as money; and shall require ample security for the redemption of such notes, in specie.

Referred to the Committee of the Whole and ordered to be printed.

Leave of Absence.

Mr. FAY, of Southboro', from the Committee

on Leave of Absence, submitted a report granting leave of absence for three weeks to Mr. Houghton, delegate from Stoughton.

The Report was accepted.

At quarter past six o'clock, upon motion of Mr. PHINNEY, for Chatham, the Convention adjourned.

TUESDAY, July 5, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President, at 10 o'clock.

Prayer by the Chaplain.

The Journal of Friday's proceedings was read.

Communication from the Secretary of the Commonwealth.

The PRESIDENT laid before the Convention a communication from the Secretary of the Commonwealth, furnishing, in conformity with an order of the Convention, a list of the Justices of the Supreme Judicial Court and the Court of Common Pleas; also, enclosing a list of pardons, remissions, restorations and commutations from 1843 to 1852 inclusive.

On motion of Mr. WILSON, of Natick, the communication was laid upon the table, and ordered to be printed.

On motion of Mr. WILSON, of Natick, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Parker, of Cambridge, in the Chair, on the Report of the Committee on the Encouragement of Literature, to whom had been referred an order of May 20th, concerning

Female Education,

And the petition of Harriot K. Hunt, on the same subject.

The resolve reported by the Committee was read as follows:—

Resolved, That it is not expedient to alter the Constitution so as to confer any additional powers upon the legislature in relation to the education of females.

The resolution was approved by the Committee of the Whole, and on motion of Mr. DAVIS, of Worcester, the Committee rose, and by their chairman reported the same to

THE CONVENTION,

With a recommendation that it do pass.

The Report of the Committee of the Whole, was concurred in, and the resolution was ordered to a second reading.

On motion of Mr. WILSON, of Natick, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Walker, of North Brookfield, in the Chair, on the Report of the Committee on the Encouragement of Literature, in reference to the establishment of a Board of Education, and a Board of Agriculture, as permanent departments of government, upon which the Committee had reported that it is inexpedient so to alter the Constitution.

The question being on concurring in the resolution reported by the Committee.

Mr. COGSWELL, of Yarmouth, addressed the Committee, as follows: No subject can come before this Convention that is of greater importance than that of popular instruction. The examples of all past ages teach us that education, founded upon principles of virtue and morality, is the most sure, as well as the most desirable defence of the State. Our school-houses and churches are the true symbols of civilization, as temples and pyramids were symbols of ancient civilization. The condition of these is a fair index of the intelligence and virtue of a people.

Learning has ever been the handmaid of virtue and upon these two elements depend our happiness and prosperity as a people. But how are objects so desirable to be fully effected. It is very evident that it is not enough to enact laws favorable to popular education, and not employ sufficient agents, or make sufficient appropriations to carry into effect those laws in their spirit, as well as letter. No reforms can be carried on without reformers; no monied institution is chartered which does not forthwith employ servants to advocate its claims before the public. This is the ordinary and direct way of gaining popular favor, and such a course is equally necessary with all the great moral and educational reforms of the day. Thus, the subject of popular education should be constantly kept before the people; the public sentiment must be educated to appreciate its glories, and its inestimable benefits. Laws are a dead letter upon the statute book, if they be not also borne in remembrance, and cherished in the hearts of the people. They must not be allowed to forget the dignity and beauty, and utility of common schools; official agents need to be constantly engaged in appealing to the good sense and patriotism of the whole community, in informing them, by lectures, essays, reports, statistics and addresses. This had already been accomplished in our Commonwealth, to a great extent, in the establishment of a Board of Education. How well this Board has done its work, it is hardly necessary to remind you. I cannot let the occasion pass, however, without bearing my humble testimony to the distinguished merits of the past and present secretaries of the Board. They have merited, and will enjoy, the grateful remembrance of the people of Massachusetts. The practical utility of this Board has been abundantly tested, and established. It is almost the only agency, or establishment, that has successfully triumphed over popular caprice, and the changes of legislative policy. It is an established and favored organization of the State. On these accounts your Committee think it unnecessary to recognize its existence, and thus virtually endorse its usefulness in the constitutional instrument we are constructing; but, prefer to leave it where it is, and commit its management in all coming times to the wisdom and fostering care of future legislatures. I move, Mr. Chairman, that the Committee rise and report the resolution to the Convention, with a recommendation that it do pass.

The motion was agreed to, and the Committee accordingly rose, and by their chairman reported the resolution to

THE CONVENTION,

With a recommendation that it do pass.

The Report of the Committee of the Whole was

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concurred in, and the resolution was ordered to a second reading.

On motion of Mr. WILSON, of Natick, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Schouler, of Boston, in the Chair, on the Report of the Committee on the Encouragement of Literature, in reference to the appropriation of moneys for

Sectarian or Denominational Schools.

The Report was read, as follows:—

Resolved, That it is expedient so to amend the Constitution, as to provide that no public money in this Commonwealth, whether accruing from funds or raised by taxation, shall ever be appropriated for the support of sectarian or denominational schools.

On motion of Mr. PUTNAM, of Wenham, the Committee rose and reported the resolution to

THE CONVENTION,

With a recommendation that it do pass.

The Report of the Committee of the Whole was concurred in, and the resolution was ordered to a second reading.

Mr. KINGMAN, of West Bridgewater, moved a suspension of the rules, with the view of taking up for consideration the resolution reported by the Committee on the Encouragement of Literature in reference to the subject of appropriating money for the support of

Sectarian Schools.

The motion was, upon a division—ayes, 92; noes, 28; two-thirds of those voting being in favor thereof—decided in the affirmative.

The resolution was again read:—

Resolved, That it is expedient so to amend the Constitution, as to provide that no public money in this Commonwealth, whether accruing from funds or raised by taxation, shall ever be appropriated for the support of sectarian and denominational schools.

The question being on its final passage.

Mr. TYLER. I beg to inquire, Sir, whether the term school, includes all academies and seminaries of learning; or whether it is confined to what are called common schools. It seems to me, the thing is indefinite as it stands. The word school, I apprehend, in its common acceptation, must mean all institutions of learning.

Mr. COGSWELL. As the chairman of the Committee from which this Report was made, is not present to reply to the inquiry of the gentleman, I will state, that the view taken by the Committee was, that the schools intended are those to which public money is appropriated, whether received from the State funds or from taxation. The Committee thought the matter sufficiently plain, and that no further explanation was necessary.

Mr. BIRD, of Walpole, moved that when the question is taken, it be taken by yeas and nays.

The motion was not agreed to—there being, on a division, ayes, 35; nays, 82—and the yeas and nays were not ordered.

Mr. WARNER, of Wrentham, moved that the further consideration of the subject be postponed until to-morrow.

The motion was, upon a division—ayes, 60; noes, 47—decided in the affirmative.

On motion of Mr. BIRD, of Walpole, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Sumner, for Otis, in the Chair, and proceeded to consider the series of resolutions reported by the Committee on Oaths and Subscriptions,

Concerning Oaths, the Incompatibility of Offices, the Enacting Style, the subject of Attachment on Mesne Process, and Election of Bank Officers.

Mr. HOOPER moved to amend the first resolve, by striking out the words "the legislature," and inserting the word "law."

Mr. BRINLEY, of Boston. I rise, Sir, to move an amendment, though I must confess that I have no great faith in the success of my proposition, because it is one of a rather conservative character. I, nevertheless, move to strike out the third resolve reported by the Committee, which is the following:—

3. *Resolved*, That the eighth article of the sixth chapter be amended by striking out the words "Senate and House of Representatives in," and the words "assembled" "and by the authority of the same," and by adding the words "of Massachusetts," so that the article as amended shall read:

ARTICLE VIII. The enacting style in making and passing all acts, statutes, and laws, shall be: *Be it Enacted by the General Court of Massachusetts.*

This resolve proposes to change the form which has always been in use with regard to the enactment of laws. The phraseology which is proposed by the amendment may be a little more terse, but I see no benefit to result from its adoption; and I am indisposed to make changes unless there is some valid and strong reason for them. We have become so much accustomed to the phraseology now in use, that I much prefer to retain it.

I make the motion to strike out the resolve, and those gentlemen who entertain the same regard which I entertain for old forms, will vote for the motion; while those who are disinclined to retain the old phraseology, but prefer that recommended in the Report of the Committee, will, of course, vote against the motion to strike out.

I do not propose to make any extended remarks, but merely to indicate my preference to a form of expression which is old and familiar to us all.

Mr. STETSON, of Braintree. I am not one of the legal profession, and therefore have not that reverence for forms and ceremonies which I otherwise should have. I shall support the resolve as reported by the Committee; and for this reason, I do not see why, in remodeling the frame of government, we should not make use of such terms as will be an improvement upon the old order of things. I am in favor of all improvements which shall conduce to the prosperity and welfare of the Commonwealth. I am not prepared to say whether this change is one calculated to conduce to the general prosperity and welfare or not; but if it is a change that will relieve us from the use of any unnecessary or obsolete term, and which will give us in its place one more brief and more intelligible, I am in favor of it.

Now, Sir, I am aware that gentlemen who have

read Blackstone, &c., hold on to the old forms of expression. I do not know whether they are even ready to acquiesce in the new order of things relative to our laws, which was adopted a few years ago, for the reason that they have become so much accustomed to a settled form of expression, that any change disarranges all their order of proceedings and habits of thought. I suppose this is the reason why so many cling to the old forms, originating in the aristocracy of England, and handed down to us by our forefathers, which consisted in a multiplication of words to such an extent that the common people could not understand the purport of a legal document at all. For instance, in filling out a writ, such a confused mass of words were employed that no person but a lawyer could understand it, unless it was that portion which pertains to himself when the officer claps his hand upon his shoulder.

I trust the Convention will adopt the Report as submitted by the Committee, because there is nothing unreasonable about it, and because it proposes a form of expression which it seems to me is preferable to that now used.

Mr. KINGMAN, of West Bridgewater. As the chairman of the Committee which reported these resolutions, (Mr. Butler, of Lowell,) is not now in his seat, and as I am a member of that Committee, I think it proper to state to the Convention that the Committee unanimously recommended this reform. The principle argument urged in Committee was that it would save a great deal of writing. Gentlemen of the legal profession are, of course, more familiar with this subject than I am. But the Committee were unanimously of the opinion that it would be better to shorten the enacting style. In the course of a year, whatever form is adopted, must be repeated a great many times, involving a great amount of writing.

Mr. UPTON, of Boston. I hope the amendment of my colleague will prevail. There is no occasion for using the words "General Court of Massachusetts." If the only object is to shorten the sentence, it would be best to strike out the words "General Court," or "Massachusetts," and insert the words "the legislature." It seems that the phraseology of the Constitution, as it stands at present, although it is rather long, is better than the term "be it enacted by the General Court." But if we are intending to alter the phraseology we had better use the phraseology of my colleague, (Mr. Brinley).

Mr. WILSON. The term "General Court" is the Constitutional name of the legislature. I think the Report of the Committee makes an improvement in the Constitution. The enacting clause now reads as follows:—

"Be it enacted by the Senate and House of Representatives in General Court assembled, &c."

The proposition now made is simply to say: "Be it enacted by the General Court of Massachusetts." That is the constitutional name of the legislature, and it is as brief as we can make it. I think it is a decided improvement over the present enacting clause, and I hope the motion made by my friend from Boston, (Mr. Brinley,) will not prevail. The expression made use of by the Committee is more brief than the term which the gentleman proposes to retain.

Mr. EARLE, of Worcester. I move to amend the amendment by striking out the words "of

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Massachusetts," and then it will make it just what I desire. It appears to me that the words "of Massachusetts" are entirely superfluous. They are not used even in the old form, and it seems unnecessary to make use of them here. I suppose that my amendment would strictly take precedence of the other, as it is to perfect the section.

Mr. BRINLEY. I have not, myself, considered that it was incumbent upon us to make great changes in the phraseology of the Constitution, and I presume if I were to sit down and criticize it much, I could find little inaccuracies which would admit of improvement. For instance, in the Constitution the legislature is called a general court, and in one or two instances "General Assembly," but we have been so long acting under these provisions that we perfectly understand them, and although, if we were making a Constitution anew, we might attempt to preserve entire consistency throughout, yet I do not think it is so important in the present instance. I think that the argument used in favor of the expression reported by the Committee, that it is a little more brief, is not entitled to much weight. I have no doubt that most of the members of this Convention, relying upon their memories, would find the words "Be it enacted by the Senate and House of Representatives, in General Court assembled," flowing from their lips more readily than the form of phraseology now used, and those who should try their hands at drafting would make mistakes very often, relying upon their memories.

Mr. EARLE. We have printed blanks before us.

Mr. BRINLEY. I do not think it is necessary, by any means for us, that we should busy ourselves about mere phraseology in the Constitution when we understand it as it now exists. And therefore, although I might say, if it were a new question entirely, that we might use a better form, still, situated as we are, and with the experience of seventy odd years, I would prefer that it should remain as it is, for the very reason that I do not care to change the phraseology of the Constitution. For instance, the phrase "General Assembly" is used. If a motion was made to strike it out, unless it was necessary to do so, I should vote against it, because it produces no harm at present. So with regard to the present enacting clause. If it produces no harm, I shall abide by it, and vote against the adoption of a new form. It is not very probable that any proposition which comes in conflict with the Report of the Committee will be adopted, and I have, therefore, no great faith that the motion I made will succeed. I leave the matter, then, in the hands of the Committee, feeling satisfied that my amendment will be rejected.

The question was then taken upon Mr. Earle's amendment and it was rejected.

Mr. EARLE. I hope now that the motion made by the gentleman from Boston, (Mr. Brinley,) will prevail, inasmuch as the motion which I made has been rejected. The object of the Committee, as I understand it, is merely for the purpose of shortening the phraseology. If this is the object, why incorporate a word in the phrase which adds nothing to its meaning. The laws are headed "Commonwealth of Massachusetts," and then comes the enacting clause. It appears to me that inserting the word Massachusetts there again is tautological, and I should much prefer the present enacting clause to this one with the

words "of Massachusetts" remaining in it. I therefore shall vote for striking out, and hope the motion will prevail. I think the existing clause far preferable to the one reported by the Committee.

Mr. WALKER, of North Brookfield. I hope the motion now before the Committee will prevail. If the Constitution should be submitted to the people in detail, this should make one of the questions as much as anything else. I do not think it worth while to encumber ourselves with a matter of so little importance.

Mr. WILSON, of Natick. It seems to me, that these reformers are getting some rather queer notions this morning. A short time since some of us were in favor of changing the Constitution in very many respects. To-day I find that it is not worth while to make a very great change unless it is absolutely necessary. My friend from Worcester, because he lost his amendment, is in hopes that the amendment moved by the gentleman from Boston, (Mr. Brinley,) will prevail. I would have liked his amendment very well, and I think the phrase as reported by the Committee would have been better, if it had been adopted. I hope the resolution as reported by the Committee will be adopted, as I consider it a marked and decided improvement upon the other phraseology. I see no necessity whatever for retaining this long enacting clause now used in acts of the legislature. The one proposed by the Committee is brief, and expresses all that is necessary to be expressed, and I hope that the report of the Committee will be sustained by this Committee and Convention. In some States they use the term "people." In the State of New York the enacting clause is, "Be it enacted by the people of the State of New York in General Assembly." So in some of the Western States they use the same term. We have decided to retain the words "general court" as the title of the legislature of Massachusetts. I hope the Report of the Committee will be sustained, and I think we need not give ourselves any apprehension about the trouble in regard to it, which will be incurred by the people.

Mr. HOOPER, of Fall River. I hope that the Constitution will be amended, whenever it is susceptible of improvement. I did entertain the hope that we were thoroughly revising the Constitution and that we had given up the idea of submitting the amendments separately. I desire to give them all a thorough revision and make improvements wherever we can, whether in matter or phraseology. I think this is an improvement which the Committee have reported, but it does not exactly meet my views. I should prefer a different phraseology. A form of expression like this, "Be it enacted by the people represented in general court," would suit me better. And for the purpose of presenting that question, I would move to amend the proposition of the gentleman from Boston, (Mr. Brinley,) so as to strike out and insert the following:—"Be it enacted by the people represented in general court." I think it will be a decided improvement upon the present amendment and likewise upon the Report of the Committee. I am in hopes that the Committee will change the phraseology of the enacting clause, as I have suggested; otherwise I hope the motion of the gentleman from Boston, (Mr. Brinley,) will not prevail, and that the Report of the Committee may stand as it is at present.

Mr. FROTHINGHAM, of Charlestown. I think in the first place we are considering a matter of considerable consequence to the whole resolve, without the presence of the chairman of the Committee, and I rise merely to make a suggestion whether in this matter of mere phraseology it would not be full as well to let the resolves as they stand go into Convention, and then make the amendments which may be determined upon there. In relation to the enacting style, I have not paid much attention to it, but it seems to me that the suggestion of the gentleman from Fall River, (Mr. Hooper,) is a very good one in the main. It seems to me by that phrase we would retain whatever of the old rust might be agreeable, and at the same time incorporate into the Constitution what there was of the new principle which has been adopted throughout the country.

Now, in New York and other States, the enacting clause is so framed, that it indicates the precise fact in relation to the laws, that the people do ordain their law through their representatives in general court, or in the Senate and House of Representatives assembled. It is worth something to ask, whether it would not be a change, or something more than a mere change in name and form, to alter the enacting style. I believe that, at present, the style is, "Be it enacted by the General Court, &c."

Mr. EARLE. It is, "Be it enacted by the Senate and House of Representatives in General Court assembled."

Mr. FROTHINGHAM. It is quite a long title, and if we could get rid of it, it might be quite well to do it. I retain, however, the impression with which I rose, that it might be well to amend it in Committee, and adopt the substance of the resolve, as reported by the Committee.

Mr. UPTON, of Boston. I suppose the only substance in this resolve, is the change in the phraseology. I regret to see such a difference of opinion among those who are trying to reform the Constitution, this morning. [Laughter.] But it does seem to me there was some little sense in the remark I made when I was up before, that if you make any change from the original form, you had better shorten it as much as possible. It strikes me it would be as well to leave it, "Be it enacted." I do not know about these mere changes of form. I remember that there was a woman who used to style herself Dorcas Sheldon, and who afterwards called herself Dorcas I. Sheldon. I do not know that she was any better for the change; and I do not know that it will be any better for the good old Commonwealth of Massachusetts to be called by a different name. She is a pretty respectable State as she is, and if we stand by the laws as they are made, and as they are enacted by the Commonwealth of Massachusetts, she will still be a pretty good, stanch State.

I still hope that, if the amendment proposed by my colleague is not adopted, we shall strike out a portion, and leave it with the simple words, "Be it enacted." That is comprehensive. There is no one living in the Commonwealth of Massachusetts, who ought not to know what the law making power is.

Mr. SCHOUER, of Boston. I wish to say one word in respect to the suggestion of the gentleman from Fall River, and his amendment. He wishes to have the style: "Be it enacted, by the

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people of Massachusetts in General Court assembled." I have just been looking over the Report of the Committee on Plurality, and I would like to ask the gentleman from Fall River, whether, if there were some towns not represented in the general court, those towns should be subject to the laws, because the laws are to be enacted by the people in general court assembled. The laws will be made only by the people who are assembled in the general court, or represented there. It seems to me that those towns which are not represented, would not be held liable to the law. My friend from Cambridge thinks that this ought to be "the dear people," instead of "the people," simply.

Mr. HOOPER. The gentleman has stated the amendment to be as it does not exist. The proposition is to have it thus: Be it enacted by the people represented in general court, and not "by the people in general court."

Mr. SCHOULER. My inquiry relates to the towns which are not represented.

Mr. HOOPER. The gentleman is supposing a case, which I am not at liberty to suppose will exist. But I suppose that some provision will be made, that the people, taken as a whole, will be represented. I believe that they can, if they choose, be represented. If they choose not to be represented, it is their fault. I do not see any difficulty in this matter.

Mr. SHELDON, of Easton. Mr. Chairman, I would like to ask whether it will be in order to move that the debate may be closed at any particular time.

The CHAIRMAN. It will not be in order.

Mr. SHELDON. I hoped it might be in order, for I wanted to fix the time for closing it at about one minute hence.

Mr. KINGMAN, of West Bridgewater. I hope this resolve will be adopted by the Convention as it came from the Committee. I perceive the chairman of the Committee is not here; and there are other gentlemen who took an active part in framing the resolution; and I think that it is but fair that we should adopt it as it is, unless they are here to explain it.

The question was then taken on the adoption of the amendment, proposed by Mr. Hooper, and it was decided in the negative.

Mr. EARLE. I now move to amend the resolve by inserting before the word "Massachusetts;" the words "Commonwealth of" in order to perfect it. Then it will agree with the present Constitution in that respect.

I see some members of the Committee are disposed to make light of this, but it strikes me that there is no occasion for it. I moved it, certainly, with great seriousness, and I did it for the reason that the words "of Massachusetts" were put in after the words "of the General Court," for the purpose of making it conform to the style in the Constitution. The Constitution designates the general court as the general court of Massachusetts, and it also designates the State as the Commonwealth of Massachusetts. That is the style, and it appears to me that if we are to follow the Constitution in this respect at all, we should follow it entirely. But if this does not prevail, I shall again, in Convention, if I do not change my mind, make my original motion to amend by striking out the words "of Massachusetts." It appears to me that if our object is to simplify the thing, it is done best by changing the enacting

clause. As it stands now, it is, "Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same." It is simply striking out as I made my original motion, and leaving all that is necessary. As it is amended by the Committee, it adds something which, it appears to me, is not necessary, but if that is added, then it is necessary, in order to make it conform to the Constitution, to add the words which I moved to add.

The gentleman from Natick, (Mr. Wilson,) said that I was disposed to strike out, because my amendment did not prevail. He certainly did me injustice in that respect. It was not; because I would not act upon any such ground. It was not because a motion which I made did not prevail, but because, as it stood, I did not consider it as good as it was in its original form.

Mr. WILSON. Mr. Chairman, I understood the gentleman to say that he should vote for the amendment of the gentleman from Boston, because his amendment had failed. I simply stated the fact, as he himself stated it without intending to do injustice to the gentleman's motives.

Mr. EARLE. I said that unless that was stricken out, I preferred it as it originally stood in the old Constitution, and I do prefer it as it originally stood in the Constitution to the form reported by the Committee.

Mr. OLIVER, of Lawrence. This whole argument upon the question before the Committee, reminds me of a story once told by Dr. Franklin, about the name of a sign for the shop of a village hatter. The name of the man was John Thompson; and he had got a sign printed with the words, "John Thompson makes and sells hats cheaper than any man in the village, for cash;" and also had the figure of a hat upon it. He desired Dr. Franklin to criticise the form, who began by suggesting that the words, "for cash" should be stricken off, inasmuch as it was the custom in the village to give credit on sales. Then something else was stricken off, till finally nothing remained but the words "John Thompson," and the figure of the hat. Now it strikes me that the Committee who had this matter in charge have done seriously the same thing which was done by Franklin in regard to the sign; they have simplified the form. I am convinced that that which is now presented for us to act upon is not necessary, and notwithstanding the great respect I have for the gentleman who made the first motion for an amendment of the report of the Committee, (Mr. Brinley,) I hope the original report will stand unaltered.

Mr. LIVERMORE, of Cambridge. I will suggest to my good friend from Worcester, (Mr. Earle,) that I believe he has mistaken the style of the legislature.

Mr. EARLE. I did, and I withdraw the amendment.

Mr. LIVERMORE. I have simply to say that if any change is to be made, I think that the Committee has taken the most judicious mode of doing it. We have already acted upon the style of the legislature, and its style is to be, "the General Court of Massachusetts." That subject was acted upon early in the session of the Convention, and it will stand as the style of the legislature. I am, however, so much in favor of old forms, particularly when they are good ones, that I prefer to have it stand as the gentleman from Boston proposed. If, however, any

change is made, I hope it will be that which the Committee have proposed, because it is what the Convention have styled the legislature; namely, the General Court of Massachusetts.

Mr. BRINLEY, of Boston. If the Committee will allow me to make a single remark I will relieve them. I have heard no very strong argument, other than that the chairman of the Committee is absent, as well as some other gentlemen who take an interest in this matter. But I judge from the aspect of things, that the amendment, which I had the honor to submit, is to be voted down because gentlemen, who should be in their places, are not here. But I do not desire that the amendment which I proposed may be defeated in the Committee, and I do not wish it to go into the Convention with the stamp of the disapprobation of the Committee upon it. I made the motion because I saw no satisfactory reason why this Convention should busy itself about mere criticisms of the language of the Constitution; but, if that is a part of our object here, I hope we shall indulge in it to a greater extent. Let me point out one single passage to which I referred before, where it is said in the old Constitution that the representatives shall receive "travel" for their attendance at the general assembly. If these things are all to be dove-tailed together so as to harmonize completely, I hope that some Committee will attend to that matter and make it correspond.

Under these circumstances, although I apprehended in the outset that I should not succeed, and am abundantly satisfied, having testified in favor of the Constitution as it stands, in that particular, I will withdraw the amendment.

The question recurred on the adoption of the Report of the Committee.

Mr. SARGENT, of Cambridge. I rise to ask a question, for information. I find in the last section, these words:—

"And whenever there shall be a vacancy in any of the above offices, the office of governor or Lieutenant-governor excepted, the same may be filled."

Now I do not understand what is meant by that phrase. Does it mean that the office of governor and Lieutenant-governor, if a vacancy exist, cannot be filled, and that in filling the offices of other officers there is no provision for the manner in which they may be filled? I hope some member of the Committee will tell us what it means.

Mr. CRESSY, of Hamilton. I desire to ask for information whether it will be in order to move a postponement of the further consideration of this subject until to-morrow.

The CHAIRMAN. That motion is not in order while in Committee of the Whole; but, the gentleman can attain his object by a motion that the Committee rise, report progress, and ask leave to sit again.

Mr. CRESSY. I will submit that motion. Mr. WILSON, of Natick. I think we may as well act upon this matter now.

The CHAIRMAN. The Chair will remind the gentleman that this motion is not debatable. The question was taken on the motion that the Committee rise, report progress, and ask leave to sit again, and it was decided in the negative.

The question recurred on agreeing to the Report of the Committee. The Report was adopted.

Tuesday,]

QUALIFICATION OF VOTERS, &c. — WARD — WHITNEY — WALKER — DUNCAN.

[July 5th.

On motion, by Mr. WILSON, of Natick, the Committee then rose, and by their chairman, (Mr. Sumner for Otis,) reported to

THE CONVENTION,

That the Committee of the Whole had concurred in the Report of the Standing Committee, and recommended the adoption by the Convention of certain resolutions in relation to the amendment of the sixth chapter of the Constitution, with an amendment thereto.

Mr. KINGMAN, of West Bridgewater, moved that the further consideration of the subject be postponed until to-morrow; which was not agreed to.

The amendment reported by the Committee of the Whole was concurred in.

Mr. WARD, of Newton, moved to strike out of the second resolution, in the third line of the second paragraph, the words "or place," and in the seventh line of the same paragraph, the words "place or," so that the paragraph as amended would read as follows:—

No governor, lieutenant-governor, or judge of the supreme judicial court, or court of common pleas, shall hold any other office under the authority of this Commonwealth, except such as by this Constitution they are admitted to hold, saving that the judges of the said courts may hold the offices of justices of the peace through the State; nor shall they hold any other office or receive any pension or salary from any other State, or government, or power whatsoever, except that they may be appointed to take deposition or acknowledgments of deeds or other legal instruments, by the authority of any other State or country.

The motion was agreed to.

Mr. WHITNEY, of Boylston. Mr. President. I desire to offer a substitute for the fifth resolution. That resolution provides that myself and a few others shall be disfranchised, and I cannot see any reason for this. I do not believe that the majority of this Convention regard the taking of oaths as a guaranty for the faithful discharge of the duties which may devolve upon any one who takes offices under this government. For my part, I cannot see any harm in providing that those who have conscientious scruples against life-taking in any form, may be permitted to hold such offices without the taking of these oaths. For that purpose, I move to amend the fifth resolution by striking out the whole thereof, and inserting the following substitute:—

Resolved, That is expedient so to alter the Constitution as to provide that persons conscientiously scrupulous of taking human life, may act in an official capacity under the Constitution, without taking the ordinary oath or affirmation.

The reasons why we ask this are these. You make provision in your Constitution for the taking of human life, by means of your officers, under certain circumstances. We hold that this is wrong and unchristian. We cannot do it ourselves, and we hold that what we cannot do ourselves, we cannot appoint anybody else to do for us. We therefore ask that we may be permitted to hold offices under the government in good faith, according to the Constitution, without being obliged to authorize anybody to do for us that which we cannot do ourselves. We are situated precisely in the circumstances of a man who should be asked to swear away or to re-

nounce his religion before he could hold an office under the Constitution; and although, by the provisions of the Constitution, you do not in direct terms require a religious test of this kind, yet, in fact, you either disfranchise us or compel us to swear away a part of our religion. I hope that this amendment will prevail.

The question being taken, the amendment was not agreed to.

The resolves were then ordered to a second reading.

Qualification of Voters.

Mr. WALKER, of North Brookfield, moved that the Convention resolve itself into Committee of the Whole upon the resolves reported by the Committee on the Qualifications of Voters, in relation to the gain or loss of residence by a person while employed in the army or navy, while engaged in navigation, or while a student of any seminary of learning.

The motion was agreed to.

The Convention accordingly resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Giles, of Boston, in the Chair, and proceeded to consider the said resolves, which were read as follows:—

1. *Resolved*, That for the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence, while employed in the army or navy of the United States, or while navigating the waters of this State, or of the United States, or of the high seas, or while a student of any seminary of learning.

2. *Resolved*, That no person removing his domicile from one town or city within this Commonwealth to another, shall, by reason of such removal, be deemed to have lost his residence in the former, for the purpose of voting for national and state officers, until six months after his removal.

The pending question was stated to be on the amendment submitted by Mr. Stevens, of Clinton, to strike out from the end of the first resolve the following words: "or while a student of any seminary of learning."

Mr. DUNCAN, of Williamstown. Mr. Chairman: Having had the honor of introducing the order which the Committee on the Qualifications of Voters, reported in this third resolve, it may be expected that I should state, by way of explanation, the reason of this proposed change in the organic law; and allow me, by way of parenthesis, to say, that the right of the people at all times to instruct their representatives is a doctrine to which I fully assent; and in obedience to the express commands of my constituents, I presented to the Convention the subject now under consideration. Whatever be its merits, or its demerits, they belong to the State of Maine, from whose Constitution I copied it, *literatim*; and if gentlemen will do me the favor of referring to the Constitutions of New York, Michigan, and California, they will find in them identically the same provisions. I therefore opine, Mr. Chairman, that this resolve would not have found its way into the organic law of so many States, had it not been deemed a matter of great importance. Let us examine its provisions, for a moment, in detail; the resolve reads thus: "For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his pres-

ence or absence, while employed in the army or navy of the United States, or while navigating the waters of this State, or of the United States, or of the high seas, or while a student of any seminary of learning." Now, I ask gentlemen schooled in the technicalities of law, to say what existing constitutional provision is there which prevents any officer, soldier, seaman, or marine, in the service of the United States, from voting in any town where they may be stationed, providing they come within the prescribed limit of time; but if I am told that by a fiction of law, the Navy Yard in Charlestown, and the forts in Boston harbor, are territories of the United States, and the inhabitants of such territories are subject only to the laws of the United States. I ask whether those territorial laws would follow them, if, by stress of circumstances, they were compelled to take shelter within the Commonwealth, for the space of one year? Clearly not; and their right of voting must be determined by the question of domicile, which is obscurely defined in our Constitution. With reference to this class of voters, provisions have been introduced into the Constitutions of nineteen States, which fact has led me to infer that it is not mere surplusage, as some gentlemen are inclined to regard it. And with reference to another class of voters, namely, those engaged in navigation, it seems to me that some constitutional provision ought to be made, declaratory of their domiciliary rights, as it should be the first duty of all governments to define clearly who should, and who should not exercise the elective franchise, and, as far as possible, to enumerate the contingencies affecting the right of suffrage. The opinion expressed by an eminent statesman, that an American vessel is a portion of American territory; and that wherever she may be, she carries aboard her American laws and American institutions, is now a maxim of international treaty and law. And this opinion is in conformity with the decisions of the courts in this State, that if a person had a domicile at the time of entering upon such service, that domicile remained unaffected by the reason of his absence, whatever the length of time occupied by the voyage.

The principle laid down, and to which I shall have occasion to refer hereafter, is, that mere absence for a temporary purpose works no forfeiture of domicile.

My remarks thus far, Mr. Chairman, are but prefatory, and designed merely to call the attention of the Convention to a few principles only, as affecting the multifarious questions which may arise on the subject of domicile.

I do not pretend that my constituents manifested any particular anxiety about some of the provisions of this resolve. They are far removed from any locality where such questions might arise; they have, therefore, only a general interest, as every person ought to have, that no individual having a right to vote should be deprived of that right, or exercise it illegally. But in the last clause of the resolve they have a deep and abiding interest; and of such importance did they deem it, as to declare that this alone, if adopted, would be to them of more real practical advantage than any, or all changes which might be made in the Constitution. Therefore, while the clause "nor while a student of any seminary of learning" is thought by some to be of little importance; they are awaiting with anxiety the issue, believing that it contains a remedy for many existing evils.

Tuesday,]

QUALIFICATION OF VOTERS.—DUNCAN.

[July 5th.

It has been hinted both in and out of the Convention that the introduction of this resolve had its origin in local, political animosity; I wish to disclaim it, yet I am free to say that the existing law of domicile, with the application of facts, in each particular case has been a subject of great perplexity with our municipal officers; and has frequently led to an unpleasant difference of opinion between the persons so claiming the right to vote, and the guardians of the elective franchise; but, I think I am justified in saying, that in no case has this right been refused, where a reasonable doubt did not exist. And personally, Mr. Chairman, as this is to be a matter of record, I wish to disclaim any feeling of hostility or unkindness towards the institution, in our town, or any of its officers, or any of its students. For years, my association with the undergraduates has been interrupted by no unpleasant circumstances; and among those now present, as among those who have graduated, I am happy to claim many cherished friends. But I cannot allow any friendship, however cherished, to come between me and the duty which I owe my constituents; it is for them and not for myself I act. The gentleman for Manchester, (Mr. Dana,) took occasion to ask, a few days since, in the course of debate, whether it were not a fact that the inhabitants of Williamstown were suffering from some smart which they thought this resolve would cure?

The tone of the remarks were such that, however unwilling I am to make answer to his interrogatory, I feel I cannot possibly avoid saying much, by way of vindication, that I would have gladly left unsaid.

There has been a feeling of hostility between the inhabitants of the town, and the college many years; for this hostility, there is no one particular reason; but a combination of reasons spread over the space of a half a century. Human prejudices and weakness are such, that it would not be surprising if the inhabitants, regarded with less favor the students of Williams' College, for having suffered from real, or supposed injuries at the hands of the corporation. Be that as it may, it is a sufficient answer to the gentleman for Manchester that it is not expected this resolve will "heal a passion or a pang," occasioned by any former grievance—but it is looked for with great interest to remedy the evils of the present, by isolating the institution as far as may be from the turbulence of political life. It had been the custom of the undergraduates to claim the right of voting in all of our elections without reference to any qualification but that of age; and when their claim was not allowed, there usually followed scenes of turmoil and confusion and the harmony of the town was broken. This state of things continued without abatement till 1842, when the inhabitants petitioned the legislature for the passage of an act to define more clearly what constituted a domicile. The legislature submitted to the supreme court the question found in the appendix to the fifth volume of Metcalf's Reports, and in the March term of 1843, the court returned the opinion therein contained.

That opinion, and I say it with deference, is much like the queen's message to parliament, capable of affording infinite speculation as to its true meaning, and consequently of little practical importance.

The real difficulty lays in the application of

facts to the principles laid down in that report; and I have often been amused to see our municipal officers, with that report before them endeavor to adjust a question of domicile. There would be no great trouble if persons were willing to state the facts as they were when they told against them, but such is the weakness of human nature, even in students, that the real facts can seldom be got at. For instance, a student enters his name upon the catalogue as from ——— town; and at the close of each term goes to ——— and to all inquiries respecting domicile, or place of abode, replies that ——— is his home; but when election comes, "a change has come over the spirit of his dreams," and lo! ——— is no longer his home, but Williamstown. All at once, he discovers that he never had any other home than Williamstown, and the immense treasure which he had formerly boasted of now dwindles to nothing; and, a poll-tax would be burthensome, were it not that he expected some of his political friends to pay it for him. So the individual who a few days before scorned to acknowledge his domicile in Williamstown who boasted of his riches and his "pride of place," now takes those famous declarations all back—acknowledges his poverty—claims the inalienable right to vote, bullies the assessors and selectmen, and threatens to spend half his fortune if estopped from that inalienable right to vote where he has a mind to, which right his grandfather mayhap, fought, bled, and died for. This is but an epitome of every year's proceedings; save, however, when the political stripe of the students correspond with the board of town officers, and then no questions are asked; but every student's name is placed upon the tax-list without reference to any other qualification than that of age. In this connection, I am bold to say that hundreds of illegal votes have been cast, where one, having a right to vote was prevented; and I ask those gentlemen who say this is a mere local political question, whether the whole State has not an interest in the elections? and while I say it I have the gentleman in my eye who was twice elected by a single vote. Are forty or fifty illegal votes of no importance, then, when one has twice made a governor in this Commonwealth? But the interference of students in the policies of the town works to them a positive injury. To secure the privilege of voting, they resort to subterfuges which, on any other subject, they would unhesitatingly condemn; but the motto "that all is fair in politics" makes them forget those nice principles of ethics which the worthy faculty are at such pains to inculcate. For instance, in 1848 in the election of representative some twenty or more voted, when it was perfectly obvious they had voted without the least shadow of legality.

The right of the member elect to hold his seat in the legislature was contested; and a commission was appointed to take the depositions of the persons voting. On his arrival, summons were placed in the hands of the sheriff, who put forth his best endeavors to serve them, but was prevented by the persons keeping out of sight, and hiding away; at length he succeeded in summoning one, and the examination commenced, but how did it end? Why, after resorting to expedients, alike dishonorable to the witnesses, and their aiders and abettors, they declared on their oaths, "they did not know who they voted for!" Was such an absurdity believed for a moment?

Could it be? And yet, young men, preparing for missionary labors among the heathen! testified under oath to what the most credulous man in christendom couldn't believe. I have said elsewhere, in substance, that I have no desire to make any statement which shall reflect injuriously or unkindly upon the students, faculty or college. But I feel that no important fact should be withheld from any morbid sympathy to the prejudice of my constituents, who are interested in this resolve.

Passing over many minor irritations I come down to the election of 1852. The assessors refused to assess all who were not, in their opinion, inhabitants of the town, leaving out of sight, as they ought, the mere question of presence on which they usually claim the right to vote.

On the day of election, many of them assembled in the town house as usual, with every variety of intention, from behaving quietly to enjoying the luxury of kicking up a row. After the polls had been open more than two hours, a motion was made to turn the ballot-box, and declared, by the Chairman of the Selectmen, as carried; but, after they had commenced counting the votes, a motion was made to reconsider the motion whereby they agreed to turn the box, but the motion to reconsider, was ruled by the Chairman to be out of order, and the count proceeded. The students, feeling piqued at their names being left off the list of voters, and, being incensed at what they deemed the unparliamentary ruling of the Chairman of the Selectmen, they assembled in disguise, in the night time, in front of his dwelling, and proceeded to burn him in effigy. Had he been a timid man, it might have passed off quietly, but having some dislike, nay, prejudice if you please, against being burned in effigy, he sallied forth, single-handed and alone, and, amid a shower of missiles, and repeated blows from bludgeons, he succeeded in wresting the effigy from them and bearing it off. The examination of the articles of clothing of which it was composed, gave a clue to the rioters; and, to prevent the instituting of legal proceedings, the affair was compromised by the payment of three hundred dollars. It was a source of deep regret to the worthy president, inasmuch as, it was known that some of the most moral young men in college were engaged in the riot! Now I ask the Convention, if a salutary provision can be inserted into the Constitution, which will lessen the irritation heretofore existing between the college and town, if it is not wise to do so?

But, I am asked, "if it is not in the power of the faculty, under the existing régime, to prevent all the evils at present complained of?" I answer, doubtlessly it is—the faculty might enforce the college laws if they saw fit, but the enforcement of law is always unpleasant, and when none but citizens are annoyed, every mitigating circumstance is kindly taken into consideration, lest injustice might be done the students—I speak of this as the general impression among the inhabitants, "that the faculty are less mindful of the conduct of the students towards the towns-folks, than they ought to be."

But this resolve, if passed, will more completely isolate them from the town, and prevent these disturbances in a great measure, which have heretofore taken place between the students and inhabitants; and, if this could be done, I doubt not the faculty would hail it with joy. Much

Tuesday,]

QUALIFICATION OF VOTERS. — WALKER — SARGENT.

[July 5th.

more might be said, and will be, I trust, by abler men; and, in making these crude remarks, I feel that I have imperfectly done justice to a subject of great importance, and my only apology is, that I have spoken without preparation, and extended these remarks much farther than I had intended. When I arose, it was my design only to say a few words by way of explanation; but if, in the course of my remarks, I have said anything I ought not to have said, it is too late to recall it now, and I can only repeat what I have said before, that personally, I have no feeling of unkindness against any person or persons to whom I have alluded.

I state these matters, that the members of the Convention may know what the feelings of the inhabitants of the town of Williamstown are, and that they regard this simple provision as of more importance to them, than all the other changes which may be made in the Constitution. I do not suppose that gentlemen of this Convention can feel so much interest in this matter as we do. There are but few towns in the Commonwealth where such institutions exist, and in those a different state of things may exist than with us, and greater harmony of feeling may prevail between the inhabitants of such towns, and the students of those institutions. But, unfortunately that is not our case. We have been differently situated, and, as I remarked in the outset, I brought forward this matter by the express instructions of my constituents, whose wishes I am bound to respect, and, as far as may be in my power, to carry out. I hope, therefore, that the resolve will be adopted, and that the amendment will be rejected.

Mr. WALKER, of North Brookfield. It will be well, perhaps, to look to the history of the resolves now before the Convention. The first of these two resolves is the same as was the third resolve in the original Report of the Committee to whom this matter was referred. While those original resolves were pending, a member moved the amendment which is contained in the second resolve now before us. Under these circumstances, as the two matters were not at all necessarily connected, it was thought best to refer the whole subject again to the Committee. It was so referred, and the Committee have reported back the two matters in separate resolves.

As regards the first resolve, as has been stated, the provisions of it are contained in the Constitutions of many of the States. Nineteen of them have the general provisions of the first resolution, and some contain the precise language which we have used. I think the gentleman from Williamstown, (Mr. Duncan,) has entirely satisfied us, as he did the Committee who reported this subject, that these are desirable provisions, that no harm can result from them, and that they ought to be adopted. I think the facts he has narrated, in relation to the action of the students at Williamstown, is sufficient to satisfy us that it is not for the good of the people of that place, and especially that it is not good for the students themselves, that their relations should be such as would tend to bring them into conflict with the officers of the town, or involve them in acts of riot and disorder. It is a great detriment to the interests of the students, to allow them to mix up with the politics of the town, as it withdraws their attention from the immediate objects they have in view, in connecting themselves with

institutions of learning. It is, to my mind, very clear, that it ought not to be said that this provision deprives many of them of their right to vote, for that is not true; for, if they are inhabitants of other towns, they retain their right to vote where they rightfully belong. It only prevents those persons who connect themselves with such institutions as students, from taking part in the municipal affairs of the places in which they have no real interest. As a general thing, they have only been brought out at times when party spirit has run high, and when parties have been nearly balanced. At such times politicians are able, by going to the colleges, to get aid enough to carry their schemes, and I submit, whether such a course is for the interests, either of the people of the towns, or of the students themselves? I believe it is not. I believe that this resolve ought to be adopted as it stands, and that the amendment should be rejected.

Mr. SARGENT, of Cambridge. It seems to me, Sir, that the whole of the first resolution is unnecessary, certainly all except that part which it is proposed to strike out. I think I am correct in saying that all the other cases, except that, are already fully provided for, and that I think I am borne out by the decisions of the court which have heretofore been made upon questions arising on those cases.

In regard to the part which is proposed to be stricken out, I think it should go with the other part of the resolve, and that all of it should be stricken out; first, because I believe that all the rest of the resolution is entirely unnecessary, and second, because I believe the part proposed to be stricken out, to be unjust. Now, Sir, we provide in the Constitution that any male citizen of the age of twenty-one years, who shall have resided in the Commonwealth one year, and in the town where he claims a right to vote, six months last past, and shall have paid a tax, shall be entitled to vote. Now, Sir, that refers to no particular class of individuals. It is a broad, general provision. It says, "any male citizen over twenty-one years of age," &c. Now what is proposed by this resolve? You propose to say to one class of the inhabitants of Massachusetts, that though you may have resided in this or that place one, two, three, or four years, yet if you reside there for the purpose of obtaining an education you shall be deprived of the privilege of exercising that civil right. Let us see how such a provision will operate. Suppose a man comes into the town of Williamstown, which feels so much aggrieved in this matter, to enter himself as a student in Williams' College. He is twenty-one years of age. Another man comes into the same town, and lets himself out as a hired man, with no idea of remaining any definite time, and it is wholly accidental whether he remains there a year, or less, or more. He remains there one year and perhaps another. You give him a right to vote, while you deprive the other of that right. No provision is made here to put them upon an equal footing. It is the home of the hired man for the time being, and so it is the home of the student for the time being. When the Constitution provides that a man shall decide where his home is, it does not provide that he shall decide that he intends to continue it as his home for one day longer. It is enough for him, if it is his home on the day when he claims a right to vote, and he is not called upon

to say whether he intends to leave to-morrow or not. If I recollect aright, a case of this kind which arose in Amherst College, came in question before congress, upon a contested seat in the House of Representatives. It was referred to a Committee, and the Committee being of the political party of the contestant, decided at once that the man casting the vote, having resided in the State one year, having resided in Amherst six months, and paid a tax assessed within two years, had complied with the requirements of the Constitution, and it was not necessary for him to contemplate remaining another day in that place of residence, in order to entitle him to a right to vote. Now I cannot see how we can, with justice, say to one class of citizens, you shall have the right to exercise the elective franchise, and to another similarly situated, that you shall not. There are thousands who vote in this State every year, who have not the remotest idea of remaining here any particular length of time. Our brickyards in Cambridge are every year full of that class of men, who spend their summers there, and disperse in the fall. Yet, having no other domicile and having resided there the time required by the Constitution, they were always permitted to vote, and they alone are the ones to determine whether that be their domicile or not. I undertake to say that no man, except the man who claims the right to vote, can decide that question. When the question is put to him, "is this your place of residence, your home," and he answers, "yes," I should like to know the power that can dispute it. Who else can decide whether that be his home or not.

Now it is said that there is a great deal of difficulty with the students at Williamstown. I happen to reside in a city where we have a large college, and more students, I presume, than they have in Williamstown, and we have not the least difficulty with them in the world. And why? We do not try, and never have tried to deprive them of their civil rights. We award to them all the privileges given to them by the Constitution, and we have no difficulty with them whatever. I think if my friend from Williamstown, (Mr. Duncan,) and his constituents will pursue the same course, he will find those young gentlemen mild, amiable, and among the best citizens, and find them no longer burning their town officers in effigy.

Mr. DUNCAN. I would ask the gentleman if those mild and amiable young men did not attempt to blow up one of their college buildings with a bomb shell?

Mr. SARGENT. I was speaking of them as citizens, and in regard to the exercise of their public rights, and their action in our public meetings. I have no doubt boys are boys, and if Williamstown is so bad as they say it is, it might be well to blow it up. I speak of them when they come to the polls, and to other public places. When they mingle with the citizens on those occasions, they are as gentlemanly, peaceable, and as good citizens as we have. I think this class ought not to be deprived of their rights. I believe when a student at a seminary decides that to be his home for the time being, having no other domicile, he is as much entitled to vote, as the laboring man who decides the place where he labors is his home while he labors there. I cannot vote for any resolution which proposes to deprive any citizen of the elective franchise. I

Tuesday.]

QUALIFICATION OF VOTERS.—MORTON—SUMNER.

[July 5th.]

therefore move to strike out all of the first resolve.

The CHAIRMAN. The Chair would state that the motion is not strictly in order at this time, but will be after the disposition of the pending motion.

Mr. MORTON, of Taunton. I would ask the Chair what the precise motion now before the Committee is.

The CHAIRMAN. It is the motion to strike out from the first resolve the words "or while a student of any seminary of learning."

Mr. MORTON. I understood that to be the motion before the Committee, but as all parts are somewhat connected, I desire to make a few remarks in relation the whole proposition. When this proposition was first presented to my mind I entertained great doubt whether it ought to be adopted or not. I was rather inclined to suppose that it ought not to be adopted, but some reflection upon the subject, and especially the discussion of the matter in opposition to the resolution, has brought me to the conclusion that it is expedient to retain the whole. I think there is not the slightest question but what precisely the same rule of law now prevails, that will prevail if this resolution is adopted. I will neither add to, nor take from the law as it now stands, and the question which presented itself to my mind was, whether it was expedient to substitute a constitutional law for a statute law.

But, before I say anything upon that point, I will briefly present my views in relation to the resolve. It relates to the qualification of four classes of persons; to soldiers in the army, and sailors in the navy of the United States, to sailors in the merchant service, and to students in seminaries of learning.

I take it that the law is well settled by the decisions of our judicial tribunals that the first class viz.: soldiers in the army of the United States, wherever they may be stationed, do not, by a change of their station, thereby change their home and domicile. They may, or they may not do it, but the fact that they have, by order, removed from one place to another, does not of itself give them a different domicile, nor is it a circumstance in determining where their domicile is. That soldiers thus situated cannot, by considering their home where they may be, make that their home, is a proposition too plain to be discussed before this Committee. Their domicile must depend entirely upon other circumstances, and wherever that may be, they are there entitled to vote.

The same rule applies to sailors in the service of the United States. Wherever they may be ordered, and however long they may be absent from their original domicile, they still retain it until they gain another somewhere else. The fact of his sailing in different parts of the world, or of being absent a longer or a shorter time in foreign or domestic ports is not a fact to effect their domicile, or in any measure to establish it.

Then there are other classes of sailors, such as those in the merchant service, in the common fisheries and in the whale fisheries, whose employment sometimes takes them away from their homes for four or five years. They come within the same rule. Let them be absent ever so long from their home here, still they retain it as long their domicile, until they acquire one somewhere else. The mere fact of their absence in foreign ports,

of itself does not deprive them of their home here. It may be that by stopping abroad and remaining, they may acquire a home there, and that would deprive them of their former domicile.

Then, Sir, we come to the last class of persons affected by this resolve—the class composed of students in colleges and other seminaries of learning, and though it may be difficult to decide all questions which may arise in relation to these, yet the same principles of law apply. The mere fact that a person becomes a student in your town, does not, of itself, according to this resolve, establish his domicile there. The only provision here is, not that he shall not acquire a domicile while a student in a seminary, but that, the fact that a student is engaged as such in a university shall not, of itself, make him a voter.

Now, there are, no doubt, a great many students in the different universities and seminaries of learning, who do not consider the places where these seminaries are located, as their home, and who never intend to make them their home. There are, also, undoubtedly, some individuals connected with these seminaries, who do intend to make them their home, and there may be some difficulty in determining in these cases where their home or their domicile is. But it seems to me that this resolve, of itself, is not to determine the student's qualification, nor to ascertain where his domicile is. You must take into view all the circumstances of the case in determining that. But, in this case, the student stands, in that respect, precisely with the hired man. It is very rare—and, perhaps it never happens—that a man's intention is to change his domicile, or have any essential effect in determining any question in relation thereto. There may be, and undoubtedly are, cases in relation to wills, or the disposition of property, where the intention of the party may be inquired into in order to settle where his home is; but not so with a man claiming an interest by virtue of his residence.

All the circumstances connected with the domicile of the student must be inquired into—the circumstances of the place where he was when he entered college; the circumstances attending his residence in that place. You must throw the burden of proof upon him, because, until a man acquires a residence in some other place, he retains the domicile of his birth. That always remains and adheres to him until evidence is furnished that he has acquired a residence somewhere else.

I think it is perfectly sound, perfectly in accordance with the provisions of law, and perfectly in accordance with this resolve, that he shall not, by reason of his residence as a student, gain the right to vote in that place. If there is any difference of opinion in regard to the construction of the present law, I think this resolve states the case so strongly, that there cannot possibly be a difference of opinion with regard to it. It provides that, the mere fact of his residence as a student shall not give him the right to vote.

This principle was so well settled by law, that I entertained, at first, a good deal of doubt whether it was expedient to put such a provision into the Constitution; not that I had any doubt about the principle itself, but I thought we ought to be very cautious how we put provisions into the Constitution which did not relate to the great principles of fundamental law; and inasmuch as this was a well settled principle of law, I thought

perhaps it would be better to allow it to remain as such. But when I came to reflect that in the formation of our government, the very first step we took was to decide upon the qualification of voters, I thought it was perfectly proper and expedient to go on and establish the details of that right in a manner that everybody could understand, and in a place where the selectmen and others could find it without difficulty, could become familiar with it, and could apply it in all cases requiring its application that come before them. I am aware that this matter of convenience to the selectmen, to which I have alluded, has been made the subject of ridicule in this Convention, and I would not bring it in as a consideration entitled to very great weight in the determination of this subject. But if there are other considerations sufficient to establish the principle, I think that even the matter of convenience to our town officers is a matter entitled to some slight consideration in our actions as a Convention.

With these remarks I leave the subject. I hope the amendment now before the Committee will not prevail, because, in the practical operation of this resolve, I think it is more important to retain this provision than either of the others, inasmuch as it is a matter about which there seems to have been some difficulty heretofore.

Before I sit down, I will indicate my desire to have these resolutions acted upon separately, because in relation to the second resolution, I entertain great doubt whether it should be adopted. In fact, I think it ought not to be.

On motion of Mr. BIRD, of Walpole, the Committee then rose, and the President having resumed the Chair of

THE CONVENTION,

The chairman, Mr. Giles, of Boston, reported progress, and asked that the Committee have leave to sit again.

Leave was granted.

On motion, the Convention adjourned until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

Qualifications of Voters.

On motion of Mr. BREED, of Lynn, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Giles, of Boston, in the Chair, and resumed the consideration of the Report of the Committee on the Qualifications of Voters, the question pending being upon the motion to strike out, at the close of the first resolution the words, "or while a student of any seminary of learning."

Mr. SUMNER, for Otis. I hope the motion to strike out will not prevail. I do not apprehend that anything can be added in this discussion to the very full and clear argument which was submitted this morning by the gentlemen from Taunton, (Mr. Morton). It seems to me that he in this instance touched every point in the case with his usual clearness and ability. But I desire nevertheless to say a few words upon the subject.

It is said, in the first place, that the report—I

speaking more particularly of the first resolution, which I propose to treat as a whole, as well as in reference to the particular amendment now pending—I say it is said that this resolution is simply declarative of the law as it now stands. Well, Sir, that is a true statement of the case, but it does not strike me as any objection at all to incorporating the provision into the organic law of the land, because it is so declared by law. Why, Sir, many of the most important articles in our Bill of Rights are simply declarative of our civil rights; but they are not the less valuable in their place, and it is considered not the less necessary or desirable by all men that they should retain their places there. So, in relation to the Declaration of Independence. It is merely a declaration; a mere recital, a mere rehearsal of our civil rights, and rights, too, which were familiar to the men who framed and adopted that declaration—our fathers of the Revolution—long before they gathered them together and embodied them in that instrument, but that is no reason for abolishing the Declaration of Independence.

The whole case, as embraced in the first resolve, seems to stand upon this principle: that the quarters of the soldier, the harbor of the sailor, and the college or other literary institution of the scholar, is not his home. That is the principle embodied in that resolution. These students go there for a particular purpose, for a particular object, and for that particular purpose and object alone. They do not go there for the purpose of acquiring that place as their residence or home. They attend a seminary of learning, just as a representative attends the general court in the city of Boston to transact the business committed to him, and not for the purpose of gaining a domicile; just as the members of this Convention from the country attend in this hall, not for the purpose of acquiring a home here, but for the purpose of attending to the business committed to them.

It is proposed, I believe, to so amend the Constitution as to make a three months' residence in any place sufficient to entitle a man to vote in any place, to claim it as his residence or home, yet no one, I apprehend, would claim that a representative coming to this city and remaining for three months would be entitled to vote in the city of Boston. But according to the arguments of some gentlemen upon this floor, a representative remaining in this city for three months—and it is by no means a rare occurrence—might very well claim the right to vote in the municipal elections of Boston.

Sir, there is no doubt about the fact that a student coming to a place for a merely temporary purpose, as I have indicated, does not acquire a home in that place. The catalogues of your colleges and other institutions of learning show how that fact is. They exhibit the fact that Mr. Senior A, Mr. Sophomore B, and Master Freshman C, have their homes perhaps in the different States in the Union, yet it is undoubtedly a fact that these same Seniors, Sophomores and Freshmen have been known to claim the right of voting in the different towns in which they may happen to have a residence merely as students, and not only have they claimed the right, but without law and against law, they have in many instances obtained the privilege of voting.

Now, the proposition is to declare in the Constitution what the law is upon that subject, so that it may be familiar to all as an evidence that

the college or academy is not their home. They come there and remain until vacation, and then return to their homes. Now, is it right, under these circumstances, that gentlemen thus situated should be allowed to interfere in the municipal and other elections of the towns in which they happen thus temporarily to reside? What interest have they there? Simply an interest in acquiring an education; simply an interest connected with their duty in obeying the orders of their tutors or of the professors and officers of the college or academy, of attending to their lessons, of obtaining an education and then of returning to their homes.

Now, I repeat, is it right that the students in your seminaries of learning should have the right to vote in the places where they may be thus temporarily located, any more than it is that the sailor in your harbor, or the soldier in your barracks, or the representative in your legislature, who may happen to reside in a place for three or six months, as the case may be, in attending to their legislative or other duties should have the right to vote? They have no interest in the municipal concerns of the town in which they may happen to be placed. They have no interest in the schools, the roads, the bridges, or anything of the kind, in that town. Is it right, then, that under any circumstances they should be allowed to control the election of the municipal officers of that town, and then of the county and minor State officers, and even of the governor himself, so far as the vote of that town is concerned?

Now, Sir, I hope that the amendment which has been offered will not prevail, but that the resolution, as reported by the Committee, will be adopted for another reason, and that is, the one presented by the gentleman from Cambridge, (Mr. Sargent). I understand from that gentleman, that in the town where he resides, a very liberal policy has been pursued with regard to allowing the right of voting to students in the University at that place. I do not mean to be understood as saying that, I suppose an intentionally improper liberality was allowed. Certainly no such thing could have been allowed in that town if the officers were acting under the advice of the learned gentleman who has just taken his seat. But I infer, from his statement, that it sometimes happens in practice, in that town, that persons are allowed to vote who, according to the laws of the Commonwealth, strictly speaking, have no right to vote there. But, if that happens in some of the towns of this Commonwealth from not clearly understanding what the law is upon that subject, I propose that it shall be put into the Constitution, so that every man who runs may read, so that our town officers may know precisely what their duty is in relation to these cases.

These, Sir, in brief, are the views which I entertain in relation to this subject. This resolve is, I repeat, merely declarative of what the law now is. But I do not conceive that there is a necessity in Massachusetts, as it seems there is in many of the other States of the Union, for incorporating such a provision into our Constitution; indeed, a majority of the States have incorporated such a provision into their Constitutions, and I trust such a provision will be incorporated into the Constitution of Massachusetts.

Mr. CHAPIN, of Worcester. I do not know as I understand the reasons which governed the Committee in making this report, but it does

seem to me that this amendment should prevail. If I understand the argument of the gentleman who has just taken his seat, (Mr. Sumner,) the students who are engaged in acquiring an education in any of the towns of this Commonwealth, are not under any circumstances to be supposed to have any interest, whatever, in the affairs of the place where they are pursuing their studies, nor are they to be permitted to exercise any of the rights of a citizen in that place. Well, Sir, is that statement precisely in accordance with the facts as they exist? Sir, you and I have known many young men who have left their homes, and everything therewith connected behind them, and embarked in the pursuit of obtaining an education, who really, to all intents and purposes, seemed to become citizens of the place where they were getting their education, and who remained there through their academical or collegiate studies, and eventually settled there. But, if I understand this argument, it would preclude every one of these persons from acquiring the right to vote until he had ceased to be a student. I do not know that I am not mistaken, but this seems to me to be the only reasonable construction that can be placed upon it.

Now, Sir, is it to be argued that a young man, who is a mechanic, coming into a place, and residing there three or six months, as the case may be, will become so well acquainted with, and so much interested in the affairs of that place as to qualify him to become a legal voter, while a student in a seminary of learning, twenty-one, twenty-five, or thirty years of age, coming there at the same time, and residing there the same period, cannot acquire the capacity necessary to qualify him for exercising the privileges of a legal voter? It does not seem to me that such a position can be sustained for a moment. The Constitution, as I understand it, puts all voters upon the same footing, and, as I understand it, the only question when a man presents himself at the polls is, whether he has come to the place to reside, whether he has resided there the length of time prescribed by the Constitution; and if the same provision which now exists continues in force, whether he has paid the taxes assessed upon him for two years? That is perfectly clear. It is easy to understand. There is no misunderstanding the provisions of the present law upon the subject, and I can therefore see no good reason for making any new constitutional provisions in relation to the matter. For these reasons I hope the amendment will prevail.

Mr. BISHOP, of Lenox. The resolution, as reported by the Committee, is, in my judgment, precisely what the Convention should adopt, without any amendment whatever. In the first place, it secures the uninterrupted right of suffrage, and in the second place, it determines, definitely, who is to vote and who is not. For this double purpose the clause which this amendment proposes to strike out was inserted in this resolve. Will it accomplish that purpose?

If it will, although it may be the declaratory law of the land, although it may be a mere reiteration of what is now understood to be the law of the land, I think for the sake of certainty, and to secure the uninterrupted right of the voter, and to protect the tribunal who is to determine who shall and who shall not vote, it should be inserted in plain, distinct, and legible language in the Constitution. If I believed, as my friend from

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Cambridge, (Mr. Sargent,) professes to believe, that this trenched upon the right of voting, that it abridged the elective franchise in any degree whatever, I would go shoulder to shoulder with him in my opposition to it. But so far from that, it secures the right of the voter, it maintains his right uninterrupted for a single hour. What is proposed? Is it proposed to change, or rather destroy the domicile? That would be impossible. Every man while he breathes, according to our law, has a domicile. It merely proposes this: that under certain circumstances the domicile shall be fixed, that there shall be no question in relation to it. Individuals who are off upon the waters, and who are not to return immediately, are not to be affected in their domicile, but all their rights attach to that domicile. Individuals who may be abroad, and necessarily abroad for a long period, in a foreign country, where they do not intend to reside, will not have their rights affected in the slightest degree, if the law, as it now exists, continues in force. To rid the matter of difficulty entirely, here are certain classes, in relation to whom we propose to insert a constitutional provision. Is my friend from Cambridge, (Mr. Sargent,) right when he says it takes away the right of suffrage. Is he correct when he states here, upon this floor, that an individual may be deprived of an essential political right? No, Sir, this resolution proposes, as I have said before, to fix the domicile and the place in which he may exercise that right. It does not propose to strip him of the right. It says you are a pupil now attending a collegiate or other institution of learning. Your residence may depend in a great degree upon your purposes and intentions, and they are in the chambers of your heart. Facts and circumstances may indicate one thing, but your purposes may be directed to another. It does not take away his right? He may go to his own domicile and there exercise his right of suffrage, the right of a freeman, and vote for whom he pleases. This is not an abridgement of the right of franchise. It merely limits the place in which that right is exercised, and it does so properly. Therefore, I contend, that instead of abridging the right of suffrage, this proposition enlarges it. Take the gentleman's doctrine, for instance. A student in college is ordinarily there four years. He may enter after he has attained his majority: he must, unless he is a resident of Cambridge or Williamstown—for I mention no particular institution of learning, I have no personal feeling in regard to the subject, whatever—after he has had his domicile in Cambridge or Williamstown for the last four years, if an inhabitant of the Commonwealth, remain six months longer before he can vote. He is abridged, therefore, of this privilege for which the gentleman contends, in consequence of going to college one-fourth part of the time. Here is one entire year in which he does exercise this right of voting. I apprehend that this is fixed upon to settle the question of a domicile, and it is nothing more, and to relieve the matter from uncertainty, does not in the slightest degree abridge the right of any individual. It has been said, that students resort to colleges for temporary purposes, which is true. That has been well and clearly illustrated by my friend for Otis, (Mr. Sumner). They go there not to reside, but with a fixed purpose of returning to their homes, or going elsewhere, after the period of their pupilage shall have ended. A hired man

goes to work out of the town in which he has had his domicile, but he may intend to remain there. If the town in which he has had his domicile is retained as his domicile, why there is his proper place to vote most unquestionably, for there is his residence, there is his home, and there he must exercise the right of suffrage. But if he abandons that domicile, and goes to another place for the purpose of working upon wages for five, six, or more months of a year, there should be his home, if there is no declared purpose of return. He may not intend to remain there during his whole life, or for any considerable period, but if inducements be offered in the line of his occupation sufficient to retain him there, then he will remain. Such is not the case with the student. He goes with the predetermined purpose of abandoning the institution, and the town in which it is located, just so soon as the purposes of his education shall have been accomplished. But I have another reason, and it is one which has considerable force upon my own mind. Who are to settle the great and important question of the right to vote? The selectmen of the several towns. It is said that the law upon this subject is perfectly plain. The law is just as plain as it can be made. That is not the difficulty in any case, or in but very few cases. The facts to which that law is to be applied create the difficulty. Here are facts presented, and after all, the question of a domicile is a question of intent and purpose. If the facts should indicate that the person who offers himself as a voter had not his domicile within the town in which he proposes to vote, still if his purpose is declared of making that town his domicile, what are the selectmen to do? To take his declared purpose, as the gentleman from Cambridge says? Most undoubtedly that is a safe rule. But there is a difficulty in relation to this subject; that the selectmen are peculiarly situated. If they were judges of the court of common law they would not be answerable for any misjudgment in relation to the matter, but they are not so. They are compelled to serve as selectmen under a penalty, and are compelled to take an oath. When an individual offers himself as a voter to be placed on the check list, what are they to do? They cannot refuse to pass upon the questions that are presented. They must act as judges in relation to this matter, and what is the result of an error of judgment. The supreme court have decided that to deprive an individual of his right to vote, subjects the selectmen to an action at law, and damages may be recovered, limited only by the discretion of the jury. Ought not the selectmen of the several towns who determine this matter, to have this matter made as plain to them as it can be. They may act honestly, they may take all the necessary pains to inform themselves, they may be studious to walk in the right path, and that only, and still err in such a way as shall expose them to a suit at law, and they are answerable in damages. Let this same question be presented to a judge of the supreme court, or to a judge of the court of common pleas. He gives his decision upon the subject, and if it is an error, who can touch him, he is protected by the law from any error of judgment, and the consequences of that judgment. Not so with the selectmen of the towns. Therefore, I say, that whatever can be clearly defined and settled in the Constitution in regard to this matter, should be so settled. I am aware that

there have been decisions upon this subject over and over again, but the only question which creates any perplexity, is that of the domicile. That question alone has led to all the exposures to which the selectmen have been subjected; it is the mere question of domicile. Now, I contend that other States having seen fit to make this matter clear by protecting those officers whom they compel to serve, whom they compel to judge, and who cannot be excused from serving without an exposure to fine, who have taken their oaths, and by their oaths are compelled to pass judgment upon the matters presented to them, that they ought to be protected here in every possible way from any suits at law, or any claims for damages which may arise. It is a matter of some considerable importance. If cases of the kind rarely occurred, if they had an existence only in a few places, it would be a matter worth not so much consideration as now. But, there is no State in the Union to which more persons resort from abroad for educational purposes, than Massachusetts. There are fewer States in the Union where young men leave their homes and resort to places of public instruction than in Massachusetts. When young men, both from abroad and inhabitants of this State, are members of colleges and other literary institutions, this question of their right to vote, arises not unfrequently, and it is an exceedingly perplexing one to the tribunal that is appointed to decide upon the right of the voter. Therefore, to clear two things, one, the right to vote without interruption, and the other to clear the tribunal that is compelled to pass upon and pronounce upon that right, from danger and exposure to prosecution, I am decidedly in favor of putting this resolution in a constitutional form, and inserting it in the Constitution as one of the fundamental and organic laws.

MR. SARGENT, of Cambridge. The gentleman from Lenox, (Mr. Bishop,) refers to the remarks I made, and says, that I am not quite right in asserting that this might abridge the right of voters. In answer to my objection, he has referred to one class of voters. The gentleman will find in all our colleges and seminaries of learning, three classes of individuals. One, a class that may have a home in the Commonwealth. Another, a class of citizens belonging to the Commonwealth, that have no other home than the one where they reside for the time being. Another class who are the citizens of other States, and have abandoned that home when they come to reside at our colleges and seminaries of learning. It is true, that under this provision, the right of the first class should not be abridged, because they might return to the town where they had their home and vote. I ask the gentleman from Lenox, (Mr. Bishop,) if under this provision, if it be incorporated into the Constitution, any student at a seminary of learning can obtain the right to vote in the town where he resides merely as a student. It says "that for the purpose of voting no person shall be deemed to have gained or lost residence while a student at any seminary of learning." I ask if any man residing as a student in any seminary of learning in this Commonwealth can gain the right of residence and of voting while remaining there. If he cannot, then, this provision will disfranchise every man who has no other residence in the Commonwealth. That is the difficulty I have in relation to this matter. I had no difficulty on account of the

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class of the voters to which the gentleman from Lenox refers. If no citizen can gain a residence in consequence of residing at any seminary of learning, when he goes there to reside, and yields up his residence in the town which he left, then I submit he is disfranchised just so long as he remains at that seminary of learning.

If he comes here from another State, being twenty-one years of age, and having no home left behind him, as a vast majority of young men have none; if he cannot acquire a residence, then I submit that he is disfranchised?

Mr. BISHOP. While a resident student, he cannot vote. If he come from Hingham to Cambridge for the purpose of study, they may say to him, you may go to Hingham and vote there.

Mr. SARGENT. What will the gentleman do with those who come from New Hampshire; will they remain here four years without the right to vote?

Mr. BISHOP. They can go to New Hampshire and vote there.

Mr. SARGENT. But I do not see, when you have placed a provision in the Constitution that a man shall have resided in the State one year, and in the town where he proposes to vote, six or three months, and when he declares that he has no home in any other place, why he should not have a right to vote, or why you should say that he shall have a home where he has none.

Mr. BISHOP. When he comes here for the purpose of study he may retain the home which he has in another place.

Mr. SARGENT. Then, you say that the citizens of the Commonwealth, save the class of students, may remove their domicile whenever and wherever they please, but as students, they shall not remove. And you put that into the Constitution, you point him to his old home, and say, you will not permit him to depart and carry his civil rights with him.

I supposed that would be the construction which the gentleman would put upon it; and I supposed that every board of selectmen in the Commonwealth, if you pass that resolve, would decide at once, that no person residing at a seminary of learning could be a legal voter in the town where the seminary is situated. Now, I say, that it disfranchises every man who is not a Massachusetts man by birth; and, I think that if he had not resided in the place where the seminary was, three years, the selectmen would not register his name and permit him to vote. I cannot vote for such a resolution.

Mr. PARKER, of Cambridge. If the honorable gentleman from Lenox will give me leave, I desire to ask him what construction he puts upon the resolution, as to its effect in relation to students particularly; whether if this provision is incorporated into the Constitution, a student in a seminary of learning can have the right of voting in the place where the seminary is situated.

Mr. BISHOP. If his domicile is in a place which would prevent it he cannot. If he had a domicile there before, he might vote.

Mr. PARKER. Suppose he goes to the place where the seminary is situated, under such circumstances that if he had any other purpose than that of study, the removal would suffice to change his domicile—will his domicile be changed? or, will this provision prevent him from voting?

Mr. BISHOP. If he is not a mere student, if he goes there as a printer, it will not prevent him

from voting; but, if he goes there for the mere purpose of study, it will.

Mr. PARKER. I speak of the case where he goes for the purpose of study and not for the purpose of printing, and where he goes under circumstances which would suffice, if he went for any other purpose, to effect a change of his domicile, and I want to know whether under the construction which the gentleman from Lenox puts upon the provision, he would have a right to vote.

Mr. BISHOP. If he went for the purpose of study solely and exclusively, he would not have the right to vote. I give you the law just as it is.

Mr. PARKER. The question is, what will be the law, if this provision takes the shape of a constitutional enactment. I wish to understand whether the gentleman from Lenox puts the same construction upon it that the honorable gentleman from Taunton did, and if he does not, then I wish to understand wherein they differ, for if we insert a new provision into the Constitution it is well to know what is to be effected by it and what it means. If there is that uncertainty about it which leads the gentleman from Lenox to put one construction upon it which will exclude a student from voting, who comes from any other place to that in which an institution of learning is situated during the time of his connection with that institution; and, if the gentleman from Taunton puts upon the same language another and a very different construction which will make it of no more importance than a piece of blank paper, I think it furnishes a good reason why we should pause before we make a constitutional provision of that character. I understand the gentleman from Lenox,—(and I so understood him from his argument, I merely put the question that I might be sure and not misinterpret what he said)—to maintain this proposition: that if this provision is inserted in the Constitution, a person who comes from another place where he has a domicile, to a place in which a seminary of learning is situated, and in which, before the time when he thus changes his inhabitaney, he had not a domicile, and comes under all the circumstances of one intending to change his domicile, if he came for any other purpose than that of being a student, connected with a literary institution, will be deprived of the right of voting there, because his domicile is not to be changed by reason of his presence there as a student in a seminary of learning. If that is the construction, it makes a rule different from that which applies to any other citizens in the Commonwealth, unless it be those mentioned in the other part of this resolution. Because, when other persons—persons who come for the purpose of labor, persons who, to use the language of the gentleman from Lenox, come for the purpose of printing,—thus change their residence, their domicile will be changed for all purposes, so that if a person should go to Williamstown as a printer, with the intention of making that his home for the time being indefinitely, he would have the right to vote there when he had resided there the prescribed time; but, an individual who went to that place from the very same town from which the other came, if he went there for the purpose of pursuing his studies in the seminary of learning, would not have the right to vote there. His domicile would not be changed for that purpose, because of the object for which he went, because of the fact that he went there as a student and not as a printer.

Is there any reason why this difference should exist between the two classes of individuals? Sir, I did not so understand the honorable gentleman from Taunton this forenoon. I understood him to say, that it meant that the mere presence of an individual as a student in a seminary of learning, should not be sufficient to give him the right of voting in the place where he was a student. I will ask the gentleman from Taunton if I am right in that?

Mr. MORTON. That is substantially the position which I took.

Mr. PARKER. That is not the construction which the gentleman from Lenox gives it, by any means.

Now, Sir, this provision, which is to make this matter so certain that he who runs may read; this provision, which is to protect the selectmen in such a manner that there can be no mistake in relation to it, is susceptible of just these two different constructions. It may mean—as you perceive by the construction of the gentleman from Lenox—that the mere presence of a person as a student will take away the right to vote, as a matter of course, if he came to attend a seminary of learning, during the time he remains connected with it; and it may mean—as you see by the construction of the gentleman from Taunton—that the mere fact that he is a student will not give the right to vote, when with the other circumstances connected with that fact, he would not have the right to vote under the ordinary operation of the law.

How certain shall we make the Constitution if we incorporate this provision, with these two different glosses upon it—one of which makes it mean everything, even to the disfranchisement of the voter for the time that he remains at a seminary of learning; and the other makes it mean just exactly nothing at all. No man will contend that the mere presence of an individual at a seminary of learning gives him a right to vote, (he being twenty-one years of age and otherwise qualified,) provided that is not the place of his domicile. Something else is always required.

It is asked whether that is his home; whether he came there with other purposes beside that of getting an education; whether it is his purpose to remain there indefinitely; whether he has some other place to which he purposes to return at the end of the year, or at any fixed future time. In the one case, the person who comes with a purpose of changing his residence—his home, and with no intention of departing from it at the end of any specified time, or at any time afterwards, has a right to vote; but one who comes for a temporary purpose, whether that purpose be to get an education, or any other, and with the design of returning again, has no right, and his being a student does not make his case any better than if his object were something else.

Mr. MORTON, of Taunton. If the gentleman will allow me, I would like to ask him a question, inasmuch as he put one to me. I would like to have him tell me whether he himself entertains any doubt about the grammatical or legal construction of the proposition?

Mr. PARKER. I am not aware that there is any doubt as to the grammatical construction of the proposition. I had the same doubt what interpretation was to be put upon the language, before either of the gentlemen addressed the Committee, which I have now, for the reason that it

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may mean one thing or the other. The gentleman from Taunton, in putting his gloss upon it, does no violence to its language. And the gentleman from Lenox, in putting the construction upon it which he does, no more violates the laws of language than the gentleman from Taunton. There is, in fact, no certainty about it. One set of selectmen may construe it as the gentleman from Taunton does, and another set may adopt the construction of the gentleman from Lenox, and both may act under the Constitution just as they now administer the rule of the law. There will be just the same difficulty.

Residence, and intention to make the place the home of the party, it is said, constitute domicile. The difficulty does not originate so much in a difference of opinion respecting the rule of law, as it does in relation to the application of the fact. Whether the domicile of a particular individual has been changed, depends, in a great measure, upon intention; and, in many instances, the intention can only be certainly known to the person himself. In some instances, there are circumstances which show, very conclusively, what that intention was. But, in others, the circumstances are of that equivocal character, that they are just about as consistent with an intention to change the domicile, as they are with the intention not to change it; and then the question which it is so difficult to solve, is, what was the intention? Where is the home of the party? Will this constitutional provision settle that question? If you put the gloss of the honorable gentleman from Lenox, upon it, you settle the question without any regard to intention; you have got a fixed rule in that case, but you have a rule which affects but one, two or three classes, and does not apply to the rest of the people of the Commonwealth. Why should this be? I ask no more for the student than for any other class in the community; I only ask that he may be put upon the same ground, under the same state of facts, with other classes. The merit of the construction of the gentleman from Taunton is, that it makes no distinction; it leaves all classes upon the same ground; but the objection to it is, that it accomplishes nothing. The construction of the gentleman from Lenox has the merit of accomplishing something, but the objection to it is, that it accomplishes something which ought not to be accomplished; for there is no reason for this distinction. It makes labor of the mind of less estimation than labor of the hands. I claim no superiority for it; but, unless some reason is given for such a course, it seems to me that it should not be put below par.

Sir, my colleague has already suggested—and the gentleman from Lenox has after all not answered his suggestion—that this is a mode of disfranchising men. It may not have that effect in all cases, but it certainly will disfranchise some individuals. It may not so affect individuals who are inhabitants of the Commonwealth of Massachusetts at the time when the change of domicile takes place; for, as is suggested by the gentleman from Lenox, the individual who moves from Newton to Cambridge and connects himself with a seminary of learning there, under such circumstances that his domicile will be changed for other purposes, although he cannot vote in Cambridge under this provision, will still have the right of returning to Newton and of voting there; for his domicile will not be changed for the purpose of

voting. He may have left with no intention of returning; he may have designed to make Cambridge his home for all future time at the time of changing his domicile; but yet he would have the right, under the Constitution, I admit, if you adopt this provision, to go back to Newton and claim his right to vote there; while one of his neighbors who had gone to Cambridge under precisely similar circumstance, except that he was to be employed in printing or in brick-making instead of studying, could not go back to vote in Newton, but would vote in Cambridge.

But this is not all. Suppose a man comes from New Hampshire for the purpose of entering some literary institution in Cambridge, although when he left that State he did it with the intention never to set foot within its borders again, but to make Cambridge his home for all future time, still, under the operation of this provision he cannot vote in Cambridge. Now I ask you, Mr. Chairman, where can he vote? Will the gentleman tell me that he can go back and vote in New Hampshire, where his old domicile was? Suppose he should go back there and present himself at the polls, what would they be likely to say to him? It would be something like this. "Did you not go to Cambridge with the intention of remaining there?" "Yes." "Have you come back to New Hampshire for the purpose of residing here?" "No." "Have you any home in New Hampshire?" "Not any." They would reply, "we do not recognize your right to vote here. The people of the Commonwealth of Massachusetts cannot make a Constitution for us; the provision you refer to is not operative across the boundary line." What answer could he have in that case? Sir, no answer at all. It would be clear that he could not vote there. The effect of a change of domicile is well understood, except it is made ambiguous by a special constitutional provision. He would thus be disfranchised because he had come into the Commonwealth of Massachusetts for the purpose of studying.

Mr. WALKER, of North Brookfield. If the gentleman will allow me to interrupt him, I would like to ask, since he refers to the case of New Hampshire, if there is not a statute provision that regulates this matter there.

Mr. PARKER. There is a statute there upon the subject, but no statute there will authorize a student who has come to Massachusetts and has gained a residence under the laws of Massachusetts to go back and vote in New Hampshire. I do not recollect the precise provisions of that statute, but I suppose it goes so far as to allow a man who has gone into a seminary of learning for the purpose of remaining there to get an education merely, the right to return to the place of his domicile and vote. I am not aware that it goes any farther than that.

Mr. BISHOP. With the permission of the gentleman from Cambridge, I will ask him whether a man can have two domiciles at the same time.

Mr. PARKER. The received opinion is, that he cannot; but, under particular circumstances he may have what looks very much like it.

Mr. BISHOP. If the gentleman will allow me one question more, I will ask him if a man does retain one domicile until he gains another.

Mr. PARKER. As a general proposition, undoubtedly he does so; but, if the gentleman means to make an application of that answer to the subject before us, I will state that if a man

comes from New Hampshire and enters a seminary of learning in Williamstown, Amherst, or Andover, under the circumstances I have mentioned, he will change his domicile. This provision, if it is put into the Constitution, will not prevent a change of domicile. The authorities of the town to which he comes may tax him notwithstanding. It is only in relation to voting that the domicile is not changed. You say that he shall not vote there, but still you may tax him there, because there is no provision to prevent it. That is another objection which I have to this provision, that it makes it operate unequally. You put him in the position of a man who has changed his domicile inasmuch that he is by law taxable, but at the same time you refuse him the privilege of voting as other men may vote who like him are taxed and have paid their taxes. He will stand in a position precisely similar to that of a man who has come into a town to reside, and who has not been there six months; but you may keep him in this position for four years; he will be liable to taxation all the while, but will not have the right to exercise the ordinary privilege which other persons can exercise under similar circumstances. What does your resolution say?

Resolved, That for the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the army or navy of the United States, or while navigating the waters of this State, or of the United States, or of the high seas, or while a student of any seminary of learning.

This is only "for the purpose of voting;" for all other his domicile may be changed, may be changed, notwithstanding that provision. By the pauper laws he may gain a settlement so that the town would be liable to support him if he should be reduced to destitution; yet he would have no right to vote while he was able to maintain himself. Now, Sir, it seems to me that we may well leave this matter, encompassed with difficulties as it is—difficulties which this provision is in no way effectual to remove—we may as well leave it where it is, for the legislature will have competent power and authority to make any provision which may be found necessary in relation to the subject. There is nothing of the nature of a constitutional enactment about it that makes it necessary that it should be in the Constitution. The gentleman for Otis, (Mr. Sumner,) says that it is something like a declaration of rights, and that therefore it is a proper constitutional provision. In that view my objection to it is, that it is merely a partial declaration; it refers to but two or three classes of the community, and is not a declaration of the rights of individuals in general; and I hope, therefore, that the gentleman for Otis will move to amend the resolve in such a manner that it shall embrace all classes, and let it determine whatever it may determine, in relation to one class of individuals as well as another.

There are some matters that have been drawn into this debate, which I trust will be left out of consideration by members of this Convention in passing upon the subject. What has been urged as a reason why this Convention should incorporate into the Constitution a provision upon this subject? Why, Sir, there have been some disturbances in the town of Williamstown—by reason of some students in a seminary there, claiming the right to vote. Admitting all this, it

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is but a single case in the Commonwealth of Massachusetts, and shall we make a constitutional provision to regulate the matter? If the difficulty is, as it is in ninety-nine cases out of a hundred, in the application of the facts, and not about the rule of law, and if this will not assist at all in the application of facts, then the fact that there has been some difficulty in the town of Williamstown upon this subject—that the selectmen have found a difficulty in applying the law to the fact in such a manner as to be satisfactory to the young men there—does not appear to me to be a sufficient reason for the adoption of a constitutional provision in regard to the matter.

The conduct on the part of the students was, undoubtedly, improper; and I do not wish to apologize for anything of that kind. Far from it; but, Sir, when my colleague suggested that so far as the students in the city of Cambridge are concerned, no difficulty has arisen of this kind; that there had been no disturbance, but that on the contrary, there had been peace and quietness; he was met by the significant question, whether at some time, and upon some occasion, the students there did not attempt to blow up something with a bomb-shell, as if that had something to do with this discussion.

Mr. DUNCAN. I merely asked that question in reply to a remark of the gentleman from Cambridge, (Mr. Sargent,) that they were peaceable, quiet citizens. I meant to ask by that, if such was the character of the citizens of Cambridge, and whether they were in the habit of blowing up buildings and things of that kind, and yet be considered by the gentleman as quiet and peaceable citizens?

Mr. PARKER. I understood the gentleman to inquire whether a circumstance of that kind had not occurred, leaving the inference to be drawn that their character was not that of quiet and peaceable citizens. But what has that to do with the question now before us? Was it in connection with their action at the polls that they attempted to blow up a building with a bomb-shell, or in connection with the exercise of the right of suffrage? I have yet to hear that it was. Well, Sir, if it was something altogether disconnected with anything of this kind, if it was the lawless and unjustifiable act of persons who did not claim any right to vote, and who, perhaps, never did vote,—for there are minors in colleges as well as those who are twenty-one years of age,—I ask if a solitary instance of unauthorized violence by young men connected with a seminary of learning, is to show that the students in Cambridge, in the exercise of their right to vote, are not peaceable citizens? I trust not. To have any value as an argument, such acts should, at least, be connected with some exercise of the right to vote. It has not even that merit. We know that there was a time when a convent was burned in Charlestown, and it was supposed by some, that the people of Charlestown had some hand in it. Shall we put a provision into the Constitution, in reference to the people of Charlestown, on that account? A short time since, I saw in the public newspapers, that there was an effigy burnt, I think in the town of North Adams. That had reference to voting—to the vote of the presiding officer of the Senate. Shall we have a constitutional provision in regard to the people of North Adams, or the Hoosac tunnel, on that account? We might just as well as to have

a constitutional provision respecting the voting of students because of any disorders and irregularities of young men, who have often a great deal more of apology for the excitement into which they get than men of longer life and more experience.

Sir, I have as little interest in this subject as any body can have, and aside from the considerations suggested, I have as little feeling as any one. Nobody can point to an instance where I have requested a student to vote either one way or the other. I think no person can point to an instance of my being at the polls with a student when he voted, or where a student was present when I voted. Whether students vote one ticket or another, or whether they exercise the right of suffrage in Massachusetts, or in some other State in the Union, is of the least importance to me.

Mr. MORTON, of Taunton. I have already expressed my views, in brief, upon this subject. I do not, therefore, now propose to go into any argument, neither have I the presumption to undertake to answer the distinguished and learned gentleman from Cambridge, (Mr. Parker). I wish merely to refer to one or two points which he made, and which seemed to be the substantial ground of his argument. *

In the first place, I understand that the foundation of his objection to this provision, is its uncertainty, and its liability to misconstruction. I appealed to the gentleman upon the subject, and understood him to say, that it was his opinion that the language here used, whether considered grammatically or legally, would admit of but one construction.

Mr. PARKER. The gentleman misunderstood what I did say.

Mr. MORTON. I ask the gentleman what his remarks were?

Mr. PARKER. I intended to say, that it was open to both the constructions here given to it, and that it was open to the construction of any court of law, to determine what its effects would be.

Mr. MORTON. I do not know now whether the gentleman intends to say that he personally entertains any doubts of what the language means. If so, and if it is capable of a grammatical and legal construction, that is all we can require, for it is impossible, in any law, or in any Constitution, to hit upon any language whatever, about which some individual in the community may not entertain some doubts.

I may have been unfortunate in another position, which I understood the gentleman to take, and in which I was most happy to concur with him, and that was, that the purport of this language was precisely the same as the existing law now is. I understood the gentleman to take that ground.

Mr. PARKER. The gentleman appeals to me to know what I did say, and I will answer him, although I am very sorry I cannot concur with the gentleman, as it would afford me quite as much pleasure to agree with him, as it can him to agree with me. I did not intend to express that idea, but I intended to say, that such was the declaration all around, of gentlemen who have spoken upon the subject. If the gentleman desires that I should express my personal opinions upon the true construction of this provision,—which I have not, as yet, intended to do,—at his call perhaps I should do it.

Mr. MORTON. If I misunderstood the gentleman, I should be happy to know in what respect.

Mr. PARKER. The only reluctance I have in the matter is, that I hesitate to dissent at all from the opinion expressed by the gentleman from Lenox, (Mr. Bishop). My own impression was, when I heard the gentleman from Taunton, (Mr. Morton,) that he put a very fair gloss upon it, one which it certainly admitted of, and which I would incline to put upon it myself, were it not for the opinion of the gentleman from Lenox, for which I entertain the highest respect, and from the fact that, putting that construction upon it, it amounts to nothing.

Mr. MORTON. I really understood the gentleman to put that construction upon it, and to found his main argument, that it would not be proper to incorporate it into the Constitution, because it did not change the existing law, and I was going to ask, if this does not change the existing law, how his argument would stand, in which he maintained, that it disfranchises a certain class of people, because they were not entitled to vote by the existing law, and this is the same as the existing law, how are they disfranchised by this provision? This neither adds to, nor takes from, the elective franchise. It only makes that certain and impeccable, which otherwise might be changed by the legislature.

I think, Sir, that the language is explicit. To be sure, it is a somewhat complicated proposition, because it includes a number of classes of people, and if you read it, and leave out all the other classes mentioned in it, except the one in question, I think you will perceive at once, that it contains a clear and explicit declaration, and that it really will not admit of more than one construction. Confining it merely to students, it would read in this way: "that, for the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while a student of any seminary of learning,"—the plain meaning of which is, that the mere fact that a person is a student, does not give him such a legal residence as to entitle him to vote. And I certainly understood the gentleman to maintain, in his argument, that, as the law now stands, a mere residence at a college or seminary of learning, of itself, unattended by other circumstances, did not entitle any man to vote. The question of domicile is often a question very complicated, and surrounded with much difficulty. It may be ascertained from a variety of facts, and my understanding of this provision is, that a residence at college does not have any tendency to establish a legal domicile and a right to vote, any further than it shows the physical fact, that the individual is personally present in the town where he may claim to vote.

The question last argued, I confess, is one not entirely clear to my mind, and that is, supposing this right is already determined, is it expedient to make it a part of the Constitution? I think the statement of another gentleman from Cambridge, (Mr. Sargent,) furnished an additional argument for doing something upon this subject. If I understand him correctly, he said, that the students in the colleges and seminaries of learning in that town, were considered as having a residence, and entitled to vote there, if they declared that it was their intention to make that their home. If that is the way in which the law is construed there, it

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is quite time that we had a provision that could be understood, because I deny the justness of that principle.

Mr. SARGENT, of Cambridge. I did not mean to be so understood. I intended to say, that they stood upon precisely the same footing with any other citizens, and were permitted to vote under the same circumstances that other citizens were permitted to vote. I did not mean to say that any special privileges were granted to them.

Mr. MORTON. I understood the gentleman to say, if they declared their intention to make it their home there, that was sufficient to entitle them to vote. If he means that they stand upon precisely the same footing as other citizens, then how stands his argument, that many students are disfranchised by the proposed amendment? I contend, that the provision does not, in any degree, infringe upon their existing rights, and, therefore, there can be no possible objection to it. It becomes a mere question, whether it is important enough to be made a part of the Constitution of the Commonwealth, and that, I apprehend, is really the only question about which any doubt remains, because I maintain—and I am unwilling to repeat a single proposition which I have before advanced—that the law, as it has been settled by the courts of this Commonwealth, is exactly in accordance with these provisions, and the reason why I would make it a part of the Constitution is, not because it in any degree affects the law of the State, not because it will make the rule more certain than it now is, but because I consider the regulation of the right of voting as one of the fundamental things in the formation of a government,—indeed, it may be called the corner stone, because it is there that you must settle the question, who shall participate in the powers of the Commonwealth, before you can go on and erect the superstructure. Upon this ground I maintain that it is proper to incorporate it into the Constitution, and make it a part of the fundamental law.

Mr. HUNTINGTON, of Salem. We have before us a proposition which is proposed to be incorporated into the Constitution, upon which, already, in this body, we have great diversity of opinion among gentlemen eminently learned in the law. We have one interpretation given to us by one ex-judge of a judicial court; another interpretation given by an existing judge of the court of common pleas in this Commonwealth, differing entirely as to the construction of this resolve. Now, Sir, I listened to the remarks of the gentleman from Taunton, (Mr. Morton,) this morning, in his interpretation of the effect and meaning of this resolve, and I am happy to say that I agree with him entirely. I think there can be no doubt that he stated the law with entire accuracy—I mean the existing statute law, as settled by the supreme court of this Commonwealth, for fifty years last past; and there is no conflict or contradiction in the judicial decisions and opinions upon this particular subject. And yet I understood the gentleman to say, that when this question was a new one, when it was first presented to his mind, he thought it unwise to pass this resolve, and that his first opinion and impression was against the resolve.

Mr. MORTON. I remarked that I entertained doubts about it.

Mr. HUNTINGTON. He says he entertained doubts, and if he doubted, I think we may all

well entertain doubts. I think his second thoughts were quite as good as his first thoughts. Then the gentleman from North Brookfield, (Mr. Walker,) the author of this Report, has another view of the matter, differing quite materially from those I have mentioned. I was not in my seat when the discussion was had in relation to this subject upon another occasion, but from what I can gather from the chairman of the Committee which reported this resolution, it seems that the resolve as originally reported, for some reason, did not commend itself very strongly to the Convention, and was recommitted to the Committee, who have reported it back in the form now before us.

The gentleman from North Brookfield seemed to suppose that by this resolution, the student of the university at Cambridge, and of the college at Williamstown, could not vote. He said that the gentleman from Williamstown had been before the Committee with his grievances, and that his grievances, in the opinion of the Committee, demanded redress, and that there were obvious reasons why students in college should not be permitted to vote, that the faculty and directors of the colleges would prefer that the students should not vote, and that it was very unjust and unpleasant in towns in which these institutions were located; that students coming there from abroad for a merely temporary object, mere passengers, mere birds of flight, should come in there, and after a few months' residence, exercise all the privileges of a permanent resident voter. Well, Sir, so far as that goes, I am entirely of the same opinion. I sympathize entirely with the gentleman from North Brookfield, and the gentleman from Williamstown, in all this. But the only difficulty, as it seems to me, is, that they will get nothing by this resolution. As I understand it, it is only proposed by this resolution to put in the Constitution what has been decided by law for five years. The chairman of this Committee undoubtedly thinks that if he can get this resolve incorporated into the Constitution, he will then have something which will prevent the student from voting. Now, Sir, he will not necessarily get any such thing. I say necessarily, because the question of domicile does not depend entirely upon actual residence. It is a question which has to be determined by all the circumstances in the case. This question of domicile is a very complex one. It is oftentimes an exceedingly difficult question to settle, and it must be governed by a great variety of circumstances, facts, and considerations.

Well, Sir, I pray to know how the gentleman is to accomplish any definite and salutary purpose by merely incorporating in the Constitution what was before a matter of law? It has been repeatedly declared by the decisions of your courts, that mere residence does not create a domicile, nor give a man a right to vote.

It seems to me, that the gentleman from Taunton, (Mr. Morton,) understands this resolution precisely as it should be understood, and I should have no manner of doubt with regard to it but for the fact that the learned gentleman from Cambridge, (Mr. Parker,) gives a different construction, although he says the opinion he expresses is founded upon the opinion of the gentleman from Lenox, (Mr. Bishop). The learned judge from Cambridge, you will perceive, does not give any opinion of his own at all, but says that upon the authority of the gentleman from Lenox, he

is inclined to think so and so. Well, Sir, it is for these learned gentlemen to settle the matter among themselves, but I do not look upon the resolve as having any other effect than merely to declare that mere bodily presence, or mere bodily absence, shall not give or take away the right to vote. That is precisely what it does; nothing more, and nothing less.

Now, Sir, I put it to the gentleman from North Brookfield, (Mr. Walker,) and to the Committee, whether it is worthy of this honorable body sitting here, the fifth day of July, deliberating upon the organic law of the Commonwealth—I say it is worth the while of this Convention to send out to the people this proposition, that mere bodily presence, or mere bodily absence, does not give nor take from a man the right to vote? Why, if it is necessary to make this provision apply to Cambridge and to Williamstown, and the other towns where these seminaries of learning are located, you might just as well go farther. The resolution now provides that "for the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the army or navy of the United States, or while navigating the waters of this State, or of the United States, or of the high seas." That is to say, the sailor who is abroad under the flag of his country, does not lose the right of voting at home. Well, Sir, did any man ever doubt that? I hardly see the necessity or propriety of putting such a proposition into the organic law of the Commonwealth; but the gentleman from Lenox, (Mr. Bishop,) says it will make the law so plain that he who runs may read. But if it is necessary to go so far, I do not see why it is not just as necessary to go further, and I propose, therefore, to add after the words "or while a student in any seminary of learning" these words: "or while an inmate of any jail, house of correction, penitentiary, or State prison." It is just as necessary that the provision should be made in one case as in the other. To be sure, if the question of domicile shall come up relative to an inmate of the institution at Charlestown, and the question should come up whether it was his intention to make it his place of residence, it would be a little doubtful, and it would be somewhat doubtful whether the inmate of that at East Cambridge came there voluntarily; but otherwise, it would be just as sensible to embrace these classes of persons as those mentioned in the resolve.

Now, Sir, when a young man goes to a town merely for the purpose of attending an academy or college, I think he should not vote in that town. They certainly have no sympathies or interests in common with the citizens of the place or with the community in which they live. They are merely encamped, so to speak, there, for one, two, three or four years as the case may be. It is hardly just to the citizens of these towns to have their elections controlled by the voters of these students. In Cambridge they got along very well, in this respect, that being a large city and most of the students there being very young; but, the same is not true of the country towns where these institutions of learning are situated. The same is not true of Williamstown, where the students are generally older and a greater portion of them old enough to vote. Any gentleman must see that thirty or forty young men encamped at Williamstown or Amherst, may exert a very

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bad influence upon the community so far as the voting is concerned, if they are allowed that privilege; and, therefore, it is that I say, I sympathize entirely with the friends of this resolve in the object they seek to accomplish, but I say that the resolve does not accomplish that object. You may adopt it and incorporate in the Constitution, and the students will vote just as much as they did before. Gentlemen say they want the resolution adopted, in order to make the law plain, and yet they are not making it in any respect plainer than it was before. The gentleman from Taunton, (Mr. Morton,) says, the law as it now stands under the decisions of your courts is precisely what is contained in this resolution. What, then, do we gain by its adoption? Nothing.

Gentlemen say they want the provision in the Constitution, where it may be easily found. If that is the reason for putting it there, then why should we not go on and fill up some half dozen volumes, as we might in the course of a year, made up from the Revised Statutes and the judicial decisions, as to all these questions of right about which there is often much difficulty? There are thousand of cases in our possession where learned judges have undertaken to define a variety of circumstances and limitations of this right, and why not put them all in the Constitution? Why stop at this mere matter of residence? Every-body knows that there are very many other circumstances which must be taken into consideration. I could state a case, of which I have some knowledge, where these circumstances would amount to a great deal in determining the right of the student to vote. I knew an instance of a young man who entered college in one of those towns, and while a student was secretly married, unknown to the faculty of the college. He became the father of a child, and while yet a student entered into a partnership with a brother of his wife to go into business in that place as soon as he should graduate. Now, I ask, if, under these circumstances, that student would not have a sufficient interest in the affairs of that place to give him a domicile there, and entitle him to vote?

But, Sir, as I understand this proposition, a student in college, or a sailor upon the high seas is not to be governed in the matter of residence by any different rule from any other citizen of the Commonwealth. I am sure no one in this Convention would be prepared to say that one rule should apply to a student in a seminary of learning and a man upon the high seas, and another and a different rule should apply to a mechanic, or any other citizen employed in any other avocation. No man pretends to such a construction of the resolution. Then the long and short of the matter is, that the resolution means just precisely nothing.

The learned gentleman from Taunton, (Mr. Morton,) says, it is simply designed to declare what the law is. Now, I want to know why we should send out to the people, to be engrafted into the Constitution, a proposition which is already so plain that nobody can have a shadow of a doubt about it, that mere residence, unaccompanied by any other circumstances, does not *per se* give a man a domicile or the right to vote?

Mr. WOOD, of Fitchburg. I believe the great difficulty in the case is, the application of the facts to the law. It is, in many instances, a matter of extreme difficulty to determine where a

man's home is. When the old Constitution provided that a man should reside in a place for six months to entitle him to vote there, it undertook to settle the matter of residence forever by giving a definition of the term "inhabitant." But, it so turns out that the definition is no definition at all. It is in effect saying that a man's residence is, where his residence is, or that his home is where his house is, and nothing further is determined by it.

But there is another difficulty. The members of this Convention generally construe this law in the same manner. But it is notorious that the people generally throughout the State construe it differently. The selectmen, in many instances, construe it differently. I presume there is no question that the difficulty of which we have heard so much in Williamstown was to some extent the result of a wrong construction of the law. I know nothing of this case any more than what I have learned in this Convention, but I presume there is no question that this matter of inhabitancy or residence was construed differently there from the construction given it by the learned gentlemen who have given their opinions upon it in this Convention; and, it will continue to be so construed unless we place some provision in the Constitution so plain and clear that but one construction can be given to it. It seems to me a matter of some importance that such a provision should be made, because in a small town where the parties are very nearly equally balanced, so that fifteen or twenty votes upon the one side or the other, will change the result, if it is possible to put such a construction upon the law as to allow that number of students to vote. The temptation is certainly a very strong one to place that construction upon it, and to marshal out the students.

I recollect an instance, where the decision was made three times over by the supreme court, that a man's changing his residence for a mere temporary purpose did not change his domicile, and that he could not be taxed at his place of temporary residence, but notwithstanding the ruling, the jury brought in a verdict directly in opposition to that decision, and for some reason the court did not see fit to set it aside upon that ground. The jury insisted that a man's going away and continuing away was a sufficient evidence of a change of residence so far as the payment of a tax was concerned. The courts decided, that if a man went to sea, or went abroad for a merely temporary purpose, intending to return again, and was gone for twenty years, or any length of time, that did not change his residence—that if a man in one of the towns of the Commonwealth came down here to the city of Boston and remained here for six, eight, ten or twelve months, but for a temporary purpose, it did not change his residence, but that he would be taxable in the town from whence he came. But the assessors would not believe any such doctrine. They say, "How are we to assess a man—how are we to make out our valuation if we are to ascertain whether every man who has left the place for the last twenty years has left for a temporary purpose or for a permanent one? Common sense forbids any such construction." That is the practical effect of it, and although the decisions of the supreme court are the supreme law of the State, yet the people will act directly in violation of those decisions. I submit, therefore, whether it is not advisable to put this pro-

vision in the Constitution, where it may be understood by every one? It will certainly do no harm, and I think it is a matter of sufficient importance to make it worth while to make the declaration in the Constitution that the mere fact of a student or any other person residing in a place for a temporary purpose does not give him a domicile in that place nor entitle him to vote there.

The law has amounted to nothing heretofore, because the officers of the town did not understand it, but now it is proposed to place the same provisions where the selectmen and others may read it, and then when a young man comes up to the polls and claims the right of voting, and the question is asked him: "Are you here as a student?" "Yes." "Are you here for any other purpose?" "No." "Where do you expect to go to when you graduate?" "Home to my father's." "Then, young man, you cannot vote. Your being here merely as a student gives you no right to vote." "But," says the young man, "am I not one and twenty years old? Have I not been here for three years, and have I not complied with all the requirements of law to entitle me to vote?" "Here is the organic law of the State," replies the selectmen, "your being here merely as a student in a seminary of learning, gives you no right to vote, and your name cannot go upon the check list."

Sir, this result never will be brought about so long as these provisions merely remain in the decisions of your Supreme Court. These decisions are founded upon a multitude of circumstances. If a man has become a resident of a town, so that that town would be compelled to support him if he should become a pauper, he will be taxable in that town.

Wherever a man is taxed he has a right to vote, provided he has the other requisite qualifications. All these things ought to go together, and will go together. There is no question about it. The mere being a student does not necessarily make you a voter, nor will it make you an inhabitant of the place. Now, if it does not do so, then say to the assessors at once that my being a student does not make me an inhabitant, so that I can be taxed. It all depends upon the domicile and other things following. Now, if this thing is put into the Constitution it will settle the question forever, and that is one reason, if there were no other, why it should be put there. Let it be stated fully and fairly, so that hereafter there may be no doubt about it. I think if we adopt that resolution as it now stands, without the amendment, it will be sufficient, and I must confess myself in favor of it as it stands.

Mr. WILKINSON, of Dedham. It seems to me that this resolution is susceptible of amendment; and, that that construction is in entire harmony with what has been the law and the practice of the Commonwealth for a number of years, although individual cases may have arisen in which the selectmen may have come to a wrong decision as to the facts, because the question of domicile is one which is exceedingly difficult to decide. I think that this resolution leaves that question precisely where it was before. It simply declares that mere presence or absence does not fix residence. It has not struck me as being a matter of very vital importance that this provision should go into the Constitution. There is one reason, however, that makes it proper that the

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qualifications of voters should be defined in the organic law, so that it may be taken away from the power of the legislature to intermeddle. This seems to be necessary, otherwise great absurdities might be perpetrated. Suppose that the legislature should enact that all students of colleges should vote where their college is located and nowhere else. That would seem to be an intolerable law. It is, therefore, proper, that the definition of what constitutes domicile in this respect should go into the Constitution. It can do no harm. It makes the matter plain and the people can refer to it at once in the Constitution where it is proper to find it. I, therefore, move to amend the proposition by adding after the words "seminary of learning," the following: "Or while engaged in any other temporary business or employment." I think that will make the matter perfectly plain.

Mr. WALKER, of North Brookfield. I am sorry that this debate has been protracted so long; but it must be evident to every gentleman that the question is regarded as being important, otherwise, it would not have elicited such a display of talent. It is evident, too, from the fact that, several of the States, as before mentioned, have an article identical with that now under consideration.

Mr. STEVENS, of Clinton. I wish to ask the gentleman which of the States besides those named, has adopted the substance of this resolution?

Mr. WALKER. I have not examined the Constitutions of all the States myself, but the gentleman from Williamstown can answer the question if he is present.

Mr. STEVENS. I have examined the Constitutions of Maine, New York, Wisconsin and California, and I only find the mention of the word student in these Constitutions. I believe it is not to be found in any other.

Mr. WALKER. I am not certain in how many of the Constitutions it will be found, but I find it in several.

The gentleman from Cambridge intimated that he thought this provision made an invidious distinction. I do not understand that such is the fact—that any invidious distinction is made; but that the student gains his residence in the same way as any other inhabitant of the Commonwealth. But, Sir, there is a marked difference between students and other classes of the inhabitants. What is that difference? When young men come to Massachusetts from other States they usually come to seek their fortune. For what purpose does the student come? He comes to obtain an education so that he may acquire a fortune in any part of the world. That is the reason I suppose why students are placed in the same category with soldiers and sailors, members of the army and navy of the United States.

The facts stated by the gentleman from Williamstown made a deep impression upon my mind. The fact that sixty-eight students in that college reside in New York and yet vote in Williamstown is worthy of consideration, and shows the propriety of putting this provision in the Constitution. Now, I submit, that if our friends from Cambridge were as much troubled as the people in Williamstown, would not they feel as the people of Williamstown do? No doubt they would; and if the members of the university were opposed to the dominant party in the town they would feel quite as unwilling that they should

come in and overturn the government of Cambridge.

Mr. SARGENT. I have no doubt we should feel very bad in such a case; and I am glad that the truth has come out.

Mr. WALKER. I do not know what truth has come out unless the gentleman from Cambridge feels guilty of that which I have not accused him of. All I have to say is that, it is desirable that the question should be settled in all these different localities.

Mr. PARKER. I did not design to make any particular allusion to the gentleman from Cambridge or to his politics; neither to the elections which take place there. I do not mix in the elections sufficiently to make me at all anxious about the matter. I have inquired of myself whether it is expedient to put into this Constitution a provision of this character. In regard to politics I disclaim any such consideration.

Mr. HUNTINGTON, of Northampton. It seems to me that the action of the Convention on another subject renders it important that this provision should pass. I allude to the voters' list to be kept by the registers.

Nothing can be more proper than that they should ascertain what constitutes a voter. If you are to have an authorized list of voters, then you should define what constitutes a voter, so that that list may be accurately made out. I make this suggestion for the consideration of the gentleman from Salem. I believe that there is no difference among the members of this Convention as to what we design by this provision; and I submit, that so far as the question of phraseology is concerned, we need not waste any time about it. Here is another difficulty,—that is, what is meant by a seminary of learning.

They go to college and remain there three or four years, generally four. It is very easy for the selectmen to say to a student is this your home? Yes. Why? Because I am here for three or four years. And the officer acts conscientiously enough in the view he takes of the matter and thinks that he is bound by the answer to allow the student to vote. This resolution does meet the difficulty, which arises in such a case, by requiring that a man shall neither gain or lose any residence while attending college, or any other institution of learning. I do not understand that there is a single gentleman of any side, who maintains that there is not an evil here which it is desirable to cure if possible, which we could remedy if we would only act together and agree upon the best phraseology.

Mr. HUNTINGTON, of Salem. I understand the gentleman from Northampton to say, that it is important we should insert this resolution in the Constitution as a guide to those official persons who make out voting lists, and that if we are to provide such lists we ought to furnish them the means of making out those lists. The gentleman will see at once that this resolution goes but little ways indeed. It merely makes provision as to the fourth class, and provides that mere residence *per se*, nothing more or less, shall not make a voter. If we are to have the qualifications of voters set out in the Constitution, it would require a treatise of forty pages to define all the qualifications, limitations, and conditions under which, and upon which persons become voters. I submit to the gentleman and the judgment of this Convention, whether it will be worth while to

make a treatise of forty pages at least, defining the qualification of voters.

Mr. HUNTINGTON, of Northampton. In answer to the gentleman's inquiry I will merely say that, I would not incorporate into the Constitution a treatise upon this subject, but where by three or four lines I could meet the difficulties which have been found practically to exist, I certainly would do it. More difficulties have arisen in regard to this class of voters than any other class in certain towns where there are colleges and seminaries of learning, as for instance, at Cambridge, Williamstown and Andover. Town officers, in looking at the matter see that the Constitution gives a man the right to vote if he has paid his taxes. They do not know that residence in the language of the Constitution, means something more than inhabitancy. They see, perhaps, that here is a student in town who has been there for two years, and, therefore, his name goes upon the list. If incorporating a provision into the Constitution meets the difficulty arising in such cases, I certainly would make such provision. If there are other cases, which this provision does not meet, let gentlemen come forward and present them, and perhaps in a few lines they can all be met. By this single and distinct act, it seems to me we can introduce a provision which will operate well in those towns where this difficulty has occurred, and for the reasons already given, I think it ought to succeed.

Mr. DANA, for Manchester. I have still the same objection to voting for these resolutions, which I had when they first came up. I have not only listened to this debate with a great deal of care, but have also endeavored, by conversation with the friends of these resolves, to find out precisely what they mean, and the objects they have in view. I must say, the more I have heard and the farther I have inquired, the less I am inclined to sustain them. The gentleman from North Brookfield, (Mr. Walker), introduced an element into this debate, which I believe has not been introduced before, and which had reference to my friends from Cambridge, opposite. As I also reside in Cambridge, and am a voter there, I ought to bear a little of the obloquy which would fall upon them. The truth is, it does seem to me, that the difficulty is not so much because the students vote, as it is because they vote wrong. [Laughter.] It is evident, from these resolves, that the students have done something wrong. They are different from all other classes of persons that are absent from home, and for no other reason, are to be put into the Constitution and pilloried in this manner. The provision proposed to be inserted in the Constitution, reads as follows:—

That, for the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence, while employed in the army of the United States, or while navigating the waters of this State, or of the United States, or of the high seas, or while a student of any seminary of learning.

Is it true, that a person ever gains the right of voting by mere presence, local presence, in any place? Has any man ever gained it?

Mr. HUNTINGTON, of Northampton. I make the question, whether residence is not an important element?

Mr. DANA. It is an essential element, but not conclusive. I wish to ask, whether the mere

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fact of presence in a place, did ever make any man a voter? Certainly not, in law. Why say of a student, that mere personal presence shall not make him a voter? What have students done? I have suffered under the voting of students. I have seen in Cambridge, where I live, students come up, and, almost to a man, vote right against the ticket I vote, and in favor of the ticket that my friends from Cambridge, on the opposite side of the House, support. It would have been a source of pleasure to me, if those students had voted the same ticket with myself, for I should have gained, and my party would have gained, but to insert in the Constitution a provision which would shut them out from the polls, is the very last thing I should undertake to do in the discharge of my duty, to accommodate myself or any one else. I cannot believe that the Committee would, for a moment, yield to an argument of that kind, upon whichever side it was pressed. It is very plain, that some grievance has arisen from the conduct of the students. It is said that students have not behaved well. I do not see how these resolves are going to mend that. We only propose to say who shall vote, and not to say how they shall vote or behave themselves. I have inquired of the friends of these resolves, what purpose they wish to answer. I never can and never will vote for a resolve of this Convention, unless I can fairly understand what it means. If there is any ambiguity resting over it, if that ambiguity is of a kind which its friends decline to remove, then I never will vote for it. There is ambiguity resting over these resolves. They may be clear to my own mind, but legal gentlemen have doubts about them. It is very plain that the gentleman from North Brookfield, (Mr. Walker,) and the gentleman from Williamstown, (Mr. Duncan,) consider them as of great importance, as a remedial measure which is to answer a great purpose, and that is the ground upon which they press them. The gentleman from Taunton, (Mr. Morton,) says, that he supports them because they are very innocent and harmless, and that they are not going to produce any change whatever, but that they simply declare the law as it stands—a simple principle of law, that personal presence shall not make a voter. On the one hand they are innocent and harmless, and on the other they constitute an important remedy for a great evil. If these resolves are what the gentleman from North Brookfield, (Mr. Walker,) believes, the gentleman from Williamstown, (Mr. Duncan,) hopes, and the gentleman from Lenox, (Mr. Bishop,) thinks they are, then I submit to the Committee that they are wrong, because they will exclude students from voting under any circumstances. If they mean simply what the gentleman from Taunton, (Mr. Morton,) supposes they mean, then they are nugatory, and I should not wish to insert anything into the Constitution which was entirely nugatory. I cannot think that any gentleman will bring his mind to believe, that these resolves, so urgently pressed before this Committee, discussed, recommitted and renewed, are intended merely to declare the axiom which every man knows, that personal presence does not make a residence. So much note of preparation never came from so slight a cause as that. Something more is meant. I have endeavored to ascertain, from the friends of these resolves, whether they considered them merely a

declaration of the general principle, that presence shall not make a voter, and I cannot learn from them that such is their understanding. I have tried to ascertain from the friends of the measure, whether they considered that the effect would be to exclude students, and I cannot ascertain that they so consider it. I cannot ascertain their construction of them, and I am driven to the necessity of saying, that I cannot vote for anything over which an ambiguity rests, and which the friends of the measure do not clear up.

Mr. DUNCAN, of Williamstown. For the information of the gentleman for Manchester, (Mr. Dana,) I would say that I intended, when I introduced this order, to convey the interpretation that is given by the gentleman from Lenox, (Mr. Bishop). I did not intend to disguise anything, or have any concealment about this matter. The gentleman, I think, has very plausibly misunderstood me. To me, this matter is perfectly plain. In Maine, they understand it as I do, and so in New York, Michigan, and in California, and the meaning is simply this, that a student cannot acquire the right to vote in any town where such institution of learning may be located. That is the construction put upon it in Maine and New York. I hope now that the question is fairly understood.

Mr. DANA. I am very much obliged to the gentleman, indeed, for his explanation. We are told, by the gentleman over the way, that he puts the construction upon it which is put upon it by the gentleman from Lenox, (Mr. Bishop,) that a student shall not acquire the right of voting in any place where he is residing, for the purposes of education, no matter what the circumstances may be, though they may be sufficient to give him a domicile, and to make him taxable there. But the gentleman says, that is the provision in Maine and New York. Nearly the whole argument made in favor of these resolves, has been made upon a very opposite consideration, that it does not intend to effect any such thing, but is a simple declaration to the selectmen, of a well-known principle of law which exists everywhere. That is the ground upon which the learned gentleman from Northampton, (Mr. Huntington,) the gentleman from Taunton, (Mr. Morton,) the gentleman from Fitchburg, (Mr. Wood,) and other gentlemen have supported these resolves. I ask these gentlemen, if the construction is that given to this matter by the gentleman from Williamstown, (Mr. Duncan,) whether they can vote for them.

It is now stated by them clearly what they intend, and what their object is. The object is that students shall not vote in the place where they reside. Let us take it so. They have given a construction to their own phraseology.

Mr. DUNCAN. That is my construction, I will say, if the gentleman will allow me. I am not accountable for others.

Mr. DANA. The gentleman from Williamstown, and I suppose also, the gentleman who reported this resolve to the Convention, intended to carry out this object that I have named. The question then is, whether we will adopt a provision that students shall not vote in the place where they reside. I wish it were put in plain terms like the following:—

Resolved, That no person shall vote in the place where he is residing while he is a member of a seminary of learning.

I think that would be a doubtful proposition. In the first place, there would be an invidious distinction against students. You would allow a man, who was a resident of the place for the purpose of learning a trade, to vote at the age of twenty-one. If he was there as an apprentice to a bricklayer he could vote, but he could not if he was pursuing a literary or scientific course of study.

Mr. DUNCAN. I would ask the gentleman if the statute does not make a distinction between that class of men and other classes of men.

Mr. DANA. I do not quite understand the question which is put by the gentleman.

Mr. DUNCAN. Does not the gentleman understand, that by the statute there is a distinction between students and another class of citizens, in reference to the contraction of debts.

Mr. DANA. The statute does make a distinction in that case. But that is a very different matter from the present. The "inalienable right of voting," as it has been called here, is quite a different thing from the inalienable right of contracting debts. [Laughter.] That statute is passed in kindness to them. This kindness, which takes away the right of voting for a period of four years, is a kindness which I think we should not agree to exactly.

Mr. DUNCAN. I would like to ask the question if any debts can be collected of students?

Mr. DANA. It is pretty difficult. [Laughter.] I do not know whether it will be aided at all by preventing their voting. But here we are undertaking a very difficult operation: We have in Cambridge a great many graduates; almost as many graduates as under-graduates, perhaps. There is the Law School, the Scientific School, and the Divinity School. The number of the students in the Scientific School is constantly increasing. They are men of years, often; men who have been engaged in business,—engineers and chemists. Some of them come there with their families, and pursue courses of lectures; and sometimes they bring their families with them, and they sometimes own property there. They are very respectable citizens; but, by this provision, we mean to say to them, that they shall not vote there. As to the general principle, in saying that students shall not vote where they reside, there might be a difference of opinion. But it strikes me that it would be a very invidious distinction. We do not wish to make these invidious distinctions. We wish to make one general and uniform rule, and to carry it out.

Then again, see at what cross purposes we are playing here. The gentleman from Williamstown, (Mr. Duncan,) is advocating the measure because it would cut off the students from voting; and the gentleman from Dedham, (Mr. Wilkinson,) who is a friend of the measure, has moved to apply it to all persons who reside in a place for any temporary purpose. So that the gentleman from Dedham is putting into the same category all persons who reside in a place for a temporary purpose, and the gentleman from Williamstown is trying to kill off the students. It strikes me, if this matter is correctly reported,—and we know that it will be,—any gentleman who will come to look at it in a disinterested manner, will say: here have been a number of lawyers engaged in making and amending a law on opposite constructions and at cross purposes. And it will be said, too, that if the lawyers could not under-

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stand it, it is not to be presumed the selectmen will be more enlightened than they have been heretofore. What can be more applicable than the answer given by the supreme court to the question propounded to it by the House of Representatives. The question was with regard to this very point, whether persons who were residing in any place as students would have a right to vote, and the answer was, in part, as follows:—

“The question, therefore, whether one residing at a place where there is a public literary institution, for the purposes of education, and who is in other respects qualified by the Constitution to vote, has a right to vote there, will depend on the question whether he has a domicile there. His residence will not give him a right to vote there, if he has a domicile elsewhere; nor will his connection with a public institution, solely for the purposes of education, preclude him from so voting, being otherwise qualified, if his domicile is there.”

In another place it says:—

“In that case, we are of opinion, that his going to a public institution, and residing there, solely for the purpose of education, would not, of itself, give him a right to vote there, because it would not necessarily change his domicile; but in such case, his right to vote at that place would depend upon all the circumstances connected with such residence.”

Now, there is the decision of the supreme court given in answer to this very Williamstown case. There is not a selectman in Williamstown who has not read that decision; and that decision makes it as clear as day, that residence for purposes of education of itself, does not give the right of voting. They have had this decision before them ever since 1843, and I suppose there is not a selectman in Massachusetts that does not know, and has not known for the last ten years, that the mere residence for purposes of education does not, of itself, make a man a voter in the place. Now, would any man propose to put into the Constitution that which is so well settled?

I will make one other remark which I ought to have made before. When that answer came from the supreme court back to the legislature, there was no legislation on the subject. These Williamstown gentlemen have been before the legislature, as I understand, and they have obtained from the legislature no statute. Is that not *prima facie* evidence against them? They have been here before the legislature having majorities of different parties, and presented the decision of the supreme court, and they have obtained no statute. Would it not have been better to make a statute than to put such a provision into the Constitution? For, if the court put an unexpected construction upon a statute, it can be modified. But no legislature has given a statute, and that is a strong reason why we should not adopt such a provision. I suppose that those who wished such a statute passed, wished to shut out the students from voting altogether. The legislature did not intend that it should be done, and we do not intend that it shall be done. No gentleman has advocated the position which the gentleman from Williamstown takes, and which it is supposed by some of the friends of the measure it will result in.

I, therefore, hope, Mr. Chairman, that so far as the students are concerned, we shall strike out the clause entirely. It is not a harmless thing. It will be considered by the selectmen, as the

gentleman from Williamstown now understands it. Sir, the selectmen will say, it cannot be that these four hundred grave men discussed for a whole day, and finally adopted into the Constitution a provision of a half a dozen lines, merely to say what we all knew before, what every child knows, that a mere staying in a place, does not give the right of voting. That cannot be. And they will construe it otherwise. We shall mislead them; we shall put an element of doubt in it. I hope, therefore, that it will not pass.

There are other objections; but I will not take much of the time of the Convention in considering them. It is said, that no person shall lose his residence “while navigating the waters of the State or of the United States, or of the high seas.” Is he to lose it while absent on land? What peculiarity is there, Mr. Chairman, in the navigation of the high seas, to preserve the right of voting? Salt water is said to preserve many things; but, I never heard before that it was peculiar for preserving the right of voting. [Laughter.] It is said, that if a man is absent on the high seas, his right of voting is preserved; but, if he is absent on land, heaven help him! It cannot be that we are gravely asked to provide that a man who is absent for several years upon the high seas may have his right to vote retained, while the man who is absent from home upon land shall lose it. How will this matter be looked at, hereafter, when this little excitement about students has passed? People will say, here were lawyers and judges in the Convention, and the Convention said that if a man was absent from home on the high seas, he should not lose his right to vote; plainly implying, that if he was absent on land he must lose it. If he has gone to California and been digging there a long time, he cannot vote when he returns; or, if he travels over land to China.

Mr. BOUTWELL. How can that be done?

Mr. DANA. He can travel overland to China without being on the water, at least, longer than ten days at a time, to say nothing of Behrings Straits. He comes back and goes to Williamstown, and wants to vote, and the good selectman says he has been absent, and inquires if he has been navigating the waters of this State. No, he could not do that for four years. Have you been navigating the high seas? No, Sir, only ten days. All the rest of the time I was on land. Then, you see, Sir, you cannot vote; for the Constitution has taken up that subject, and those who made it have said, that if you had been on the high seas, then you might have voted, but as you have unfortunately been on land all this time you cannot vote. Now, it strikes me, that would be the very language, or else we are here enacting an absurdity; one or the other. If it be true, that a man does not lose his right of voting by being away on sea or on land, why confine the privilege to the sea? *Expressio unius est exclusio alterius*. If it be not true, then we are making an odious distinction in favor of every one who is away upon the ocean. My sympathies are very much with the men upon the ocean; and if I thought it just to say, that the seamen might have the right to vote, notwithstanding their absence, but that the land lubbers should lose the right in consequence of absence, why, I would go for it; but, I fear it is not quite fair and just.

This resolution also says, that no person shall lose the right of voting, “by reason of his

presence or absence while employed in the army or navy of the United States.”

Is not that going a good ways? Here is a man at the age of twenty-one years, an inhabitant of the State. He enlists into the army of the United States, or into the navy, and he is ordered off, and his absence is only while he is in the army or navy of the United States. How long may he be in the army, and then come back and vote? He may be there twenty years. Suppose he is an officer, and is in the army for life; and yet, according to this resolve, he would be a voter in Boston if he was absent from this city to the day of his death. He need not pay any tax there in order to vote, for we have abolished that. But he continues to be a voter. General Scott, on the same principle, would have been a voter in London, or whatever place it was in the old dominion from which he came in 1810, although he has ever since that time been an officer in the army of the United States. So every officer in the army and in the navy of the United States may continue to vote in the place where he last had his residence. And, although his name may not be on the voting list, he may turn up at the end of twenty or thirty years and claim the right to vote; and, if the selectmen do not put his name on the list of voters, or will not do it, he could sue them!

Mr. HALLETT, for Wilbraham. Does the gentleman mean to say that General Scott should not be a voter at the place where he had his original domicile, unless he had acquired another.

Mr. DANA. That I do not answer, one way or the other.

Mr. HALLETT. If he had a domicile, then this does not apply to General Scott; nor to any one who has a domicile elsewhere.

Mr. DANA. I do not know why it does not apply. It says, “That for the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the army or navy of the United States.”

Now, if his domicile is in another place by reason of his military capacity, then he cannot have acquired the capacity to vote there. Because we have said in Massachusetts that that capacity shall not be so acquired. We have shut it out entirely.

Mr. HALLETT. But the gentleman says, that this provision declares that he shall not lose his residence.

Mr. DANA. That is, his residence for voting. There is another difficulty a-head. We are going to have two or three kinds of domiciles going on at the same time. That is, a gentleman may have one domicile for a residence, another for voting, and another for military service. General Scott—for whose right of voting the gentleman is so anxious—would retain his domicile for voting in Massachusetts, and acquire one for paying taxes elsewhere; and if a man from Massachusetts were in the army or navy, he could pass through Boston after thirty years—having had many domiciles in the interval—and if he found the people engaged in voting, he would have the right to drop in his ballot.

It is perfectly true, as the gentleman, (Mr. Hallett,) says, that he may acquire a domicile elsewhere; but, we mean to confine his domicile for voting to the last place where he happened to be, and say to him, so long as you remain in the

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QUALIFICATION OF VOTERS.—WILKINSON—DANA—WALKER—WILSON.

[July 5th.

army or navy you shall vote at your last residence here. That is introducing a new class of domiciles. Men in the army and navy, and men navigating the high seas, shall not gain or lose a domicile for the purpose of voting by change; but domiciles for all other purposes, they may lose or gain. Suppose a student leaves his home in Brookfield, and goes to Williamstown to study. His residence is Brookfield, for taxation. But he is in Williamstown; and suppose his parents then remove to Williamstown—what is the result? Why, his domicile for taxation is then in Williamstown, but not his domicile for voting. That would be the result. If his parents, to whom he intended to return, move to Williamstown, he would be taxed in Williamstown, and would be obliged to perform military duty there, and jury service; and he would have all his rights and obligations there except the right of voting, and that he could not exercise anywhere.

Then suppose his parents remove to Northampton. His domicile for the purpose of voting would revive.

I cannot believe that this Committee ever intended to pass such a resolve as that. I cannot believe that this resolve was thoroughly searched through and examined in all its bearings by the learned and able Committee who reported it. I am inclined to think that they took it a great deal on account of the urgency of the gentleman from Williamstown, who has set his heart so much upon it; and, Sir, it makes my heart bleed for him to be obliged to oppose it, as I feel it my duty to do. Every word costs drops of blood. [Laughter.] Seeing how deeply the gentleman from Williamstown took this matter to heart, I presume the Committee felt anxious to gratify and accommodate that gentleman, and therefore they reported the resolve.

Mr. WILKINSON, of Dedham. If the gentleman from Manchester will allow me, I would like to ask him whether he puts the same construction upon this resolve that he imputes to the gentleman from Williamstown. I do not exactly understand from the tenor of the gentleman's remarks how he would construe it himself.

Mr. DANA. That question is pregnant with another question, and that is, whether I do correctly interpret the gentleman from Williamstown. The gentleman asks me if I put the same construction on the resolve which I impute to the gentleman from Williamstown; but, Sir, that gentleman does not complain of the construction which I put upon the language. Indeed, he admits that he means that. Now here is my difficulty. I do not want the Convention to take this resolve upon my interpretation. I do not want them to take it upon the interpretation of the gentleman from Taunton. I do not want them to take it upon the interpretation of the honorable member from Cambridge; neither do I want them to take it upon the interpretation of the gentleman from Williamstown. I am not satisfied with the resolve upon any of the interpretations which have been given to it; and I think it is quite reason enough why it should be rejected, that we find the lawyers here are obliged to ask one another's opinion across the House, to find out what this language does mean, and they do not give uniform answers. If the gentlemen who concocted this measure, and who, therefore, ought to know the most about it, do not agree in their construction, how can we be

expected to understand it? If those who have prepared the remedy for the evil do not know what the medicine is which they have concocted, how can we be expected to know what it is, who only have an opportunity to read the label? We are obliged to take the language as we find it. The gentleman from Williamstown wants it to be passed so as to prevent all the students from voting, while the gentleman from Taunton wants it passed because it will produce no such effect as that. The gentleman from North Brookfield agrees with them, that it is a very serious and important measure; but, they question one another across the House to know what it means, and I think that is reason enough why we should not pass it. I wish to have a construction given it by the body who passes it, for a mere private opinion in the matter is of little consequence; I wish to have the Committee say, in plain terms, whether they mean to exclude all students, or not. Besides this, there are other objections that lie behind this, with regard to the provisions in relation to the army and navy; but I will not enlarge upon that part of the question. It is said, by the way, that this same clause has been put into the Constitutions of four States. Now, I think the history of that matter will be found to be this. In the Convention which formed the Constitution of the State of Maine, they adopted this same proposition, and without much consideration, it was copied verbatim into the Constitutions of the other three States which have been mentioned. But as I understand it, the gentleman from North Brookfield says that nineteen of the States have substantially the same provisions in their Constitutions; while the gentleman upon my left, (Mr. Stevens, of Clinton,) says, that of these nineteen only four have the word "student" mentioned. I think this puts the force of the argument rather against the gentleman from North Brookfield.

Mr. WALKER. I think I stated expressly the first time that I spoke on this subject, that several of the States—I did not remember whether it was four or five—had this provision, word for word; while in nineteen States, there was a general provision in the Constitution on the subject.

Mr. DANA. That is just what I said. The statement of the gentleman from North Brookfield is undoubtedly correct, that the Constitutions of nineteen States have a provision substantially of this nature, but he did not undertake to say how many of them mentioned the word "student." It is now said that four of them have a provision in relation to students; and the inference appears to me to be that fifteen out of the nineteen States have refused to make special reference to "students." This provision has stood in the Constitution of the State of Maine for thirty-three years; and out of nineteen States which have adopted the provision substantially, fifteen have struck out the clause relative to students, while only four have retained it. Now, if we are to be governed by the views of the majority of the States, in relation to this matter,—and the presumption is, that the majority are the wiser,—the argument goes rather in favor of striking out this clause in relation to the students than in favor of retaining it.

Mr. WILSON, of Natick. I suppose that after listening to the arguments of the able and learned gentlemen of the legal profession,—I call them learned, because that is the custom in this Con-

vention,—we are prepared to come to a vote to-night. At any rate, I hope we shall take the vote, if these various gentlemen do not agree in their opinions, for nobody expects to find lawyers agreeing unless they are paid for it; if they do, they expect more than I do. Now, while they disagree very much in their interpretation of this article, it seems to me that the people who, like me, are no lawyers, will have no difficulty in understanding this question. In my view, the declaration is simply this—that the mere fact of the presence of a man in Massachusetts who belongs to the army of the United States, shall not make or unmake him a voter; the mere fact of the presence of a man here who belongs to the navy of the United States, shall neither make nor unmake his right of suffrage; his mere presence while navigating the waters of this State, or of the United States, shall not have that effect; nor shall his mere presence as a student in Massachusetts, make or unmake his right of suffrage; that is the whole of it. After all these arguments, it merely amounts to that, and nothing else. Now, Sir, I do not rise for the purpose of making a speech upon this subject. We have had a great many interpretations put upon this matter, and it seems to me as though gentlemen had undertaken to see to what extremity they could carry this matter, and how far they could make these various interpretations consistent with the language of the resolve. I hope, Sir, that we shall take the vote to-night. We have spent quite as much time upon this question as I think it deserves; for I regard it as of very little practical consequence any way. As it is becoming late, I hope the vote will be taken at once.

Mr. WALKER, of North Brookfield. I do not rise for the purpose of making a single argument, or of replying to a single argument which has been made; but I understood the gentleman from Cambridge to complain that I had imputed improper motives to him and to others who acted with him. I did not intend that my language should bear any such construction. I only said that if the gentleman from Cambridge had been as much troubled with the interference of the students in the university there, as the people of some other places had been from a similar cause, I thought they would feel very much as other people do. I did not desire to be understood as imputing any bad motives to those gentlemen, for I know they bear a highly honorable and respectable character.

Mr. PARKER. I am very happy to hear the gentleman's disclaimer; but his language went a little farther than that, if I am not mistaken. I understood him to say that, the views of the gentleman from Cambridge were determined by the fact of the operation of the resolve in their locality, as to the manner in which the students might vote in the elections in that city and in Middlesex county.

Mr. WALKER. I certainly did not intend to impute any improper motives to the gentleman, although it is well worthy of note, that in the first place, the motion to strike out came from one of the gentlemen from Cambridge, and another gentleman from Cambridge took hold with a great deal of zeal upon the same side. Now, the gentleman who has just spoken, (Mr. Dana,) I thought, rather reflected upon the Committee, that they had not examined the matter themselves, but, reported the resolves in order to please the

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QUALIFICATION OF VOTERS.—WALKER—PARKER—STEVENS.

[July 6th.]

gentleman from Williamstown. In regard to that matter, I beg leave to state that, the Committee is constituted, like all the other committees of this body, of gentleman of the different political parties; and if I mistake not,—I can tell, of course, by referring to the records,—there was not a single objection to the reporting of this resolve.

Mr. DANA. If the gentleman will allow me, I will state that, I imputed no improper motives to the gentlemen who composed that Committee; I only thought that they had a good deal of tenderness of heart for the gentleman from Williamstown.

Mr. WALKER. Well, Sir, I did not observe any particular emotion upon the part of the Committee for the gentleman from Williamstown. That gentleman appeared before the Committee and presented his case; he presented these astounding facts of what he saw, and what he knew, and what he had experienced. I admit that those facts had an effect upon me, and, Sir, they ought to have an effect upon any one who should become acquainted with them. When we come to consider, therefore, what ought to be done under these circumstances, and when we had presented to our minds the fact which has been adverted to here, that this same provision existed in the Constitutions of several other states, which have been formed within a few years past, it seemed reasonable and proper that we should recommend its adoption. Not a word was said in Committee as to its political effect in Williamstown either upon one side or the other. I did not know how a single member of that school voted, and the matter was considered without reference to its political bearing, so far as I am aware. Indeed, I had no suspicion of anything of the kind until I discovered the very earnest efforts in regard to this matter arising from a particular quarter. I should be very happy to have the vote taken; I think the subject has now been sufficiently discussed upon both sides.

Mr. PARKER. I must say, Mr. Chairman, that the latter part of the remarks of the gentleman from North Brookfield have taken away very much of the virtue of the explanation which he had just made. [Laughter.] It seems to me that he has gone back again to the original imputation; and in relation to that, I have only to repeat that I have had no connection whatever with political affairs in Cambridge. I never have been in a situation that made me desirous of meddling with this, that, and the other matter, that may have a bearing upon political questions as they arise in Cambridge. As I said before, no person has ever heard me request a student to vote or not to vote, or to vote either one way or the other. No person has ever seen me marshaling the students at the polls in order to control their action; nor am I aware that I have ever been present to see a student give a vote, or that one has ever been present to see me give one. I think I may stand exonerated from all imputations of that character, and I hope that I may of all suspicion of being biased, or of my acts being controlled, by any reference whatever to the effect of this measure upon the city of Cambridge.

Mr. STEVENS, of Clinton. I must beg the indulgence of the Committee to a few remarks, although the hour is late, and we have already had a protracted discussion upon this subject. If I did not give this resolve the same construction which the gentleman from Williamstown and the gentleman from Lenox have put upon it, I certainly

should not have moved to strike out this clause; but with this construction, I cannot see why a distinction should be made between this class of persons and any other class who may reside in a place for a temporary purpose. I did not, however, rise for the purpose of stating my views at length, but merely to allude to certain statements which have been made by gentlemen in their arguments upon this subject. The gentleman from Williamstown alluded to a law which had been enacted in New Hampshire, and which had the effect of disfranchising the students of Dartmouth college; and the reason which was given by him for procuring the passage of this act, was the interference of the students in the general business affairs of the town. It so happened, Mr. Chairman, that I was a member of that college at the time when this act was passed; and I supposed, and I always have supposed, until I heard the statement of the gentleman from Williamstown, that I knew the reason why that act was passed. The fact was, that the voters of that town, aside from the students, were very nearly equally divided in politics—so nearly, that if the students did not vote, it was very doubtful which way the election would turn, and when aided by the votes of the students, it was pretty certain that the representatives of the town of Hanover would be of a particular party. This was not satisfactory to certain gentlemen of that and neighboring towns in the same county, and at the suggestion of some of their political friends in the college, the bill was introduced into the legislature. It was supposed at the time to have been carried through for political purposes alone. I supposed so then, and I have never seen or heard anything since to induce me to change my opinion. So far as the students taking part in town affairs is concerned, I never heard one word of sensible complaint upon the subject. On the contrary, the students acted on school committees, and in other capacities in relation to the schools of the town on many occasions, and were very highly commended for the manner in which they performed these duties. When this proposition was brought in here, remembering at once the circumstances of the enactment of the law in relation to Dartmouth college, I asked the gentleman from Williamstown whether the passage of this resolve would not produce a different result in their political elections; and he said it was true that it would do so, but at the same time that it was not introduced for that purpose, but simply because the students ought not to vote as a matter of principle. Now, although I had no doubt but that the gentleman was perfectly honest in making this statement, yet I did not believe that it was entirely true; I did not believe that this resolve would ever have been thought of, unless it had been for its bearing on political parties. If the great body of the students had voted the other way, I think you would never have had this resolve introduced into this Convention. This was the conclusion to which I arrived, judging from what I had seen at Hanover; and now, Sir, I will ask the gentleman from Williamstown whether the students voted in the same way with the majority of the citizens.

Mr. DUNCAN. I will say that the most flagrant outrage has been committed by the party to which I belong; and the very acts of which I complain have been committed by the party to which I belong. The flagrant act of which I

complain was, that one Sabbath afternoon forty men, belonging to the college, were put upon the list to vote at the polls the next day. These men were those belonging to the institution, who had all the ordinary qualifications, such as being over twenty-one years of age, and who had been in the State two years and in the town six months, and they were all allowed to vote.

Mr. STEVENS. As I did not mean to detain the Committee long, I will now pass to a statement of the Chairman of the Committee setting forth the reasons why this resolve was reported. Without meaning to reflect at all upon the course of the Committee, it seems to me very singular that the Committee should report resolves to engraft into the Constitution, or organic law of the State, a provision like this, simply from certain facts which were brought before them in relation to evils existing in one locality, without making inquiry whether the same evils existed in other and similar localities. I have heard of no such complaint from any other quarter. There are probably, in the city of Cambridge, four or five times, and perhaps even ten times, the number of students which would come under the provision introduced for the benefit of Williamstown as in that town. I have myself made inquiries of gentlemen from Cambridge, Amherst, Andover, and Newton, in all of which places seminaries of learning exist, whether any provision of the kind is desired by their citizens; and they unanimously tell me that no such thing is desired in those localities. I am certainly disposed to gratify the citizens of Williamstown in anything which is reasonable, and I am especially anxious to gratify my friend from Williamstown, who is so earnest in this matter; but why should we disfranchise so many persons, who are not guilty, in order to punish a few persons who are guilty? If this provision should be introduced into the Constitution it would operate harshly upon all this class, merely because a few persons, in a certain locality, have been guilty of certain offences. Now, because these individuals are guilty, are you going to punish the innocent, who are much more numerous in other localities, because, simply, they embrace the same occupation?

One word in regard to the remarks of the gentleman from Lenox, (Mr. Bishop). He says that this restriction, instead of abridging the right of voting, enlarges it. And how does it do that? It enlarges it, as he says, because it fixes the domicile of a party for all time to come, and that the student, instead of losing six months' time in gaining a residence when he enters college, and six months in gaining another when he leaves college, keeps his residence all the time. Now that may, in one sense, be true; but, I hold that whatever tends to obstruct and interfere with the right of suffrage, in another sense abridges that right, and is practically an interruption of that right. Now, what will be the effect of this. I presume to say, that a very large number of the students in seminaries of learning, who find themselves there after they are twenty-one years of age, are there, simply, because in their early life their parents had not the means of supporting them at school, and they spent their early years in laboring upon the farm, or in manufacturing, or mechanical pursuits, for the purpose of acquiring funds to obtain an education. It chances, frequently perhaps, that they do not acquire funds until after they arrive at twenty-one or two years

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of age. At the age of twenty-one, before connecting themselves with any seminary of learning, no matter where they may be in this Commonwealth, they are entitled to vote, possessing the usual qualifications, but at twenty-two, a year afterwards, they pass, perhaps, into a seminary of learning, and what is the result? They have, as I said before,—and it is true to a great extent, and gentlemen here know it is true in respect to a very large number of persons,—they have labored hard to acquire funds to enable them to get this education. Now, in order to enjoy the right of suffrage, they must not only leave the institution where they are pursuing their studies, for a time, longer or shorter, but they are also compelled to draw heavily upon this small fund they have so labored to acquire, to enable them to reach their homes, where they are entitled to vote. I ask if this is not a restriction upon their right to vote? Is it not a virtual deprivation of it? We have already agreed to abolish certain tax qualifications, heretofore required of voters, because of their effects upon some classes of individuals. I yielded to the force of the arguments which were brought in favor of that change. I yielded assent to all that was said of the influence which the payment of the dollar, or the small pittance which the State required to be paid, exercised upon the voter; and I now ask you, Mr. Chairman, and gentlemen of the Committee, whether we shall adopt such a provision as this, which virtually requires a student, who is endeavoring to fit himself to perform well the duties he owes to his country and to the world, to withdraw from his scanty and hard-earned funds, a still larger sum than you have heretofore required of voters, or otherwise lose his right of voting? I, for one, cannot do it. It is not right to take from him his funds in order that he may be secured that right. These are the reasons why I hope the Committee will adopt the interpretation put upon the resolve by the gentleman from Lenox and the gentleman from Williamstown, and then support the amendment. I am very sorry to see that there is a difference of opinion as to the true meaning of this resolve, because it will affect the vote upon this question. Some will vote for it because it is harmless and means nothing, out of respect to the Committee reporting it; and others will vote for it because it is stringent, and they desire to abridge the rights of this worthy class. If I were going to do anything to affect injuriously the exercise of the right of suffrage by any one class, I certainly should not begin here. I cannot support any provision that will operate upon one class of our citizens alone, but I would rather provide that it should be universal, and confined to no one class. If you propose to restrict the right of suffrage at all in reference to residence in a town for a temporary purpose, carry out the principle and apply the rule to all persons who are in a town for a temporary purpose. Let the mechanics of New Hampshire, who come into the city of Lowell every spring to engage in temporary employments during the summer months, be deprived of the right to vote.

If gentlemen will examine the debates of the Convention of 1820, they will find that the question was discussed there, not in reference to students, but in reference to those engaged temporarily in agricultural pursuits. The farmers complained, then, that they employed laborers to help them through the spring and summer months,

and that they were permitted to come to the polls to vote, and thereby, perhaps, might control their affairs. But the Convention of 1820 wisely determined to place a restriction of the right of voting upon any class, and I hope we shall not begin at this late day to do what they would not do in 1820.

One remark of the gentleman from Lenox, (Mr. Bishop,) surprised me much, and that was, that we have persons in this State who come here from other States to pass a period of their lives in study, who have no interest in our town affairs, and, therefore, ought not to be permitted to take a part in them. Now, Sir, I supposed that we prided ourselves somewhat in our government. We have been inclined to boast of ours as a model State, and very many gentlemen have spoken here of the little democracies, the pure democracies, which exist in the municipalities of our State, as the cause of our prosperity and success. Now, I would ask, when a young man comes here from another State to acquire an education, why not let him perfect it?—why not let him take a part in town affairs—in these democracies,—study in these “schools of freedom,”—so that when he returns home he may carry with him the seeds of true democratic liberty, and disseminate them among the community where he may reside?

Mr. WILKINSON, of Dedham. The question is simply, whether we will incorporate into the Constitution a correct exposition of a provision contained therein, somewhat doubtful and uncertain, at least to those who are not lawyers. I do not understand the gentlemen who argue against this cause to deny that the explanation should exist somewhere, and be in some form accessible to those who are to decide upon questions of domicile. They doubt the expediency of putting it into an organic law. It is not perhaps of vital importance so to do. It seems to me, however, that all provisions of the Constitution should be made as plain and clear as practicable. That all necessary explanations should appear upon the face of the instrument itself. The framers of the Constitution in 1780 were of this opinion, and they undertook to define “inhabitaney” as used in the Constitution. They evidently considered “inhabitaney” (or residence, as adopted since, each being equivalent to domicile,) as needing explanation, and they thinking the Constitution the proper place for this explanation, inserted the following provision,—“To remove all doubt concerning the meaning of the word ‘inhabitant’ in this Constitution, every person shall be considered an inhabitant for the purpose of electing and being elected into any office for place within this State, in that town, district, or plantation where he dwelleth or hath his home.”

The trouble was that this definition was about as indefinite as the term defined. It by no means removed all doubts. Questions of great difficulty arose, eminent lawyers differed in their construction of this provision. Its application in the several instances enumerated in this resolve was matter of argument before the Supreme Court. It has been there settled in accordance with the doctrine of this resolve, as I understand it. Should the amendment proposed by this Convention be adopted, residence would be the sole qualification of voters. This rather increases than diminishes the propriety of allowing a satisfactory definition to accompany the use of the term.

If there is any difficulty in the phraseology of the resolve it can be put into any form the gentleman from Manchester may desire. No one doubts his capacity to incorporate these rulings of the Supreme Court into such words as may not be susceptible of any ambiguity. The amendment proposed by me would seem to cover all the objections urged by the gentleman for Manchester. It relieves the resolve of all invidious distinctions, if it were obnoxious to any such change before. It has been said that this matter is a proper subject of legislation: that the legislature may pass an act regulating these cases of doubt. I think this suggestion mistakes the true functions of the legislature. The court and not the legislature must interpret the Constitution. The sources of constitutional construction, aside from the instrument itself are the decisions and opinions of our highest judicial tribunal. These are not equally accessible to all. If then this resolve embodies a clear judicial construction of an ambiguous constitutional term, why should it not have a place in the Constitution?

Mr. HALLETT, for Wilbraham, called for the reading of the resolves, as proposed to be amended. They were accordingly read.

The question being taken on agreeing to the amendment of the gentleman from Dedham, (Mr. Wilkinson,) it was decided in the affirmative.

The question was then taken on the motion to strike out the words, “or while a student of any seminary of learning,” as amended by the adoption of the amendment of the gentleman from Dedham, and it was decided in the negative.

So the motion did not prevail.

The question recurred on the adoption of the resolution as amended. A division being called for, and no quorum voting,

Mr. CROWNINSHIELD, of Boston, moved that the Committee rise and report that fact to the Convention.

The Committee accordingly rose, and by their chairman, (Mr. Giles, of Boston,) reported to

THE CONVENTION,

That they had under consideration the resolutions relating to the subject of the Qualification of Voters, and had made some progress therein, but no quorum being present, they had been unable to come to any vote upon it.

On motion by Mr. CROWNINSHIELD, of Boston, the Convention then at fifteen minutes to seven o'clock, adjourned.

WEDNESDAY, July 6th.

The Convention assembled, pursuant to adjournment, and was called to order by the President, at ten o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read.

Report from a Committee.

Mr. WALKER, of North Brookfield, from the Committee on the Qualification of Voters, submitted the following Report, which was referred to the Committee of the Whole, and ordered to be printed.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 6, 1853.

The Committee on Qualifications of Voters, to

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SECRETARY, TREASURER, &c. — WOOD — WALKER — WILSON — EARLE.

[July 6th.

whom was referred an order of the 19th of May, in regard to the expediency of so amending the Constitution as to provide that no person who shall make or become, directly or indirectly, interested in any bet or wager depending upon the result of any election, shall have a right to vote in such election, or be qualified to hold any office for which he shall be a candidate at such election; also, the expediency of so amending the Constitution as to exclude from the right of suffrage, and the right to hold any office of profit or trust, all persons who may be convicted of bribery, larceny, or other infamous crime; also, all persons who forcibly, or by promises of reward, shall attempt to induce any voter to refrain from voting, &c.; also, the order of June 18th, on the expediency of providing that no voter, during the time of holding any election at which he is entitled to vote, shall be compelled to perform military duty, attend court as a suitor, juror or witness, &c.; also, the order of May 31, in regard to the expediency of requiring that all persons who may be admitted to the right of suffrage after the year 1856, shall be able to read the Constitution of this Commonwealth, printed in the English language; also, the petition of Harriot K. Hunt, that she may be excused from paying taxes, or allowed to vote; also, the petition of Wendall Phillips and others, that woman may be heard at the bar of this Convention in support of her rights, report, that it is inexpedient for this Convention to take any action in relation to the same.

AMASA WALKER, *Chairman.*

Mr. WILSON, of Natick, moved that the Committee of the Whole be discharged from the further consideration of the resolves on the Qualifications of Voters.

The motion did not prevail.

Mr. WILSON moved that said resolves be laid upon the table.

The motion was agreed to, and the resolves were accordingly laid upon the table.

On motion of Mr. WILSON, of Natick, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Wood, of Fitchburg, in the chair, and proceeded to consider the Report of the Committee on the Encouragement of Literature, on the subject of

The School Fund.

The Secretary read the resolution, as follows:—

Resolved, That the legislature shall, as soon as may be, provide for the enlargement of the school fund of this Commonwealth, until it shall amount, at least, to the sum of two millions of dollars; and the said fund shall be preserved inviolate, and the income thereof shall be annually appropriated for the aid and improvement of the common schools of the State, and for no other purpose.

The resolution was agreed to, and, on motion of Mr. WILSON, of Natick, the Committee rose and reported the same to

THE CONVENTION,

With a recommendation that it do pass.

The Report of the Committee of the Whole was concurred in, and the resolution was ordered to a second reading.

On motion of Mr. WILSON, of Natick, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

For the purpose of considering the Report of the Committee on the

Encouragement of Literature,

In relation to amending the second section of the fifth chapter of the Constitution; that Committee having reported that it is expedient to amend said section by striking out therefrom the words "University of Cambridge."

Mr. Oliver, of Lawrence, in the chair.

The Report was read.

The question being on concurring in the same.

Mr. WOOD, of Fitchburg, asked for the reading of that part of the Constitution which is proposed to be amended.

It was accordingly read by the Secretary.

Mr. WALKER, of North Brookfield, remarked, that on reference to this provision of the Constitution, it was evident that the change proposed was a proper and desirable one, and one which ought to be adopted.

Mr. WILSON. I moved the consideration of this subject in Committee of the Whole, because I thought that the question was a plain and simple one, and that there would be no difficulty in arriving at a conclusion in regard to it.

Mr. WOOD, of Fitchburg. The consideration by which the Committee was actuated is simply this. In making provision for the encouragement of literature, it is deemed inadvisable to make a distinction in favor of the University of Cambridge. The Committee, therefore, recommend the striking out of those words, because they make an invidious distinction in favor of that institution. The proposition is designed for the encouragement of literature in grammar schools and other public schools, as well as in higher institutions of learning.

Mr. EARLE, of Worcester. If I understand it aright, this puts the subject exactly on the ground upon which the friends of Harvard College have long wanted it to be put. Their desire is, simply to stand upon an equality with other colleges. When this university at Cambridge was founded, there was no other institution of a similar class in the Commonwealth. As an evidence of this, it will be recollected, by those who are familiar with the subject, that, in applications for aid that had been made to the legislature for years past, for the benefit of the college libraries, &c., such applications have always been coupled with applications for the aid of other colleges. This amendment simply puts all institutions of learning upon an equal footing in reference to the aid to be furnished by the State. And it appears to me eminently proper that the report of the Committee should be adopted.

The report was concurred in.

On motion of Mr. WILSON, the Committee rose, and by their chairman reported to

THE CONVENTION,

That the resolves ought to pass.

The Report of the Committee was concurred in, and the resolves were ordered to a second reading.

On motion of Mr. STETSON, of Braintree, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

On the unfinished business, being the Report of the Committee in relation to

Loaning the Credit of the State.

Mr. EAMES, of Washington. It appears to me that the House is not full enough at present to consider this subject. I move that the vote by which the Convention resolved itself into Committee of the Whole be reconsidered.

Mr. STETSON. Is that motion debatable?

The CHAIRMAN. It is not debatable.

The question on the motion to reconsider the vote was decided in the affirmative.

IN CONVENTION.

The question recurred on the motion to go into Committee, and being taken, it was decided in the negative.

Secretary, Treasurer, &c.

Upon motion of Mr. WESTON, of Duxbury, the resolves reported by the Committee on the Secretary, Treasurer, &c., with the motion made by the member for Manchester, (Mr. Dana,) to reconsider the vote by which they were finally passed, were taken from the table for consideration.

Mr. WOOD, of Fitchburg. At the time that the motion was made to reconsider the vote by which the resolves were passed, I certainly understood the gentleman for Manchester, (Mr. Dana,) to object to the passing of only the second resolve, viz.: that relating to judges of probate, clerks of courts, commissioners of insolvency, district attorneys, registers of deeds, county treasurers, and county commissioners. I understood him as urging upon the consideration of the Convention, that it would be better that the judges of probates should be elected for a longer term of time than three years, and in that respect taking him out of, and distinguishing him from, the commissioners of insolvency, district attorneys, county treasurers, county commissioners, &c., and as giving some reason at that time, in regard to that matter. At a subsequent period, a few days ago, when the subject came up, I understood the gentleman to say, that he intended that the motion to reconsider should extend to all the resolves, and the President so considered it. But, I believe, however, the gentleman in his argument, though speaking somewhat generally in regard to the other officers, confined himself more particularly to sheriffs and judges of probates. In regard to sheriffs I believe he abandoned the argument, after it was stated by the gentleman from Lenox, (Mr. Bishop,) that there would be some provision made in regard to the removal of sheriffs, if he should refuse to perform his duties as such. I say that he then abandoned his argument in that regard, and confined his remarks to judges of probate.

Now, Sir, I wish to say that the election of judicial officers, is somewhat of an innovation into the principles of our government. It has generally been considered in this Commonwealth that it would not be safe to trust the people with the election of any judicial officers, and although our Committee have already reported that the judges of the Supreme Court and of the Court of Common Pleas, should not be elected by the people, and that it is inexpedient to make any change in the Constitution in that respect—which report has not yet been acted upon, but will be, and probably will be accepted—yet it is said that the judge of probate so far partakes of the nature of a judicial officer, that this is an innova-

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tion which had better not be introduced, and if introduced, that he should not be elected for a longer time than three years. Now all this, it appears to me, arises from the fear of the people. The apprehension may, perhaps, be well grounded, or it may not be. But there is, and there always has been, a large party in the United States, which say they are not afraid to trust the government in the hands of the people; that, although the people may be wrong, and sometimes excited and carried away from the rights, for the moment, yet they settle down aright, and after all, the principles of our government are founded upon the people. That is theory, and that is the principle, and this large party has carried out the principles, to see if the people can govern themselves. There has been an apprehension of trusting the people from the beginning. It arose in England when the popular power was growing stronger and stronger, and it was supposed that there must be one branch of the government beyond and above the power of the people, otherwise there would be no stability or safety in the government—that either the executive, or legislative or judiciary branch should be out of the control of the people, or our whole government would be endangered.

I do not intend upon this occasion to go into that argument at any great length. I say I belong to the party, heart and soul, which is not afraid to trust the people, and I do not believe that an instance can be found where I have hesitated to rest power with the people, and running out the principle into the small communities of the people. That, I believe to be the true principle of republican governments. Hence, it is not surprising that I should be in favor of the election of judges of probate by the people. I say the people are safe to be trusted, and every argument introduced upon this occasion has seemed to imply that it is not safe. It has been said, in the first place, that you want a man who shall be independent, you want to elect a judge who shall feel above any small, petty movement of the community, or of any influential man in the community, by whom he may be guided, or whose influence shall control his independence. Is it not as important that the governor of the State should be independent, as it is that the judge of probate should be, in any one of the counties of the State? Do you not, by saying that unless a man is elected for a long term, he is good for nothing, in consequence of his reliance upon an annual or triennial election, strike down all our annual elections? Does it necessarily follow, that a man is not independent, and that he does not feel that he can judge righteously between man and man, merely because he is dependent for his continuance in office, upon an annual election? It seems to me that the idea carries with it a suspicion that the people are not to be trusted. It is said that you want a man to be independent, and if you rely upon the people for the selection of a judge of probate, he will not be an independent, but a time-serving man, one who is kind and benevolent, and will say "yes," "yes," to every-body. Is that such a man as you like, and will the gentleman for Manchester, (Mr. Dana,) say that such is the man he would prefer? He says, let the governor select. But is the governor any more than one of the people, and is he any wiser, or any safer to be trusted than the people themselves. Will not the people require that

the man whom they shall select as their judge of probate, shall possess the same sterling qualities as their governor? It seems to me that it will be so, and, therefore, it strikes me, that if we provide that the judges of probate shall be elected by the people, and that they shall be elected for a long term, instead of a short one, strikes at the principle that it is not safe to trust the people in certain difficult cases, and that there is something over and above the control of the people.

One remark more, as to the question whether a judge of probate should be elected for a longer term than commissioners of insolvency, district attorneys, and the other officers named in this resolve. It is said by the gentleman for Manchester, (Mr. Dana,) that the nature of the business which comes before him, requires that he should hold his office for a longer term. I think not, and my experience is directly the contrary. I know of nothing connected with his business which renders it necessary that he should continue in office for any longer period than the commissioners of insolvency and county commissioners. The county commissioners have not been chosen oftener than once in three years, and although there is business which comes before them, which continues a much longer time than that, and which sometimes hangs along for five or ten years, yet we have experienced no great difficulty in that matter. It sometimes proves a benefit, as it brings up the matter afresh before a new commissioner, who investigates and decides it immediately, which would not be the case if the old commissioner remained in office for a longer time.

Now, it is said that there are a great many matters connected with trust estates, which come under their direction and control, and that it is necessary that a man should remain in office long enough to become familiar with that subject. But it is not supposed that a man will be put into that office to learn the trade, as it were, from the foundation, but one who will bring with him some previously acquired knowledge, of the subject, and of the general principles which control and govern such matters.

And further, I say, that judges of probate are not called upon to decide cases judicially, oftener than are county commissioners. The county commissioners have greater powers, and it is more important that they should be well schooled in their business, than the judges of probate. Questions of the most complicated nature come before them. We have submitted to the election of county commissioners, triennially for many years, and have experienced no inconvenience from it. And I ask if you have found them any more dependent and time-serving, when elected by the people, than when appointed by the governor.

I can see no reason why the judges of probate should not be elected for the same time, and in the same manner, as your commissioners of insolvency, your district attorneys, your county treasurers, your registers of deeds, and your county commissioners. These officers are all to be elected by the people for the term of three years, and there is no reason in the world why the judges of probate should be taken out of and made exceptions to that list, except that singular apprehension resting in the minds of us all—inherited, descended to us from the monarchical government of England—that there must be some power resting somewhere to preside over our people, which cannot

be affected by them; else the people would not be safe. It is entirely an anti-democratic feeling. Many times has it been flung in our faces; and the question asked, why we do not carry out democratic principles or monarchical principles? Why not come out clearly, and show that the people are capable of self-government, or come up like men and acknowledge that they are not capable of self-government? Why not take one side or the other? If we say they are capable of self-government, then why not trust the whole power of elections in their hands? why withhold certain officers from their election? The very effort that has been made in this Convention to elect the judges of probate for six years instead of three years, springs entirely from that feeling. There has not, to my knowledge, been one single reason suggested in this Convention why the judges of probate should be elected for a greater length of time than the other county officers, except that they are in part judicial officers, that it protects their judicial capacity better to make their tenure of office a long one, because they will not thus be made, to so great an extent, subservient to the people. Well, Sir, if a man is to be subservient because he is elected to office, to the men who elected him, why he had better not be elected at all. Let him be appointed as heretofore. But if there is any such danger, which I do not apprehend, the argument presented the other day by the gentleman from Boston, in relation to this matter, appears to me to be perfectly unanswerable. It is this: if you have a good man elected for judge of probate, you can re-elect him, but if you have a bad one, and he is placed in office where he cannot be removed until the term of office expires, I ask you if three years is not long enough?

Now, Sir, we are going to introduce a new principle into our Constitution, in making all these officers by the people, and it yet remains to be seen how it will work. We shall undoubtedly be a little bungling at first. We shall not be as likely to select as good officers at first, as we shall by-and-by. We shall make some mistakes, and do we not want the power of correcting these mistakes as soon as possible? For the first three years, although we make our selections cautiously, fairly, and impartially, of the best men in our judgment, for the offices, yet we cannot always tell who are the best men. A man may be good for many purposes, and yet when we come to try him for judge of probate may be found to fail, although he may be found as suitable for many other equally important and responsible positions with any person who could be selected. We can only find who are the best men for judges of probate by experience, and, I submit, whether three years' service is not long enough to make the experiment upon? If your choice is a good one, you may re-elect him, and continue to re-elect him for life if you choose; but if your choice proves to be a bad one, I ask again, if three years is not long enough to keep him in office.

With these considerations I leave the subject, hoping, that the motion to reconsider will not prevail, but that the Convention will allow the resolutions to stand as they have been passed.

Mr. HILLARD, of Boston. In the few remarks which I submitted to the Convention on Friday evening, it was my aim to be as brief as possible, because the minds of the members of the Convention had been in a state of tension all day,

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and I did not like to ask them to listen to anything approaching to a long speech.

Certainly there are considerations, which apply with great force to the cases of sheriffs and clerks of courts, to which I did not allude; and I did not allude to them, because the arguments which I had just used with reference to the judges of probate, would apply with equal force to the sheriffs, but as to the clerks of the courts, it seems to me that the relation between them and the judge is of so intimate and confidential a nature, that it requires no argument at all for any candid mind to come to the conclusion, that it would be hardly respectful to the Bench, to say the least, to deprive them of the power of appointing their own officers.

The gentleman from Lenox, (Mr. Bishop,) replied to some of the remarks, which I had the honor to present, and I trust he will allow me to thank him for the manner as well as the matter of that reply. I shall always remember it with gratitude. He told me that I was mistaken in point of fact, in the opinion I ventured to express, that a faithful discharge of the duties of a judge of probate would not insure that favor which would be likely to lead to re-election. Perhaps, Sir, I am mistaken; it is my habit of mind to defer in my judgment to those who have had larger opportunities of gaining information upon the particular matter at issue. I admit that the gentleman from Lenox, and the gentleman from Fitchburg, (Mr. Wood,) are both of them in positions more favorable for coming to correct conclusions in relation to these subjects, than I am, and that the testimony given by them upon this question is entitled to more consideration than mine; and, although I cannot give up my own opinion entirely, yet, I confess, that I cling to it with a less tenacious grasp than I did before.

The gentleman says, that if I mingled more with the people, perhaps I should have greater confidence in their readiness to do justice to men who act from an inflexible sense of duty. Sir, perhaps the gentleman does me injustice in that remark. I have not lived an absolutely cloistered life—I have been for nearly twenty years of my life in the practice of the law—not extensively, not conspicuously, but during that time I have sustained a great variety of other relations towards the community, perhaps more than most of the members of the profession; and my observation of humanity is such—I cannot help it—that I cannot come to the conclusion, that a faithful and efficient discharge of the duties of a sheriff or of a judicial officer, is that which invariably and inevitably wins popular favor.

Now, Sir, the gentleman from Lenox will permit me to say, that perhaps there is an element in his experience which takes something from the value of his opinions upon this subject. He has lived in the county of Berkshire. It may well be held, that the principle of popular elections may safely be intrusted to a community like that—a rural community—an intelligent community, in which there are no very large towns, and where the interests of the people are nearly homogeneous. It would be a matter of less consequence to me if the entire population of the Commonwealth were like that in Berkshire, what was the mode of election of judicial and other officers. I have always looked upon that county as a sort of Goshen, and I feel a mixture of compassion and respect for

gentlemen from there, who are obliged to leave their breezy homes upon the hills, and come down here at this season of the year, to live among brick walls and dusty streets. I have not often had the pleasure of visiting those scenes, but when I have, as I looked around me, I have said to myself, that if the men who dwell in so fair a region were not better than others, they were not grateful to God who had cast their lines in, such pleasant places; that if the spirit that dwells in those woods, those winds, those waters, does not pass into the hearts and characters of men with elevating and healing power, it must be because the mind of man is not acted upon by nature—a conclusion that not only poets, but all good men would shrink from.

I can only say upon this, as upon all other subjects, that I am ready to yield my own opinions whenever I find them mistaken. I have had occasion to do so many times before, and I expect to do so many times again. I can cheerfully say to the gentleman from Lenox, that if he held the office of judge of probate and decided against me never so often, if he did it with that gentle dignity with which he replied to my argument on Friday last, he should have my hand and my voice for his re-election just as long as he desired the office.

Now, Sir, I have a word to say to the gentleman from Lowell, (Mr. Butler,) and I am sorry not to see him in his seat. He replied to the remarks I made upon this subject the other day, in that characteristic style with which this Convention is but too familiar; for, to do him justice, he distributes his courtesies with a pretty impartial hand. Like an elephant in an Indian army, he sometimes sets his foot upon friend and sometimes upon foe. In every political troop there are men too rash for captains, too mutinous and headstrong for subalterns. That gentleman thought proper to misinterpret an expression which I made use of, and to make it the ground of a coarse personal reflection upon myself. From the more than common glow of self-complacency which diffused itself over his countenance, he evidently thought he was making a crushing response. But I have survived it. The expression, "the hand that feeds us," which I made use of the other day, is like to have a currency second only to that of the memorable "huge paws." I have been somewhat amused at the ingenuity which has been brought to bear in perverting an expression, which meant simply to express, that there was a relation of good taste and of good feeling between a man and the community in which he lives, which should govern his language among those who were, if not enemies, at least unfriends to that community.

First, it is intimated that I am a friend of proscription for opinion's sake. In the next place, that I am willing to sell my opinion, and to sell my conscience for the lucre of gain.

Sir, nothing is more easy than to make a speaker responsible for sentiments which he never uttered. You have only to tear a particular sentence from its context, and then wrest it from its obvious meaning, and your task is done. We have all heard of the ingenious preacher, who preached a pungent discourse against a prevalent fashion of head-dress, from the text—"top-not, come down"—leaving out the previous portion and close of the verse. That was the perversion of quaintness, but quaintness is not half so good at

that work as malice. That sentence has more than once been flung into my teeth in this Convention, by gentlemen whose path I never crossed—to whom I never gave one jot or tittle of provocation. The gentleman from Lynn, (Mr. Alley,) the other day upon this text discharged at me a small pellet of something that tried to be sarcasm, but could not. The report of his pop-gun was so faint that I do not think it was heard by half the Convention. Indeed, nothing but a respect for the decorum of the place prevented me from calling out *encore!* I thought it selfish to be amused by an exhibition in which so few participated.

Then I have been assailed by divers newspapers. I have been much blackened by printers' ink. A quantity of very formidable nouns, pronouns and adjectives has been let loose upon me. A bit of the *Plymouth Rock* has been flung at me; and even the uplifted sword of the great Commonwealth has been brought down upon my luckless head. Now, Sir, I wish to say to all these writers and speakers, in the Convention and out of it, that they have the largest liberty of abuse and misrepresentation, that even they can desire. And can I put the case more strongly? They may "cut and come again." My words have been spoken. Where they have fallen, there they shall rest. I will take nothing back. I will explain nothing, I will contradict nothing. They may speak of me as one who is willing to take his opinions from his clients—who is prepared to sell his honor and put his conscience into his bills. And I can tell them of a trick in this game, which perhaps they have not thought of. As unlike most of my political associates, I have not opposed the secret ballot, they may say that I want it for my personal protection; that I want to vote against my clients, and yet not lose my fees. They may paint me a slave who means to be a liar. They may even represent me as one prepared to enter into a secret contract, by which I shall vote for a man, whose political principles I abhor, on condition that he shall vote for a man whose political principles he abhors. That, perhaps, is a depth of baseness of which even their imaginations have not conceived.

They are welcome to all the honor, all the votes, and all the subscribers they can thus gain. I hope that the bread which is buttered with lying, and the meat that is seasoned with slander, may be savory in the mouth and nourishing to the frame. Let them pour on: I shall endure. "Tray, Blanche, and Sweetheart, the little dogs and all"—the bull dogs and the "curs of low degree" may all yelp at me. I shall cast no stone at them. Their bark is harmless, and bite they cannot. The exercise may do their lungs good, and may prevent some of them from dying of a suppression of venom.

Let me come back to this matter of proscription for opinion's sake. As I have been personally attacked, I am sure the Convention will indulge me in a few words of personal explanation. Sir, to those who know me, who know the modest position which I hold in this community, who know my modest fortunes, the idea of my wielding the power of political proscription, is nothing more or less than absolutely ludicrous; and it is especially ludicrous with reference to the gentleman from Manchester, (Mr. Dana,) whose position is notoriously and deservedly higher than mine at the bar. And as to the other part of the

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charges—that I am ready to take my opinions from the hand that feeds me—if such were the degrading sycophancy of my character, should I be so unmitigated an ass, as to come up here, where every word is recorded and remembered, and make proclamation of it? Such wickedness, such baseness and such folly do not meet in the same person.

By way of defence to this last charge, I hope I may be allowed to refer to one or two passages in the history of my life. The first time I had the honor to be called into public life was in 1836, and at that time in the House of Representatives, upon the question of the exclusion of witnesses on account of religious belief, I took ground against my party and against my constituents. The gentleman for Wilbraham, (Mr. Hallett,) if he were here, could bear testimony to that fact.

Upon this matter my constituents judged me according to their cast of character and feeling. The amiable pitied and lamented my backsliding, and the malicious accused me of having sold myself bodily to the Democratic party, to further my ambitious schemes. For years I was laid upon the shelf, and the door of political promotion was shut against me.

Again, about ten years since, I had the honor of holding a seat in the school committee of Boston, and while holding that position I introduced a petition, and enforced it by a speech, to induce that body to break down the system in Boston, by which colored children are sent to separate schools—a system which I then regretted, and do now regret. Out of a body of twenty-six there was only one person who voted with me. At that time I represented ward No. 6, and there is no part of Boston where such a course could have been more distasteful, from local reasons, known to those who live here. When the question came up, as to my reelection, and it was discussed whether I should be a candidate or not, my friends said, to borrow an illustration founded on an incident in the life of Mr. Clay, that I had missed fire, or at least fired into the wrong flock, but they would pick my flint, and try me again. They did try me again, although there was not a man who voted for me that did not regret my course. I was touched with their confidence then, and am touched by it now when I recall it.

The charges to which I am now replying, form part of a system of vituperation to which I have been exposed for the last three or four years, brought upon me from the fact that I could not, in conscience, join a certain political organization, which has come into existence within the last five years. It was my faith then, and is my faith now, that that political party rested upon a mistaken basis, and that the practical operation of that party was to increase the evil which it proposes to lessen. That was my faith then, and I call God to witness that it is my faith now—and yet I do not suppose that there is a man of that party now listening to me who will do me the justice to believe that I am speaking the truth.

Mr. KEYES, for Abington. I rise merely to make an inquiry of the gentleman. Did not the gentleman state in a speech, upon one occasion, if he was twenty-five years old that he would have joined this same party. [Laughter.]

Mr. HILLARD. I did say so. Because in that event, I should have been young and inexperienced. [Laughter.] The gentleman for Manchester, (Mr. Dana,) of whose reply I do not in

the least complain, and to whom I bear no malice therefor, said that there was something he would not say; as the Committee doubtless remember. That is not the first time nor the twenty-first time that the thing which he did not say has been said. I have been told in kindness and unkindness, in friendliness and unfriendliness, in sorrow and anger, that the reason why I did not join that party was, because I did not dare to join it, and that I was afraid of losing my clients. I have yet to see the first member of that party who will do justice to the motives of a political opponent, of the party to which I belong. There may be such a man, but I have yet to see him. I never met any one who admitted that the course of a Whig opponent was dictated by conscientious motives. Towards another class of their opponents their charity is more than Christian. Although we are told that we are to forgive our enemies, yet I do not read that we are required to embrace them. [Laughter.] Proscription for opinion's sake!

We have heard a great deal about proscription for opinion's sake. The matter has been brought up here upon this floor, and the changes rung upon it, again and again. The evidence of it has been found in a scrap from the *New Bedford Mercury*, and another scrap from the *Daily Advertiser* of this city. A conspiracy to set Charles river on fire, and the evidence is a squib in a man's hat and a cracker in a boy's pocket! Proscription for opinion's sake! I have seen that consummated and perfected. I have seen the block erected, the victim laid out, the head cut off, and the bloody axe waved aloft in triumph. The time was in 1851, the scene was the Senate Chamber of Massachusetts, the victim was a gentleman nominated for a professorship of history, in Harvard University, and the executioners were the combined Democratic party. No man can say that that gentleman was not qualified to fill that post, by his talents. No one can cast a stone at his character, and no one can say that he was obnoxious to the students, for they one and all petitioned to have his appointment confirmed. No. But he was guilty of holding offensive political opinions, first upon a certain armed contest, four thousand miles off, and then upon a certain civil contest, four or five hundred miles off. For that reason, the brand of rejection was set upon his forehead, the bread taken out of his mouth, and himself cast forth with an indignity set upon him rarely known in the whole annals of that institution. If the case had been reversed, if he had been a Democratic professor, and had been rejected by anti-democratic influence, should we have ever heard the last of it? I respectfully submit it to any candid man, if there was ever in this Commonwealth or anywhere else, a more marked and decided case of proscription for opinion's sake.

The gentleman from Lowell, (Mr. Butler,) in the course of his remarks, spoke about the manners of the bench. I suppose there is no one, who does not now and then get a lick from the rough side of a judge's tongue; but no well-natured person allows the sun to go down upon his wrath.

The occupation of a judge is trying to the patience and the spirits. His laborious and monotonous duties are in themselves trying. He is further tried by the unseasonable pertinacity, the long speeches and the intemperate zeal of the bar. Especially is he tried by the bad manners of a

portion of the bar. At the bar there is an assortment of manners; some good, some bad, and some neither good nor bad. There are men at the bar, and conspicuous there too, whose elevation seems to justify the sarcasm of some man of wit, that there were three requisites for success at the bar—impudence, impudence, impudence,—whose professional bearing is marked by coarse brutality and foul-mouthed ferocity—who sometimes tear their victims with their claws, and sometimes bespatter them with their filth—who import their morals from the State Prison, their manners from a bear-garden, and their language from Billingsgate. Who has not seen lawyers of this stamp swaggering about a court house, with the port and bearing of a bar-room bully, after his second mug of flip, insulting witnesses, treating the opposing counsel with indignities studied and unstudied—and especially hectoring and brow-beating the bench? Is there any spectacle which more moves pity and indignation, than that of a judge, who, from weakness or self-distrust, allows himself to be overcrowed by one of these legal ruffians? When, therefore, we judge the severity of the bench, we must measure the provocations by which that severity is called forth. So long as this aggressive spirit dwells among the bar, it is desirable, it is necessary that there should be a power on the bench to keep it within bounds. We may consent to have a hedge of thorns around the fountains of justice, if they are to be protected against swinish tusks and swinish hoofs. So long as we have jackalls and hyenas at the bar, I hope we shall have a lion on the bench, who with one stroke of his vigorous paw, can, if need be, bring their scalps right down over their eyes.

Mr. WILSON, of Natick. Mr. President: I must confess my surprise, my utter amazement at the exhibition we have just witnessed on the floor of this Convention. This exhibition of harsh language, ill-temper and ill-manners, must surprise even that gentleman's friends.

The PRESIDENT. The Chair cannot allow the gentleman from Natick to allude to the manner and appearance of a member of the Convention. It is not in order for him to do so.

Mr. HILLARD. So far as I am concerned, I hope the gentleman from Natick will be allowed to proceed.

Mr. WILSON. I thank the Chair for calling me to order. I do not wish to say anything out of order. I have been in the legislature eight years, and during those eight years I was never called to order for words spoken in debate. I regret that I have said anything that looks like a violation of the rules of order. I have not uttered an unkind word towards any member since I came here, and I have no wish to do so now.

Mr. BATES, of Plymouth. I rise to a question of order. The gentleman from Natick was called to order for referring to certain language—the language which the member from Boston, (Mr. Hillard,) used when referring to the members of the Convention in and out of it. He referred to members of the Convention as “dogs and curs of low degree.” It appears to me to be competent—

The PRESIDENT. The gentleman from Natick was not called to order for referring to the language, used by the gentleman from Boston, but for describing the manners of a member of the Convention.

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Mr. WILSON. I regret to say that I have listened to-day, to such language applied to members of this Convention as I never listened to before. I deeply regret that the member from Boston should apply to members of this Convention language such as the member from Plymouth has referred to—language which no member of this Convention should permit himself to use on this floor—language which no member should be permitted to apply to members of this Convention unrebuked.

The other day, the member for Manchester, (Mr. Dana,) made an allusion to the city of Boston. He made some reflections upon this city, it is true, but his tone and manner was kind, and could not excite angry feelings in any bosom. The gentleman from Boston, (Mr. Hillard,) referred to the allusions of the member for Manchester, in a manner that took the Convention by surprise. Considering the personal relations of these gentlemen, the tone, language and bearing of the member from Boston, surprised and pained many of us. In that debate, the member from Boston uttered that unfortunate phrase, that it did not become either of them "to strike at the hand that feeds us!" This phrase will make the tour of the country. It is one of those phrases that will be often flung before the people. It is one of those phrases that will long linger in the popular mind—as a phrase that expresses the extremest servility. I then regretted its utterance, and I assure the gentleman that I now regret it. I will here, and now, say, that I do not believe that he is capable of entertaining the sentiment of servility embodied in this unfortunate phrase; I will go further, and say, that I regret some of the remarks that have been made upon that phrase, in and out of the Convention—remarks which I know have stung the gentleman to make the remarks which have fallen from him to-day.

The gentleman talks of bitterness of feeling, of dogs, and "curs of low degree," of hyenas and lions, of manners and morals borrowed from the State's Prison. Sir, I think the gentleman has made the greatest exhibition to-day, any of us have ever witnessed, of the feelings, language, characters and manners he describes. He comes into the Convention with a carefully prepared speech, and, because the member from Lowell, (Mr. Butler,) had referred to him with some severity, he applies to members of the Convention, epithets, that I would apply to no member of this body. He singled out my friend from Lynn, (Mr. Alley,) and, in his absence, applied to him language of scorn and contempt, in a tone and manner insolent and overbearing. It does not become the gentleman from Boston to assume such lofty airs. It does not become any man, and especially a gentleman who makes such pretensions to the refined courtesies and proprieties of life. In intelligence, in character, in moral worth, the gentleman from Lynn, (Mr. Alley,) has few equals on this floor. In accurate knowledge of American history, he has few superiors in this Convention. He is a gentleman of great practical talents, of intellectual and moral worth, and if the gentleman from Boston had known him better, he would not have indulged in such language as has fallen from him to-day. He is my friend—a friend I honor for his sterling qualities of head and heart. If he were here, he would speak for himself, but, in his absence, I

will not permit the gentleman from Boston to assail him with impunity.

Sir, the member from Boston indulges in a fling at the secret ballot and its friends. Perhaps the gentleman has just been reading the debates in the British House of Commons. The reformers of England have made another effort for the ballot. They have again contended for it on the floor of that House which, for more than twenty years, has witnessed their noble efforts to secure the independence of the electors of England. But again they have fought in vain. How were they met in their arguments and appeals? Lord John Russell rose and quoted the action of the legislature of Massachusetts. He told the sturdy reformers of England, that the "intelligent State of Massachusetts" had tried the secret ballot, and that the people had abandoned it, after two years of trial; and, therefore, the ballot should not be introduced into England. Yes, Sir, the action of the legislature of Massachusetts, for 1853, is quoted by Lord John Russell, on the floor of the House of Commons, to put down and silence that glorious band of reformers, who are struggling to secure to the people of England those great rights it is our privilege to enjoy. Does the gentleman from Boston feel proud of the fact, that the English minister quoted the action of his whig friends of the last legislature? Do the whig members of the Convention feel proud of the fact, that the action of their friends was quoted, to silence the reformers of England? Tell us, gentlemen, do you feel proud of that speech of the British lord? Sir, I feel indignant and mortified to know, that the acts of Massachusetts can be quoted in the Old World, to silence the friends of liberal institutions. I thank God for the hope I feel, that the people of Massachusetts will, in November next, place in their Constitution the secret ballot, so that Lord John Russell, nor no other lord, can ever more quote the action of a partizan legislature to silence the demands of the people of our fatherland, for the protection of the ballot. Next year, the reformers of England, I trust, will be able to tell Lord John Russell and his brother lords, that the "intelligent State of Massachusetts" has placed the secret ballot into the fundamental law—beyond the reach of party folly and madness.

Sir, the gentleman tells us that charges have been made here. Charges against whom? Against his political party? I deny it, altogether. He refers to an article read by me from the *New Bedford Mercury*, and to another from the *Boston Daily Advertiser*. Why does he refer to the reading of these articles? Does he justify those articles? Does he endorse the sentiments avowed in those articles?

Mr. HILLARD. Certainly not.

Mr. WILSON. Then why assail us for referring to those articles? Those articles appeared in leading political and commercial journals. I quoted them to show what men in moments of excitement would say. Why does the gentleman complain of our quoting what he will not defend? He dare not defend here or elsewhere the atrocious doctrines avowed in those articles. I uttered not a word—no, not a word against any political party. I said then, and I now repeat it, that men in moments of intense political excitement, will say and do what reason and justice will not sanction. I referred to the articles in these papers simply to prove the truth of what I uttered.

The gentleman in his remarks to-day has spoken of the political scenes of 1851, and of what he is pleased to call the political proscription of that year. He has referred to an act which took place in the Senate chamber, an act in which I had some little part. He refers to the rejection of Francis Bowen, for the professorship of history, in Harvard University, and he has charged that upon us as an act of proscription. He says, that the block was raised, and that then, and there, that act of political proscription was enacted. I deny the charge of political proscription altogether. I say here, and I am prepared to show it now or at any time, that Francis Bowen was rejected by the Board of Overseers for other reasons than, the sentiments and opinions uttered by him in the *North American Review* dishonorable and disgraceful as were those sentiments and opinions to the American name, and to the literature of the country. That Review was arrayed upon the side of Austria and Russia, and of despotism, in the great struggle of those times. It was arrayed on the side of falsehood and ignorance also, and for that we rejected him. Will the gentleman from Boston dare rise upon this floor and defend the opinions of Bowen, or deny the facts I now assert? Did not a lady of Roxbury, through the *Christian Examiner*, in articles of great ability and research, show the gross ignorance, dishonesty and falsehood of the man who edited the *North American Review*? She has there shown him not only grossly ignorant of the subjects which he discussed, but that in his statements in regard to the questions discussed, he misstated facts, and for that falsehood and ignorance he was rejected in 1851. For that rejection in 1851, the men who put a brand upon him received the universal commendation of the American people without distinction of party, except the little coterie of the Mutual Admiration Society.

I know not, Mr. President, why the gentleman brings these party topics into this Convention. The general tone of the Convention up to this hour, has been to keep partizanship out of the discussions of the great questions pending. The gentleman bitterly complains of the injustice manifested towards himself and friends. He tells us that we can never do justice to our Whig opponents. I dare say that we are sometimes unjust towards our opponents. We may judge them sometimes too severely—too harshly. But we treat them as men—as equals, here and elsewhere. Can the gentleman and his friends say as much? Have not the presses and orators of the party with whom that gentleman acts, for years sneered at, ridiculed and derided their political opponents? Have not the orators and presses of the party with which the gentleman acts, assumed airs of lofty superiority in dealing with their opponents? When, in 1851, the Free Democratic and Democratic parties hurled the Whig party from power, when they took the reins of the government in their hands, did not the deluded Whig presses and orators, in tones of asserted superiority, deplore the sad fate of Massachusetts, whose government had passed into hands too feeble to hold the reins of power? Did not the followers of these jubilant orators and presses come even into this Constitutional Convention with the idea that the men of the majority would go down on this floor before the mighty and overshadowing powers of their chieftains—chieftains before whose lights the men of the coalition would "pale their inef-

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fectual fires." Two months have passed, and that innocent delusion has also passed away. Now, the gentleman from Boston tells us, in sad accents, that we never do justice to our opponents! Sir, it has been my misfortune to differ with the gentleman from Boston in times past. That difference left in my bosom no feelings of unkindness, none whatever. I have none but feelings of personal kindness and regard towards him now. I know he has been hardly dealt with, in and out of the Convention, for that unfortunate phrase, which will not soon be out of the public mind. He is a public man, and he will pardon me for saying that he should not be stung by the taunts of the public press, or by the flings of political opponents, into the use of language unworthy of himself, of the place, and of the body of which he is one of the most gifted members.

Mr. HILLARD. The gentleman from Natick, (Mr. Wilson,) has replied to me in a manner to which I take no exceptions. I shall not treasure up his language against him. Before closing the remarks I have just made, I had intended to apologize to the Convention for the tone of personal justification into which I fell. My defence must be found in the fact, that my language has been wilfully perverted and my personal character assailed. Could the gentlemen of the Convention see the attacks which have been made upon me, and the charges which have been brought against me, they would pardon something of warmth even to a colder temperament than mine. If I have transcended the rules of order; or violated the decorum of debate, I regret it, and throw myself upon the indulgence of the Convention. I can only say, that nothing which has sprung out of this discussion shall leave any root of bitterness behind. Whatever irritation may have been aroused by it shall pass away and leave no sediment of malice behind.

Mr. KEYES, for Abington. I do not propose to prolong this debate, nor to take any particular part in it. But, I wish to call the attention of the Convention to one lesson, which may be, perhaps, drawn from it. It is easy enough to understand the sensitiveness of the gentleman from Boston. I am not surprised at his anger, as I have read many of the articles to which he has referred. They are, indeed, absurd and ridiculous. They charge him with meaning what he did not mean, as we all know. But that is the bitter penalty we are called upon to pay when we enter into politics. I would have him recollect, however, that his party and his friends have, for long years, with almost the entire newspaper press of the State in their hands, and by the use of the public forum, the bar and the pulpit, indulged in one constant and sweeping strain of abuse and slander of the party to which I belong, and the men who compose it. And the gentleman himself has not failed, on this occasion, to follow the example of those whom he so fiercely rebukes, and to use, himself, terms as abusive as any of which he so bitterly complains. I do not say that he has taken an active part in the general system of slander, although one expression of his, to-day, was as pointed and vindictive as anything I have heard from any other source. But it grows, naturally, out of the circumstances in which he is placed, and the society in which he lives. The very air which he breathes has, for long years, been thick and heavy with opprobrium of us and our cause, and that is the source of his inspira-

tion, and, perhaps, the cause of his extreme sensibility.

Instead of being restricted to the feeble means which are at our command, he and his friends have had nearly the whole power of the press of the Commonwealth on their side. If, therefore, we have sometimes, in our agony, breathed words not very polite and courteous, let him remember, that we only did what he has done to-day, uttered, under the influence of excited feelings, words bitter and wrathful, which, perhaps, had better have been left to the imagination, and let him see in it our justification, if there can be any justification for harsh language. The gentleman said one thing, this morning, which calls for a remark. He is a gentleman with whom I do not wish to dispute, and I do not believe it possible for him to create within me any feeling of anger or hostility. In his first speech, he stated that I held my opinions, because the Whig party took the opposite ground. Now, however well he may judge me in other particulars, he could not have possibly made a greater mistake than he did with regard to that.

Mr. HILLARD. Mr. President, I wish to make a personal explanation. The gentleman, of course, relishes a joke, and understands very well that my remark was made in a spirit of pleasantry, and he would have so received it, if he considered my manner at the time.

Mr. KEYES. I supposed that the gentleman had so long studied the newspapers of Boston, that he considered me as a rash, reckless, villainous hyena, or something worse.

Mr. HILLARD. Not at all, not at all.

Mr. KEYES. I supposed, that when the gentleman made his speech at Worcester, to which I referred in my question, he believed the Freesoil party to be correct.

Mr. HILLARD. I believe them now as I did then.

Mr. KEYES. When we saw the two great parties in the country totally subservient to the slave power, sacrificing patriotism, honor, and honesty, in their zeal for the increase and protection of slavery, we thought it wisdom on our part to unite for freedom, as they had united for slavery. It seemed to us just and proper to do so. I do not believe that any man, with such an intellect as is caved in his skull, ever doubted that we were right, and, that that was the only way to conquer our enemy. It was not until this morning that I supposed he had a particle of doubt on the subject.

I wish to refer to one allusion which he made in regard to voting for men by a secret ballot, which he characterized as being so bad that no human mind could conceive of its baseness. I understood that remark to be applied to those persons who united in the election of those two gentlemen, (Messrs. Boutwell and Sumner, then sitting side by side,) the one to the office of governor of the Commonwealth, and the other to a place in the Senate of the United States.

If it is an act of infamy, I confess, I committed it openly in the face of day, and I have never regretted it for one moment, even under the pressure of the heavy charge of the gentleman from Boston just made. I did not suppose that in the vote which I gave for the gentleman, (the delegate for Berlin,) I was committing an act of infamy, the depth of which no human imagination could conceive. I suppose that gentleman

may hold opinions different from my own. It would be strange if he did not. But, I ask the members of this Convention, and the gentleman himself, if they can, now that the deed has been accomplished, and the results have been seen, point out the spot where the infamy lies. I ask the gentleman from Boston if it is such an act of infamy as he has described; and I ask him when he makes such a charge against me or the gentlemen who act with me, on such a foundation, if he cannot make some allowance in favor of those persons who slander him.

Mr. HILLARD. The gentleman's argument eliminates the fact that he did not understand my application of the remark which I made. I said, vote secretly.

Mr. KEYES. I understood the gentleman to refer to voting for coalition candidates.

Mr. HILLARD. I am not responsible for the manner in which the gentleman understood me.

Mr. KEYES. He has described a case and I could not suppose that he was using any delicacy; for he employed language not often used in any public body. It was the boldness of his speech which occasioned most surprise. He says that no freesoiler would do a whig, who remained out of that party, justice. Do a whig justice! They would not condescend to give us an opportunity to do them justice. They would not listen to our speech, or respect the grounds of our action. Trampling us under foot with sneers and derision, was all the notice the whigs, at first, took of us. I can account for it.

A great deal has been said about Boston, and I am not disposed to dilute those streams of eulogy poured out in such abundance upon her. I know what Boston is, and I know what Boston whiggery is. It is a halter about the neck, in many different shapes. Years ago, when a whig myself, and residing in Boston, if I asked the name of an unknown individual, and he happened to be a democrat, it was not thought necessary to tell me. It was sufficient to say, Oh! he is nothing but a loco.

So much for the self-sufficiency of whigs, which does not, by any means, grow out of their superior knowledge on political subjects. I believe that a majority of the people of Boston, intelligent, educated and cultivated as they may be on other subjects, are more ignorant of the politics of the State than the people of the country. We remember with what speechless astonishment they heard, one morning, of the defeat of their party throughout the State, an event which the country people had predicted long before.

In Boston, every man of consequence is supposed to be a whig, as a matter of course. When living there myself, I should as soon have thought of renouncing civilization, as of going out of the whig party—the party. The only party, it was considered, for a gentleman to belong to.

The very air of Boston is whiggish. Not to be a whig is to be an outlaw and an outcast. I was coming into town a few days since, (and Boston extends something beyond its geographical limits,) I chanced to meet with a whig, who undertook to give me some good advice with regard to our action in the Convention. He was reading the *Journal*, and he remarked, that in reading the papers he always skipped the doings of the Convention. That, said I, is the reason why you, and such as you, are so ignorant. You read only your own side of the question; you do not

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wish to know that you are on the wrong track, nor would you take the other if you did. You are bound to your organizations, determined to sustain them, and know nothing beyond them. Ask them if they read the *Commonwealth*, and they will reply: "Do you think that I ever read the *Commonwealth*?" "No, sir! but I should think you had need enough to read it." [Laughter.] Now, Sir, I did not intend to say anything about such matters as the following, but when gentlemen tell us about the open-day acts of the city of Boston, we are reminded of some *not* so open. The acts which we reprobate, were not done by daylight; they were done by cowards, and they were done in a cowardly manner; the sun of heaven was not permitted to shine upon them. The poor wretches who took part in that act of meanness and oppression (the surrender of Sims) should be hissed with scorn and derision by all the men of Massachusetts, and they would be, if a majority of the people were not themselves slaves to fashion and party.

The city of Boston has a great many merits and a great many weaknesses. It will not do to eulogize it altogether, for there is a great deal of meanness and servility in it, as well as a vast amount of humbuggery of every description. The gentleman speaks of the proscription of a professor who had been nominated for the office of teacher of history in the University at Cambridge. Sir, I was utterly surprised to hear the gentleman from Boston call that proscription. If he had been proscribed for simply holding abstract opinions, I concede that it would have been improper. But he was a man employed to teach the youth of Massachusetts and of the country, the facts of history; and those who were called upon to confirm his nomination believed his doctrines pernicious and hurtful, and unworthy to be taught the rising generation, and they discharged a high and sacred duty therefore, when they decided that he should not hold a place where he could poison the minds of our youth with his pernicious errors, in an institution under the patronage of the State. It is to be hoped that what has occurred will convince the gentleman from Boston that there are two sides to questions; and seeing how sensitive he is himself to criticism, may he learn to appreciate more correctly the injustice of those criticisms which he and his friends have so long bestowed upon others.

Mr. MORTON, of Quincy. I should think that the subject of Judge of Probate had now been fully discussed, and, I, therefore, move the previous question.

Mr. CUSHMAN, of Kingston. By the indulgence of the Convention, I desire to say a single word before this question is taken, as I have been in very feeble health for the past ten days, and have taken no part in the debate. On the 7th of March, I was elected to come here and attend this Convention, and I considered it to be duty that devolved upon me to do so. I was aware of the magnitude of the work that was to be performed, and I took into consideration my inability to perform the duties of a member of this body; but, Sir, I have attended, supposing there might be some occasion where I could perform a humble part. I knew that there were different views and opinions entertained by different gentlemen who belong to the various parties, and when I came here I expected to find more or less of that division exhibited in this Convention. But, Sir,

on visiting my home, I have been asked the question, whether politics often ruled here, and my answer was "No; it has ruled but very little—far below my expectations." It has appeared to me, Sir, that the divisions between people in regard to the measures brought forward, subsisted as much among the parties as it did between the parties; and in consequence of this, I reported to them my belief. I considered that but few of the speeches that had been made here, but few of the measures that has been brought forward here before the Convention, were dictated with party spirit. I thought that had in a great measure subsided, and that there was union and harmony prevailing among all the members of this body, and a disposition to do all the duties devolving upon them, in a manner creditable to themselves and to the Commonwealth. I thought that there was an earnest desire and endeavor to transact our business in such a manner as best to promote the welfare of the Commonwealth. I hope such scenes as we have had to-day will be avoided in future, and that we shall go on and do our business as heretofore.

Mr. EARLE, of Worcester. I hope the previous question will not be put now; for before it is put, notwithstanding the extent to which this subject has been debated, I also wish to say a few words in reply to the gentleman from Boston, upon my right, (Mr. Hillard).

The PRESIDENT. The motion is not debatable. The gentlemen from Worcester cannot proceed unless by general consent.

Mr. EARLE. I will say, then, that I hope the motion will not prevail, because there have been some things said personal to myself, to which I feel called upon to reply. If I can be allowed to proceed, I will engage not to occupy the time of the Convention more than ten minutes.

House of Representatives.

Mr. STETSON, of Braintree, demanded the consideration of the subject which had been specially assigned for half-past ten o'clock this morning, being the resolves on the subject of the House of Representatives, on their second reading.

The resolves were read.

Mr. BOUTWELL, for Berlin, remarked that it appeared to him the better way would be to dispose of one subject at a time. In order, therefore, to enable the Convention to dispose of the subject just now under consideration, he would move that these resolves be laid upon the table.

Mr. LORD, of Salem, inquired whether the resolves, if laid upon the table, would not lose their character, as a special order.

The PRESIDENT. That will be the effect of laying them upon the table. They will go upon the Orders of the Day as a subject to be acted upon when reached.

The question, on the motion of the gentleman for Berlin was decided in the affirmative. So the resolutions were laid upon the table.

Orders of the Day.

On motion by Mr. BOUTWELL, the Convention resumed the consideration of the Orders of the Day.

Mr. EARLE. I will redeem the pledge which I made, to be brief in my remarks. I was about to say, that the gentleman from Boston has impliedly, if not directly, made a charge—

The PRESIDENT. The Chair will remind

the gentleman from Worcester that the previous question has been called for, and debate is not in order.

Mr. EARLE. I supposed that the motion for the previous question fell upon proceeding to other business.

The PRESIDENT. The taking up of the special assignment did not cut off the motion for the previous question, which had previously been made.

Mr. EARLE. I hope that the previous question will not be sustained, in order that I may have an opportunity to say a few words by way of personal explanation.

Mr. DANA. I hope the main question will not now be taken—not, however, because I wish to make any remarks upon any other subject than the Judges of Probate, as scarcely anything has been said about the unfortunate judges of probate and sheriffs. I should be sorry to have the previous question put now, because everything but the subject matter has been discussed, and I am afraid that would be one reason why the Convention would order the previous question. I did want to say a word or two upon the main question, and but a word or two. I think a reason might be given which would induce the Convention to reconsider its action, almost perhaps, if not quite, with the concurrence of the Committee who reported the resolve.

The question being then put on ordering the main question, on a division there were—ayes 102, noes 117; so it was not agreed to.

Mr. EARLE. I was about saying that the pledge which I made to the Convention, I intend to redeem by making my remarks as brief as possible. The gentleman from Boston, as I understood him, made a charge, by implication certainly, if not directly, that the coalition party had gone into that coalition corruptly, and with a bargain that we would vote, upon one side, for men whose principles we utterly detested and abhorred, on condition that those upon the other side would vote in the same way for candidates, whose principles they abhorred, and to whose doctrines they do not assent. Now, I utterly deny and repudiate the correctness of any charge like that, either here or elsewhere. It is entirely false as relates to the original inception of that coalition, and it is false in relation to all its details. I do not think it very strange, that the gentleman should come here and repeat what he has read so often, and seen so many times, in all the papers which such gentlemen as he are accustomed to read, and which has found no chance for denial, except in such papers as they do not think it worth their while to look into. I say it is false as to the very inception of the movement. So far as I know, the first movement of the kind was made at the Freesoil County Convention in Worcester. When the proposition was made, it is within my certain knowledge, that a preamble and resolutions were adopted, in which it was stated that, inasmuch as we agreed, in the main features, with the policy of the democratic party in relation to the State government and State affairs, if they chose to unite with us and nominate a ticket for State officers, we would unite with them in such nomination.

Mr. MORTON, of Quincy. Mr. President, I rise to a question of order. The subject of discussion is the Judges of Probate, and although I do not like to interfere, yet I moved the previous

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question for the purpose of cutting off this discussion on these other subjects which have so long passed by. I am, therefore, under the necessity of calling the gentleman to order.

Mr. SCHOULER. I rise to a question of order also. I call the gentleman from Quincy to order because he is addressing the Chair while he is out of his seat. [Laughter.]

Mr. EARLE. I have no doubt that this debate has all been out of order; but if the Convention will allow me to go on, I pledge myself to occupy but a very short time. I trust I may, therefore, be permitted to proceed with my remarks.

The PRESIDENT. The Chair has not yet decided the gentleman to be out of order.

Mr. EARLE. I was remarking that resolutions were passed at that Convention, in which it was set forth that, as we agreed substantially with the democratic party in relation to the affairs of State government, we consented to unite with them in the nomination of a senatorial ticket, but with the express understanding that we did not thereby sanction their peculiar doctrines in relation to national affairs; and, while we did not object to unite with them in the nomination of a State ticket, we committed ourselves in no degree to any opinion, which they might entertain in relation to other matters, on which, we had not hitherto acted in common with them. Nor did we understand that they, by uniting with us in the nomination of such a ticket, assented to any opinions which we might hold adverse to them, or expect that they would endorse such opinion. That was the sole condition on which we entered into the coalition or remained in it, and the only condition, as I understand it, on which it was ever based anywhere. Parties were so evenly balanced in the legislature that the organization of the government could be effected only by a union of some two of the parties, and hence it was necessary that they should unite. What then? Would the Whig party have refused to unite with either of the other parties, if they had a chance? I tell you "nay;" they were ready; and not only were they ready, but they even made propositions to that effect, themselves. They were ready to unite with anybody, who would unite with them, and give the lion's share too, for the sake of it, although differing more widely from both the other parties, than those parties differed from each other.

It being thus necessary that some arrangement was needed for the sake of organizing the government, it was perfectly natural that those who most nearly harmonized should unite for that purpose; yet, as I understand it, at that very time when the great question of the election of a United States senator was under consideration, which detained the House of Representatives so long, and which divided the members of the general court upon the questions of national policy, no man gave a vote in violation of his principles; but, the distinguished gentleman now representing Marshfield, (Mr. Sumner,) was elected by those who concurred with him on national questions, while those democrats who differed from him steadfastly refused to give him their votes, and stood out in their opposition to the last. I do not understand, on the other hand, that, at that time, any one of the representatives voted either for governor or for any other State officer, with whom he did not agree in principle, on those

questions of State policy on which they respectively had to act. Yet, as has already been stated by other gentlemen, not only were our opinions misrepresented on that occasion, but no opportunity has been afforded to a large proportion of the people of this Commonwealth to understand this great question. So habitual has become this system of falsehood and misrepresentation, that it seems to have become interwoven into the very texture of the whole system of tactics of the party to which the gentleman from Boston belongs.

As an illustration of this system, I may be permitted to allude to a circumstance, somewhat personal to myself. Since this Convention has been in session, the most prominent political paper in this city, (the *Atlas*), edited by a leading member of the party, has put forth statements in relation to a member of this body, as utterly groundless as any falsehoods that ever were concocted, and has spread them before the people for the purpose of producing political effect. The statements in that article have been authoritatively denied in another paper, and the author defied to produce any evidence of their truth; and yet, this leading whig paper has not the manliness either to meet the denial or retract the statements, but undertakes to turn the whole affair off with a sneer, notwithstanding that the brand of falsehood remains stamped upon the face of its author and he cannot escape from it. I allude to this incident, merely, as an illustration of the system of falsehood that has been persevered in up to this time by the political press of that party, and which, I am sorry that the gentleman from Boston, to some extent, seems to sanction.

The PRESIDENT. The Chair must inform the gentleman that it is not in order to indulge in that course of remark.

Mr. EARLE. Whether the gentleman from Boston, in consequence of reading only such papers, has come to the belief that everything therein stated is true, and whether he ignorantly supposed that we agreed to vote for candidates who would not fairly represent our views, I do not know, and it is not my purpose now to inquire. It is sufficient for me, that the charge was made; and I felt it my duty to repel it, inasmuch as I was engaged individually before the people, primarily, in making these arrangements, and afterwards in the legislature in carrying them out. I felt, therefore, called upon to make the remarks which I have made, and having accomplished the purpose I had in view, I yield the floor, in conformity to the pledge I made on taking it.

Mr. LORD, of Salem. I perfectly agree, for the purposes of this debate, with the gentleman from Worcester, that he has not done anything of which he need be ashamed, and that the *Worcester Spy* is just the same old foggy newspaper that it ever was. [laughter,] and that those gentlemen who went off in 1848 because General Taylor was not whig enough, were better whigs than they are democrats now. But while I agree to all that, I do not propose to enter into the merits of the question at this time, but to discuss the question of judges of probate, for I believe that is the question which is properly before the Convention. I shall, therefore, keep out of this general mêlée, by observing the importance of the question before us; and when we want to have a little skirmishing, we can do so when we have some question before us which nobody cares anything about.

I had the honor of addressing the Convention the other evening; and because I thought, then, that there was a disposition on the part of the Convention to place judges of probate and other officers in a different position from that in which the resolves places them, I ventured to make the remarks which I then made.

In reply to the gentleman from Fitchburg, that we dare not trust the people, or are afraid of them, I beg to say to that gentleman, that he does not surpass me in respect for the judgment of the people, whenever their mind is brought to bear upon a subject; and, when he says that we complained that if judges of probate were elected annually, they would not be independent, he is entirely mistaken, for such is not the line of argument which we have adopted. Our objection is, not that the men will not be independent, but it is to the tenure itself. When I addressed the Convention the other evening upon this subject, I undertook to show that the mode of appointing judges was comparatively immaterial; that what we most wanted was an independent tenure when they were appointed or elected; and that, in my judgment the people of Massachusetts, generally, require a higher degree of qualification for public officers, than the executive does. But that is not to my purpose. The proposition to which I will endeavor to call the attention of the Convention is this—that we should make the tenure of the office of judge of probate independent—that we should not permit it to be in the power of any single individual of any political party to say, that because a certain decree is rendered, or because a certain decree was refused, the judge so rendering or refusing should no longer fill his place. I care nothing about the appointing power. In my judgment, it is of vastly more importance that the tenure of our judges of probate should be independent, than it is that the office of judges of general jurisdiction should be independent. Sir, if it were left to me to decide, as to whether I would annually elect judges of probate, or judges of the supreme judicial court, I would say at once, rather let me elect the latter every year than the former? Why so? For the obvious reason that the candidates for the office of judge of the supreme court, will be men who are known throughout the Commonwealth. They will be men of wide reputation, and no little jealousy or local feeling can disturb them in their places. On the other hand, if you take a mere county officer, or a judge having merely local jurisdiction, it must be obvious to all, that in many instances a single individual who has a purpose to subserve, can pack a caucus, by reason of his own political influence, to dispossess him. I have seen such things done numbers of times in relation to county commissioners. A gentleman inquired of me this morning, how it was in the county of Essex, when one candidate had six hundred votes and another only five or six, in one town, while in another town the fact was almost exactly reversed, the gentleman receiving the units in the former town, receiving the hundreds in the latter; and, although the other evening I referred to the same matter, I repeat it now, and shall beg of gentlemen to pardon for saying the same things to a certain extent, that I said the other evening when there was scarcely a quorum present. The explanation which I made to the gentleman was this: in one town, a road had been located contrary to the wishes of almost the entire population, and it

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was supposed that it was much owing to one of the commissioners, and the entire vote of the town almost was thrown against him; in another town, there was a strong desire to have a free instead of a toll-bridge, and under authority of an Act of the legislature, obtained the year before, entrusting the expediency of the matter to the county commissioners, the inhabitants of the town thought it their duty to throw their almost unanimous vote for the townsman whose views upon the expediency of the measure were perfectly understood.

Through the rest of the county there was almost an entire absence of all interest in the election. What was the consequence? One party wanted a road made in one place, and another in another. One party wanted a bridge here, and another party there; and all the interest that can be enlisted in these county elections is merely local, and often involves personal feelings and prejudices in favor of this or against that candidate. In one county a controversy was waged in regard to a road in one place and a bridge in another, and that road and bridge have made and unmade the county commissioners ever since. Now, suppose that all these matters were thrown at once into a public caucus. Suppose, that the people of one part of the county wanted a bridge, and that those of another portion wanted a certain man for judge of probate, and that between them they could muster a sufficient number of votes to have it all their own way, by each voting for the project of the other; would not some such combinations always be resorted to? Undoubtedly. While, therefore, I am in favor of popular elections for many county officers, yet for judges of probate and commissioners of insolvency, and officers of similar character, I would say that they ought to remain in office so long that they would never desire to become candidates for re-election. I am not anxious about any specific term of years, so that it be long enough to induce men of capability to accept the office. Say seven or ten, or twenty years, if you choose, so that the candidate shall not feel that during his official career, either he or his judgments are liable to be passed upon in a political caucus. And, Sir, all those who are at all conversant with the decisions of judicial tribunals, will agree with me in this—that those decisions which most excite the approbation of the public mind, are those which are most firmly based in right, in law, and in justice. Why so? Because judges are like other men; and they know what the passions and feelings of other men are. If, therefore, there is a high state of feeling on any subject, a judge will not run counter to that feeling, unless compelled by his oath and the duties of his office. Then, Sir, you will have that kind of judgments which it is the boast of this republic to possess—a judgment that is right in itself, and according to the laws of the land. I would not, therefore, have the judgments of our courts of law reviewed in political caucuses, because, on all great and exciting subjects they would be so reviewed. We all can, doubtless, remember in our experience, many instances, in which the decisions of our highest tribunals have been received in the first instance with disfavor by the public mind, but which have afterwards received the sanction of the sober second thought of the people. We have all seen occasions when the public mind has been so excited by judicial decisions, that if the people had

had the power immediately to have constituted a court so as to have these decisions reversed, they would have done so. And it will always be so, so long as man is man; for certain parties know just exactly where to spread their sails to catch the popular breeze; and hence, whenever a decision is pronounced, involving any question of that kind, every politician who is anxious to get his party into power will attack it, and make it a subject of political capital to go into market with.

I would not, therefore, have these judges' decisions reviewed and revised by a political caucus. But, I beg the Convention not to understand me at this, or at any other time, as advocating the appointment of judicial officers by the executive. That matter will come under consideration at another time, and be in abler hands than mine. Nor, would I be considered as an advocate of a life-tenure of office. I care not, for the purposes of my argument, by whom the judicial officers shall be appointed. What I desire is, that when they are appointed, whether by the governor, legislature, or the people, they shall hold their office by an independent tenure, and that they shall be subject to removal for nothing but mal-conduct. Now, if five years is enough to accomplish that end, say five years, or if ten is necessary, say ten years shall be the term of holding the office.

I agree, that if you were to submit the election of the judges of the supreme court to the people of Massachusetts to-day, the result would be, that they would elect as good a bench of judges as can be selected. They will start right, and will select good men, but if the judges are to be elected annually, or triennially, and an exciting question should come up before them, which should be decided adverse to the general sentiment of the people, although the decision should be right in itself, yet when the caucus for nomination should come together, they will immediately ask themselves the question, whether it would not add something to the strength of their party, whichever it may be, to enlist that element of diversity of views, in favor of their party. The result will be, if the judges are upright men, they will be set aside, and others elected, who will execute the will of the people. I beg the Convention to make a distinction which the gentleman from Fitchburg, (Mr. Wood,) this morning neglected to make, the distinction between an independent judge, and an independent tenure of office. We should have independent judges, at any rate, until the politicians found they could control the matter of electing them, and then we should have a class of men elected, who are not independent men. The difficulty is, that we could not keep the matter out of the control of political assemblies.

Every suggestion which has been made in relation to the election of judges of the supreme court, or judges of probate, may be applied to the election of Commissioners of Insolvency. I may be pardoned for the reason already stated for repeating some things which I said the other evening in relation to the commissioners of insolvency, an office in relation to which, I think we made a mistake a year or two ago, when we increased the number of them. I think we did right when we said that there should be but one of them in a county. When we increase the number, we give men an opportunity to select

the one before whom they will present their petitions. There is always some choice, and when a man is unfortunate, and is obliged to go into insolvency, what will be the qualities which he will seek for in a master of chancery, or a commissioner of insolvency, if he has a choice between two? He will seek for a commissioner who will "put him through." I suppose that phrase is perfectly understood. I do not know what may have happened in other places, but I have heard of a case where it was said that a master in chancery agreed with a man for a specified sum of money, to "put him through." One master of chancery told me, not long since, that a man—the advertisement of whose insolvency proceedings I saw in the newspapers—came to him, and told him that another master had agreed to "put him through" and give him a discharge for thirty dollars. He told him he could not put him through in that way. Now when you multiply commissioners of insolvency, there must be some choice, in that respect, between them, and the one will be selected who will put a man through best. That difficulty is much obviated by providing that there shall be but one in a county. If, therefore, we insert into the Constitution at all a provision in relation to commissioners of insolvency, it seems to me that it would be better policy and wisdom, to say that there shall be no two of them having jurisdiction over the same person, so that there shall be no opportunity for a choice.

I would make the same limitation in regard to justices of the peace, for many of them act pretty much in the same way. There is a common saying, perhaps founded in some truth, that every lawyer has his justice before whom he brings his actions. If you give parties the selection of their tribunals, they will select those which will act most favorably to their wishes. A tribunal thus selected will, by an unerring and unmistakable tendency of the human mind, act favorably towards the party which thus gives it the preference.

As to commissioners of insolvency, then, I would say that there should be but one in a county, and I would not let the tenure of his office depend upon popular favor, any more than I would upon the executive favor. I would have him feel, while in office, that there is nothing but his own misconduct which can remove him. I do not believe that the public mind of Massachusetts, is prepared to say that the judicial decisions of the judges shall be reviewed in political caucuses.

Judges of probate have the most important, and most delicate of all trusts committed to them. They are the guardians of those who have no guardians. Minors, and persons incapable of acting for themselves are before them, and their rights are decided upon. And who does not know, that when there is no person upon the one side but a minor or minors, and upon the other side an active and bustling political man, who makes a noise in his local district, that when the latter presents his account—especially when the election comes off the next month, and the judge wants office—the judge will pass his accounts a little more carelessly than he would under a different state of things. I am speaking now of the best of men. I believe that the best man, if unfortunately he is in the position to desire the continuance of his office, will unconsciously to himself, act less stringently under the pressure of

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political power than he otherwise would. Well, Sir, if that is the case with the best of men, how would it be with those who care about nothing but their continuance in office? There are some such men, and they are the ones, who, if the office is submitted to party scramble, will act unjustly and oppressively.

I wish, therefore, that this matter may be reconsidered for the purpose of providing in some mode—I am not particular about the way in which it is done—that persons who perform any judicial functions, shall, when they are in their places, stay there, notwithstanding political caucuses do not like their decisions, and notwithstanding a single person or many persons may be dissatisfied, unless there is a mal-administration of his duties.

I ought, perhaps now in closing, as I did not in the outset, beg pardon for calling the attention of the Convention away from a racy discussion which was going about matters and things in general, to the matter directly under discussion. But when we shall have disposed of this subject, and have something before us not very serious in its nature, I should like, for one, to discuss the gentleman from Worcester, (Mr. Earle,) a little, but I am afraid to do it now, because if we lose sight of this subject at this time, when we come to vote I fear we shall not be disposed to reconsider it. But if we now act and bring our judgments to bear upon it, as men acting for the interests, not only of ourselves, but of those who come after us, I think we shall determine to make judicial officers independent in their tenure of office.

Mr. DANA, for Manchester. I suppose that the responsibility of deflecting the course of business upon this subject devolves somewhat upon me, and I feel considerable responsibility because I moved a reconsideration of this question. I supposed then that after half an hour's discussion, the whole matter would be ended. But this subject has been taken up several times, almost always in a thin House, and discussed there. And it is proposed this morning in a House of four hundred members to take the question upon a matter which had been discussed in a House of ninety-seven members, and I thought it was fit that a few words should be said upon the question. But when it did come up again, we had two or three hours taken up upon a question which was not relevant.

I beg the indulgence of the Convention a few moments, while I state a few reasons for the reconsideration of these resolves. The Convention will recollect that they have taken their final passage, and if we fail to reconsider them now we cannot undo the work hereafter, and the Committee, upon whom that duty devolves, will immediately put in form what the Convention has resolved upon. If you do not reconsider this question you will have declared that the judges of probate, sheriffs, clerks of courts, and commissioners of insolvency, shall be elected once in three years. I do not propose to discuss the general question of an elective judiciary upon these resolves, because of all the officers named in the resolves, only one, the judge of probate, is judicial, and even he only semi-judicial, and I think it probable that many gentlemen who would not be in favor of an elective judiciary, would still vote to have the judges of probate elective. But I am told that the Convention has pro-

nounced in favor of the election of a judge of probate every three years. If so, I should not be willing to seek to reverse a judgment of the Convention, formed after mature deliberation and pronounced at a regular stage of the proceedings upon the resolves. If the Convention thinks that these various officers ought to be elected, I have nothing to say upon the question, and I do not propose to raise it in my remarks, and I regret that the friends of this measure should have raised the question of an elective judiciary upon this issue.

I had the honor of suggesting to the Committee, yesterday or the day before, that we have declared that the sheriff should be elected by the people every three years, but had made no provision for a removal or suspension of that officer. So that whatever might be the conduct, he could not be removed. I am informed by the chairman of the Committee that they are about to present a resolve to cure that defect, and the very Committee who brought in this resolve acknowledge that it is absolutely necessary to clothe the governor with the power of removal or suspension, and they are now preparing a resolve to that effect. I would simply ask, whether in the judgment of this Convention, it would not be well to agree to a reconsideration, without any further debate, until that Committee bring in their other bill, without which, they confess, it would not be safe to pass this resolve?

There should also be a power in the courts to remove or suspend their clerks. I do not believe that the judgment of the Convention has been particularly taken upon the question of electing clerks. It seems to me that the clerks would be better appointed by the courts. The people might as well elect the clerk of the House of Representatives, the clerk of the Senate, the speaker of the House, and the president of the Senate, as to elect the clerks of the courts. I believe every great body is better fitted to elect its own officers, than any power outside of it. But still, if the Convention have deliberately considered the subject, and think it best that a foreign power should appoint the officers of a particular tribunal, I should have nothing to say upon it, because I do not think that any great harm will grow out of it. But, I think the courts should have power to remove or suspend their clerks for misconduct, or faithlessness in the discharge of their duties. You have, however, given no such power.

I find, also, in the Convention, a number of members who are in favor of the election of the judges of probate, but think that term of office is too short. The gentleman from Otis, (Mr. Sumner,) in whose society, within arm's reach of my seat, I have had much pleasure during this session, has said that he thinks the term too short, and wishes to extend it to six years.

Since there may be some doubt about the propriety of electing the clerks of the courts, and since we ought to give the judges power over these clerks, and we ought to give the governor power over his sheriffs, which we have not given them,—apologizing to the Convention for having brought up this question again, and having most unintentionally and innocently been the means of consuming much of its time, having unfortunately brought up the subject under most unfavorable auspices,—I submit to the Convention whether, under the circumstances, it will not be better to reconsider

the vote by which these resolves passed, let the matter lie over until the Committee make their other report, and then let all the subjects connected with the matter be disposed of together.

Mr. BATES, of Plymouth. I certainly hope that the motion to reconsider the vote, by which these resolutions have been adopted, will not prevail. I have no particular feeling, as a member of the Committee which reported the resolve, about the tenure of office of the judges of probate. But the course which this debate has taken, makes it somewhat singular in its character; and there is manifested, upon the part of some members, a disposition to bring into the debate an element which I am sure was not intended by the gentleman for Manchester, (Mr. Dana,) who moved the reconsideration. Of course I do not impute improper motives to him, because I know him to be incapable of entertaining them, but the disposition is consequent upon the course which the debate has taken since the motion to reconsider was made.

Now, Sir, when this matter came up for consideration on the adoption of the resolutions, it consumed an entire day in the Convention, in the absence of the gentleman for Manchester. In the course of that debate all these objections were considered with reference to the election of clerks of the county courts, and in relation to the district attorneys, the county treasurers, the county commissioners, and the commissioners of insolvency. All these objections were thoroughly and fully discussed, and under these circumstances the resolves passed the Convention with only forty-one votes in the negative.

But a motion was made to reconsider, and upon that motion we have consumed three days of the time of the Convention in the discussion of the same questions over again, as well as almost every thing else, and now we are asked to reconsider the vote by which these resolves passed, and allow the matter to lie over until another report is presented from the Committee, and then take up that report in connection with these resolves, which of course will open the whole question again, and we shall probably have three or four days more discussion upon the same subject. It is now plainly and openly put to the Convention, that the clerks of the courts, and certain other officers named in the resolves, should not be made elective. This is made as one of the strongest reasons for a reconsideration, and of course this question will open a new field of debate from that which was intended by the gentleman who made the motion, (Mr. Dana,) and I submit, therefore, to the Convention, whether, under these circumstances, after the resolves have been finally passed upon with so great unanimity, and after we have spent so many days in discussing the motion to reconsider, we shall now agree to a motion which will again place the subject back where it was when we commenced, and open it again for a protracted discussion? I certainly hope the motion will not prevail.

Mr. SCHOULER, of Boston. When these resolves were first before the Committee of the Whole, I said a few words in favor of the Report. I voted for it and I intend to vote for it all the way through. But after all the discussion which has taken place in reference to this matter, and after the course the debate has taken this morning in regard to an elective judiciary, and especially after the remarks of the gentleman from Salem,

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(Mr. Lord,) I think it necessary that I should say a very few words upon the subject.

I am opposed to an elective judiciary, but I never supposed, and I never heard it supposed by any one until this morning, that it was more necessary that the judges of probate should have a life tenure than in the case of the judges of the supreme court and court of common pleas. Sir, I cannot concur in that doctrine at all. The judges of the supreme court and court of common pleas have a great deal more power placed in their hands than do the judges of probate. They can put a man into the State prison, and they can do a great many things which the judges of probate cannot. They, in fact, have control over his life, his property, and his liberty, which, I presume, no man would contend the judges of probate have.

I believe these officers ought to be made elective. I believe we shall find no difficulty, and a great deal of advantage arising out of it; at least, we shall find more than sufficient advantage arising out of it to counterbalance the evil. Sir, when we get a good man in office, he will of course discharge his duty in such a way as to merit the respect and confidence of the community. The very fact, that he has the property of widows, orphans, and infants to administer and take care of, and the fact, that if he does not take care of it properly, the community will take care of him, by not reelecting him, instead of being an inducement for him to do injustice to that class of persons, in my opinion, would be an inducement, if to swerve at all, to swerve towards the side of weakness—towards the protection of that class of persons who always have the sympathies of the community.

I say, I can see no evils arising out of the principle, and I have perfect confidence that it will have the effect to carry out the ideas of those who desire that a judge should always lean, in his sympathies, towards the side of the weak, without swerving in the least from the path of justice. It is true that a hue and cry may be raised by some politicians against the judge for this reason, but where there is one against him there will be ten or twenty in favor of him.

Now, with regard to these officers, my friend from Salem, (Mr. Lord,) says, we wish to have the commissioners of insolvency made elective, so that they may put the insolvents through, and he gave us some instances of the way they put them through down in Essex county. Now, Sir, I would like to ask the gentleman from Salem, whether those men, who advertised that they would put a debtor through for thirty dollars, were commissioners elected by the people or appointed?

Mr. LORD. The gentleman from Boston has entirely mistaken my argument. I did not argue against making these officers elective. I argued, that the tenure of these officers should be made permanent and independent, and the cases which I mentioned, to which the gentleman alludes, took place where the tenure of the officers was not permanent or independent. They were subject to removal at any hour. What I want is, that they should be made independent.

Mr. SCHOULER. Well, Sir, I understand we are going to have a resolution reported by the Committee, making these men amenable to the executive, or some other power, to be removed whenever they do anything wrong, or worthy of removal, and, therefore, their tenure will not be

any more permanent after they are elected, than before. But, I think three years is long enough to continue them in office. But the question I wish to ask is this: if there are men appointed or elected, such as the gentleman has described, who will advertise in the newspapers, that they will put a man through for thirty dollars, or for any sum? I want to know if anybody supposes such men could be reelected in the county of Essex? No, Sir; the very fact that a man's conduct is to be reviewed by the whole people in the county, will be sufficient to prevent the appearance, hereafter, of advertisements from commissioners of insolvency, that they will put men through for thirty dollars apiece.

But, Sir, the gentleman says, it is the policy of these commissioners of insolvency to clear a man of his debts, because the friends of the debtor will go for his reappointment. Now, Sir, if these officers are made elective, and they undertake to clear a man wrongfully of his debts, it may be, as the gentleman says, that some strong politician will go for his reelection; but then the gentleman forgets, that perhaps a dozen strong politicians will go against him on that account, so that one will balance the other, or, as I think, one will a little more than balance the other.

Now, Sir, I do not wish to occupy the time of the Convention, but I desire to notice one point more. The gentleman does not wish to have the subject of judicial decisions brought before a political caucus. Sir, I am perfectly aware of the influences which are sometimes made use of in a political caucus, but it sometimes happens, that men who have had considerable to do with them, use them to make a scarecrow of. Now, I have no fear of this. It is not to review the decisions of a judge that the political caucuses are held, nor is that a question likely to come up. The only question in respect to these men will be, as to their capacity and fidelity, and if they are men who do their duty,—as we can find men in all our counties who will,—I do not apprehend any difficulty in reelecting them. But, Sir, I understood the gentleman, sitting on my right, who was district attorney for a number of years in his county, that the office of register of deeds, which has been, heretofore, an elective one, has been continued to the same man in his county for more than thirty years, and I have no doubt that it will be found to be so with the judges of probate, if they are found faithful in the discharge of their duty, and so with all those other officers. Their duties are not of a political nature. They are not political officers, and they cannot well be made such.

Sir, I think we shall gain something by making them elective; we shall, at least, put a little of the urbanity, the suavity, and the grace of life into some of these officers, where, I think, it is very much needed. If it makes a man polite and courteous to make him elective, according to the same rule, it will make him the reverse to give him office for life. It will make him austere and forbidding. Now, I think that, by infusing a little of the popular spirit into one of these officers, we shall gain more than we shall lose,—we shall gain more in making him polite, courteous, and faithful in the discharge of his duty, than we shall lose on account of any wrong influence that may be brought to bear upon him on this account.

Then, in regard to the sheriffs, I am also in favor of their being made elective. I am aware that the duties of a sheriff are not of a very cour-

teous kind; but, then, if they were made elective, I think they would meet a poor man, whom they had to apprehend and arrest, a little more as though he were a human being, than they do now.

I want to infuse a little of this feeling into all these officers, and I think we shall do it, by making them elective. Let them be made removable by the governor, or by some power, if they do not attend properly to their business, and then let the people elect them. I think they will be more likely to perform their duty well. I think it will have the effect to greatly improve the character of these officers, and I think that by adopting it in the Constitution, it will greatly improve the Constitution.

Mr. WILSON, of Natick. I ask the unanimous consent of the Convention, that I may submit a motion that the question be taken at fifteen minutes past twelve o'clock.

Mr. LORD, of Salem. I desire about two minutes, to reply to the gentleman from Boston, (Mr. Schouler,) and then I have no objection to the question being taken. I, however, desire that time, and therefore object.

Mr. WILSON. Then I move that the subject under consideration lie upon the table, for that purpose.

The question was taken, and the subject under consideration laid upon the table—ayes, 112, noes, 56.

Mr. WILSON, of Natick. I now move that the question be taken at 17 minutes after 12 o'clock.

Mr. LORD, of Salem. I do not believe that there is anything to be gained by this motion. This morning the demand was made for the previous question. That motion the Convention would not entertain, for the reason that certain gentlemen desired the matter should be farther discussed, and the Convention did desire that it should be farther discussed. By a rule of legislative bodies, the previous question cannot be moved again during this session. The Convention understood that perfectly well, when they settled that they would not then take the question. Now, by a sort of parliamentary manoeuvring, the gentleman from Natick proposes to lay the orders of the day upon the table, so that he can make a motion to take this question, and avoid the rules which say that the previous question shall not be moved again, when he knows that there are persons who desire to speak, not dilatorily, not to consume time unnecessarily, but to express their honest convictions, which they have a right to express, as good a right as the gentleman from Natick has to talk by the hour about a professor of history in Harvard College. With a poor grace does it come from him, to say that there shall be no discussion upon this question, upon the motion of a gentleman who has been half an hour talking upon something.

The PRESIDENT. The gentleman from Salem is taking too wide a range of debate. The question is upon the time for closing the debate.

Mr. LORD. I submit that I have a right to make a suggestion. I do not know how wide a range may be allowed, but I submit that I have a right to suggest that the Convention ought not to sustain a motion to stop the discussion of the real question, coming from a gentleman who has been discussing politics to the exclusion of the

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real question, while it was before the House. I desired to say, and I think it is in order for me to say it, that the gentleman from Boston, (Mr. Schouler,) had misconceived certain views which I meant to express, and also to show an illustration of what I thought was the practical operation of this thing. I desired only to discuss the question fairly and properly, and if, by a sort of parliamentary management, gentlemen are to be prevented from discussing questions, when they adhere to the question, by those who do not touch the question, I think that we had better adopt different rules.

Mr. WILSON, of Natick. A single word in reply to the gentleman. The gentleman from Salem has already spoken more than one hour upon this question. I wish simply to say, that I occupied but ten minutes this morning, upon the subject to which he referred, and, with three exceptions, that I have not exceeded fifteen minutes at any time during the session. The gentleman from Salem has already spoken over one hour upon this subject. He spoke forty minutes the other day, and some twenty-seven or twenty-eight minutes this morning. I made the motion, not to preclude him from speaking again, but because I thought we had spent a great deal of time already upon this question.

The question, upon Mr. Wilson's motion, was then taken, and it was agreed to.

Mr. WILSON then moved the consideration of the special order, being the resolve relating to

Sectarian Schools.

The motion was agreed to.

Mr. TYLER, of Pawtucket. I wish to inquire of the Chairman, or any other gentleman who can give me the information, what is the extent of the meaning to be attached to the word "schools" here, whether it is confined to common district schools, or whether it will include academies, colleges, or other institutions of learning. I should be glad to be satisfied upon that point.

Mr. STETSON, of Braintree. I move that the word "colleges" be added after the word "schools."

Mr. BLAGDEN, of Boston. I do not see that the chairman of the Committee, or any member of the Committee is present except myself, and, therefore, I will answer the inquiry of the gentleman from Pawtucket, (Mr. Tyler). The Committee understood by the term schools, the common schools, and I understood distinctly that it did not embrace colleges.

There is another resolve reported by the Committee, recommending the Convention to strike out the words "University of Cambridge," from the article relating to that subject in the present Constitution.

Mr. LOTHROP, of Boston. I hope the amendment proposed by the gentleman from Braintree, (Mr. Stetson,) will not prevail. The resolve as it stands, it seems to me, is perfectly distinct and clear. The gentleman from Pawtucket, (Mr. Tyler,) inquired as to the meaning of the resolve, and what it was proposed to cover. It seems to me that it covers distinctly the common schools of the Commonwealth, and nothing more. No academies, properly speaking, are entitled to a share from the public money. The public money has a distinct meaning, and every gentleman understands what that meaning is.

Our academies are more or less corporate institutions, in the hands of trustees, like colleges, and they are in various ways connected with the religious or denominational sympathies of the people of the Commonwealth. In general, they are conducted in such a way as to promote the great object for which they were instituted, to provide education for those who wish to avail themselves of their privileges. This resolution relates simply to the common schools of the Commonwealth, and to the public money arising from the income of the school fund, and from taxes levied for the support of those schools, and we wish to provide against any sectarian or denominational influence being brought to bear in their management. That covers the whole extent of the resolution. As my colleague says, there is another resolve reported by this same Committee, recommending the Convention to strike out the words "University of Cambridge" from the article on the encouragement of literature, as it now stands in the present Constitution. We contemplate doing that, because the university at Cambridge, and all the colleges of the Commonwealth are included under the phrase "all seminaries of learning," which is used in that article. The Commonwealth has the general care of these seminaries, and an interest in all of them, yet they are distinct from the common schools of the Commonwealth, inasmuch as they are incorporated institutions in the hands of trustees, and therefore not so particularly or directly under the charge of the Commonwealth, as the common schools. It seems to me that nothing would be gained, by adopting the amendment proposed by the gentleman from Braintree, and considerable confusion might arise hereafter from its adoption. Suppose, that, in the course of a few years, something should occur, which should dispose or induce the legislature of the Commonwealth to make an appropriation from the State treasury, to Amherst or Williams' College, or the University at Cambridge. Each of these institutions, to a limited extent at least, is in the hands of a particular religious denomination; in the public mind, certain particular religious views and opinions are associated with one and another of these colleges, and yet the general interests of education, as well as the interests of the college, might be promoted, and the whole State benefited by such an appropriation from the Commonwealth, to one or the other of these colleges. It would be wise, just, patriotic legislation to make the appropriation. No sensible man in the State, of any denomination, would object to it; and, yet it might be argued that it could not be done under this article of the Constitution, provided the amendment of the gentleman from Braintree prevails, and this argument would be conclusive; the college being in the hands of trustees of a particular denomination, would, upon a strict construction, come within the rule, and be regarded as sectarian in its character. It seems to me that the insertion of the word "colleges" would only produce confusion, and that the resolution, as it stands at present, is distinct and intelligible, and covers all that is important in this matter.

I wish to modify my amendment by adding the words "or any seminary of learning," which I think will cover the whole ground.

Mr. FROTHINGHAM, of Charlestown. I had the honor of being upon the Committee that

reported this resolution, and, perhaps, it is not out of order to state, that in the Committee I was opposed to the adoption of this resolution, not however to the subject which the resolution is intended to secure; for, I agree with those who go the farthest, that our common schools should be kept entirely free from sectarian influences of all sects and kinds. But, it seems to me, that there is one provision of the Constitution which is so ample as to cover this subject entirely, and that, therefore, an additional provision in the Constitution would seem to be mere surplusage. I would beg the privilege of reading it. It is in the amended article which was inserted, instead of the third article. It reads as follows:—

"And every denomination of Christians demeaning themselves peaceably and as good subjects of the Commonwealth shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law."

For that reason, because there was enough in the Constitution already, I was opposed in the Committee to the adoption of the resolve, and I shall vote against it here in the Convention.

Mr. BIRD, of Walpole. I would like to ask the gentleman from Charlestown, whether we have not, with that clause in the Constitution, granted appropriations to Harvard, and Williams-town, and Amherst colleges?

Mr. FROTHINGHAM. The gentleman asks in relation to colleges, and not in relation to schools. I merely answer the gentleman's question.

Mr. STETSON. After looking this over in all its various phases, I think now, that in order to have the construction plain, the word "any" might as well be stricken out. Then I think it may be explicit enough, and I modify my amendment in that manner.

Mr. KEYES. It was suggested to my mind by the remarks made by the gentleman from Williamstown, wherein he seemed to indicate that there was no necessity for this; that I also could not see precisely how it was called for. But, it strikes me, there might a great deal of difficulty grow out of it in consequence of the doubtful meaning of the words "sectarian or denominational schools." What is meant by these terms? Does it mean schools where theology of one sort or another is taught? Or, does it mean those where theology may be taught, and nobody but persons of a single denomination shall go; or does it mean a school where the leading idea is one thing, but where the school is open to every-body? It appears to me, that if there was anything against which, persons might have any objection, in any of our schools,—if there was such a provision in the Constitution,—they might be opposed on the ground that they were denominational or sectarian. All the schools are under the influence, in chief, of some denomination or other; and there is no college but what the leading religious idea is one, whether it be under the direction of the Baptists, Presbyterians, Unitarians, or Episcopalians. When I was a small boy, at Amherst, I did not suppose that there was any other religion in the world than that which was called Orthodox. It never occurred to me that there was any other worthy the regard of good men. I want to know whether these provisions are to apply to such an institu-

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tion as that, where every professor was of one religious sect, and where every lesson in history, and every lesson from the Bible, had the color of that sect, and where, if we did not have a revival once in a quarter, there was thought to be a great lack of grace. I want to know whether such an institution would be termed denominational or not, under the operation of the provisions of the resolution before us?

And I want to know another thing, which, perhaps, some persons may find a little more delicacy about. I want to know whether it is aimed at the Catholics or not? Now, I pass once or twice a week where I see not "the ruins of the convent," but the ruins of the Catholic college at Worcester. It was by accident burned down; and who knows but that that institution may apply to the legislature for aid in rebuilding its walls. I do not know why that college has not the same right to ask, and why there is not the same duty on the part of the government to grant assistance to that institution as any other literary institution. For all our people are on the same basis, and have equal claims to the patronage of the government as the Medical College at Pittsfield, or colleges at Williamstown, or Amherst, or Harvard, which have received aid from the public treasury. The question is, is this intended to have any such application? Unless there is some technical meaning beyond what is contained in the words of the resolution, it seems to me it is of no use at all, because all our schools are in one sense denominational, and in another sense, none of them are denominational.

I understand the Catholic college—and that is probably the strictest sectarian school in all New England—is open to anybody who has a mind to comply with the regulations, and pay the bills. If that is the fact, then that school and Harvard College stand upon the same basis. Neither one is denominational in one sense, and both are denominational in another sense. Unless there is some special reason why we should embarrass the Constitution with such a provision which has not been adverted to, I hope it will not be adopted at all.

Mr. CHANDLER, of Greenfield. It will be observed that there was another resolution presented to this Committee relative to a public fund, raised for the encouragement of our common schools. I do not find the resolution among my documents, but I think it has been before the Convention, and that they have acted upon it. In that resolution it was declared that when this fund had accumulated to two millions, the avails of it should be appropriated to the support and improvement of common schools, and for no other purpose. This was designed to guard the public fund, the school fund, from being appropriated to any other purpose than the support of common schools and the common school system, implying, of course, normal schools for the education of teachers, and perhaps teachers' institutes; and it was not to go out of the line of the common schools. That, by some of the Committee was thought sufficient, and by others it was thought better to add a particular resolve guarding it still further. And this was added:—

Resolved, That it is expedient so to amend the Constitution, so as to provide that no public money in this Commonwealth, whether accruing from funds, or raised by taxation, shall ever be appropriated for the support of sectarian or denominational schools.

That is a resolution relating to the same fund, to guard it sacredly; and there was no word pointing at the Catholics or any other denomination. But the Committee were aware that denominations are very fond of influences and of receiving countenance from the public, and many would be glad if they could get hold of the public fund, to appropriate that to build up their own denomination. The Committee judged it altogether improper, and they wished to guard the public fund against it; for they wished it to be preserved sacredly for one single object.

The gentleman called for information, and I believe that this is the understanding which the Committee have; at least it is the understanding which I received. I am sorry that the chairman of the Committee is not here to state the matter more fully.

Mr. WILSON. I wish simply to say a single word in relation to the amendment of my friend from Braintree. I hope that amendment will not be adopted. I suppose that this resolution is intended to apply strictly to common schools. The object to be attained is this—that our common schools may be open to all the children of the State, without distinction of sect or condition; so that the school fund may be forever preserved, not only that portion, the proceeds of which are to be applied to common school education, but that which is raised by taxation, so that our common schools shall stand in the future just as they do to-day, and as they have stood in the past, and to avoid if possible the question which may hereafter arise as to the establishing of sectarian schools. I think the resolution not so clear as it ought to be. I have seen a resolution drawn up by the distinguished delegate from Cambridge, (Mr. Parker,) which I think, if I fully comprehend it, covers the whole ground. As to this amendment, I cannot vote for it in any way. I am willing to vote money, if we have it to spare, to Williams' College, or Amherst, or Harvard Colleges, or any other sectarian colleges or seminaries of learning. They are all sectarian, more or less, and I think they should not be mixed up with the common schools, where we all say sectarianism should never come. I wish my friend from Cambridge would move the amendment which I have seen in his hand, and which I think is quite sufficient. I hope, at any rate, the amendment of the gentleman from Braintree will not prevail.

Mr. STETSON. I did not intend to say a word upon this subject, but the remark of the gentleman from Natick has drawn me into it. I do not believe it is necessary that this resolution should pass at all, but, if it is to pass, I think my amendment is necessary, because, as the resolve now stands, it is not sufficiently explicit; and then, I do not know why we should not appropriate money to schools which may be called sectarian, as well as colleges which are sectarian. If any gentleman will give a good reason why we should not, of course I would have no more to say. But, my opinion is, that there is no necessity for such a provision in the Constitution; therefore, I have moved the amendment, so that all may go together.

Mr. BLAGDEN, of Boston. I should be glad to give way to allow the gentleman from Cambridge an opportunity to offer his amendment, if he has a resolution which will be more specific than this will be. But, I have here an amendment, which I have the honor to offer to the

amendment of the gentleman from Braintree, and which I think is in order and which will cause the resolution to be more acceptable to him, which is, that "no money shall ever be appropriated for the support of any common school of a sectarian or a denominational character." That will be specific and will meet the object which the Committee hoped they had met by the wording of the resolution. I apprehend that this will be specific enough, and I hope the gentleman from Cambridge may make his suggestion if it is necessary, and I will adopt it into the amendment which I have the honor to make, if possible.

The PRESIDENT. The Chair will suggest that the amendment of the gentleman from Boston will be in order after the amendment of the gentleman from Braintree is disposed of.

Mr. STETSON. If the gentleman from Boston wishes to perfect his resolution, I will withdraw my amendment.

Mr. BLAGDEN. I then offer the following amendment to the last part of the resolution. It now reads:—

Shall ever be appropriated for the support of sectarian or denominational schools.

I move that it be amended so that it will read:

Shall ever be appropriated for the support of any common school of a sectarian or denominational character.

Mr. RANTOUL, of Beverly. I do not see any necessity for adopting this amendment in the Constitution. It seems to me that greater evils will result from the adoption of it, than will ever occur from its omission, and, therefore, I think it is inexpedient to adopt it.

With respect to sectarianism and denominationalism, I believe there are no two persons who agree what is meant by it. I never found any two who could tell. It will, as it seems to me, lead to discussion immediately of that particular subject, and it will extend through the Commonwealth and be attended with consequences which we do not foresee. The Catholics, on the one side, may contend that the protestant schools are sectarian schools, and, therefore, that the Commonwealth ought not to give any money for their support. On the other hand, the protestants may contend that the Catholic schools are sectarian, and, therefore, should not receive the aid of the school fund. It appears to me the anticipation of the effect of this provision's being introduced into the Constitution, should deter us from adopting it, because we ought not to hasten the discussion which will come soon enough in this country in all probability between the Catholics and protestants. The Catholics are increasing very fast, and ought not to do anything in any way which will promote or encourage discussion upon that subject.

I have heard no explanation whatever from the gentleman who reported this resolution, or any other one, as to what is meant by sectarianism or denominationalism, and I apprehend there is a difficulty in stating that meaning. We are attempting to do what no two persons can agree about.

Mr. PARKER, of Cambridge. I hold in my hand a sketch of a resolution or amendment which I suppose my friend from Natick referred to. I was purposing to offer it whenever it might be in order to do so. I suppose it is not

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strictly in order, but with the indulgence of the Convention, I will read what I have prepared to offer at a proper time. I propose to strike out all after the word "Resolved," and insert the following:—

That the money raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of such schools, shall be applied to no other schools than those which are under the order and superintendence of the town or city authorities according to law, in which the money is to be expended.

The PRESIDENT. The immediate question is upon the amendment moved by the gentleman from Boston.

Mr. BIRD, of Walpole. It is somewhat singular that yesterday this order was up before the Convention, and it required all the skill which I possessed to prevent the Convention from rushing to the final passage of this resolution by the suspension of the rules. The rules were suspended, and nobody said one word against the resolution, and we were upon the point of taking the final vote, when a motion was made to postpone the further consideration of the subject, which was with difficulty carried. Now we find every-body to be opposed to the resolution.

The hour of one o'clock having arrived, the Convention adjourned until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at 3 o'clock.

Report from a Committee.

Mr. HALL, of Haverhill, from the Committee on Secretary, Treasurer, &c., submitted, (in behalf of the Chairman,) the following Report, which was referred to the Committee of the Whole, and ordered to be printed.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 5, 1853.

The Committee on Secretary, Treasurer, &c., to whom was referred the Order of June 4th, have considered the same, and report the following Resolves:—

HENRY W. BISHOP, *Chairman.*

1. *Resolved*, That it is expedient to amend the Constitution, so as to provide that the electors of the several towns, shall elect, in such manner as the legislature may direct, Justices of the Peace, whose term of office shall be three years, and whose jurisdiction shall extend throughout the county in which they may be elected; their number and classification shall be regulated by law; they may be removed after due notice, and an opportunity of being heard in their defence, by such court, as may be prescribed by law, for causes to be assigned in the order of removal.

2. *Resolved*, That it is expedient so to amend the Constitution, that the Governor may remove any officer in the former resolves of this Committee mentioned, within the term for which he shall have been elected, giving such officer a copy of the charges against him, and an opportunity of being heard in his defence.

3. *Resolved*, That it is expedient to provide in the Constitution, that, in case of vacancy by resignation or otherwise, of any State, County, or District officer, whose election is provided for in the Constitution, the governor shall issue his warrant to the mayor and aldermen of the several cities, and the selectmen of the several towns, to fill the vacancy at the next annual election after

it shall happen; and the governor, with the advice and consent of the council, may appoint suitable persons to fill vacancies until an election by the people.

Upon motion of Mr. LELAND, of Holliston, the Convention proceeded to the consideration of the Orders of the Day, the first subject being the unfinished business of the morning, viz: the resolve on the subject of appropriations for

Sectarian Schools.

Mr. CHAPIN, of Worcester. I am entirely unable to see any occasion for a provision of this kind. If I understand the amendment of the gentleman from Boston, it proposes to apply this, in some way, to common schools. I suppose that common schools in the State of Massachusetts are those which are open to all the children of the State, and which are supported at the public expense. It is difficult for me to see how, under our present laws, these schools are to be sectarian and denominational. I cannot see any occasion, therefore, for the adoption of an amendment of this kind; and, if it is in order, I will move that this matter be indefinitely postponed.

The PRESIDENT. That motion is not in order at the present time.

Mr. BLAGDEN, of Boston. I had not intended to say anything further upon this resolve; but I desire to answer the objection of the gentleman from Worcester, and while I am up I should like to explain the proposition so as to show why it is deserving of the support of this Convention. It is known, that in reference to the school fund of other States, applications have been made from religious sects, and from one religious sect in particular, that the public money of the State should be divided among the schools of a particular religious denomination. This resolve is intended to preserve to the Commonwealth, in all future time, the great benefit of the public common schools, where the children of all religious sects can meet together, and where the modified influence which arises from a common education can reach all the children of the respective cities and towns in the Commonwealth. It was thought by a majority of the Committee that it was desirable to place such a safeguard in the Constitution, so as to continue the influence of the public schools, and to make that influence certain and good for all future time, and remove all cause of controversy. That was the opinion in my own mind, and that, as I apprehend, was the opinion in the minds of all—I was about to say, of the Committee—but, perhaps, I should except the gentleman from Charlestown, (Mr. Frothingham,) who expressed his views upon this subject previous to the adjournment this morning. It was my impression, until then, that the Committee were unanimous in their opinion. This is strictly, and in the true sense of the term, a Catholic measure. In some sects, I am informed that the tendency has been, and the Roman Catholic sect is one of those to which I allude,—to seek to have the funds of the respective States applied to the continuance and the improvement of schools of their own particular denomination. We wish, in future, to have the aid of the State bestowed without reference to sectarianism in the schools, and that is the point that we wish to meet in this resolve.

Mr. BIRD, of Walpole. I do not see the ground of the distinction which some gentlemen

here seem inclined to make between appropriations of the public money for common schools and similar appropriations for colleges. My friend from Natick said this morning, that he would leave this matter open, so that when we had money to spare, we might appropriate it to sectarian colleges. Sir, I would do no such thing. If you would not appropriate it to sectarian common schools, why should you appropriate it to sectarian high schools? And if not to sectarian high schools, which are after all common schools, why should you appropriate it to sectarian normal schools? And if not to sectarian normal schools, why should you appropriate it to sectarian colleges? I should like to have gentlemen tell me where we are to stop, and what reason they can give for drawing a line between two of these classes rather than between any other two. If I were willing to vote for a proposition of this kind, I would vote for one that would cover the whole ground, and forever prevent the appropriation of a single dollar of the public money to any school whatever of a sectarian character—using the word school in its broadest sense, as including seminaries of learning of all descriptions. If I would do anything of the kind, I would do that; and that is just what I would like to do. I should like to have a provision of that kind inserted into the Constitution, which would prevent such unseemly scrambles as we have seen here in the legislature to get appropriations of the public money for colleges.

Gentlemen may perhaps recollect, that in the year 1847, Amherst College applied to the legislature for an appropriation of five thousand dollars a year for five years. Every-body knows that up to that time, Amherst College never could get a penny from the legislature—I will not say what the reason was; but it is well known that previous to 1847, there was an influence from some quarter or other which was sufficiently powerful to prevent Amherst College from getting one dollar of the public money. But in 1847 she got the \$25,000. I always supposed, I suppose now, that at that time there was some general understanding between Amherst College and all the other colleges in the Commonwealth, that they would let Amherst come in and get this appropriation in 1847, and then they would all come in 1848 and start fair for a large haul. Williams' had previously received grants, and Harvard; but up to that time Amherst had never got anything. I do not mean that there was an express bargain, but that was the idea. "Let Amherst get her portion this year, and next year we will all come in and make a general attack, and see if we cannot get a handsome sum for us all." Well, Sir, that was just what was done. Gentlemen will recollect that the next year after Amherst got her appropriation, all three colleges came in and made a concerted attack upon the proceeds of the public lands, and they came very near getting several hundred thousand dollars; they got almost a unanimous report from the Committee in favor of it, and the thing was urged here by the powerful and combined interest of the friends of these three institutions, Amherst, Williams' and Harvard, all being ably represented here. I confess, Sir, that it was rather wonderful to me at the time that they did not succeed. If any restriction is inserted in the Constitution, I would have one which shall reach another operation.

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Now, I do not know as it is necessary that we should have any clause of this kind inserted in the Constitution. Some gentlemen seem to be afraid that it will operate unfavorably upon the popular vote for the new Constitution, because it may seem to be aimed at our Catholic citizens; but, I have no fears of any complaint on that score, provided, you make the provision a general one, to apply equally. It should equally exclude all classes of sectarians from any portion of the public money, for any class of schools; for of course, if it seems to be aimed at any particular class, you will arouse the prejudices and invite the opposition of that class. I am not sure that anything needs to be done in relation to this matter of sectarianism in the public schools, for I am inclined to think, that public opinion will take care of the matter in future legislatures, and that, there will not be much danger of appropriations being made to public schools of any description, which are of an improper sectarian character. But I hope that this resolve, if it is adopted at all, will be so worded as to cover the whole class of institutions of learning, so that there shall be no possibility of one dollar ever being appropriated to sectarian schools, sectarian academies, or sectarian colleges of any description whatever. I do not know of any difference between a college and a normal school, except, that one is a seminary of learning of a little higher grade than the other.

I took occasion to say, in 1848, in the course of the debate upon the matter to which I have alluded, and my experience since that time has strengthened my conviction that it is the true doctrine, that what we need to perfect our system of school education, is that we should have a higher grade to correspond with colleges. I hope to live to see the day, and if I live a few years, I expect to see the day, when we shall have public colleges in Massachusetts, either by converting Harvard College, and Williams' College, and Amherst College into public colleges, for I think we have the power to do that, and I trust that we shall exercise it; or, if that is not deemed advisable or expedient, we can at least open public colleges, and in that way compel these institutions to do as we have already, for the last twenty years, compelled academies and private schools to do; that is, to shut their doors unless they open them to the public as free schools of the highest grade. There are men, who, will see the day when the public schools of Massachusetts shall offer to every son and daughter of the Commonwealth, the best education which human teaching can furnish, free of charge, when our school system will be perfected by the addition of a higher grade of common schools, performing a part in our system of public instruction to correspond with our colleges as now managed. Believing this, I would, by a constitutional provision, if that is necessary, prevent the possibility of the appropriation of one dollar for a private school, whether sectarian or not; but would reserve all our aid for public schools,—common schools, high schools, normal schools or colleges.

Mr. WALKER, of North Brookfield. I am very desirous of having some provision of this sort incorporated into the Constitution of Massachusetts, for I think that it is high time that we should settle the question, that the public funds are never to be given, hereafter, to any private institution. The original plan of the common

school system, as it was commenced in 1642, was, that the system of public schools, which we have now, should be carried out, and that all institutions of learning, which accepted any portion of the public patronage, must be open to all persons—that there should be no sectarian, no exclusion of any sort whatever. I sincerely hope that, the time is not far distant when colleges may be open in this way, and that we shall have free colleges and normal colleges on our original plan. I see no reason why colleges should not be as free to all, as any other institution of learning; and hence, I fully agree with the principles which are laid down in the resolves that have been reported by the Committee. I would have it extended to all institutions of learning, of whatever description; and I think the time has come, when that principle should be distinctly recognized as a part of the Constitution of Massachusetts.

Mr. SARGENT, of Cambridge. I think that in everything we attempt to do, we should first decide that there is a sufficient cause for acting. We have lived under the present Constitution for more than seventy years, and I submit, whether there has been any difficulty arising on this subject during that whole time. If there has been none, then it seems to me, that there is no evil which is necessary to be removed. If there is any difficulty in expectation, if I read this resolution aright, we shall, by passing it, place ourselves precisely in the position which we are seeking to avoid. "No money shall ever be appropriated for the support of a sectarian or denominational school." Now, what is the meaning of these two words, "sectarian" and "denominational?" How are we to determine what is a sectarian school, and what is a denominational school? I suppose that it will be admitted, that the community is divided into two great sectional divisions, or denominations—Protestant and Catholic. Each of these denominations has a Bible of its own, differing from that of the other. Under this clause, I would ask, if these Bibles do not become sectarian and denominational books; and if the one or the other of them be used in a school, and its doctrines are taught there,—not the sectional, but the plain doctrines of it,—I ask, whether you do not, by this resolve, raise the question which must be settled, whether that is not a denominational school? It seems to me, that we are running into the very difficulty which we are seeking to avoid. I think the resolution which was brought before the Convention by my colleague, (Mr. Parker,) covers the whole difficulty that is sought to be avoided, or at least escapes this difficulty, in the resolution before us. I hope, therefore, that the amendment of the gentleman from Boston will not be adopted, and that this resolution will be rejected; and then I hope that the resolution of my colleague will be presented, and that it will meet the approbation and concurrence of this body.

Mr. UPHAM, of Salem. Remarks have been thrown out by the gentleman from Walpole, and also, by my friend the delegate from North Brookfield, that have introduced some confusion with reference to the matter now under consideration. I understood those gentlemen to advocate the establishment, at some future and early day, of public colleges in the Commonwealth; and I am at a loss to know how such institutions can possibly be made to avoid the imputation of being more or less sectarian, or how they can be contemplated

as sustained in any other manner than by the public resources. I will ask, whether it is wise to inscribe in our Constitution a principle, which will prevent applications of the resources of the Commonwealth at any future day, for the establishment of such institutions if it should be thought desirable. But, as I listened to the language of the amendment of the gentleman from Boston, it seemed to me that such a topic as my friends have introduced is entirely inapplicable to the resolution. It refers to common schools alone; and now I beg the attention of gentlemen of the Convention for a moment, in reference to this matter. It is proposed to establish in our Constitution the principle that no public money, whether accruing from funds arising from taxation, or from the public lands, or any other source, shall ever be appropriated for the support of common schools of a sectarian or denominational character. Now, I would inquire whether there ever have been such schools in the Commonwealth, whether by any possibility there can be such schools? I understand that common schools are, as stated by one of the delegates from Worcester, (Mr. Chapin,) schools supported by the public resources, and equally open to all. I maintain that there are no such institutions in this Commonwealth of a sectarian character, and that there cannot be any, unless gentlemen take the ground that the usage which has come down to us from our pious ancestors of observing a devotional exercise at the commencement of a school session, and of having a chapter from the Bible read, imparts a sectarian or denominational character to the institution. If the observance of that practice can be regarded as imparting a sectarian or a denominational character to the institution, then it seems to me, that the adoption of such a resolve as this would be in fact an expression by this Convention of the opinion that such a practice should be abandoned. For that practice, Mr. President, does open that question to which some gentlemen have alluded, and which, in a few years, if it has not even now become so, will become a serious practical question.

A large portion of our constituents maintain, that the practice of reading the Protestant Bible in our schools, and of offering up prayers by the teachers who are Protestants, and which prayers are liable to partake more or less of the character of argumentation and inculcation—I may say, perhaps of preaching—gives a sectarian character to these institutions. Now, I do not wish to express a personal opinion here, and I would not advise this Convention to express an opinion upon that point.

The amendment offered by the learned gentleman from Cambridge, (Mr. Parker,) contemplates the only method by which we can avoid this great issue in this Commonwealth, and that is, to allow these matters of detail in the management of our public schools to be determined in all instances by the local authorities. I object to the raising of this question at all, here, in this Convention; and I suggest that it would be expedient for us, in all respects, to adopt the suggestion made by one of the delegates from Worcester, to allow this subject to go to the table. I am confident, from what little observation I have made in these matters,—and perhaps I may say it has not been very little,—and from the circumstances with which I have been made acquainted, from various parts of the Commonwealth, that

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there are questions and difficulties involved in connection with this matter, which we are not prepared to solve, and which it would be inexpedient to settle by a constitutional provision, but which the good sense and considerate judgment, and the patriotic feelings of the citizens of this Commonwealth, in the various towns and districts, will settle, through the proper agents, the school committees, and the local authorities, in a manner satisfactory to all. If thus left to settle themselves, these questions will gradually become settled in a manner that will avoid a great practical inconvenience.

I had not intended to offer a word of remark upon this subject, but as it seemed to me to be involved in serious difficulties, not obvious, perhaps, at first view, to all, and not easy to be surmounted by any possible phraseology which could be used by this Convention, I have thought proper to suggest that it would be highly inexpedient to attempt to inscribe upon the Constitution anything in reference to this matter, and, also, to explain the vote which I shall give, in all stages, and all forms, against the adoption of this resolve.

Mr. STETSON, of Braintree. As I can see no possible good to arise by the passing of this resolve, I move to lay it upon the table.

The question was taken, and the motion was agreed to.

So the resolve was laid upon the table.

Resolves on Oaths, Subscriptions, &c.

The Convention next proceeded to the consideration of the resolves on Oaths, Subscriptions, &c., as the next business upon the Orders of the Day.

The PRESIDENT stated the question to be upon their final passage.

Mr. BRINLEY, of Boston. I move to strike out the third resolve, which is in these words:

Resolved, That the eighth article of the sixth chapter be amended by striking out the words "Senate and House of Representatives in," and the words "assembled" "and by the authority of the same," and by adding the words: "of Massachusetts," so that the article as amended shall read:—

ARTICLE VIII. The enacting style in making and passing of all acts, statutes, and laws, shall be: *Be it enacted by the General Court of Massachusetts.*

Mr. President, I had the honor to submit the same motion in the Committee of the Whole, which motion I subsequently withdrew, and, I now, in Convention renew it. If it is proper to advert to what took place in the Committee of the Whole, I may say, that the great reason assigned for the proposed alterations contained in this resolve was, that in the first place, the proposed term "the General Court of Massachusetts" was rather shorter than the phraseology now in the Constitution. The reason which induced me to withdraw the amendment was, that the chairman who reported the resolves to the Convention, was not then present to assign the reasons which induced the Committee to recommend the alterations. That course was recommended from a source which I considered entitled to respect, and under those circumstances, it was thought best that the amendment should not then be adopted, but that the Committee of the Whole should recommend the report to the Convention in the form

in which it was submitted by the sub-Committee.

I understand that, one reason for the phraseology proposed to be adopted is, that it harmonizes with that portion of the Constitution which prescribes, that the legislative department shall be styled "The General Court of Massachusetts," and it is proposed, in relation to that body, to retain the same epithet in the Constitution.

The Constitution, Mr. President, as it now stands, provides that the legislative department of the government shall be composed of two branches—a Senate and House of Representatives—each of which shall have a negative upon the other, and the legislative body so constituted is called "The General Court of Massachusetts." Well, now I submit that the framers of the Constitution understood the meaning of the language they employed in drawing that instrument, and that they made use of an appropriate and proper phrase when they made use of the words contained in the enacting clause, that, as it now stands, and with which we are all familiar, is as follows:—

"Be it enacted by the Senate and House of Representatives in general court assembled, and by the authority of the same."

Now, Mr. President, I maintain that that phraseology is fit, proper and appropriate to convey precisely what the framers of the Constitution intended to convey by it. It included within it, as it were, that other part of the Constitution to which I have adverted, viz: that the department of the legislature shall consist of a Senate and House of Representatives, and it shall be called the "General Court." Therefore, it seemed to follow very naturally and very logically that the enacting style should be: "Be it enacted by the Senate and House of Representatives in General Court assembled." I maintain, therefore, that there is a peculiar propriety and fitness in that clause of the Constitution, providing for the enacting style.

It is now proposed by the Committee, to vary that, with which, we have been so long familiar, and to adopt the shorter phrase "the General Court of Massachusetts." I see nothing gained by the proposed change, but a very small degree of brevity, to offset which I place the usage of four score years and ten, and that familiarity with the language and phraseology which brings it naturally to the lips and pen of every man who has occasion to employ it.

I concur in the opinion expressed by the gentleman from Cambridge, just now, that an amendment to the Constitution should not be made without some substantial reason for it, and I must confess, that I do not see any reason existing in this case, sufficient to warrant the change proposed. I will not take up the time of the Convention by discussing this matter at any length, but will present my views in the briefest possible form. I believe there were gentlemen in the Committee of the Whole who regretted that I withdrew the amendment, though I am satisfied that I did it upon a right apprehension of the state of things in the Committee, and, therefore, I renew it now.

Mr. HOOPER, of Fall River. I move to amend the motion of the gentleman from Boston, by striking out all after the word "the," in the enacting clause, and inserting the words "people represented in General Court," so that it shall

read, "Be it enacted by the people in General Court assembled."

The object of that amendment is, in the first place, to shorten the enacting style, and, in the second place, to express precisely the fact which it is intended to express. It is a fact, I suppose, which no gentleman will deny, that all authority emanates from the people; that the acts of the legislature are simply the acts of the people, through their legislature. Now, the term I propose to use, expresses precisely the whole facts of the case. It expresses the idea that the people are the source of power, and that they enact laws by their representatives assembled in General Court. That, it seems to me, is precisely what we want of an enacting clause.

It will conform, likewise, to the practice adopted in several other States of the Union. In almost all the Constitutions which have been recently framed, a similar phraseology is to be found. In New York, the phrase is, "the people represented in senate and assembly." In almost all instances the term "people"—is inserted in some form or another.

Mr. BRINLEY. I think the other phraseology would carry the idea, that what was done by the legislature was done by the people, quite forcibly enough. And, as the gentleman thinks that it has brevity to recommend it, I would state, as I am informed by a gentleman upon my left, that it is shorter than the phrase recommended by the Committee, only by four letters. And further, it seems to me, that in this good old State of Massachusetts it is not very necessary for us continually to revert to the practice of other States—New York among the rest—to ascertain what we shall do when we propose to vary our Constitution, and, I do not admit the applicability of any such allusions.

Mr. EARLE, of Worcester. The more I have looked at this question, the more I have become satisfied that there is no necessity for any alteration whatever. It appears to me that the present phraseology is very good. It answers the purpose for which it was intended; and, it seems to me, that after the existence of this government for nearly eighty years, we need not put anything into the enacting clause of our laws to remind the people of the source from whence the power springs that enacts them. There might have been some reason for it in other States, when their governments were newly formed, and there possibly might be some reason for it here when our government was new, though I do not admit even that. We gain nothing by the change, and unless we do, my opinion clearly is, that we lose rather than gain anything by making alterations where there is not a clear case in favor of it. If there is no other reason than this against it, it is that we may run foul of the prejudices and preconceived notions of some people, who otherwise may be favorable towards the amendments which we shall have made. I, for one, came here with the hope that we should be enabled so to make such a Constitution as would be acceptable to the great mass of the people, and that what we do here will be ratified by them almost unanimously. Therefore, I would avoid making any amendment that is not clearly needed; most of all I would avoid that which is merely a change of form, and which, as I said before, may run foul of the prejudices of some, and therefore induce them to oppose what otherwise they would not object to.

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Mr. KINGMAN, of West Bridgewater. A considerable portion of the day has been taken up with the discussion of this subject, and I believe that considerable time has been previously spent upon it, and I am afraid that the rest of this afternoon will be consumed in the same manner, and therefore, I move the previous question.

Mr. BIRD, of Walpole. I would suggest, before the question is taken upon the call for the previous question, that there is a verbal alteration which should be made in another section of the resolve, and that is, that the words "Receiver General" should be stricken out where it occurs, in order to make the resolves conform to what we have already determined upon, in reference to that title.

The PRESIDENT. The Chair would remind the gentleman that the matter cannot be discussed after a call for the previous question.

Mr. EARLE. I do not know how it may be with others, but I have no objection to the previous question being put, provided all other portions of the resolves, besides the one which we have discussed, are satisfactory all around. If the previous question could be called upon the third section alone, which is the one which has been under consideration, I should be satisfied. I would ask if the question can be divided.

The PRESIDENT. It can be; but if the Convention shall order the previous question, it will apply to the whole.

Mr. KINGMAN. I intended to move the previous question upon the particular part which has been under discussion, but as it has been ruled to apply to the whole resolve, I withdraw it.

Mr. BIRD. I now move that the words "Receiver General" be stricken out wherever they occur in the resolves.

Mr. GOOCH, of Melrose. As a member of the Committee which reported this resolve, I have a single suggestion to make. The reason which induced the Committee to make this Report upon the subject now before us was this: in a preceding portion of the Constitution it is provided that the legislature shall be styled "*the general court of Massachusetts*," and your Committee thought it very proper to make the enacting style correspond with that given to the legislature itself; that, if that body were to be styled "*the general court of Massachusetts*," it would be very proper that the enacting style should be, "*Be it enacted by the general court of Massachusetts*."

It is known that the enacting style must be written, printed and read, a great many times in the course of every session of the legislature, and it will be seen that by adopting the recommendation of your Committee it will be made only about one quarter the length of that now in use. It will, therefore, save a great deal of writing, reading and printing, in the course of a single session.

But it has been said, that the men who drafted the Constitution perfectly understood the use of every word they inserted in it. Now will any gentleman tell me what possible force or strength is conferred upon the enacting style by the last clause of that now in use—"and by the authority of the same?" The enacting style now is: "*Be it enacted by the Senate and House of Representatives in general court assembled and by the authority of the same.*" Now, I repeat, what possible strength or force is there conferred upon this enacting style by this last clause?

It seemed to your Committee, that if they could

make the enacting style as concise as possible, and make it also conform to the style of your legislature, to wit: "*The general court*," by so doing, they would render the Constitution to that extent better and more acceptable. These were their reasons for reporting this resolution, and I hope it will be adopted without amendment.

The question was taken upon the motion to strike out the words "general court of Massachusetts" and to insert "the people represented in the general court," and it was not agreed to.

The question then recurred upon the motion to strike out the third resolve and upon a division there were ayes 58, noes 125.

So the motion to strike out did not prevail.

Mr. HALLETT, for Wilbraham. I move that the words "or before a Judge of the Supreme Court," be stricken out where they occur in the first resolve, so that the article would then read:—

And the said oaths, or affirmations, shall be taken and subscribed by the governor, lieutenant-governor, and councillors, before the President of the Senate, in presence of the two houses of assembly, and by the senators and representatives before the governor and council for the time being, and by the residue of the officers aforesaid before such persons, and in such manner, as shall from time to time be prescribed by the legislature.

I understand, that by this resolve as reported by the Committee, the governor, lieutenant-governor, and the councillors may be sworn before any Judge of the Supreme Court. Now, I cannot see any good reason for changing the present usage in this respect. The idea of the governor of the Commonwealth going down into the court room, or of going into some private room, or in any place where he can find a single judge, to be sworn, and then of coming up here to notify the Senate and House of Representatives of it, is to me not a pleasant one. It would seem to me to take away much of the dignity of the office. I trust these words will be stricken out.

Mr. WILSON, of Natick. I hope this amendment will prevail, and then I hope we shall make another amendment, which is this: I hope that we shall strike out the word councillors where they occur in this provision, and that we shall provide some other way for them to be sworn into office. It seems to me, that it is nothing but a farce for the Senate and House of Representatives to go into convention for the purpose of swearing in these straggling councillors as they come along. I think there has hardly been a session of the legislature for the last eight or ten years, when the Senate and House of Representatives have not had to go into convention at least three or four different times to swear in councillors.

I think it is very proper that the governor and lieutenant-governor should take their oaths of office in the presence of the two branches of the legislature in convention assembled. But I do not think it at all necessary or desirable, that these two branches should go into convention for the purpose of administering the oaths of office to the councillors, one by one, as they come along. I think we had better provide, that the oath of office may be administered to them by the President of the Senate, in the presence of the Senate, or by the Speaker of the House of Representatives, in the presence of the House of Representatives, and that both Houses shall not be called on to meet in convention for that purpose. The idea of the Sergeant-at-Arms coming in here and announcing

the Senate, the members rising to receive them, and all the formality which must be gone through with, simply to swear a straggling councillor into office! I hope we shall provide some other way for these oaths to be administered in future.

Mr. HALLETT. If the gentleman will offer an amendment which will accomplish his purpose without making two jurisdictions to administer oaths, I will accept it. It seems to me very desirable that we should not have more than one jurisdiction for the administering of oaths. With regard to councillors, if the gentleman will move an amendment providing that the oath may be administered by the President of the Senate in presence of the Senate, I have no objection to it, that will not create another jurisdiction. It would remedy the inconvenience and would furnish all the formality which would be necessary for administering of the oath of office to councillors. I consider it indispensable that there should be but one jurisdiction for that purpose; and if the amendment could be reduced to a form which would provide that the governor and lieutenant-governor should be sworn in presence of both Houses of the legislature, and that the councillors should be sworn in presence of the Senate by the President of that body, it would remedy the inconvenience which exists and would be sufficient for all purposes of formality.

Mr. MORTON, of Taunton. I am opposed to the amendment, and I beg leave to suggest one or two reasons for my opposition. In the first place, I apprehend that no great inconvenience will result from having two jurisdictions to administer the oath of office. But in addition to that, there are other reasons why another jurisdiction than the two houses of the legislature in convention assembled, or than either of those houses, should be provided. It may so happen that in consequence of sickness or for some other reason, councillors elected by the people may be unable to come to the city until after the adjournment of the legislature, and unless you provide some other jurisdiction, under such circumstances, they would never be able to take their seats in that body to which they were chosen by the people of the Commonwealth, or by the people of the district for which they are elected.

Again, it may so happen that the governor elect of the Commonwealth may be prevented from attendance by sickness or necessary absence. It seems to me very necessary that you should have some other persons authorized to administer the oath to him. Now, this may be supposed to be a very remote contingency, and probably it would never have occurred to my mind but for the fact that the governor of the Commonwealth was once thrown into very great embarrassment because the person elected governor was sick, lying at the point of death, and great doubt was entertained whether the lieutenant-governor could act in case of his death without being properly qualified to perform the duties of the office. It was doubted whether he would have the authority to act as governor in case of the death of the governor, without being sworn into office.

I, therefore, hope, that some provision may be made, by which two jurisdictions for the administering of oaths may be provided, because cases may occur in the future as they have in the past, when such a provision would be necessary to prevent the governor from being subjected to very great inconvenience and embarrassment. I hope

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the provision reported by the Committee will be adopted, and that the amendment will not prevail. The person to whom I alluded was the late Governor Sumner. He was elected by the people, but was soon after taken sick, and although he lived for some time after the legislature met, he was unable at any time to go before them to be qualified, and the fact gave rise to great difficulty and embarrassment in the organization of the government.

Mr. WHITNEY, of Boylston. I think it would save a great deal of time, perplexity and inconvenience, and that the duties of those officers would be performed just as well if we dispense with the oath of office entirely. [Laughter.]

Mr. HALLETT, for Wilbraham. The provision as it now stands is very simple. It reads as follows:—

And the said oaths or affirmations shall be taken, and subscribed by the governor, lieutenant-governor and councillors, before the president of the Senate, in the presence of the two houses of the assembly; and by the senators and representatives [first elected under this Constitution, before the president and five of the council of the former Constitution; and forever afterwards] before the governor and council for the time being; and by the residue of the officers aforesaid, before such persons and in such manner, as from time to time shall be prescribed by the legislature.

We have had that provision a very long time—since 1780. The instance of a governor being unwell has been referred to by the gentleman, an event which has not yet occurred, but which of course may occur. If he should be so unwell as to be unable to come here and take the oath, it is very easy to induce the two Houses to postpone it. I think it will detract from the dignity of administering the oaths by sending either of these dignitaries down to a judge of the supreme court, and that it is wholly unnecessary to change the mode of proceeding which has prevailed so long, for the reason which has been so properly given by the gentleman for Abington, (Mr. Keyes). We ought not to change merely for the sake of change. There should be some substantial reason why we should depart from the present phraseology of the Constitution in regard to this matter.

Mr. WILSON, of Natick. My friend for Abington, (Mr. Keyes,) as we all know, is quite a stickler for forms and ceremonies, and I sometimes think that he is a great stickler for nearly all the rust there is upon the Constitution. That gentleman knows very well—for it has been his fortune to march up and down between the Senate and House to administer the oath of office to councillors—that the whole thing is a matter of ridicule. Why, it is hardly ever done here, without exciting smiles in both branches of the legislature. It generally happens that a majority of the councillors are here in due season, but there is always some one lagging behind hand, three or four days, and then senators are required to march down from the Senate to the House and administer the oath of office to this straggling member of the council who comes along after the session has opened. My friend for Abington says that the two Houses have nothing else to do. I believe one of the reasons put forth for having this Convention was the necessity that existed for simplifying the organization of the government. It was said that our mode of organization was

formal and cumbersome, and that it ought to be changed and simplified, so that the two branches of the legislature could meet like other legislative bodies and enter upon their work at once. I undertake to say, for the last twelve years—and I can state it with some little degree of confidence, for the eight years in which I have been a member of the legislature—that the organization of this government has averaged at least eight days each year, which ought to be done in two days at the farthest. The legislature of the State of New Hampshire met on the first Wednesday in June and adjourned before the fourth of July. They met, organized, had two sessions a day, and by the second or third day they were ready to go on and do their business. Our legislature may and can organize in two days. All I wish to do is simply this: that the governor and lieutenant-governor shall be sworn into office in the presence of the Senate and House of Representatives, that the councillors shall be sworn into office by the president of the Senate, in the presence of the Senate, or by the speaker of the House of Representatives, in the presence of the House, so that if the councillors are not all here on the day of the meeting of the legislature, when one of them comes straggling along afterwards, that he may come before the president of the Senate, in the presence of the Senate, or before the speaker of the House, in the presence of the House, to be sworn into office, and that the other branch shall not be called upon to come in and witness that ceremony. It is a piece of formality which ought to be done away with. When the proposition which has been made by my friend for Wilbraham, (Mr. Hallett,) is acted upon, I wish to incorporate the following words, by way of amendment: “by councillors before the president of the Senate, in the presence of the Senate.”

Mr. GOOCH, of Melrose. The reasons which influenced the Committee in reporting the amendment, have been stated so fully by the gentleman from Taunton, (Mr. Morton,) that it is hardly necessary for me to go over the same ground. It occurred to the Committee that there might be a case where the organization of the legislature might be embarrassed by the sickness or necessary absence of the governor. It was then supposed, as it would not be desirable that the legislature should separate, that some person might be empowered by the Constitution to administer the oath to the governor, if he were not able to be present. The same oath could be administered to the lieutenant-governor, and then the lieutenant-governor would be the acting governor for the time being, and your government might be organized. That was one of the reasons which influenced the Committee to propose this amendment. It did not occur to the Committee, even if the oath should be administered by a judge of the supreme court, that it would be necessary for the governor to go from the council chamber to one of the lobbies of the court house, because they supposed that the thing might be done in another way, that the judge might wait upon the governor at his house, if he should be so sick as not to be able to leave it, or at some other place, or at the council chamber, if it should be deemed advisable to administer the oath there. It was not supposed, that this mode of proceeding would be resorted to as the usual form of administering the oath, except in cases where necessity required it.

The question was then taken upon Mr. Hallett's amendment, and it was agreed to.

Mr. HALLETT, for Wilbraham. At the suggestion of the gentleman from Natick, (Mr. Wilson,) I would move to amend by inserting the word “and” after the word “governor,” striking out in the third line the word “councillors,” and inserting in the fourth line the following words: “by councillors, before the president of the Senate, and in the presence of the Senate,” so that the clause would read: “And the said oaths and affirmations shall be taken and subscribed by the governor and lieutenant-governor, before the president of the Senate, and in the presence of the two Houses of Assembly, and by the councillors before the president of the Senate, in presence of the Senate,” &c.

The question was then taken on the amendment, and it was agreed to.

Mr. BRINLEY, of Boston. It has not been my inclination to oppose amendments to the Constitution, particularly of a mere verbal character. I understand the gentleman from Melrose, (Mr. Gooch,) who was a member of the Committee, to state, that he was inclined to retain the words “General Court of Massachusetts,” in the enacting clause, because the legislature were called the General Court of Massachusetts. In that particular he was inclined to abide by the phraseology of that portion of the Constitution. The resolve presented to us by the Committee, and which has just been amended, provides that oaths and affirmations shall be taken in the presence of the two Houses of Assembly, and I suppose the Committee of which the gentleman from Melrose is a member, adopted that phraseology, because it already exists in the present Constitution. For that reason, I, for one, would not alter it, nor do I propose to make any amendment of that character. I had occasion to remark the other day, that it was a little singular the phrase “Houses of Assembly,” should occur two or three times in the Constitution. It occurs in that portion of it which prescribes the compensation to be paid to members for their travelling expenses in coming here and returning home at every session. The clause reads as follows:—

“The expenses of travelling to the General Assembly and returning home, once in every session, and no more, shall be paid by the government, out of the public treasury,” &c.

It is also used in the clause regarding oaths and affirmations, as follows:—

“And the said oaths or affirmations shall be taken and subscribed by the governor, lieutenant-governor, and councillors, before the president of the Senate, in the presence of the two Houses of Assembly,” &c.

It is sufficient reason for me to be content with the resolve as reported by the Committee, that the phrase does exist in the Constitution. It strikes me if there is great necessity for adhering to this phrase, “General Court of Massachusetts,” that it would be proper enough to substitute some such phrase as that here, “that oaths and affirmations should be taken in the presence of the General Court,” and not before the two Houses of Assembly. If I were disposed to be a little critical, I do not recollect a single instance where the Senate is anywhere spoken of as being one House, although in one or two instances it is

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characterized as being the upper branch. I suggest to the advocates of great consistency in this matter, whether they ought not to provide, where oaths and affirmations are to be taken, that some other phrase beside that of General Assembly should be used. I make no motion, but leave the suggestion entirely to the consideration of those who are inclined to be critical in this matter.

Mr. EDWARDS, of Southampton. I perceive there is an amendment necessary to the second resolve, in order to conform to what has already taken place in Convention. I move to strike out the words "Receiver-General."

Mr. EARLE, of Worcester. I would inquire if the word has not already been stricken out on a former reading.

The PRESIDENT. The word has been erased in other places, but not here.

Mr. WILSON. In that portion of the Constitution relating to the treasurer, the word "Receiver-General" were stricken out. It will but take a moment to adopt the amendment of my friend over the way, (Mr. Edwards,) and it will conform our action to what has already taken place.

The question was then taken on Mr. Edwards' amendment, and it was agreed to.

The PRESIDENT. The question recurs upon ordering the resolves to their final passage.

Mr. BATES, of Plymouth. I move to strike out the words, "of assembly," in the first resolution and the second paragraph, and insert the words, "in Convention."

The motion was agreed to.

The question then recurred on ordering the resolves to their final passage, and being taken, by a division, there were—ayes, 150; noes, 6.

So the resolves were passed.

Basin of Representation.

Mr. BOUTWELL, for Berlin. I now move that the resolves in relation to representation, be taken from the table, and that their consideration be assigned to half past nine o'clock to-morrow morning.

The motion was agreed to.

Special Assignment.

Mr. WILSON. I rise for the purpose of making a motion, in relation to fixing the time for taking the vote upon the propositions relating to the House of Representatives. The Convention has already assigned the time for their consideration at half past nine o'clock to-morrow. I think it is important to settle this matter this week. I suppose that a large number of the members are absent, who, if a notification were given to them, would endeavor to be here to vote upon this great question. I move, that the hour of eleven o'clock on Friday, be assigned for taking the vote upon that question.

Mr. LORD, of Salem. On that question, I ask the yeas and nays.

The question being taken on ordering the yeas and nays, there were, upon a division—ayes, 21; noes, 162.

So the motion was rejected.

The PRESIDENT. The question recurs upon the motion to assign a time for taking the vote.

Mr. LORD, of Salem. I called for the yeas and nays, because I desired to have them recorded. I thought, that, after gentlemen who

were in favor of this basis of representation, had discussed it as long as they should think proper, that then it would be only fair to give those gentlemen, who might wish to reply to any statements or arguments, and it may be misrepresentations that may have been made, an opportunity to do it. But I do not make any complaint. I do not, however, think it worth while to fix the day. I believe that something like one hundred gentlemen have expressed their views. Probably they do not wish to express their views again, and possibly they do not want to hear anybody else. I do not know how that may be; but I should think—although we had a specimen of gentlemen's speaking on other subjects this morning, and not wanting others to be heard—that upon a matter so important as this, a matter which, in my judgment, is not by any manner of means exhausted, except as the patience of the Convention may be exhausted, and which I do not think is properly so; we might be willing to give every gentleman an opportunity to express his views. Because, when we consented to come here, we consented to come and endure the martyrdom of hearing other people's opinions, even if they do not agree with ours. And, Sir, when the town which I represent, sent delegates here, they supposed that they would be entitled to be heard if their representatives wanted to be heard; and they did not suppose that the Convention would say that a subject should be taken up at such an hour, and in the very next breath, say that it should be finished at such a moment; that debate should be just so long and no longer. They did not believe that, Sir, or rather they hoped they would not have to believe that. But if this Convention chooses to take that course, I certainly shall not make any objection to it. I suppose, during the brief period that shall remain for discussion, the President will, of course, give the floor to those who are the most active, and the first who catches his eye. But here is a matter very important, and one which I believe everybody is agreed, must be amended in its details, before it shall be finally acted upon; because the Convention have passed votes utterly inconsistent, and there they stand upon the record, utterly and diametrically opposed to each other, and it must be altered.

The PRESIDENT. The Chair must suggest that the gentleman is debating the merits of the question.

Mr. LORD. I ask pardon of the President; I am not intending to discuss the merits at all. I am stating a fact, that the Convention has adopted two propositions diametrically opposed to each other; one of them limiting the number of representatives, which was adopted upon the motion of the gentleman for Berlin; and subsequently another amendment was adopted, upon the motion of the gentleman who represents Wilbraham, reducing the number which shall be the mean increasing ratio, and which would be utterly senseless, while the limit remains, except it be introduced fallaciously, for the purpose of shearing the large towns one cut deeper.

The PRESIDENT. The gentleman is debating the merits of the resolutions, and not the question of assignment.

Mr. LORD. I am stating what the Convention have done; I am not saying whether I approve or disapprove, or whether I would have it otherwise. I am stating that they have adopted

these inconsistent propositions, and that having adopted them, one of them, at a proper time, to perfect the resolution, and, therefore, must be taken out.

The PRESIDENT. The line of argument which the gentleman is pursuing opens the whole question.

Mr. LORD. I do not know how that appears to other people; but, if it is out of order for me to state the proposition which I have stated, then I am very sorry that I have transgressed the rules of order. But, I understand the rule of Parliamentary law precisely as the President has ruled it over and over again during this session, that in discussing the assignment of time, it is proper to state what the propositions are before the House, and the details of them, but not to go into the resolves themselves.

The PRESIDENT. The gentleman may allude to them; but, if he characterizes them in such a manner as that it will be necessary for other gentlemen to reply; it is improper. The gentleman characterizes them as being inconsistent, and every gentleman will see immediately, that that opens the whole merits of the question.

Mr. LORD. I had supposed that if I have a right to allude to them, and one resolution should say, that the assembly shall be composed of white men, and the other resolution should say, that it shall be composed of black men, I should have a right to say, that they are inconsistent. And I should not care how many reply to that.

The PRESIDENT. But the gentleman in alluding to the resolutions cannot discuss their merits.

Mr. LORD. I do not propose to discuss their merits, and I cannot be driven into it. I only propose to say, whether it is proper to take up the question only twenty-six hours before the time when the final vote is to be taken. In doing that I am doing only what the President says, I am in order in doing. A proposition is before the House, and I am stating what that proposition is. I have gone no further than that, and I do not propose to go any further than that now, and I cannot be coerced or driven to go further than that.

Well, Sir, if the Convention chooses to say, that no more time shall be taken, under any circumstances whatever, it seems to me to be the most offensive form in which the previous question can be applied to a subject upon which, of all others, discussion should be permitted. I do not think that such a course for fixing the time is proper. If, however, the detail of the debate is to follow as the member from Natick shall indicate, and if he is to determine just how long it shall be before the discussion ought to close, I have nothing to say at all. But, Sir, I say this is a proposition upon which the Convention cannot act understandingly now. Nobody knows what other amendments may be offered. Suppose that to-morrow morning,—I am only putting this as an illustration,—the gentleman from Natick and one of his friends get up, one of them moving an amendment, and the other an amendment to the amendment, and both of them perfectly immaterial; and then the question is discussed up to the hour for taking the vote. Nobody else can move an amendment, simply because the Convention have fixed the hour when the discussion shall cease.

Now, Sir, it is not probable that any gentleman

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would do such a thing as that; but, when gentlemen will resort to such measures as I have seen resorted to for the purpose of stopping discussion, that is the next step, and I should not be much more surprised to see the next step taken if they do not want amendments proposed, than I should have been to have heard before the deliberations of this assembly commenced, that such measures would have been resorted to as I have seen resorted to. I want to propose an amendment; the gentleman from Natick thinks I had better not; and, thereupon, he gets up and offers an amendment, and gets a friend to offer another amendment to that, and a debate springs up which takes up all the time during the twenty-six hours, and there is no opportunity for mine to come in. I say, we cannot tell beforehand, we cannot act understandingly beforehand, and if we decide now that the question shall be taken at that time, we decide it blindly, we decide it without acting upon the merits of the question, we agree that we will do the thing at that moment, not knowing whether it will be right or wrong to do it at that time, when it comes; and, therefore, I say, that we ought not to fix that time thus in advance. If the Convention had chosen to have this matter determined in such a manner that every individual would have had an opportunity to stand right upon it, I should not have troubled the Convention by any remarks of mine. I am not anxious to be obtruding myself continually upon the attention of the Convention. But when what I consider to be a valuable right is invaded, I do not care how great the majority is that votes me down, I can speak and I shall; and I shall say, that the determination, before we touch a subject, that it shall not be discussed beyond a certain moment, and that within twenty-six hours of the time for taking the question, is an invasion of the rights of the minority.

Mr. WILSON. I wish to say a single word in reply to the gentleman from Salem. I made the motion, Mr. President, for the purpose of giving the friends and the opponents of this question fair notice, that on Friday next the question would be taken. The notice could go out to-night, and as it is well known that many are absent, they would be present when the vote is taken. I made it for no purpose of restricting or cutting off debate. If adopted, it gives nine hours of debate, seven to-morrow, and two the next day; and then, during that time, nothing of the kind can be sprung upon us. I made the motion, Sir, with no intention of crowding off the gentleman from Salem, (Mr. Lord,) for I can assure him, that I never listen to his sweet and melodious voice, nor see his smiling face, [laughter,] without experiencing as much pleasure as any gentleman on his side of the house can feel. Now, Mr. Chairman, in Committee of the Whole, eighty-two speeches were made, occupying thirty-nine hours, wanting three minutes. I kept an exact account of the time of every speaker on that matter. Since the Committee reported, twelve hours have been spent in debate, making fifty-one hours spent in the discussion; and, I believe one hundred and seven speeches have been made on the subject.

Now, Sir, I think this Convention understands this matter very well; and if they do not understand it, I can tell the gentleman from Salem, that he will have seven hours to-morrow to explain it to them—I will agree to that. I will

consent to give him just as much time as he wishes. If he wants to lengthen out his hour to two or three hours, he may set me down as one of those who will vote to allow him that privilege; for certainly I do not wish to crowd him or anybody else. The only object which I had in making the motion was, that I supposed it was the general desire of the Convention that the question should be settled this week; I knew we had already had fifty hours of debate upon the subject, and the time between now and the hour I have named for taking the question, will probably be sufficient for all those gentlemen who have any more speeches to make. The gentleman from Salem knows that no man will offer trivial amendments, for the purpose of consuming the time. I do not believe he would do it, and I know that no other gentleman would; but, on the contrary, there will be ample opportunity to discuss the question, and when it has been discussed to the satisfaction of every-body, we can take the vote. So far, in the course of this Convention, every allowance has been made, and the best disposition and feeling have prevailed, to hear all sides of the question fully discussed. We shall have all day to-morrow, and the gentleman from Salem can have all the time which he wishes. I will vote to extend his time, for I shall be delighted to hear him speak, and shall listen to him with the greatest pleasure, for he is a favorite of our side of the Convention.

Mr. LORD, of Salem. We are almost every day reminded, that it is not well for politicians to have long memories. I really wish that the gentleman from Natick could remember as long back as this forenoon, when I told him that I wanted just exactly two minutes—I think there was no sarcasm in it, and no "*little pleasantry*" with regard to personal appearance or any other natural endowment; and, yet, that gentleman did not feel quite willing then to allow me two minutes. All that I asked for was two minutes, and the gentleman pressed his motion, out of the regular course of parliamentary proceeding—not unjustified by parliamentary law, but out of the regular course of parliamentary proceeding, he pressed his motion this morning to cut off a speech which, I said I wanted to last only two minutes. Hereafter, I hope that gentleman's memory will last from breakfast until tea; I ask no more than that, but that, I think I am entitled to ask. Now I have no particular wish to speak upon this question. I have sat here and listened to the one hundred and seven speeches, if there have been so many; and one of them came from the gentleman from Natick, in which he declared what his principle was, and in less than fifteen minutes afterwards he voted in direct opposition to it. I am not upon the record at all; I have not said that I was in favor of the district system, and then within fifteen minutes voted against it, but that is one of the hundred and odd speeches that have been made, of which the gentleman from Natick has taken pains to keep an accurate account. Now, Sir, if I felt disposed to speak upon this subject, I have no doubt but that I could say a word or two—wise or foolish, as the case might be—that has not yet been said. I do not consider the whole range of debate upon this question to have been exhausted. I do not think that even when this entire Convention goes out—I trust I shall not be considered out of order in saying what a member of the majority said the

other day—when this entire Convention goes out, I do not think that all the wisdom will be gone by any means. I think there is another consideration connected with this subject of representation, which has not yet been urged; and Sir, that is a consideration which, in my judgment, will be most effective upon the popular mind in the settlement of this question, and it has never yet been alluded to by any speaker. That is my judgment with regard to the matter; but I do not know that I shall desire to speak, even if this discussion should continue until the whole four hundred members had spoken their twice apiece. And yet, Sir, I confess that I am so constituted—and perhaps in that respect I am not alone in the Convention—that just as soon as the majority says "you shall not speak," the old Adam within rises up and says: "I will speak." Are there not a good many more here who feel just in the same way about this thing? I do not mean to say, that the time which has been suggested by the gentleman from Natick is not long enough; what I mean to say is, that the Convention cannot beforehand determine whether it is long enough or not. We do not know what the state of things may be at the moment when this particular time arrives for taking the vote. If the minority in this House were a factious body—if this discussion had been extended through so many days and all these speeches had been made by the minority, I should not complain, for one, if the majority should feel it their duty to take the matter into their own hands and decide that the discussion should be brought to a close at a certain period, because the responsibility would rest upon them if they permitted a waste of time in useless debate. But the case is not so. According to my judgment, nearly the old speeches have been made on the majority side, and but comparatively few, that I have heard, have been from the minority, according to my present recollection; so that it cannot be said that there has been any disposition upon the part of the minority to engage in useless discussion, or to delay the business before the Convention. I say, therefore, that it is a reflection upon the course of the minority, for the majority to make such a proposition as this; and it is one which I think they do not deserve to have cast upon them. Why, Sir, upon a former occasion, a motion was made, on Tuesday, I believe, that the question should be taken on a certain subject on the next Friday; and what was the result? The Convention refused to adopt that order, and it turned out that the question was taken on Wednesday instead of Friday. There was no disposition then to protract debate, and there is no disposition now to protract debate. I will only tell the gentleman from Natick that if on Friday, at half past eleven o'clock,—supposing that this order should be adopted—if at that time a gentleman has not spoken who desires to speak, on the next day he can move a reconsideration and make a speech upon it. Any gentleman would have a perfect right to resort to this parliamentary mode of obtaining an opportunity to speak if he were cut off from his right to address the Convention. Now, Sir, I do not want to force any gentleman to the necessity of resorting to a measure of that kind; I do not want questions taken in that way; I do not want to have reconsiderations. What I desire, is to have the discussion go on in the regular way; and, when gentlemen have be-

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come satisfied with discussing the question, then let us take the vote. I do not think that it is necessary that there should be a drum beat to call the members of the Convention in here, to vote upon this proposition. I do not think that if gentlemen choose to absent themselves, we are, therefore, to advertise when we are going to take the question, so that they may be sure to come in and vote. One of the earliest things said in this Convention by a leading member from Lowell, (Mr. Butler,) was, that if members went home at four o'clock in the afternoon, it was not of much consequence whether they were here or not. Although I did not exactly consider, that there was much good taste manifested in that remark, there was something in the sentiment which I confess, met a partial response, at least, from my own mind. If, upon a matter so important as this question on the basis of representation, every gentleman does not find out for himself when the question is to be taken so as to be present and vote upon it, it is not the fault of the Convention. I did not happen to be present and vote upon one occasion when a vote of some importance was taken; but, I do not blame the Convention for my not voting. I had a right to vote if I had chosen to be present, and so has every other gentleman a right to vote upon every question. If this Convention is a mere assembly to record the edicts of any other body or any caucus, and if they are to assemble their members by beat of drum at a certain hour to vote upon questions, it is all very well—I have nothing to say. But, Sir, I do not believe in that doctrine. I do not believe in advertising the hour when a vote is to be taken. I think it very much more proper that the Convention should go on and attend to its business—take up this question to-morrow morning at half past nine o'clock; when it is taken up, let gentlemen discuss it who wish to do so, and when they have done discussing it, then let us take question without waiting for absent members to come in. If this should be the course to be pursued, I should not be much surprised if the question should be taken to-morrow forenoon—certainly not, if it should be taken to-morrow afternoon. It has often so happened during the sessions of this Convention, that a gentleman whose seat is upon this side of the hall, gets up and makes a suggestion which just exactly happens to strike the mind of some other gentlemen seated upon the other side, (poor innocent soul!) as an excellent proposition; just as if we did not know that this thing was all arranged beforehand. It is all cut out and prepared beforehand—so this thing strikes me. If we see certain gentlemen putting their heads together, we know that something is coming pretty soon. Well, before long, one gentleman makes a motion, and directly another gets up and says that this seems to be just about the thing—it strikes his mind favorably; and he does not more than get into his seat before another one gets up, and says, that he had been a little exercised in his mind also, upon the same subject, and the real panacea is provided. Now, I do not like to ask right out of the gentleman from Natick, whether he did not understand that the gentleman from Berlin was going to make this motion, and whether the gentleman from Berlin did not expect the gentleman from Natick to follow it immediately out with his motion, because, it would not be quite fair to ask such questions as these. I will not put those gentlemen to the trouble of

denying this—I do not wish to intrude into the secrets of party discipline or party tactics. But to let that matter pass, as I do not wish to discuss that question, I will say, that I think we should dispatch our business in a more expeditious manner—at least, until, on the part of the minority there is shown a spirit having in something the appearance of factiousness—by letting the ordinary course of things be pursued. I do not think, that the gentlemen need be troubled with the sound of my voice, any more than with my personal appearance. As to that matter, perhaps a hot sun does either of us no good. [Laughter.]

I am not prepared, Mr. President, to join in any cry about a protracted session. I do not think that this session has been protracted; and, if I have occasion at any time to express any opinions upon the subject, the only view which I shall express is, that instead of the sessions being protracted by long speeches, it would rather seem that the truth was so grievous to be borne, and so hard to be endured, that it was important at the earliest possible moment to stop all the sources from which that most important element could be expected—

The PRESIDENT. Does not the gentleman see that he is imputing improper motives to the Convention by the course of his remarks?

Mr. LORD. Really, Sir, I thought I was imputing to them the very best of motives. I did not mean to charge them with doing this with any improper motives. If I had said as is suggested by my friend here, that they were an "unhealthy political organization," that would have been out of order; and I will thank gentlemen not to prompt me to make any such disorderly remarks. [Laughter.] I did not think it necessary to suggest to the gentleman opposite, that his course of remark was out of order, because we all observed it—it was obvious that it was a somewhat disorderly proceeding. But, Sir, I have been led to go much beyond what I had intended when I arose. I arose merely with the intention of replying to the remark of the gentleman from Natick; and, what I say, I take the responsibility of and adhere to, that any such course of proceeding as this, although there is the power here to do it—numbers can determine it—but any such course as this is in my judgment an imputation upon the conduct of the minority. Whether or not the time will be extended beyond the time suggested by the gentleman from Natick, I do not know. If I had permitted myself to be tired of the wisdom which emanates from gentlemen of this body, I should probably have been tired long ago; but, Sir, I do not permit myself to be tired in a good cause. When I hear hour after hour, gentlemen proclaiming their political principles with such wisdom, with such sagacity, and with such profundity of thought, I admit that I am sometimes in some danger of getting tired, but on such occasions I summon up all my patriotism; I compel myself to keep awake and listen to all these orations. I consider this as a part of the martyrdom to which I subjected myself when I voluntarily took this seat in the Convention. I was about to say that I hope the Convention will not fix a time for taking this question; but upon that matter I do not know that I care about expressing any such desire. I have done what I believed to be my duty in resisting this movement; and, Sir, if hereafter it should ever become my fortune to appeal to that power

to which we all of us look up as higher than we are, I think that I shall have no occasion to assert that upon this, or any other subject I opposed the limitation beforehand of the right of discussion, or, that I did what was in my power to enable the friends of reform to say, that every measure presented for the acceptance of the people, was fully and freely discussed and carefully considered, and that the minority at least had opportunity on every occasion to discuss to the fullest extent.

Mr. KEYES, for Abington. I suppose the gentleman from Salem, has accomplished his object by consuming a large portion of the afternoon.

The PRESIDENT. It is not in order for the gentleman to make such remarks in reference to members upon this floor.

Mr. KEYES. He has also illustrated the other side of the question, so that there will be no necessity for speeches from that quarter. He has shown the great facility with which this session may be lengthened out, for purposes which may be conceived or imagined by any person that chooses to. Therefore, I hope the Convention will adopt the course proposed at once. The propositions which have been presented to the Convention upon this subject, have been of such a character, that perhaps few have been enabled to fully accord with any one of them, or to unite upon any definite plan. The effect of the adoption of the proposition now before us, will be to concentrate opinion upon something or other, so that we can the sooner reach a result. The debate which may be had, and which will be had, upon the propositions now before us, is not of a character to lead us to conclusions. Three-fourths of the members of this body, have not, and will not, in all the time they shall be here, speak upon all subjects as much as the gentleman from Salem has spoken this afternoon, upon this one subject. It is not that class of speakers that consume the time of the Convention. If gentlemen desire to express their views upon particular subjects they can do it in ten minutes, and such men we are rejoiced to see rise at all times. But there is another class of speakers who are so loquacious, that our hearts sink within us when we see them upon the floor, because they have that power of volubility which seems never to exhaust itself. It is to avoid that kind of speeches that I would have this motion adopted. I supposed that this remark, abstractly, would hardly be in order, under the ruling of the Chair, but, Sir, when we are in Rome we must do as the Romans do. In all public bodies a similar plan has been adopted to cut off debate. We hear something said about responsibility, and who are to be charged with the great length of the session of this body, and all that sort of thing. I care as little about that as anybody, if we only go straight forward and finish our labors as soon as we can. In Congress and in all other deliberative bodies they see fit on occasions to limit debate, or the length of speeches which latter, is precisely the same in principle, as limiting the time when the vote shall be taken. I hope the motion will be adopted, because I know it will bring us to the issue quicker, and in a manner more satisfactory to the people. If any amendments are offered to the proposition before us, let us bring them directly to a vote, and vote them in or vote them out, just as we shall be guided, by our sense of propriety, and right, as they shall be offered.

These are the reasons, which induced me to

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think, that the time for taking the question should be settled and fixed upon. Indeed when the motion was made, I was surprised that it was put off so long. I supposed the question would have been taken to day, and I came here this morning with the expectation of seeing a full house assembled for the purpose of taking the vote to-day. I think it is quite long enough to put off the taking of the question until Friday, and I trust we shall fix upon that time, and that this alarm which has been raised, will not frighten anybody. It may amuse, but I think it will neither alarm nor instruct.

The question was then taken on the motion of the gentleman from Natick, (Mr. Wilson,) and it was decided in the affirmative.

So the Convention determined to take the question on Friday next at 1½ o'clock A. M.

Amendments and Enrolments.

Mr. BIRD, of Walpole. I move that the Convention resolve itself into Committee of the Whole upon No. 46 of the calendar.

The motion was agreed to, and the Convention accordingly resolved itself into

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Mr. Griswold, for Erving, in the chair, and proceeded to the consideration of the subject referred to it, being the Report of the Committee to whom was referred so much of the Constitution as relates to Amendments and Enrolments, and to whom was also referred various orders relating thereto.

The Resolves were read, as follows:—

1. *Resolved*, That it is expedient to provide in the Constitution that, at the general election to be held in the year one thousand eight hundred and seventy-three, and in each twentieth year thereafter, and also, at such other times, preceding or succeeding the above-named year, as the legislature may by law prescribe, the question—"Shall there be a Convention to revise the Constitution, and amend the same?"—shall be submitted to the qualified voters in State elections; and, in case a majority of the same thus voting, shall decide in favor of a Convention for such purpose, the legislature, at its next session, shall prescribe by law for the election of delegates to such Convention.

2. *Resolved*, That it is expedient further to provide in the Constitution, that, whenever the legislature shall fail to submit to the people, at the periods designated in the foregoing resolve, the question of calling a Convention for the purposes indicated therein, the qualified voters in State elections, in the several cities and towns, may, at the next general election thereafter, and upon notice of such failure by the secretary of the Commonwealth, whose duty it shall be to issue such notice, proceed to vote upon said question, as though it had been propounded by the legislature; and if, upon a return to the governor and council, of the vote so given, it shall appear that a majority have voted in favor of the proposition, the governor shall forthwith issue his proclamation, calling upon the voters of said cities and towns, at meetings legally warned for that purpose, to elect delegates to such Convention; the time and place for holding its session, being expressed therein.

3. *Resolved*, That it is expedient to amend the Constitution by striking out thereof Article 9th of Amendments, and inserting the following:—

Any amendment or amendments to this Constitution may be proposed by the Senate or House of Representatives; and if the same shall be agreed to by a majority of the whole number of senators and representatives elected, such amendments shall be entered upon their respective jour-

nal, with the yeas and nays taken thereon, and shall then be referred to the next general court. And if the proposed amendment or amendments shall be agreed to by a majority of the members of the Senate and House of Representatives voting thereon, the same shall thereupon be submitted to the voters qualified to vote in State elections; and if a majority of the same, thus voting, shall ratify said amendment or amendments, the same shall be deemed a part of the Constitution.

Mr. NAYSON, of Amesbury. I do not deem it at all necessary or incumbent upon me, as a member of the Committee which reported these resolves, to take up the time of the Committee of the Whole, with any explanation of the subject matter embraced in these resolves. The report which accompanies the resolves, together with the resolves themselves, will so far explain themselves, and the nature of the propositions contained in them, as to render any explanation I could make entirely superfluous; and, heeding the admonition of my friend for Abington, (Mr. Keyes,) thrown out in debate the other day, that the chairmen of committees, instead of endeavoring to explain their reports, had better, sometimes, leave them unexplained, I feel disinclined to make any statement of a matter which so fully explains itself. Still, if there is any point upon which any person desires any explanation, I shall feel a pleasure in making it, as far as is in my power. Further than that, I deem it my duty to remain silent.

Mr. BOUTWELL, for Berlin. In regard to the third resolve, I should like to hear from the Committee, why they propose that a mere majority of the members of the Senate and House of Representatives shall propose amendments to the Constitution, instead of two-thirds? Also, whether the language of the proposed resolution is not such as to mean, that the majority of the Senate and House of Representatives shall be counted together, when they propose to amend the Constitution?

Mr. NAYSON. In answer to the inquiries of the gentleman for Berlin, I would say, in regard to the first, viz.: in reference to the liability of misconstruing the language used, that it did not occur to the Committee, who made a careful examination of the resolves, that any ambiguity could exist, and that there would be any uncertainty as to the meaning of the terms. The Committee, in employing the language they did, were unanimous in the opinion, that the mode of expression adopted was, on the whole, the best.

In regard to the question, why we propose to change the Constitutional provision which now exists, and which requires the concurrence of two-thirds, instead of a bare majority, to propose amendments to the Constitution, I would say, that it was the unanimous opinion of the Committee that, under the circumstances of the case, it would be better to require a simple majority, rather than two-thirds,—that matters of amendments to different provisions of the Constitution might come up, in the heat of political excitement, when it would be impossible to obtain the assent of two-thirds of both bodies to any proposition of amendment; and, acknowledging the principle which obtains here, that the will of a majority, when fairly expressed, should be acceded to by the minority, they introduced that provision. It was upon such considerations that the Committee suggested the modification of the

present provision of the Constitution, so far as to substitute a majority in the place of two-thirds.

Mr. WALKER. I like the general tenor of these resolves reported by the Committee, but I should have been better pleased if they had provided that the question—"Shall there be a Convention to revise the Constitution and amend the same?"—should be proposed to the people in 1863, instead of in 1873.

The Resolve now reads as follows:—

Resolved, That it is expedient to provide in the Constitution that, at the general election to be held in the year eighteen hundred and seventy-three, and in each twentieth year thereafter, and also, at such other times, preceding or succeeding the above-named year, as the legislature may by law prescribe the question—"Shall there be a Convention to revise the Constitution and amend the same?"—shall be submitted to the qualified voters in State elections; and, in case a majority of the same thus voting, shall decide in favor of a Convention for such purpose, the legislature, at its next session, shall prescribe by law for the election of delegates to such Convention.

Now, it seems to me, that we should say, that in 1863, that is within ten years after this Convention, the question should be submitted to the people, whether they will have a Convention to revise the Constitution. It costs nothing to have the question submitted, and if the people do not want a Convention they will say "no," without any trouble or expense. It is no more than fair and just, that the people should have that opportunity as often as once in ten years, and, therefore, I venture to move to strike out from the resolve which I have read the words "seventy-three" and insert in lieu thereof the words "sixty-three." I do it upon the ground that it is but just to the people that they should possess that power.

I do not know what party such a provision will benefit or injure, and am not at all anxious to know. Indeed, nobody in the mutable nature of human affairs can know. It is enough that I believe that the people should, as a matter of justice, have the right at that time to vote upon the subject, irrespective of any legislation whatever.

Mr. BATES, of Plymouth. I can hardly see the propriety of adopting the proposed amendment, and leaving the resolve, in other respects, as it is. If we adopt it the provision will provide that in ten years from this time the question shall be proposed to the people whether they will have a constitutional convention or not, and in each twentieth thereafter, instead of each ten years. If it is important to have the question taken in ten years from this time, it will be just as important to have the question submitted in ten years thereafter instead of twenty years.

I think the resolve is well enough as it is, and I hope it will not be amended as proposed, and at any rate if "seventy-three" shall be stricken out and "sixty-three" inserted, that it will be further amended so as to provide that the question shall be submitted every tenth year thereafter.

Mr. NAYSON. A single word in regard to the proposed amendment. The time was fully considered by the Committee, and after mature reflection the Committee were unanimous in the opinion that the period of twenty years from this time, and every twenty years thereafter, was on the whole soon enough and often enough for sending out to the people a proposition for the call of a constitutional convention. In coming

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to that conclusion, they were governed mainly by the consideration, that if the legislature shall deem it of sufficient importance, or if the people shall will it, the question of calling a convention to revise the Constitution can still be sent out to the people every year by the legislature. Considering that the provision is in advance of any provision existing in the Constitution of any other State upon that subject, and that the legislature still have the power of submitting the question at any time, the Committee thought the period of twenty years soon and often enough to make it imperative upon the legislature to submit that question. But, had it not been in the power of the legislature, or of the people through the legislature, to submit that question as often as they choose, then the period of ten years might have been a proper length of time for that purpose. The provision provides that a convention may be called every year, if the people, through their legislature, will it.

If the amendment of the gentleman from North Brookfield, (Mr. Walker,) is adopted, then the language of the resolve should be changed in other respects, in order to make the different parts conform. I hope, however, that the Convention will adopt the resolve as it stands, for I thought the Committee had been extremely liberal in their manner of treating this matter. The present Constitution, as the report states, is entirely deficient in this respect, and it is only in reference to single and specific amendments, that any method is designated whereby that instrument can be changed. The Committee have endeavored to supply that defect, and by an inspection of the Constitutions of other States, I am bound to say that the proposition now under consideration goes to a further extent, than any that I have been able to find existing in the Constitution of any State in this Union—not even excepting New York, which has been the most liberal in that respect.

The question was then taken upon the motion submitted by Mr. Walker, to strike out "seventy-three" and insert "sixty-three," and it was decided in the negative.

So the amendment was not agreed to.

Mr. BIRD, of Walpole. I would like to ask the chairman of the Committee, what reason there is for requiring that when a proposition for the amendment of the Constitution first comes before the legislature it shall be adopted by a majority of all the members elected, but when it comes before the next general court, it need only be adopted by a majority of the members present and voting?

Mr. NAYSON. In answer to the inquiry of the gentleman I would say, that the controlling motive in inducing the Committee to that recommendation was this, if I understand it correctly, to prevent the introduction of unnecessary and uncalled for propositions for the amendment of the Constitution. Supposing that the labors of this Convention will terminate in the production of an instrument as nearly perfect as possible, amendments to any great extent will not be necessary. But if propositions for necessary amendments should hereafter be made, the reasons for them would be so apparent and obvious, that a majority of all the members elected would assent to such a proposition. These were the controlling motives which operated upon the minds of the Committee. They thought it reasonable

and proper, under the circumstances, and directly calculated to guard against the infraction of that instrument, and prevent all unnecessary and impolitic amendments being proposed.

Mr. BOUTWELL, for Berlin. I cannot, as at present advised, agree to the third resolve. In the first place, setting aside the usage of Massachusetts and other States, I think it quite doubtful whether the legislative assembly properly has anything to do with the Constitution. So strongly impressed am I with the truth of that consideration, that I am willing to make it difficult for the legislature to amend the Constitution, or to take any initiatory steps towards that end. The members are not usually elected with reference to amendments of the Constitution, and it is with this view that I would rather agree to the existing provision of the Constitution in reference to legislative amendments, than to the proposition of the Committee. The proposition of the Committee is, that amendments proposed to the Constitution in the legislature shall be consented to by a majority of the senators and representatives elected, without any reference to the distinction which exists in the Constitution, that senators and representatives form different branches of the government.

If there should happen to be twenty majority in the House of Representatives in favor of the proposed amendment to the Constitution, and a majority of five in the Senate against it, according to the reading of this resolution, the amendment would be adopted and referred to the next legislature; and then, if there was a sufficient number of senators and representatives present to constitute a quorum only of each branch, and nine members of the Senate, and thirty-one members of the House of Representatives, should vote in favor of the amendment, it would be adopted, and go to the people.

Now, Sir, I had much rather that the Constitution should stand just as it is. It seems to me, that if any great exigency should arise, requiring legislative interference in this matter, it will be taken care of under the existing provisions of the Constitution. Besides this, I am not in favor of holding out any invitation or inducement to the legislature to take this matter of amending the organic law of our Commonwealth into their own hands, to be acted upon when they please, and under whatever peculiar circumstances may possibly exist for the time being. I would rather place it entirely beyond the power of the legislature to take any initiatory steps whatever in reference to amending the Constitution. If the general question is to be submitted to the people once in twenty years, I think we shall not experience any bad consequences; and this resolution I will support. I ask for a division of the question, with the hope that the third resolution will be rejected.

Mr. HALE, of Bridgewater. There has been no explanation given as yet which satisfies my mind that the second resolution reported by the Committee, should be incorporated in the Constitution. From a cursory view which I have taken of the subject, it seems to me, that it is a provision which is entirely unnecessary to be inserted in that instrument. If I understand it, it is intended to provide, that in case the legislature of 1873 should fail to submit to the people the question of calling a Convention, that duty shall devolve upon the Secretary of the Commonwealth, who shall proceed at once to issue notice

for that purpose. It seems to me, that by adopting any such provision we shall be casting an unjust imputation upon the legislature of that year, whoever they may be, that they will not do as they are required by an express provision of the Constitution to do; and, Sir, I am the last person who would be willing that any provision containing such an unworthy suspicion should be adopted and made a part of our organic law.

Besides this, it is provided, as I understand the resolution, that the legislature of any year, whether preceding or succeeding the year 1873, may, if it is desired, submit that question to the people; but, if any circumstances should arise which would make it necessary for the people to call for a convention, and the legislature should not deem it expedient to submit that question to them, the people would be very sure, the next year, to elect a body which would conform to their wishes in this respect. It, therefore, strikes me, that the second resolution is entirely unnecessary, and ought not to be adopted.

Mr. NAYSON. I would say a single word in reply to the remarks of the gentleman from Bridgewater. I hope that his motion to strike out the second resolve will not prevail, for if the Committee which had the subject under consideration were unanimous or united upon any one point referred to them, or which presented itself in the course of their deliberations, it was upon the proposal embraced in the second resolve. Taking into account the history of the past, together with the fact that this same provision in reference to the calling of a convention at a specified time, once existed in the Constitution of 1780, and that that provision was entirely disregarded by the various legislatures, the time when the question should be submitted to the people being allowed to go by, and thereby depriving the people of the right of calling a convention—I repeat, taking these facts into consideration, I hope the Committee will be slow in adopting the motion of the gentleman from Bridgewater.

It seems to me a perfectly plain and obvious matter, that a power should exist somewhere which shall enable the people, in case they fail to obtain their right of calling a convention through one class of agents, to obtain it by another means—that is, through the Secretary of the Commonwealth. The Committee considered the subject in that light, and unanimously agreed upon this resolution as the most effectual mode of providing against an emergency of this character. Until such an exigency shall occur, the provision will, of course, lie dormant and useless; but, when the event shall take place, which is not an impossible thing, it will then come in full play, and be the just and proper remedy for the difficulty. I hope, therefore, that the resolve may be allowed to pass as it stands.

A word now in regard to the objections to the third resolution so strongly urged by the gentleman representing Berlin, (Mr. Boutwell). I would call the attention of that gentleman to the fact which he will no doubt recollect, that, in the present Constitution of our State there is no express power given to the legislature to propose specific amendments to the Constitution; and it is for the purpose of conferring that power upon the Senate and House of Representatives that the third resolution has been especially framed, and is so explicit in its terms.

I think, that upon due consideration of this

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matter, the gentleman will see the necessity for some provision of this kind in the constitution, placing in the hands of the Legislature the power to propose amendments to that instrument whenever such alterations may be required, and will accordingly acquiesce in the Report as it stands. So far as the Committee are concerned, it is perfectly immaterial whether the vote of two-thirds or of a simple majority of the two Houses shall be required upon the adoption of such amendments, so long as the power is conferred upon the legislature to propose amendments whenever they may be necessary. I hope that this explanation will be sufficient and satisfactory, and that no further objection will be made to the passage of the resolution in question.

Mr. HALE, of Bridgewater. The gentleman has referred to the provision in the original Constitution of 1780, that at a certain time the legislature should submit the question of amending the Constitution to the people, but as they did not do it, they lost the power of acting upon the matter, in any way. And there has been no other provision for the question to be submitted by the legislature to the people, at any other period. According to the first resolution here, the legislature may submit the question to the people at any time either before or after the year 1873, or the twentieth year following, so that the contingency could not happen, which arose under the old Constitution, that if it was not presented to the people at a certain time the right of the legislature was entirely forfeited. It can hardly be supposed that any exigency will arise, however, which will require that a legislature shall take immediate action upon the subject, but if such an occurrence should, by any unforeseen event, take place, and the general court should refuse to submit the question to the people, whether there shall be a Convention to revise the Constitution and amend the same, the very next legislature which would come from the people would be sure to conform to their wishes. I think, therefore, that the argument of the gentlemen, so far as it relates to the Constitution of 1780, fails of having any force in this respect.

Mr. BARTLETT, of Boston. I entertain no very favorable regard for either of the resolutions which have been reported by the Committee, but believing it to be a wise policy that if any amendments are to be adopted, and incorporated in the fundamental law of the State, they should be thoroughly revised and understood. I would like to make an inquiry of the chairman of that Committee. It is this: does the second resolution provide for the basis of representation in any Constitutional Convention that may be called by the legislature, or, in other words, how is the Convention to be constituted?

There is, it is true, a crude suggestion, that the electors shall call the Convention together, but whether each town shall have one delegate or more, or whether the towns shall be represented in accordance with the basis of representation of the last decennial period, the resolution does not state.

Mr. NAYSON. So far as I am able, I shall be happy to answer the question which has been propounded by the gentleman. I would say to him, that the matter was fully discussed in the Committee, and they came to the conclusion that, in the choice of delegates to such Convention, the usual course would be followed which is now

pursued in all civil bodies of this kind. Precepts would be sent to every city and town in the Commonwealth, calling upon voters to elect delegates, in the same manner as they were issued in convening this body. It is a matter, however, more properly within the jurisdiction of those officers of the government whose duty it is to issue such instruments, and the Committee, therefore, thought it unnecessary to cumber the resolve in question with any details as to the manner of proceeding, which has been alluded to by the gentleman from Boston.

Mr. BARTLETT, of Boston. I think if the gentleman will compare the Act under which the present Convention was called, with the Act which convened the Convention of 1820, he will find that those gentlemen who were delegated to represent towns in that Convention, might be elected from other towns than the one in which they resided.

Mr. NAYSON. I would ask the gentleman if he finds any provision, in the Act calling this Convention, which allows the election of delegates from other towns than those in which they reside? Is it not a matter of inference, merely?

Mr. BARTLETT. I do not mean that it is specifically so provided, but I think it is practically the case. There are living illustrations of that fact all around us. I do not desire, however, to protract the debate. All resolves that are passed in Committee of the Whole, are to be placed in the hands of a revising body, previous to their being submitted to the people, and whatever defects may exist, will be there pointed out and remedied. But, I desire that no resolution shall pass this body until it has been made so clear and perspicuous, that the revising Committee can readily comprehend its meaning and intent.

Mr. BOUTWELL. I have a word to say in reference to the third resolution. That resolution declares, that amendments to the Constitution may be proposed by the Senate and House of Representatives. It is true that the existing provision of the Constitution does not, in terms, declare that propositions for the amendment of the Constitution may be made, but it says that, whenever propositions are made, either in the Senate or House of Representatives, they shall be treated thus, and so, of course, the very language itself implying that amendments may be proposed.

Besides this, we have a usage of many years to justify such a step, and I, therefore, think it as well settled as anything can be, that under the existing Constitution, amendments may be proposed either in the Senate or House of Representatives. Under these circumstances, I do not believe it is worth while to incorporate any provision in the Constitution, which almost every one will agree is there at the present time. As to the form of treating amendments, when they have been proposed, I concur in the provision of the Constitution rather than in the mode proposed by the Committee. I, therefore, hope the third resolution will not be adopted.

Mr. COLE, of Cheshire. I would inquire of the chairman of the Committee, whether the Committee were of the opinion that, in the submission of the question to the people at the time specified in the resolution—namely, the year 1873, and every twentieth year thereafter—any legislative act would be required?

Mr. NAYSON. In reply to the gentleman, I

would state, that the Committee do not understand that any legislative act is necessary, for calling a Convention at the time designated in the resolve.

They decided that, as it was a peremptory provision, making it a duty of the legislature to send out that proposition, that body would send it out at the proper period, no other action being necessary on their part. The whole duty of the legislature, therefore, is accomplished, when they shall have conformed to the provision of the Constitution, and submitted the question to the people.

Mr. SIMMONS, of Hanover. There seems to be a variance between the first and second resolve, which I would like to hear explained. By the first resolution, we provide positively, that this question shall be submitted to the people in the year 1873, and at every twentieth year thereafter; then there is a further provision that the legislature may call a Convention at such other times, preceding or succeeding the last named year, as they may see fit. I understand, from the explanation which has been given by the gentleman from Amesbury, that no legislative action is necessary in calling the Convention every twenty years, but will not some action be requisite, if the legislature should call a Convention at any other period than that which has been designated? Then in the second resolve, it is provided, that in case the legislature shall fail to submit to the people at the periods named, the question of calling a Convention, that duty will devolve upon the Secretary of the Commonwealth. I would ask if there is not an apparent inconsistency in these provisions? This is the way in which the resolutions strike me, and I should be happy to hear an explanation in regard to them.

Mr. NAYSON. It may be, Mr. Chairman, that the meaning of the resolutions is involved in all the obscurity, doubt, and even contradiction which the gentleman would have us suppose, and it may be, too, with all due respect to the judgment of the gentleman, that he has failed to comprehend their plain and obvious meaning and intent. As he desires an explanation, however, I will state, that the first resolve merely imposes upon the legislature by a Constitutional provision, the duty of submitting to the people, every twenty years from this time, the question, "Shall there be a Convention to revise the Constitution, and amend the same?" and, in case the legislature shall fail to comply with this Constitutional duty, the second resolve further provides, that that duty shall devolve on the Secretary of the Commonwealth, who shall send out the question for the consideration and action of the people, precisely in the form prescribed in the first resolve. And, if a majority of the people vote in favor of calling a Convention, then it is further provided, that the governor of the Commonwealth shall issue his proclamation to the qualified voters of the cities and towns of the State, calling upon them to elect delegates to such Convention.

It seems to me that the resolutions are obvious and consistent in their meaning, and within the comprehension of every gentleman of this body, and, if any fault is found with the language, the difficulty, if there is any, can be remedied, as has been suggested, when the resolutions shall go before the revising Committee.

Mr. THOMPSON, of Charlestown. As there

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is some doubt whether there is a quorum present, and as there are not enough, certainly, to warrant the taking of a vote upon this question, I move that the Committee do now rise, report progress, and ask leave to sit again.

The motion was agreed to.

The Committee accordingly rose, and, the President having resumed the Chair of

THE CONVENTION,

The Chairman, Mr. Griswold for Erving, reported, that the Committee had had under consideration the resolutions on the subject of Amendment and Enrolment, had made some progress therein, but had been unable to come to any conclusion, and asked leave to sit again.

Leave was granted.

Leave of Absence.

Mr. FAY, of Southborough, from the Committee on Leave of Absence, presented a Report from that Committee, granting leave of absence to Mr. Taber, of New Bedford.

No objection being made, the question was taken on agreeing to the Report, and it was decided in the affirmative.

On motion, the Convention then, at twenty minutes past six o'clock, adjourned.

THURSDAY, July 7.

The Convention assembled pursuant to adjournment, and was called to order by the President at 10 o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read.

Petition Presented.

Mr. CHANDLER, of Greenfield, presented the petition of C. J. J. Ingersoll, and thirty-eight others, inhabitants of Greenfield, for a declaration in favor of fugitive slaves.

The petition was referred to the Committee on the Bill of Rights.

Quorum.

Mr. COLE, of Cheshire, submitted the following resolution, which was referred to the Committee of the Whole:—

Resolved, That the Constitution be so amended that a majority of the members of the House shall be necessary to constitute a quorum.

Orders of the Day.

On motion of Mr. WILSON, of Natick, the Convention proceeded to the consideration of the Orders of the Day.

The first item being the subject of General Laws for Corporations, was, on motion of Mr. Wilson, passed over.

The next item being the resolve on the subject of

The School Fund,

Reported from the Committee on the Encouragement of Literature, was read, as follows:—

Resolved, That the legislature shall, as soon as may be, provide for the enlargement of the School Fund of this Commonwealth, until it shall amount, at least, to the sum of two millions of dollars; and the said fund shall be preserved inviolate, and

the income thereof shall be annually appropriated for the aid and improvement of the Common Schools of the State, and for no other purpose.

The question being on its final passage.

Mr. COGSWELL, of Yarmouth. Mr. President, the question of public or popular education is one of the most truly important subjects which can engage the attention of the Convention during its session. In Massachusetts, founded by men, many of whom possessed minds enlarged by observation, and enriched by careful cultivation of the old world, this momentous interest has at no time been neglected. The loftiest intellects and noblest spirits of the State have considered themselves honored in bestowing their best labors upon this cause. The Pilgrim Fathers, in the darkest and most gloomy days of the infant colony, when it was oppressed by poverty at home, and threatened by savage wars abroad, made liberal appropriations for the support of her schools. And, in the progress of time, has arisen that noble system of popular education which is admired and imitated throughout the world.

The excellencies of this system are, first and best—that it is free and equal. It is established for the benefit of all. It throws wide open its ample portals, and welcomes all to enter in. The school house is built for all. The libraries, apparatus, all its privileges and opportunities, are offered, unrestricted and without reserve, to any and every person desirous of improving them.

Thus this system brings all classes together, and helps them to a mutual understanding and regard. The children of the protestant and the catholic are instructed in the same school room, and taught that God is the maker of us all. The nurslings of fortune sit upon the same form with the children of poverty, and learn that man is respected, not for the accidental circumstances of birth or fortune, but for what he is, and what he becomes of himself. In this way they are trained to mutual forbearance, and made to know each others wants and deficiencies. Thus, too, the sentiments of personal equality and independence are entwined about the life of childhood until they grow with the growth and strengthen with the strength of manhood. Upon the tender and impressive nature of youth, is stamped the conviction that in a free state merit must rise, while the most inspiring examples show them that the lowliest birth, and deepest poverty, are no obstacles to the greatest success.

This is the only system by which the poor can be worthily educated. The poor have special claims upon the State which is the mother of all her citizens. If a young man is forced to begin life under the depressing influences of poverty, he should be permitted to receive the fullest privileges of education, and be recognized as an equal among equals.

But, we must educate the poor, not only for their sake but for our own. It is for the interest of all that they should become intelligent and high-minded members of society. Otherwise, we shall witness the frightful results of ignorance and degradation and crime. Sir, in the course of the debates to which we have listened, upon other topics of vital interest to the State, gentlemen have frequently alluded to the excesses of European Revolutions. If we wish to avoid such excesses; if we wish that the ballot-box, rather than the paving stone of the street should be the engine of political revolution; if we wish to see

the reign of christianity, rather than of infidelity, in a word, if we are desirous of enjoying the rule of American citizens rather than of French mobs, let us make liberal appropriations for the instruction and enlightenment of all classes of society.

This system has been abundantly tried, and is amply successful. It is the only one that can diffuse, universally, the benefits of knowledge. It is as free as the air and generous as the dews and rains of heaven. It is become an unit; it is easy, expeditious, and economical in its operations.

Our system of public instruction should be especially dear to us, as being essentially *American* in its character. It is adapted to the genius of our institutions and is necessary for their perpetuation. Common schools were established in the infancy of our country; they are equally beneficial in these later days of its glorious maturity and development. In these nurseries our children are trained to virtue and independence. They are early taught the lessons of freedom and equality. They are shown that individual excellence and self-reliance constitute the true nobility of manhood. Thus, are they trained for the arduous duties of life and the manifold needs of society.

How different in this respect is the operation of our system of public instruction from the systems of the European states, so much praised and vaunted. They are like, and yet how unlike, our own! In Germany, and Austria, and Italy, and Prussia, schools are abundant, and no expense is spared to secure their excellence. But, after all, they are only nurseries of slaves. Children are taught religiously to believe in the doctrines of implicit obedience to despotic authority and the divine right of kings. They too often become intelligent machines rather than high minded men and women. How different in Massachusetts! Here we wish our children, above all other things, to be taught, both in theory and by example, that all men are free and equal, both by the dictates of natural reason, and in the eye of the law. The advantages of our common schools in the past and present history of the Commonwealth, being so manifest and obvious, the sole question for us to decide is, how we may best perpetuate the system and develop it to its noblest perfection. It may not be absolutely symmetrical in all its parts, its benefits may be extended in different ways, and to those who do not yet receive and appreciate them; but yet it is and will be one of the positive and cherished institutions of the State. Our earliest care will be to supply its imperfections if any are discovered, and furnish the material aid necessary to its operations. This is the practical question now before the Convention. An enlargement of the school fund is needed to meet the increasing wants of the people. Our population is rapidly augmenting. New institutions, tending to promote the general diffusion of knowledge, have been introduced amongst us: they need efficient pecuniary assistance. Teachers' institutes, the normal schools, the scholarships, all look to us for substantial endowments. Shall they not have them? Besides, large sums may be profitably expended in the support of efficient and accomplished agents, the publication and diffusion of educational documents, and the establishment of school libraries. If this provision be adopted, moreover, it will be gratefully received by those numerous towns of large population and scanty means, where taxes for the support of common schools are now so

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heavy and burdensome." In these towns our school is half our taxes.

I hope, therefore, Mr. President, that this provision will be adopted. It seems to me to be demanded by the necessities of the case and the progress of the times. I believe nothing would more materially promote the prosperity of the State. I believe that justice and generosity alike require us to be liberal in this matter. I would have every poor boy, every friendless child, to feel that the cherished arm of the State is over him for good, and that nothing but his own exertions and perseverance are necessary to raise him from his obscurity.

I do not propose to trespass longer upon the patience of this Convention with this strain of desultory and general remark. Before resuming my seat, I wish, however, to make a single suggestion addressed to the laudable sentiment of State pride—the honest exultation and satisfaction we all feel in the fame of this ancient Commonwealth, for whose good we are now attempting to legislate. Massachusetts is not blessed with great natural wealth or abundant resources; and yet, in spite of her disadvantages, she has grown great and prosperous, and won for herself a fame that the proudest empires of earth might envy. And this has been accomplished by the enterprise and intelligence of her sons alone. A great part of it is to be ascribed to our common schools, that our wise fathers established, where every son and daughter of Massachusetts have been trained to self-respect and honorable labor. Other States have imitated our system of public instruction, and have even made improvements upon it. Let us be careful that we be not the first to take steps backward. Now we see other States, more favored than our own by nature, taking gigantic strides along the road to wealth and prosperity. In the Great West and upon the shores of the Pacific, yearly spring up States of a territorial extent compared to which ours is but a finger's breadth. Constantly the great tide of emigration rolls through our borders on its way to fill up their magnificent prairies and deposit its living millions upon the banks of their mighty rivers.

In the progress of events, States now foreign to us will demand admittance into the Union. This seems the natural course of things, and we can scarcely obstruct it if we would. Now, is Massachusetts to fall back from the proud position she has occupied so long? There is one way and only one to retain it, and that is, by developing still more assiduously and liberally the intelligence and innate enterprise of her children. True, our soil is a hard soil to cultivate, but it is the best in the world on which to raise intelligent and high-minded men.

"Men are the growth our rugged soil supplies,
And minds are ripened 'neath these Northern skies."

I repeat it, Mr. President, if we wish our State to retain the high rank she has so long maintained among the States of the Union, we must foster the interests of education; we must, in the language of our Constitution, "cherish the interests of literature, and the sciences, and all seminaries of them, especially common schools and grammar schools, in the towns." Then in the future as in the past, we may hope that Massachusetts will bestow upon the world her jewels beyond all price. And long may peace and prosperity smile

upon her, and her borders be the home of liberty, patriotism, intelligence and virtue.

Mr. LOTHROP, of Boston. I move to amend the resolve by inserting after the word "appropriated" in the last line but two, the words "under the direction of a board of education or such similar agency as may be by law established;" so that the resolve, as amended, would read:—

Resolved, That the legislature shall, as soon as may be, provide for the enlargement of the school fund of this Commonwealth, until it shall amount, at least, to the sum of two millions of dollars; and the said fund shall be preserved inviolate, and the income thereof shall be annually appropriated, under the direction of a board of education, or such similar agency as may be by law established, for the aid and improvement of the common schools of the State, and for no other purpose.

The Committee which reported the resolve under consideration, also reported another resolve which is contained in document No. 94, and is thus expressed:—

Resolved, That it is not expedient so to alter the Constitution as to provide, that a board of education and a board of agriculture shall be established as permanent departments of the government.

I proposed at first to present the proposition which I have now submitted as an amendment to this last resolve, but it seems to me, that the question as to whether a board of education shall be established or recognized in the Constitution may very well be discussed under the resolve now before us.

Upon the merits of the resolve as it stands, without the amendment I propose, it seems to me there can be but very little difference of opinion. The proposition as contained in the Report of the Committee to increase the school fund gradually, without taxing the people, to a sum much larger than the present amount of that fund, is one which, in my judgment, is vital to the best interests of the common schools of the State. I believe that, but for the fund which we already have the board of education would not have been in existence, and all that this board has done towards the improvement of these schools would not have been accomplished. The existing fund has already been and is of immense importance to the State, and its gradual increase to the amount proposed by the Committee, is also a matter of vital moment, and one which I am sure this body cannot fail to carry forward. Even if it is raised to \$2,000,000, the amount will not be so large as to produce the effect which is produced in some States where a large school fund exists. If the whole income of the fund were directly appropriated towards the support of the schools, and proportionally distributed throughout the towns and cities of the Commonwealth for that purpose, it would not so perceptibly diminish the school tax as to deaden and depress the interest felt by the people in the common schools. Even if thus appropriated, it would only operate, and as it has been and will be appropriated, to "the aid and improvement of the schools," it would especially operate to increase the interest felt in them. If raised to the sum of \$2,000,000, the income will simply be large enough to enable the board of education to carry forward with renewed and increased vigor all the plans which their wisdom

may suggest for the improvement of the common schools of the State.

The Committee, of which I have the honor to be a member, have reported on the orders referred to them, that it is inexpedient to establish or recognize in the Constitution, either a board of education, or a board of agriculture, as a permanent department of the government. Now, it seems to me that a board of education and a board of agriculture are two distinct subjects. It might be very well to refuse to recognize a board of agriculture, and yet not well to refuse to recognize a board of education. Agriculture is one of the great industrial occupations of the people of the Commonwealth, and it might with, perhaps, just as much propriety be proposed to establish a board of commerce or a board of manufacture, or a board of the mechanic arts, or a board to regulate any of the great industrial occupations of the people of the Commonwealth. The question of a board of agriculture and a board of education are totally distinct from each other in my mind. It might be very proper to refuse to recognize one, and yet a matter of vital importance connected with the highest interests of the Commonwealth, that we should recognize the other.

Now, Sir, I believe that the history of the board of education in Massachusetts, or rather the history of the common schools of Massachusetts under the direction and management of the board of education, and you cannot separate one from the other, is of such a character and importance as to demand upon the part of this Convention a recognition in the Constitution of a board of education, or some such agency, as a permanent part of the organization of the government. Such an agency is necessary if we would have our system of public instruction, through common schools, efficient, progressive and thoroughly diffused and applied. It is necessary, especially for the benefit of the small towns of the Commonwealth, those portions of the State where the great influences of society do not bear with a very strong pressure. Indeed, the large towns and cities do not much need such an agency. In them there is always a spirit of enterprise, of progress, of improvement, and the strong action of the public mind, in those places, would of itself be sufficient to make it sure that these schools would be well taken care of, kept up at a high standard, and open to every improvement in education. But, in all countries where there has been a system of public education, the great point has been to reach the remote parts of the State—the small, poor towns—to bring up the standard of education there, and to make their schools as good as those in the cities and large towns, so that slumbering talent everywhere may be reached and developed. Such has been the effect of one system of public instruction in Massachusetts. Every portion of the State has been reached, and the whole community has been elevated, and all the common schools in the quiet and retired parts of the country have been improved. The great progress made in this direction during the last sixteen years is to be attributed almost altogether to the efforts of the board of education. This board has been the means of diffusing abroad in the State an immense amount of knowledge. It has awakened everywhere an increasing interest in the public schools. It has raised everywhere in the Commonwealth, even in the most remote vil-

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lages, the standard of public education, and the whole character of the schools, and of the teachers. There is no State, I believe, in the world, that has increased more in all that goes to constitute an enlightened, prosperous, healthy, and happy community, than has the State of Massachusetts during the last twenty-five years. With no natural advantages of soil, climate, or staple productions, we have prospered in all things, and that prosperity has proceeded from the general intelligence of the people; and that general intelligence is the result, to a great extent, if not wholly, of our system of common schools; and the improvement, the immense improvement, in these common schools during the last sixteen years, is, in my judgment, mainly due to the efforts of the board of education. Permit me to allude briefly to what it has attempted and accomplished.

The successive members of that board have directed their attention to the improvement of the teachers; to the improvement of the school-houses; to greater punctuality in attendance, to the increase of the length of the sessions, and to circulating throughout the Commonwealth the laws of the State in reference to common schools, and all valuable documents upon the general subject of education.

They have improved the teachers by means of normal schools, teachers' institutes, and lectures of agents employed for the purpose. They have improved the school-houses by giving information as to the best plans of construction, the best arrangement of seats, desks, &c.; the most suitable localities, and all the minutiae of those outward, surrounding appearances and conveniences, which have so important an influence upon the mind and heart.

To secure punctuality of attendance, they have been at infinite pains to inform the parents of the amount of absence of children, and of the immense loss they sustain on account of that absence. They have recommended to the legislature laws which have been adopted, and which have had an important bearing upon the question of improvement of schools.

We can hardly conceive of the immense benefit to be derived from a body of men like the Board of Education directing their whole attention to the condition of the schools, and of suggesting to the legislature such changes in the laws as are requisite for their improvement. No member of the legislature, no committee of the legislature, would be able to give the subject so much attention as to understand perfectly what it was best to do without the aid of this Board of Education.

I say, it is mainly through the efforts of this Board of Education, that the important changes and improvements which have been made in our system of common schools during the last sixteen years, have been brought about; and I must ask the attention of the Convention for a moment longer, while I indicate some of these changes and improvements.

In the first place they have increased the compensation of teachers, and by increasing their compensation have elevated the standard of the qualifications demanded of them.

In 1837, the average pay of male teachers by the month, was \$25.

In 1852, the average was \$36.25—making an increase by the month, of \$11.25.

In 1837, the average compensation of females was \$11.38.

In 1852, the average was \$15.36—making an increase of \$3.98.

In 1837, the average length of sessions was six months, twenty-two days.

In 1852, the average was seven months, fifteen days.

This, multiplied by the number of schools in the Commonwealth, gives an increase of seven years and four months' school keeping in the Commonwealth every year, over the amount there was sixteen years ago.

The amount of money raised in 1837 for the support of schools was \$387,124.

The amount raised in 1852 was \$910,216—making an increase of \$513,092.

We have also greatly multiplied the number of the public schools within the last sixteen years. In 1837 the number of schools was 2,918. In 1852, the number was 4,056—making an increase of 1,138.

In 1837, the number of teachers employed was 5,961. In 1852, the number was 8,910—making an increase of 2,949.

Another very important influence, as I conceive, which the Board of Education have exercised in the past and will still continue to exercise, is in increasing the relative number of female teachers employed in the Commonwealth. Every one of experience acknowledges the superiority of adaptation upon the part of females to be teachers; when properly educated themselves, they excel in imparting instruction and are best fitted to have charge of the mind and heart of the young. Everything, therefore, that can tend to elevate the females in the community and give them the means of earning a livelihood, by some elevated and honorable employment, is worthy of encouragement. In our own State, the number of female teachers employed in 1837, I have not been able to ascertain, but the number in 1852 was 6,456, and I cannot doubt that it is a very much greater number than were employed sixteen years ago.

The number of Normal Schools in the Commonwealth, which, also, have a very important bearing upon the subject of education, is now five, and provision has been made for the establishment of another. Of these, three are supported by the State, one by the city of Boston, and one at private risk. The amount of influence which these Normal Schools have had and will continue to have in improving the system of education throughout the Commonwealth is incalculable. Without it our common schools could hardly have been brought to their present improved state. Yet for these in a great measure, we are indebted to the Board of Education; and shall we not recognize this Board or provide for some such permanent agency to take charge of this highest interest of the State. To show something of the state of these Normal Schools and the beneficial influence they are exerting upon the common schools of the State, let me say that at a recent examination of one of these schools, a class was examined in optics. No text books were used at the examination, or had been used in the instruction. The pupils were taken to the blackboard; they drew the figures enunciated, the general and particular truths belonging to the propositions laid down, and illustrated them, and drew the algebraical formulas containing rules applicable to

the construction of optical instruments, and in every way showed that they had a thorough scientific knowledge of the subject, sufficient for all purposes of instruction, and yet all the instruction they had received, was given in twenty-one oral lessons, by one of the pupils of the school. The gentleman from whom I had this information mentioned the fact as an illustration of the improvement which had been made in the art of teaching and mode of imparting instruction in our schools, and in the preparation of teachers. These persons, who had received but twenty-one lessons in this science, were all of them, probably, competent to go out into one of the common schools of the State and impart the same instruction in the same manner. This is one of the results which are the consequence of our Normal Schools, in preparing teachers for the duties of their profession.

Now, Sir, I repeat that it seems to me exceedingly important and desirable that we should recognize a Board of Education in our Constitution, and that it should be made the duty of the legislature to continue to provide for some such agency. I am not desirous that the Board of Education should be established or recognized precisely as it now exists. I only desire that we shall recognize the existence of such a Board and the obligation resting upon the legislature always to provide for some similar agency to take charge of this vast and important interest of the Commonwealth. It may be said that so long as the people of the Commonwealth continue to take the deep interest which they do now it is unnecessary to make any further provisions in reference to the subject. But it seems to me that a subject of so much importance should not be overlooked by us. The Board is now recognized and established by the legislature; but it seems to me that the very fact—the fact that it is an important branch of the government, is provided for by the legislature and does actually exist,—is of itself a reason for recognizing it in the Constitution. It has been suggested, that the people are so deeply interested in the public schools, there is no danger of the legislature overlooking the subject, and that it is not, therefore, necessary to put any provision in the Constitution with reference to the Board of Education or any similar agency, but that the whole matter may very safely be left in the charge of the legislature. On this ground we might as well refuse to take any notice in the Constitution of our common schools. Sir, I would notice both—the schools, and the agency by which they are to be constantly improved. If the subject of common schools is of that vital importance which I believe it is; if the experience of sixteen years has proved that under the direction of the Board of Education, the whole system of public instruction in Massachusetts has been most wonderfully improved, elevated and carried forward in every direction, in every portion of the Commonwealth, even in the most remote, smallest, poorest and most sparsely settled towns, it seems to me that it is our duty—that it is incumbent upon us as the guardians of that great interest, to recognize this Board of Education, and to recognize further, if necessary, the duty of the legislature to always provide for the establishment and continuance of some such agency for promoting and advancing this great interest.

I am sorry to trespass so long upon the attention of the Convention, but, I hope and trust, that

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the view I have presented will have weight in the minds of gentlemen, and that the amendment I have presented will prevail.

Mr. COGGIN, of Tewksbury. I consider efforts to secure the general diffusion of education as among the highest and noblest of human efforts. There is no other institution in our country so essential to our happiness and prosperity, so indispensable to the existence of a free people, as the common school system. Destroy this, and in a short time all our free institutions will follow; for, it is an unchangeable truth, that a free republic cannot exist where the common people are sunk in ignorance. It does appear to me, Sir, that we can hardly attach too much importance to our common schools. It does appear to me, Mr. President, that no laws of this Commonwealth more immediately affect the moral purity, happiness, and prosperity of the whole people, than those laws which go to establish, regulate and improve our common schools. However important our academies, our colleges, and seminaries of learning may be, in themselves, still, are not our common schools equally important? Yea, Sir, are they not more important? We might possibly dispense with some of our colleges and seminaries of learning and not be ruined, but we cannot dispense with our common schools, and as a free, enlightened community, survive the loss.

It is related of one of the presidents of the United States, while making the tour of New England, that he was struck with astonishment at the marks of perseverance and industry which were exhibited everywhere around him. The mountains were, many of them, cultivated to their summits, and all around him bore marks of enterprise, industry, and happiness. He expressed his surprise, and inquired of one of his suite, a distinguished citizen of New England, the cause of the phenomenon. "Do you see," says the gentleman, "on yonder little eminence, a large house with a steeple, and by its side a small white house? There is the solution of the problem—the secret of New England enterprise." The meeting-house and the school-house, always inseparable, contain the elements of that industry which cultivates the mountain's top, and gathers wealth from the mountain stream. The meeting-house and the school-house are, indeed, the source of New England's prosperity—her intelligence and her virtue.

Some parents withdraw their influence from our common schools, from the apprehension that the morals and manners of their children may be somewhat injured by the examples of the children of the poorer classes of the community. Now, those children, thus taken from the common schools, are generally the best scholars—the most studious and exemplary, and thus a serious injury is done to the common schools. Then, again, some of the most competent, faithful, devoted, and successful teachers are taken up by those who have the means and disposition to establish select private schools for their children. We cannot, to be sure, deprive these parents of the privilege of establishing schools for their children at their own expense, but, upon the whole, are they doing right—are they consulting the public good? Depend upon it, the time will come when their children will be exposed to the corrupting influence of bad examples, and at a time, too, less favorable for the parents kind, faithful, interposing,

councils, warnings, and instructions. If they would send their children to the common schools, and along with them their fostering care and deep interest in their welfare and prosperity,—if they would help to cleanse the streams at the fountain head, they would confer upon community an incalculable benefit.

It has been said, Mr. President, and, I believe, truthfully said, that all the education which at least nine-tenths of our children ever receive, and which is to prepare them for all the various duties of life, is received at our common schools. I apprehend, Sir, that the views of many in reference to our common schools are very erroneous; an opinion has prevailed, more or less, that they are established for the poorer classes of community only; now a more anti-republican view of the subject could not be presented. Now, so long as such an idea prevails, they who have the means will provide for their own children,—there will be no inducement for the tax-payers, whose children are educated elsewhere, to provide any but the most ordinary accommodations for the common schools. Now, Sir, this evil must be remedied before our common schools will become what they ought to be. But what is the remedy? Why, let those who now educate their children at private schools and academies, exert themselves to make our common schools our best schools; let us have the best accommodations, the best teachers, and the evil would soon be remedied.

Mr. President; I think the opinion of Daniel Webster on this point worthy to be regarded and followed by us all: "If," said he, "I had ever so many sons to educate I would send them all to the public school, and," said he, "it is a reproach to Massachusetts that her public schools are not superior to the private."

Upon that part of the Report which prohibits the appropriation of any part of the school fund for the support of sectarian schools, I would make a few remarks. Though we have reported, that no part of the school fund shall be expended for sectarian purposes, yet, we would not, therefore, be understood as setting aside all moral and religious instruction in our common schools; far from it. Sir, Massachusetts has settled this subject. She has, by her Constitution and laws, enjoined it upon teachers to inculcate piety and Christian morals—love to God and love to man. Neglect all moral and religious instruction in our schools and seminaries of learning, and you cut assunder all the cords of conscience and moral obligations. Tell me, then, what principle remains that can give efficacy to laws in that community? Am I told that education, generally diffused among them, will do it? This is all important, but not enough. Depend upon it, education, the penalties of the statute book, the array of tribunals and executive offices and prisons, are all frail as the spider's web, to restrain the passions of men let loose from the ties of religion. Generally, education and true religion are indispensable to our political edifice; when united they constitute the life-blood of the body politic.

A most insidious effort, however, has been made, and is making, to separate religion and education, under pretence of discountenancing sectarianism, and prevent a union of Church and State. Hence, the Bible, in some instances, in years gone by, has been banished from our common schools, and teachers, in some instances, have been forbidden to pray in their schools, or

speak a word to their pupils on the subject of morality and religion. Strange infatuation! that republicans should banish a book from their primary institutions of learning, which contains the only system that meets the wants and guards the rights of the great mass of mankind. Civil and religious liberty has found no place for the sole of the foot on this wide earth, except where the Bible is in the hands of the common people, and where it is studied, and in some measure loved and obeyed.

Now, Sir, let our public schools be sustained, and let the principles of sound morality and religion generally prevail, and our liberties may yet be immortal. Let the immense tide of population, rolling to the distant west, carry with them our common school system, and the institutions of Christianity, and its mountains and vallies shall nourish a growth of freemen; and ignorance and vice, and the regions of despotism, oppression, and slavery, will vanish before them.

Now, Mr. President, depend upon it, they are the truest and best friends to their country whose example and influence contribute the most to cherish and extend the knowledge and the practice, the morality and religion of the Bible, and to prevent or eradicate infidelity and wickedness. And oh! with how ill a grace do those persons boast of their patriotism, and publish their zeal for the liberty and happiness of the people, who are themselves the slaves of vice or the patrons of irreligion.

Mr. BRIGGS, of Pittsfield. I wish to say a word upon the amendment before the Convention. I believe this is the last matter reported by the Committee of which I had the honor to be Chairman. I desire to say, in regard to the amendment now before us, that I hope it will not be adopted. The subject embraced in the amendment did not escape the notice of the Committee, but they thought, in regard to the means of promoting popular education, that it was best to leave the matter just as it stands in the present Constitution. The article referred to the Committee, was that most beautiful and remarkable, and striking one, drawn by the pen of John Adams, whose mind, at the time of preparing it, was full of this subject of popular education, in which he recites the advantages of popular and universal education, the means of disseminating it, and the duty of the legislature to encourage it in all its forms. Under that article succeeding legislatures have proceeded, until our system of popular education has reached its present state. It seems to me, and such is the opinion of the Committee, that as the means of promoting this great object in future, and the instrumentalities to be used, it is better to leave the subject, under the circumstances, to the wisdom of succeeding legislatures, than to undertake to indicate by what instrumentality it is to be done. The amendment now offered adds nothing to the obligation of the legislature, and, indeed, it seems to me, it goes but very little ways, at the least, for it only provides, that this matter shall be in the charge of a board of education, or some such instrumentality as the legislature shall see fit to adopt. That is precisely the duty of the legislature now, and would be in any event. Again, it seems to me, this provision is not the appropriate one for increasing the school fund. I hope the Convention will adopt the resolution as reported by the Committee, which has for its object the promotion of popular education, without encum-

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bering it with any such provision as is here introduced by this amendment.

The question was taken on Mr. Lothrop's amendment, and it was rejected.

The question recurring on the adoption of the resolution, it was taken and decided in the affirmative.

Basis of Representation.

Mr. BOUTWELL, for Berlin. I call for the special assignment.

The PRESIDENT. The special assignment is the consideration of the resolves upon the House of Representatives, which have been read twice, and the question now is upon their final passage.

Mr. WOOD, of Middleborough. It appears to me, that the second paragraph in the resolution requires amendment, and I wish to call the attention of the Convention to that particular section, as it has not been adverted to in the course of debate. The section reads as follows:—

Any two of such towns may, by a vote of the major part of the legal voters of each, at legal meetings thereof, unite together in a district, which shall be entitled to a representative each year, and shall continue for a period not less than five years.

Suppose, that these towns should unite in the year 1854, and the census should be taken in 1855. By that census, either of these towns might be entitled to one representative, having arrived at a number above one thousand, and having united in 1854, they must continue together for five years and cannot separate. Suppose they go on for four years and choose one member each year. Then they will have each of them one member left. Suppose, now, at that period they unite together. They must continue together for five years, because this resolve provides, that they must be united for five years, and then they might go in and choose a representative for five years more, and thus, they would get more than their proportion, which it is supposed they are entitled to, that is together, they would have a representative some eight or nine years. This would be the case if they unite at any period after the third year. If they continue together for five years, they would get more than their proportion, which, I presume, is not the intention of the Convention, by this resolution. The idea, I suppose, is taken from the Constitution of 1840, which provides, that they can only unite in the first year succeeding valuation year, or the year in which the census is taken; but, I do not see how it can be done, save the right of each town, and give the towns no more than their just proportion, unless the union takes place immediately after the census, or immediately after valuation year. In order to call the attention of the Convention to this subject, I propose the following amendment to this section:—

Any two towns may, by a vote of a major part of the legal voters of each, at legal meetings thereof, and held at some time preceding the first election, which shall take place under this amendment to the Constitution, and, thereafter, at legal meetings, held at some time preceding the first election, which shall take place next after each decennial State census, unite together in a district, which shall be entitled to a representative each year, and which shall continue until the next decennial census, excepting the year in which the valuation of estates is settled.

Mr. BOUTWELL, for Berlin. Although I

have some views which I am well enough inclined to submit to the Convention upon this question, and it may be in defence of the proposition now before us upon its final passage, I should rather have preferred a moment farther on for the consideration of this subject.

Mr. MORTON, of Taunton. Will the gentleman give way for a moment. I understand from the suggestion of the gentleman, just made, that he would prefer to make what remarks he designs making, after we shall have heard all that is to be said against the proposition now before the Convention. In consequence of that suggestion from him, I propose to make the few remarks—which I had the intention of offering when a convenient opportunity presented itself—at this time, if that course would be most agreeable to him, or I will wait until he has finished, if he prefers it. He is entitled to the floor, and my desire is to conform entirely to the gentleman's wishes.

Mr. BOUTWELL. I will yield the floor with great pleasure.

Mr. MORTON. If it had been my good fortune to have had fifteen minutes more the last time I addressed the Convention upon this subject, I should have had no occasion to trouble them at present. I rise to address the Convention now with unfeigned reluctance. I have received so much kindness and attention from this body, that it would be very ungrateful in me to ask any farther indulgence from them; but, the subject now before the Convention has interested me so deeply, and I have deemed it of so much importance, that I supposed they would pardon me, in justification of my earnestness and pertinacity upon this subject, if I were still further to trespass upon their time and attention. I will pledge myself, in the outset, that I will not wander from the subject into the region of party politics, nor take up the time of the Convention in repelling any attacks or allusions which have been made to me personally in or out of the Convention. I will endeavor—and I hope that has always been my aim—to confine my remarks to the subject now before the Convention.

It is exceedingly unpleasant, at all times, for a gentleman to address a body, whose opinions, in all probability, are entirely made up, and when he cannot expect to convince or essentially affect their judgment; and this Convention, having directly acted upon the several propositions, or the particular propositions, presented here, I have too much respect for them, individually and collectively, to suppose, that there is any reason for believing that they will change those views. They have formed them as I have formed mine, having acted deliberately upon the subject, and I cannot hope to convince them. Still, it is barely possible that some suggestions which I may throw out upon some branches of this subject, may have some possible influence upon the minds of some members. I will endeavor not to abuse their indulgence by repeating anything that I have said before, upon this subject. It may be impossible for me to proceed with my argument without alluding briefly to some things which were said before. I consider the great problem in the establishment of free government to be, to settle and determine the mode by which the whole people are to express their views in the legislation of the country. I have endeavored to show that all the inhabitants of the country are entitled to a voice in the government, and that, the object in

fixing the ratio of representation should be to give the whole people an opportunity, through their agents, to make known their wishes upon the subjects upon which it becomes necessary for the government to act.

I have endeavored to show, unsuccessfully, I fear, that the true basis of the system before us, is equality; I have endeavored to show, that this is founded on the principle of democracy, on the principle of justice and on the principle of Christianity. I do not intend to repeat anything that has been said in support of these propositions. I maintain, and other gentlemen have maintained here, that the true principle upon which we should act, is, that every man should at all times be equally represented in the legislative department of the government. As to the number of the agents which may be chosen to represent the people, that is a matter of expediency about which we may very properly differ.

I suppose, Sir, we have all come to the conclusion that we have presented to us here, the alternative either to take, in some form or other, town representation, or a system of representation by districts. The majority of the Convention have manifested their preference for town representation. I suppose that will be established. I maintain, however, that the only way by which you can reach equality or justice in regard to this subject, is by districts; and, I propose now very briefly to state, in addition to what I have already said on the subject, some reasons why the district system ought to be selected, rather than a system of town representation. I propose, therefore, to look at the comparative advantages and disadvantages of these two systems.

In the first place, I maintain that the district system enables us to fix upon a proper number, and that it is impossible to select the right number, in any system of town representation which can be devised. However we may differ upon that subject, and although in all probability I prefer a much smaller number than a great majority of the Convention, yet I take it, that all the Convention must agree that it is impossible, consistently with town representation, to reduce the number of this House at all, much more to bring it within proper and reasonable limits, and to get such a body as can best transact the public business for the use and advantage of the whole Commonwealth. I do not propose, Sir, to go much into this subject, but I wish to make two or three suggestions, which I passed over before in my desire to accomplish what I wished to say within the time allowed me. I think, Sir, that there are very strong objections to a very large House; and I call a House unreasonably large which exceeds the number of two hundred and fifty or three hundred. Certainly, four hundred, which, I believe, is less than the number required, by the ratio in the resolution, is a number entirely inconvenient for the transaction of the public business and inconsistent with due deliberation and advisement.

Such a body—and I intend to speak of it as regards those who have existed or may exist, with all possible respect—such a body, composed of four hundred members, brought together to legislate, be they the wisest men in the whole community, cannot transact the public business, with that understanding, that deliberation and wisdom, which is necessary to insure the best legislation. I hold, that such a body, be it composed of whom

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it may, necessarily falls into party divisions, and is influenced more or less by party feelings and party considerations. It is impossible for every individual to take a direct part in the transaction of business, and certain active individuals must of necessity assume the relation to the rest, of managers or leaders. It is immaterial what the character of the assembly may be, such will inevitably be the result; and such a body must necessarily be more under the influence of party leaders and party training than a smaller body.

Again, Sir, such a body, thus constituted, is more liable, I maintain, to extraneous and sinister influences. The moment you come to the conclusion that it assumes a party character, that it falls under the influence of leaders, you destroy individual responsibility, you narrow down the sphere upon which extraneous and illegitimate influence may be improperly exerted, to accomplish sinister objects. I am hardly disposed to say, yet I would not deny it, that the class of individuals who enter ardently into the management of public affairs as leaders, who become deeply interested in all public questions and ambitious of succeeding in all the measures they advocate, are more liable to extraneous influence than the members of the body generally. The great foundation of this objection, I apprehend, is this; that in a multitudinous assembly, you destroy personal responsibility. Every man considers the body as the accountable agent, and the individual is lost in the mass. If you have a small number, every individual feels himself personally answerable for every act that is done. In a large body, the members forget their individuality, lose their responsibility, are mixed in the general mass, and go either one way or the other, in the current, without feeling that deep interest in the righteous decision, of every question which is necessary for the proper consideration and examination of it, and the wise and conscientious exercise of their judgments. I have known measures carried by party training and party leaders, through a body of five or six hundred members which could not have been carried through a body composed of any one hundred of the same members. Were I a young, aspiring, talented and eloquent man, I would advocate a House of four or five hundred members. It would open a fine field for political adventurers, and ambitious aspirants for public honors.

But, Sir, I do not intend to enlarge upon the reasons which I have heretofore presented upon this subject, and I shall leave it where it is for the consideration of the members of the body.

I adverted to one other subject, which I deem of good deal of importance, but I had no time to speak of it before, and I will now say a few words in relation to it. I mean the concentration of power, or centralization, as it is called. In the centre of the Commonwealth, where the population is dense, numerous and wealthy, there will of necessity, be an accumulation of influence and power. This danger, to a greater or less extent, undoubtedly, does exist. I contend, that the sure and infallible remedy for the undue exercise of any such influence, is the division of the whole Commonwealth into fair and equal representative and senatorial districts. Because, in the centre of your Commonwealth, in your central population, in your great cities, you find a greater diversity of business, of pursuits, of opinions, of tastes, and

of feelings of every kind, than anywhere else. And, when you divide this central population into districts, instead of being united in their action, you will find them balancing each other. And if you look into the rural parts of the Commonwealth, you will find a greater uniformity of pursuit, and much less diversity of interest and of opinion, than you will find in the large cities; and so far as congeniality of feeling and sympathy goes, your farming population will act more in harmony, and be more likely to unite together than the population of the large towns and cities. The moment you form districts, in a central population, where there is a variety of pursuits and competition and opposition of interests, that moment, rivalry and jealousy will spring up, and the more compact the population, and the more close the contact of the districts, the more likely will they be to oppose each other, and the more bitter and irreconcilable will be their disputes and their hostility.

Having said this, in favor of the District System, I will not go further into that subject. Having presented these general views, in favor of this scheme of representation, I wish now to look briefly at the subject of town representation, as it is presented to us, and see what there is to recommend that to our favorable regard. It would be impracticable for me to attempt to take up all the arguments which have been urged in favor of this system of representation. I wish barely to allude to some topics which have been discussed here, and say a very few words upon each of them.

In the first place we are told, that, by adopting the system of town representation, we are adopting the precedents of our ancestors, that we are following the usages which have been established in this Commonwealth for two hundred years. How much weight, Mr. President, ought this argument to have? In the first place, I deny that we are following the precedents of our ancestors; and, in the next place, I deny that we ought to follow them merely as precedents. It has been said, that our representation has always been that of town representation. I shall say a word upon that directly.

But, I contend, Sir, that these precedents ought not to have weight. If we are to adopt a system merely because our ancestors practised it, why should we not adopt it, and act upon it in all its parts, as they practised it? Why should we select one principle, one distinct point, and say that we will follow the precedent in that particular, but we will follow it in nothing else? If we are to be governed by their principles, in relation to the management of towns, why not carry it through, and take the principles as they adopted them?

It has been stated, and I have no reason to suppose that it is not correct, that in the early history of our Commonwealth, they admitted nobody as a legal voter unless he was a member of some orthodox church. They also required that the representatives should be pious and orthodox men. They also, at one time, and in one section of the Commonwealth, provided, that no lawyer should be a member of the general court.

Now let me inquire, if these precedents are so sacred that they must be followed, why not take them as a whole? Why undertake to amend them? Why not give us the full benefit of the whole of them? I am inclined to think that some gentle-

men who advocate this system, would, like myself, be rather unwilling to have some of these provisions carried out, especially the last one.

But, again, if we are to follow out these precedents, we should have every town represented every year. But you propose to disfranchise a large portion of the towns for a part of the time. It seems to me, that, after having mutilated these precedents so far, we had better discard them altogether. But, what force ought they to have? Here was a little Commonwealth, one of the most perfect, I suppose, that ever existed, containing, perhaps, ten thousand inhabitants in its early organization. Now we are, upon the same territory I hope immensely improved in many things, though I fear not in adherence to principle and a conscientious discharge of duty, amounting to a million. Why should we adhere to the views which they adopted, or follow the examples which they set? You might as well say, that our parents were wise when they prescribed the clothes we should wear when infants, and, therefore, it would be very disrespectful to them, and unwise to change the fashion of them now that we have grown up to manhood. I apprehend this argument ought not to have much weight.

But if it has any weight, I wish to say, that, I think it has been established from this discussion, that there never was such a thing as town representation. To be sure they provided that the inhabitants of certain towns, upon the principle of equality as near as it could be attained, should be represented in the general court, not because they were towns, but because these organizations being in existence, it was the only mode in which they could conveniently establish their representation. But the principle upon which they established the representation, was that of men and not of corporations; and the town organization was resorted to for the purpose of enabling the freemen to vote, just as it is now in many elections, for State and national officers. But it was only as a matter of convenience, while the representation was the representation of the men, and not of the towns.

I suppose, I may be excusable for examining a little into this matter. Let us look at these towns and see what they were. I deny that they were intended to be established exclusively or mainly as municipal corporations. The great object of the governments themselves were ecclesiastical. The civil government was secondary and subordinate to the great purpose of religious worship. The object of establishing towns, and probably the principal one, was to create a body to exercise parochial powers. The inquiry, when a plantation applied to be established as a town, was, whether they were able to build a church and support an orthodox minister; and, that was almost the only inquiry made. Therefore, they gave establishments to carry out religious as well as municipal purposes, and afterwards it was provided, that the representation of the freemen should be according to their residence within the limits of these corporations, as the powers conferred were municipal as well as parochial.

I once thought, that it was rather singular that they should take the name of town, rather than parish, which was so common in the mother country. But, it is well known, that the origin and meaning of the word town was a fortified place, and this understanding of the import of the word, our ancestors, especially those who settled at Plymouth, brought with them. Those early settle-

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ments all had some kind of fortifications to protect them from the ravages of the aborigines of the country, and wherever a settlement was made, a block-house or stockade, or some kind of fortification was constructed with old trees, logs, or bushes, and those settlements, as well before as after their incorporation, were called towns, and hence the name, as I think, originated. But, I maintain, that they were religious, as well as municipal corporations, and were not intended for representation, when they were originally established.

The argument derived from town organization and town administration, is, the great argument in favor of town representation. I listened to it with instruction and delight, and I assented to every proposition which was laid down, except the conclusion which was drawn from it. I drew a directly opposite one. The importance of these municipal corporations nobody will question. Nobody has a higher opinion of their utility, nobody attributes more of the prosperity of this Commonwealth to these municipalities than I do, and nobody has a higher opinion of their use in inculcating and establishing democratic principles.

I believe, that I had occasion when in a public capacity many years ago, to call them little democracies. I maintain now, that they are schools of instruction in democratic principles, and I consider them invaluable for that purpose. The people there learn and practice the rudiments of political science. They meet and select their presiding officers, organize their meetings, and many subjects come before them which they discuss and investigate and refer to committees. They have reports, deliberate upon their adoption, rejection or postponement, move to amend them, to lay them on the table, to take them up, to indefinitely postpone them, and thus, go through the routine of parliamentary proceedings.

I never knew a town go into committee of the whole; but, they often manage to have pretty free discussions without resorting to that mode of transacting public business. But, there are a great many interesting subjects, which necessarily come up in town-meetings, and excite the deep interest and attention of the inhabitants. In many towns they transact their business in almost as orderly and parliamentary a manner, as it is done in the legislature of the State or in this Convention.

The subjects which come before towns, directly affect the welfare, and deeply excite the interest of the inhabitants, and I am not sure that the business done in town-meetings is not as important to the town inhabitants as any of the business of the legislature of the Commonwealth.

The subject of laying out, building, and repairing highways; the subject of the financial affairs of the town; the manner in which the money shall be raised and disbursed; the proper support of paupers; the maintenance of public schools, and the division of towns into districts for that purpose, are subjects which affect the rights, the property, and the welfare of all the inhabitants. These, with many others, are important topics of discussion, and will ever occupy the attention of these little deliberative assemblies, which are, in fact, legislative bodies, making laws for the government of all their inhabitants and exercising the powers and transacting the business of a democratic government.

The subject of establishing by-laws and of adopting petitions and remonstrances to the State, or

federal governments, and the passing of approbatory or denunciatory resolves, often come before town-meetings, and open for discussion the science of government and the whole range of politics. In these assemblies are learned the rudiments of legislation and the mode of transacting public business. Here are trained and prepared the future governors, judges and legislators of the Commonwealth. No one appreciates these democratic schools more highly than I do, or would be more unwilling to destroy or diminish their power and usefulness.

And does anybody propose to impair any of these? Does the district system do it? Not at all; if it did, I would be the last man to adopt it. Does anything which we propose to do, diminish the people's deliberations and discussions in any way? No, Sir. It is said, that we take from them the right of representation in the legislature; but that is not done by the district system, for they have precisely the same right to come together and vote by that, which, they have under any other system—they can vote just as they always have voted; and, as far as the matter of merely voting for representatives is concerned, whether it be to represent a town, or a district, it does not change the character of the act. The depositing a vote for a representative, can neither add to, or diminish the instruction of which the gentleman speaks, when he tells us, that it would be a valuable school to initiate them into the forms of procedure in a deliberative assembly. Sir, the district system has not the slightest influence of that kind. What are the facts with regard to this matter?

Why, Sir, in choosing representatives, the people do not assemble together as they do when any subject is to be discussed in town-meeting; they come individually; they come very much as the gentleman from Natick said the councillors came, dropping in one after another. Each individual deposits his ballot, sealed up, it may be, although unlike my friend before me, (Mr. Lothrop,) he might not feel in the same degree degraded by the performance of that act—he comes, deposits his vote and goes about his business. We do not intend in any degree to impair the functions, or the utility of the municipal corporations of this Commonwealth. I disclaim any such idea or disposition.

But to proceed. There is another proposition which has been urged with considerable force, and which struck my mind as being somewhat remarkable. As I understood the proposition, it was, that we must preserve this system of town representation in order to furnish a system of checks and balances for the government. It struck me, as being a very singular proposition, to establish a body of four hundred, or four hundred and fifty members to be a check upon the popular obullition in the other branch of government, consisting of forty sober, discreet, grave men, for the very name of senator implies gravity and seniority.

I may be too radical, perhaps, but I deny altogether the application of checks and balances to a democratic government. I do not admit that they belong to our system. What are they, Sir? They are required only to operate upon some vice in the system of government. You introduce one provision, that is in itself vicious, and will operate unfavorably and perniciously upon the community; and then, you have to introduce another vicious principle in another part of the gov-

ernment to counteract that, or compensate for its injury. You introduce an erroneous principle to check the pernicious, vicious principle; or, you do a wrong to one class, to balance the wrong which you have done to another. I hold, that in a democratic government this is not only unsound in theory, but, is also, mischievous in practice. You propose to establish a body upon unequal and unjust principles; and one, which does not fairly represent the people; a body founded upon corporations, about which I will speak by and by, as a check to the action of the people of the Commonwealth. This seems to be incompatible with all the sound principles of a free government, and if it were decorous, I should say, was in itself inconsistent and absurd.

All that I consider requisite to constitute and render secure a true democratic government, is, that you so provide for the different departments of government, as to ensure due consideration and due deliberation. Whether that could be obtained in an assembly of four or five hundred members, is a problem, which I will not now discuss. Let those who advocate such an assembly satisfy themselves on this point. If you organize your government upon sound principles, and establish such a mode of action as shall ensure due deliberation and due consideration, why do you need checks, or what is there to balance? I hold, that the opinions of the people thus formed and expressed, should prevail without being checked by any factitious scheme or artificial contrivance whatever.

Again, Sir, it would seem that this House of Representatives, which is to be established as a check, is not a popular branch; it is made to assume somewhat the character of the House of Lords of England; that is, it is to be made with reference to particular localities, and to particular corporations, and is to be invested with the attributes, which are given to the House of Lords in other countries where there are such bodies. It seems to be an absurd, if not ridiculous comparison, to liken this assembly, coming from the rural districts of the Commonwealth, to the House of Lords in England, or any of the members of that branch of the government there—either the lords temporal, or spiritual. I will not dwell a moment on this subject, because, I cannot think that it will be deemed deserving of a sober consideration. Will anybody think it necessary or useful to give to the House of Representatives this artificial character to restrain legislative freedom, or to be a check on the precipitate action of that popular body—the Senate?

But, Sir, there is another view of this subject which I desire briefly to present. I have before suggested, that in my opinion, we never have had a corporate representation. I know very well that it has been said, that representation is a corporate right, viz.: that the corporations had a right to decide, whether they would have representatives or not, and I know that it has been said by the highest authority, but I have always doubted the soundness of that opinion. It has long been acquiesced in and I do not intend to stop to controvert it. But, it never has been said, that the House was a representation of corporations. I believe, that every one who heretofore has spoken on this subject, has avowed the doctrine, that the House was a representation of the people, and, that it did not acquire any additional force, or power from any corporations in existence.

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I consider, Sir, that one of the most threatening evils in our country arises from the multiplication of corporations, and the increase of associations. They are destroying all individuality of opinion and individuality of action among the people. Almost all enterprises and undertakings are commenced and carried on by associated action; and, I maintain, that our innumerable associations, whether with or without corporate powers, tend to destroy a proper reliance on private judgment and to annihilate individual responsibility. I really hope that in these views I shall have the sympathy of some portion of this body. I say, that the multiplication of corporations and associations for all manner of purposes, I care not what—although some of them may, perhaps, be useful and necessary—is extremely evil in its tendency and influence. It is well known, that corporations in their collective capacity will, without hesitation or consideration, do things that every one of the members, in his private capacity would shrink from with horror.

What, Mr. President, is a corporation? It is not very easy to form a definite and clear idea of it. Before attempting to define or describe this anomalous entity, I wish to make three or four remarks upon the subject of representation. I can't resist the conclusion that the present system, as about to be adopted, is founded, to a greater or less degree, upon representation of corporations. Such representations are very rare, the world over; they have a few of them in England. Their universities have representatives in parliament, but members of those colleges, after they have aided in the election of a representative for the colleges, do not lose their right to vote as citizens of the counties, or cities, in which they live.

And here, also, we are about to establish essentially a representation of corporations. In many towns by their numbers, the people do not authorize the representatives proposed; for to a man, in one town, is given four or five times the political weight and power that a man has in another; the people in some towns have a much greater representative power than the same numbers have in other towns. "Why this inequality? Why is so much more given to some than others?" Gentlemen say it is because we must maintain the system of corporate representation; then they give a portion, at least, of the representation to the corporation in its corporate capacity.

How much of the representation belongs to the corporation, and how much to the people? Upon what principle is the apportionment made? It is like all the rest of the system, purely arbitrary. There are no two towns in the State, where the proportion between the corporation and the number of the people is the same. There are no two towns where the political weight of the respective inhabitants are the same. It is all fixed upon an arbitrary rule, without the pretence of any principle to support it.

Now, Mr. President, what is this thing called which is allowed to deliberate and speak and vote in our legislative halls? A corporation. Corporations may be established for various and different purposes; they may be very diverse in their object, their influence and their effect; some of them may indeed be absolutely necessary and cannot be avoided; but none of them, I think, are unattended with evil. What is a corporation? I find it a little difficult

to answer this question, and I wish I had my learned friend from Cambridge, (Mr. Parker,) to aid me, but, I see, that he is not in his seat. A corporation is said to be a legal fiction. But, it operates sometimes with tremendous power; and sacrifices property and even lives; but, still, it is only a fiction. What is it? Can you see it? Suppose an officer comes with a *ca. sa.* or a *sub. per. col.*, where can he find the corporation? Can he execute his precept? It is nothing but an impalpable, fictitious being. Though immaterial, it certainly is not spiritual. The law books say that corporations are invisible and immortal, existing only in intendment of law. Everybody who is so unfortunate as to fall into their power, and has occasion to seek a remedy, will learn these things. It is said that they have no souls—they have really no moral responsibility. A corporation, as such, can commit no crime, certainly none *malum in sa.*; it cannot be punished at any rate.

Now, Sir, shall we add character and power to this dangerous, irresponsible, being? We admit that, it is possessed of vast influence in the community—shall we give to this soulless fiction a substantial and living representative in the legislature of the Commonwealth? I think, Sir, that if we should, it would be giving countenance and encouragement to all kinds of associations, corporate and voluntary, that it would induce them to make greater advancement, and to go still farther than they have ever yet gone in encroachments on the private rights and private pursuits of individuals. I have been astonished in looking at this subject, to find to what an extent corporations of every kind, religious and municipal as well as others, will disregard and violate the rights of individuals. I hope and am ready to believe, that this is not the case with all corporations, but instances of this kind are of frequent occurrence. Even in those corporations which are composed of the best men in the community, you may see the dangerous tendency of their irresponsible power.

It might be considered invidious to refer to some remarkable examples within my knowledge. But these corporations, parochial and municipal, as well as others, sometimes will be guilty of conduct which would surprise the members themselves. You may find a religious or parochial corporation taking from a poor widow her last seat in the church, her only place for the public worship of her Maker, merely, that they may adorn and beautify their house, or build a more elegant edifice. I have known a case—it is recorded on our Reports—and, therefore, I may speak of it, where a town went through a protracted lawsuit in resisting the payment of the expenses of a surgeon, for amputating the limb of a pauper, by which his life was preserved and prolonged. I would not impute such conduct to every religious or municipal corporation; and, I will not reflect too severely on the motives of those, who were concerned in these things. They may have been very good men, individually, but, when men act in corporations, they seem to forget the rules and principles which govern them in their individual capacities.

I cannot agree to this representative system, as formed by my excellent friend for Erving, or whoever else may have formed it; for, I think, in many respects, it is constituted on the same plan as the English borough system. I dare say, that,

this system was familiar to their minds, and it is very possible, that it had more influence upon them, than they are aware of. They have, in one particular, given us a perfect rotten borough representation. They have given us an arbitrary rule of apportionment, instead of a representation founded on population.

Boroughs, as it is well known, in England, elect nearly one-half the whole representation in Parliament; they are corporations vested with the privilege of electing members of Parliament, and, in that respect, they bear more or less resemblance to the towns in this Commonwealth, under the new system—they are entitled to one, two or three members, according to the provisions of their charters, without regard to the number of their inhabitants. This is the essential character of English borough representation. In this matter our friends have imitated them, and this system, I suppose, is the one which is to prevail in this State. There is one thing, however, in which we fail to come up to the English standard, and that is, in the right of representation without residence. English boroughs are not confined at all to their own localities, in the election of members. I believe, by the provisions of the Constitution as it now stands, the towns will be compelled to elect their representatives from among their own inhabitants—which I deem an important and essential provision.

No man can be a faithful representative of his constituents, unless he resides among, and gets his impressions directly from them. In England it is otherwise, and this is the only feature which is wanting, in order to make our system a fac simile of the rotten borough representation of England. I do not know whether this feature is intended to be introduced into the question or not, but, I am informed that there is a motion now pending before this Convention, to provide, that towns shall be authorized to select their representatives from any part of the Commonwealth, without regard to their residence in any particular town. If that proposition should be adopted, it will, in my opinion, give to our system a perfect similitude to the rotten borough system, in every important particular. It will, at any rate, then come much more near to the British precedent, than to the old system of representation as practised in provincial and colonial times.

I had prepared a statement, showing the gross inequality of the system now proposed, but I do not think it would be expedient again to go into its details, because, that part of the subject has been sufficiently discussed and exposed already. I cannot very well help alluding to it, however, before going on.

Mr. President, I have some other objections to this system. I object to the proposed system because it is sectional. If anybody will look at the system, they will see at once that it has a very unequal bearing upon the different sections of the Commonwealth. I trust, that we are not going to establish, or advocate a scheme of representation founded upon sectional preferences, or which gives one portion of the State great advantages over other portions. I do not intend to impute any intention of that kind, to any gentleman who favors this system; I do not mean to say, that the chairman of the Committee, (Mr. Griswold, for Erving,) living in a particular sec-

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tion of the Commonwealth, when he gave to that section two or three times the representation that other sections had, was governed by any other than the most honorable motives. I do not mean to impute anything of that sort, to any gentleman in this Convention. What I mean to say, is, that the system, as it is presented, is a sectional system, because it gives to one section of the Commonwealth much greater representation than it gives to another section; it gives to the north-western portion of the Commonwealth a much greater degree of power than it gives to the south-eastern portion. I say, therefore, that it assumes the character of a sectional representation.

By the Report of the Committee, the three north-western counties, viz.: Berkshire, Hampshire and Franklin, with a population of 114,115, have eighty-four representatives, while Bristol and Barnstable, with a population of 108,976, have thirty-nine representatives—less than one-half. Again, Bristol with 74,979 inhabitants, has twenty-six representatives, while Berkshire, with 48,937 inhabitants, has thirty-four representatives; and Barnstable, with 33,997, has thirteen representatives, while Franklin, with 30,888 inhabitants, has twenty-six, just twice as many. Is there not injustice in this? Is there nothing sectional in it? Again, the four western counties, with a population of 164,339, have one hundred and seven representatives, while the six south-eastern counties, with a population of 254,121, have ninety-three representatives. Thus, the six south-eastern counties, with more than one-quarter of the inhabitants of the State, have little more than one-fifth of the representatives, while the four western counties, with one-sixth of the population, have more than one-quarter of the representatives. But, I believe the inequality, injustice and geographical unfairness of the Report of the Committee, is so palpable, that it has been abandoned by its friends. And the gentleman from Lowell, (Mr. Butler,) has undertaken to remedy some of its defects. But, in this attempt, without correcting the wrong principles of the Report, he has abandoned the only correct one it had. He has somewhat mitigated the grossness of the inequality, but in doing it, has disfranchised, for a part of the time, the small towns.

The amendment contains the same sectional inequality and injustice. The evil is only mitigated, not cured. Bristol, with 75,000 inhabitants, has only twenty-nine representatives, while Franklin, with 30,000, has twenty-one, and Berkshire, with 50,000, (only two-thirds as many as Bristol,) has twenty-eight; Barnstable, with 34,000, has fourteen, and Franklin, with 30,000, has twenty-one, and Berkshire, with 50,000, has twenty-eight, just twice as many. Again, the three north-western counties, with 114,000 inhabitants, have sixty-nine representatives, while Norfolk and Bristol, with 162,000, have only fifty-nine, and Bristol and Barnstable, with 109,000, have only thirty-three representatives—less than one-half.

But, I will not pursue these details. I should exhaust your patience before I mentioned one-half the instances of inequality. They pervade the whole system. The distribution is entirely arbitrary and unjust. No principle governs it. What important object can be obtained by abandoning the great democratic principle of personal equality? It is impossible for me to see any. A

most favorable opportunity is now presented to us, to establish our House of Representatives on a basis of equality, fairness, justice and political wisdom. Shall we improve or neglect it?

There is, Mr. President, another topic that seems to have some connection with the distribution of representative power, which I introduce with great reluctance. The Hoosac mountain presents a great barrier to the intercourse between a portion of this State and the State of New York and other parts of the Union. A level passage through this mountain is an object of intense desire to many. But it cannot be accomplished without recourse to the resources of the State.

This is a subject of all-absorbing interest to a portion of the State; and the representatives are so apportioned as to give to this section a very undue proportion. This necessarily presents the inference, that the system adopted had some reference to this particular local enterprise, which excites so deep a sectional interest. It so happens, that the portion of the State which is so anxious to accomplish this great sectional enterprise, in which the aid of the State is necessary, have had the peculiar good fortune to have assigned to them a very large representation. Those who have no interest in this question are represented much less than those who have a very deep interest in it; and, it is notorious, that the chairman of the Committee, (Mr. Griswold,) is not indifferent to this subject. I have said that I did not mean to impute any intentional wrong to that gentleman. I am not restrained by parliamentary rules, but by my own convictions. If I expressed such a sentiment I should belie my own feelings; but, I think, that the proposed system would not have been reported, if that gentleman had lived in another part of the Commonwealth. All that I mean to be understood to say is, that I believe that gentleman is in a greater or less degree liable to those influences which operate upon all of us. Had I been in his situation, perhaps I should have been influenced to a much greater extent than he is.

MR. GRISWOLD. This is not the first time that allusions have been made directly, or indirectly to the subject, which the gentleman from Taunton has just introduced, and I wish to say at this time that, so far as I am concerned, I disclaim being influenced in the slightest degree by any such considerations. No such consideration has had any influence upon my mind, and I can show, if I had the time, that it can have no reference whatever to that question. Nor do I believe, that any gentleman from the section of country which I represent, in part, is influenced by any such consideration as that to which the gentleman has referred.

I wish to say one thing more. I do not know to what proposition my learned friend from Taunton alludes as operating so favorably to the north-western part of the State—whether to the original Report of the Committee, or that of the gentleman from Lowell, (Mr. Butler).

MR. MORTON. I consider both of them as operating in the same way, but, although the original report was more unequal than the proposition now under consideration, yet, I consider the latter as violative of more principles than the former.

MR. GRISWOLD. I agree that so far as population is concerned, my proposition operates more favorably to some towns than to others; but, I am ready to maintain, anywhere, that the propo-

sition now before the Convention, submitted by the gentleman from Lowell, operates with greater hardship upon the county which I represent, than it does upon any other county.

MR. MORTON. I meant to make no imputation upon the gentleman for Erving, because I have not a feeling in my heart unfavorable to him. He has disclaimed being influenced by improper considerations in any measure. That he thinks, that such is the case, I have no doubt; Because if he did feel any such influences he would discard them at once. But, Sir, there is no man in the community who is not influenced more or less by considerations of which he is wholly ignorant; and, all that I meant was, to say, that the facts as they occurred tend to lead to such a conclusion. I want to see the first man here, or anywhere else, who can truly say, that in no case does his interest or his desires, without his knowledge, bias or weigh upon his judgment. I doubt exceedingly whether such a one can be found.

Seeing that some question has been made about the application of the present system, I will attempt to go a little further than I intended, and see whether or not the county of Franklin is as well represented as the other counties. I am not certain that I understand the operation of the proposed system so well as the Report of the Committee; but I should like to state briefly the operation of both plans upon the different sections of the Commonwealth. Now, here is the county of Norfolk, with seventy-seven thousand inhabitants, is to have thirty representatives, while the county of Franklin, with thirty-one thousand inhabitants, is to have twenty-one representatives. Now, I ask the gentleman, whether there is any equality between these two counties in this respect?

Thirty-one thousand gives twenty-one representatives in one county, while seventy-seven thousand only gives thirty in another. The same thing applies to Bristol, which has in round numbers seventy-five thousand inhabitants and only twenty-nine representatives, which only gives a difference of eight, as compared with Franklin, although it has a population nearly three times as large. Whether this is equality is a matter of mathematics, which I suppose, every gentleman can determine for himself. Every voter in Franklin has, according to my arithmetic, more than double the representative power that a voter has in Bristol or Norfolk. Is this the hardship operating upon the county of Franklin of which the gentleman complains?

But what makes this system so much worse is a reference to its prospective operation. I suppose that our population is increasing all over the Commonwealth, but more rapidly in some sections than in others. And if the late learned secretary's tables are to be relied upon, we must have, at this time, in each of the counties of Bristol and Norfolk, a population three times as large as that of Franklin. I presume each of these counties now has a population of not less than ninety thousand, with only twenty-nine or thirty representatives, while Franklin, with thirty thousand, has twenty-one, and Berkshire, with fifty thousand, twenty-eight. With these facts staring us in the face, who can deny, or justify, this gross inequality of representation.

Then, again, there is another aspect of this question, to which I allude with reluctance, but it is one which it seems to me ought not to be

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excluded from our consideration. We have maintained, that taxation and representation should go together, by which I suppose, the least we can mean is, that all who are taxed should be equally represented, whether they are equally taxed or not. But, if you are going to depart from equality of representation, should those who pay the greatest or those who pay the least be the favored ones? I am opposed to any discrimination of any kind. I want a system of perfect equality; but, if we are to depart from equality of population, I can see no reason why the larger contribution should operate as a disqualification or degradation.

Of the State tax of \$300,000 lately imposed, the county of Franklin pays \$6,000, while Bristol pays \$20,000, and Norfolk still more. Again, it is well known that State taxes are of rare occurrence, and that our revenue is derived almost entirely from indirect taxation, of which our bank tax constitutes nearly the whole. Of this, Bristol pays annually \$3,600, while Franklin pays only \$600. I repeat, I would not depart from equality of population. But, I would suggest to those gentlemen who advocate a departure from this principle, and talk so much about compensation for inequality and injustice, whether the contributions to public expenses should not form one of the elements of their calculations?

Then, again, the inequality in the representation of towns is much more palpable and unjust than between counties and sections. The inhabitants of some towns have five, ten, or twelve times the weight that the same number have in some other towns. I should exhaust your patience did I attempt to mention one-half of the instances of gross inequality between towns. I will, therefore, refer only to a few. For instance, the town of Pawtucket is entitled to one representative, with a population of 3,876, while New Ashford, with a population of only 210, is entitled to six-tenths of a representative, giving any man in New Ashford eleven times the weight in the legislature which is possessed by my valuable and excellent friend from Pawtucket, (Mr. Tyler). I suppose that, in his generosity and benevolence, he may be willing to vote for this system, and concede that he is entitled to one-eleventh part as much weight as the gentleman from New Ashford. He may have a right to make this unjust concession for himself, but what power has he to agree that the vote of one farmer in New Ashford is of equal value to the votes of eleven of his constituents. He may undervalue himself, but he has no right to depreciate and degrade those who sent him here, and whom, on all other occasions, he has so ably and faithfully represented. If my friend will just step over into Seekonk, he will, the moment he is over the line, find that he is twice as much of a man as he was in his own town.

Take another illustration. The town of North Bridgewater has a population of 3,958, and is entitled to one representative, and yet, here is the town of Hull, with only 262 inhabitants, has six-tenths of a representative. There is a difference of nine to one; and, I would ask my friend from North Bridgewater, (Mr. Perkins,) whom we all respect, if he feels quite willing that he should have only one-ninth part of the influence of a fisherman at Hull? I do not mean to detract from these hardy, industrious men, nor from my

friend from North Bridgewater; but, I want every man to have his just and equal share of political power.

I will refer to only one more illustration on this point. Nantucket, with 8,779 inhabitants, has three representatives, while Monroe, with only 242, has one representative six years in ten, which gives to a man in Monroe eight times as much representative weight as to a man in Nantucket. Will this satisfy the hardy, adventurous citizen of that island? Will the whaler, who, after an absence of four years, goes up to the polls to exercise this, to him, rare right, be content to be told that his vote for representative will weigh just one-eighth part as much as that of a man in some other town. Again, take those towns which are entitled to fractional representation, and do you find any equality among them? A town with two hundred and fifty inhabitants has just the same representation as a town of nine hundred and ninety. Is there any justice or principle of any kind in this?

Let my friend from Bernardston, the late lieutenant-governor, and my friend from Washington, (Mr. Eames,) answer this question. My friend from New Ashford, (Mr. Harmon,) has nearly four times the weight that either of them has, in the representative election. Does this meet their approbation, and do they wish to send out to the people for their adoption a system so fraught with inequality, and injustice, and mischief?

But, Sir, I will forbear from further details upon this point. I must, however, before leaving the subject, say a few words about the original Report.

This seemed to start with one principle, at least, which is indispensable to town representation, viz.: that every town should be represented. But the amendment having abandoned this has nothing to rest upon but an arbitrary rule. The absurd consequences to which this principle led, frightened its friends from its support; and, I am sorry to say, that they had not the courage to resort to the true principle, viz.: that of equal representation which is attainable only in districts.

But let us spend a few minutes in tracing the practical consequences of this principle of town representation. It not only renders necessary a multitudinous House, but surpasses in inequality and injustice even the rotten borough system of England. Let us compare a few towns. Quincy, with 4,958 inhabitants, had one representative, and New Ashford, with 210, one, which gave a man in New Ashford twenty-four times as much representative power as a man in Quincy.

Barnstable, with 4,805 inhabitants, had one representative, and Monroe, with 242 inhabitants, had the same, giving to a man in Monroe twenty times the weight of a man in Barnstable. A citizen of Barnstable who is a member of this Convention has avowed his support of the Report. Is he sure that he does full justice to his fellow-citizens, when he admits that it will require twenty of them to be equal to one citizen of Monroe?

Nantucket, with 8,779 inhabitants, had two representatives, while Hull, with 262 inhabitants, had one; giving to a man in Hull twenty times the weight that a man in Nantucket had. Yet a member of the Committee from Nantucket agreed to this Report. Will his constituents be satisfied with the estimate which he put upon them? Are they willing to put twenty of their citizens into the scale to balance one man in some other town,

I will refer to only one more town. Attleborough has 4,157 inhabitants, Monroe 242. They had just the same representation. This makes a man in Monroe weigh as much as nineteen men in Attleborough. Yet the representative of Attleborough was a member of the Committee, and agreed to the Report. In what scales did he weigh his fellow townsmen? I thought they were pure gold. But it would seem from this estimate of their representative, that they were nineteen-twentieths dross. Will they admit the baseness of their metal?

I will refer to no more single instances, although they are very numerous, but will present a few groups of towns. There are twelve towns having twelve representatives, and all of them but 4,808 inhabitants, while Barnstable, with 4,805, and Quincy, with 4,958, have but one each. There are ninety-six towns, with 74,312 inhabitants, which have ninety-six representatives, while Norfolk, Bristol, Barnstable, and Nantucket, with 195,000 inhabitants, have but eighty-nine representatives.

The inequality under the amendment should it be adopted, though not so great, will be monstrous. Its friends admit, that under it, less than one-third of the inhabitants of the State, may choose a majority of the House of Representatives. The House may have an important, perhaps, decisive agency in the election of governor, lieutenant-governor, attorney-general, treasurer, secretary and auditor. The representatives have especial care of the public purse. Under a House thus chosen, what security have we for our property, our liberty, or our personal rights?

Once more, Mr. President. I will refer to one more objection to the proposed system, and leave the subject. It seems to have reference to classes in the community, and to assume in the Convention, what in the legislature is called class legislation. The system operates with peculiar inequality upon different classes in the State. And, although the favored class may be called the most worthy, yet, the scheme of class legislation is not only wrong in principle, but peculiarly offensive and hateful to all the friends of equal rights.

A single glance at the statistical facts just named will show, that the system operates with great inequality and severity upon merchants, manufacturers, mechanics, fishermen and sea-faring men of all kinds. This class legislation may not have been intended. But it is the vice of the system. It is the necessary consequence of unequal representation. Those who reside in cities and large towns, including the above classes, and, perhaps, some others, fall victims to the system of town representation, while the rural districts gain the benefit of it. If we must have class legislation, I would prefer this to any other which has occurred to my mind. But, I detest the principle. I don't believe those who gain the unjust advantage desire it. The farmer loves justice too well to desire any partiality in his favor, over the merchant, the mechanic, or the sailor.

Mr. President, the whole system is full of inequality, iniquity and unrighteousness. It is arbitrary and unreasonable from beginning to end. It is founded on no principle. The basis of a wrong principle might be some recommendation. But it has not even that poor support. I cannot give my vote in its favor. If we cannot adopt some plan more equal, more just, and more in accordance with democratic principles, let us

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retain the old system, which we have now learnt is not the worst system that can be invented.

Sir, I have about done. I am sorry to have troubled the Convention so long, but the subject had impressed itself very strongly upon my mind. Upon a close examination of it, I am compelled to say, that the system now proposed is worse than the system under which we live. There are greater inequalities, greater injustice, and greater violations of principle than in the system which we came here to amend; and I am constrained to say, that with my present convictions, I cannot vote for it, either here or elsewhere.

I wish to make one single suggestion further, and then I will sit down; and that is, that I have a slight hope—it is but a slight one, I confess—that we may yet arrange some plan, so that, the people may settle it for themselves, and if there be any prospect of its being received with favor, I will propose such a plan at the proper time. I have done nothing, and will do nothing with the view of embarrassing the action of this body. I merely present such views as I have entertained, and feel thankful for the manner in which I have been heard.

To all systems that have yet been offered, I prefer the district system. It is said that the people will not receive it. It may be so; I will not discuss that point; but, I was about to say, that I think we can submit the matter to the people, without the violation of any principle, or the reconsideration of any vote that has been adopted. Having once had action on the amendment which I propose, I shall acquiesce in whatever is the decision of the Convention—but, I would inquire, whether there is not a mode in which we can submit the question which so much divides us, to the decision of the people? I think there is, and would suggest, that when the question of representation is presented to the people, it should be presented in the alternative. Let them say “yes” or “no” in reference to the amendment of the Constitution, and then let them express their preference between the district and the town system, and then should there be a majority in favor of making the amendment, let the system which shall receive the greatest number of votes, be the system adopted by the people. I again thank the Convention for the attention with which they have heard me.

Mr. SUMNER, for Marshfield. Mr. President, if the question under consideration were less important in its bearings, or less embarrassed by conflicting opinions, I should hesitate to break the silence which I have been inclined to preserve in this Convention. In taking the seat to which, while absent from the Commonwealth, in another sphere of duty, I had been unexpectedly chosen, I felt that it would be becoming in me—and that my associates here would recognize the propriety of my course—considering the little opportunities I had of late enjoyed to make myself acquainted with the sentiments of the people on proposed changes, especially in comparison with friends to whom this movement is mainly due—on these accounts, and also, on other accounts, I felt that it would be becoming in me to interfere as little as possible with these debates. To others, I have willingly left the part which I might have taken.

And now, when I think that since our labors began, weeks, even months, have passed, and that the term has been already reached, when, according to the just expectations and earnest de-

sires of many, they should be closed, I feel that acts rather than words—that votes rather than speeches—at least such as I might hope to make—are needed here, to the end that the Convention, seasonably, and effectively completing its beneficial work, may itself be hailed as a Great Act in the history of the Commonwealth.

But the magnitude of this question justifies debate: and allow me to add, that the State, our common mother, may feel proud of the ability, the eloquence, and the good temper with which it has thus far been conducted. Gentlemen have addressed the Convention in a manner that would grace any assembly, which it has been my fortune to know, at home or abroad. Sir, the character of these proceedings gives us new assurance for the future. The alarmist, who starts at every suggestion of change, and the croaker, who augurs constant evil from the irresistible tendency of events, must confess, that there are men here, to whose intelligence and patriotism, under God, the interests of our beloved Commonwealth may be intrusted. Yes, Sir, Massachusetts is safe. Whatever may be the result even of the present important question—whichsoever scheme of representation may be adopted—Massachusetts will continue to prosper as in times past.

In the course of human history, two States, small in territory, have won enviable renown by their genius and devotion to freedom; so that their very names awaken echoes; I refer to Athens and Scotland. But Athens—even at Salamis, repelling the Persian host, or afterwards, in the golden days of Pericles—and Scotland, throughout her long struggles with England, down to the very act of Union at the beginning of the last century—were inferior, each of them, in population and in wealth, to Massachusetts at this moment. It belongs to us, according to our capacities, to see that this comparison does not end here. Others may believe that our duty will be best accomplished by standing still. I believe, that it can be completely done only by a constant incessant advance in all things—in knowledge, in science, in art, and lastly in government itself, destined to be the bright consummation, on earth, of all knowledge, all science, and all art.

And, now, Sir, in framing anew our Constitution, we encounter a difficulty which at its original formation in 1780, perplexed our fathers—which perplexed the Convention of 1820—which with its perplexities has haunted successive legislatures and the whole people down to this day—and which now perplexes us. This difficulty occurs in determining the representative system, and it arises mainly from the corporate claims of towns. From an early period, the towns in the State, both great and small, with slight exceptions, have sent one or more representatives to the legislature. In primitive days, when the towns were few and the whole population was scanty, this arrangement was convenient at least, if not equitable. But now, with the increased number of towns, and the unequal distribution of a large population, it has become inconvenient, if not inequitable. The existing system does not work well, and we are summoned to reform it.

And here, Sir, let me congratulate the Convention that, on this most important question, transcending every other, all of us, without distinction of party, are in favor of reform. We are all Reformers. The existing system finds no advocate

on this floor. Nobody here will do it reverence. If the call of the Convention were not already amply vindicated—if there were doubt anywhere of its expediency, the remarkable concurrence of all sides in condemning the existing representative system shows that we have not come together without cause.

The Orders of the Day have been filled with the various plans offered to meet the exigency. Most of these aimed to preserve the corporate representation of towns; some of them, at least one from the venerable gentleman from Taunton, (Mr. Morton,) and another from the venerable gentleman from Boston, (Mr. Hale,) adopted an opposite system, hitherto untried among us, and proposed to divide the State into districts. And the question has been between these hostile propositions; and that is the question which I propose to consider, in the light of history and abstract principle, and also, with reference to present exigencies. I shall speak first of the origin and nature of the Representative System and its proper conditions under American institutions. And secondly, I shall endeavor to indicate the principles which may conduct us to a practical conclusion on the present occasion. In entering upon this service, at this late stage of the debate, I feel like a tardy gleaner in a well-traversed field; but I shall proceed.

I. And I begin with the origin and nature of the Representative System. This is an invention of modern times. In antiquity there were republics and democracies; but there was no Representative System. Rulers were chosen by the people, as in many Commonwealths; senators were designated by the king or by the censors, as in Rome; ambassadors or legates were sent to a federal council, as to the assembly of the Amphictyons; but, in no ancient State, was any body of men ever constituted by the people to represent them in the administration of their internal affairs. In Athens, the people met in public assembly, and directly acted for themselves in all questions, foreign or domestic. This was possible there, as the State was small, and the assembly at no time exceeded five thousand citizens,—a large town-meeting, or mass-meeting, we might call it,—not inaptly termed the “ferce democracy” of Athens.

But where the territory was extensive, and the population scattered and numerous, there could be no assembly of the whole body of citizens. To meet this precise difficulty, the Representative System was devised. By a machinery, so obvious that we are astonished it was not employed in the ancient commonwealths, the people, though scattered and numerous, are gathered, by their chosen representatives, into a small and deliberative assembly, where, without tumult or rashness, they may consider and determine all questions which concern them. In every representative body, properly constituted, the people are practically present.

Nothing is invented and perfected at the same time; and this system has been no exception to the rule. In England, where it reached its earliest vigor, it has been, and still is, anomalous in its character. The existing divisions of the country, composed of boroughs, cities, and counties, were summoned by the king's writ to send representatives, with little regard to equality of any kind, whether of population, of taxation, or of territory. Their existence as corporate units was

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the prevailing title. The irregular operation of the system, increasing with the lapse of time, provoked a cry for Parliamentary Reform, which, after a struggle of more than fifty years, ending in a debate which occupied the House of Commons more than fifty days, was finally carried; but, though many abuses and inequalities were removed, yet, the anomalous representation by counties, cities, and boroughs, was still continued. And this, Sir, is the English system.

Pass now, Sir, to the American system. I say American system, for to our country belongs the honor of first giving to the world the idea of a system, which, discarding corporate representation, founded itself absolutely on equality. Let us acknowledge with gratitude, that from England have come five great and ever memorable institutions, by which liberty is secured—I mean the Trial by Jury, the writ of *Habeas Corpus*, the Representative System, the Rules and Orders of debate; and lastly, that benign principle which pronounces *that its air is too pure for a slave to breathe*—perhaps the five most important political establishments of modern times. This glory cannot be taken from the mother country. But America has added to the Representative System another principle, without which it is incomplete, and which, in the course of events, is destined, I cannot doubt, to find acceptance wherever the Representative System is employed. I mean the principle of equality.

Here in Massachusetts, home of the ideas out of which sprung the Revolution, this principle had its earliest expression. And it is not a little curious that this very expression was suggested by the two evils of which we now complain—namely, a practical inequality of representation and a too numerous House. Let me furnish some details of its history.

In the earliest days of the Colony, while the number of freemen was small and gathered in one neighborhood, there was no occasion for any representative body. All could then meet as at ancient Athens, in public assembly; and in fact, they did so meet, and in this way discharged the duties of legislation. But as the freemen became scattered and numerous, it was found grievous to compel the personal attendance of the whole body, and, as a substitute therefor, the towns were directed, in 1634, to assemble in general court, by deputies. Here was the establishment of the Representative System in Massachusetts, which has continued, without interruption, down to our day. The size of the House and the relative representation of towns have varied at different times; but the great principle of representation—by which a substitute is provided for the whole body of the people—has been constantly preserved. Still a feeling has long prevailed, that the system had not yet received its final form, while, in more than vision, has been discerned that principle of equality which is essential to its completeness.

Among the acts of the first general court of the Revolution, was one passed in the summer of 1776, after the battle of Bunker Hill, "declaratory of the rights of the towns and districts to elect and depute a representative or representatives to serve for and represent them in the general court." By this act, all previous acts taking from towns and districts the right of sending a representative to the general court were repealed, and every town containing thirty qualified voters,

was authorized to send a representative. The immediate consequence was the two evils to which I have already referred—namely, inequality of representation, and a too numerous House; but the whole number of representatives which aroused the complaints of that day, was two hundred and sixty.

These grievances were the occasion of a convention of delegates from the towns of Essex County, at Ipswich, April 25th, 1776, where a memorial to the legislature was adopted, which was afterwards presented and enforced at the bar of the House by John Lowell. In this remarkable document occurs the first development, if not the first proclamation, of the principle of equality in representation. Here, Sir, is the fountain and origin of an idea, full of strength, beauty and glory. Listen to the words of these Revolutionary fathers:—

"If representation is equal, it is perfect; as far as it deviates from this equality, so far it is imperfect, and approaches to the state of slavery; and the want of a just weight in representation is an evil nearly akin to being totally destitute of it. An inequality of representation has been justly esteemed the cause, which has, in a great degree, sapped the foundation of the once admired, but now tottering fabric of the British empire; and we fear that if a different mode of representation from the present is not adopted in this colony, our Constitution will not continue to the late period of time which the glowing heart of every true American now anticipates.

"We cannot realize that your honors, our wise political fathers, have adverted to the present inequality of representation in this colony, to the growth of the evil, or to the fatal consequences which will probably ensue from the continuance of it.

"Each town and district in the colony is, by some late regulations, permitted to send one representative to the General Court, if such town or district consists of thirty freeholders and other inhabitants qualified to elect; if of one hundred and twenty, to send two. No town is permitted to send more than two, except the town of Boston, which may send four. There are some towns and districts in the colony, in which there are between thirty and forty freeholders and other inhabitants qualified to elect only; there are others besides Boston, in which there are more than five hundred. The first of these may send one representative, the latter can send only two. If these towns as to property are to each other in the same respective proportion, is it not clear to a mathematical demonstration that the same number of inhabitants of equal property in the one town, have but an *eighth* part of the weight in representation with the other; and with what colorable pretext we would decently inquire."

Under the pressure of this powerful state paper the obnoxious law was repealed; but the evil was not remedied. Then followed the unsuccessful effort to make a Constitution in 1777, which failed partly through dissatisfaction with its disposition of this very question. The county of Essex was again heard in another document, now known as the "*Essex Result*," and, among the most able and instructive in our history, from which I take the following important words:—"The rights of representation should be so equally and impartially distributed, that the representatives should have the same views and interests with the people at large. They should think, feel, and act like them, and, in fine, should be an exact miniature of their constituents. They should be, if we may use the expression, the whole body politic, with all its property, rights and privileges, reduced to

a smaller scale, every part being diminished in just proportion. To pursue the metaphor, if, in adjusting the representation of freemen, any ten are reduced into one, all the other tens should be alike reduced; or, if any hundred should be reduced to one, all the other hundreds should have just the same reduction." Mark well these words. Here is the Rule of Three, for the first time in history, applied to representation. This, Sir, is not the English system. I call it, with pride, the American system.

In another place the document proceeds as follows:—

"The rights of representation should also be held sacred and inviolable, and for this purpose, representation should be fixed upon known and easy principles; and the Constitution should make provision that recourse should constantly be had to those principles within a very small period of years, to rectify the errors that will creep in through lapse of time or alteration of situations."

It then distinctly proposes a system of districts, in words which I quote:—

"In forming the first body of legislators, let regard be had only to the representation of persons, not of property. This body we call the House of Representatives. Ascertain the number of representatives. It ought not to be so large as will induce an enormous expense to government, nor too unwieldy to deliberate with coolness and attention; nor so small as to be unacquainted with the situation and circumstances of the State. One hundred will be large enough, and perhaps it may be too large. We are persuaded that any number of men exceeding that, cannot do business with such expedition and propriety as a smaller number could. However, let that at present be considered as the number. Let us have the number of freemen in the several counties in the State; and let these representatives be apportioned among the respective counties, in proportion to their number of freemen.

"As we have the number of freemen in the county, and the number of county representatives, by dividing the greater by the less we have the number of freemen entitled to send one representative. Then add as many adjoining towns together as contain that number of freemen, or as near as may be, and let those towns form one district, and proceed in this manner through the country."

Mr. HALLETT, for Wilbraham, (interrupting). Will the gentleman state who was the author of that Essex paper.

Mr. SUMNER. Theophilus Parsons is the reputed author of the document known as the "*Essex Result*."

Mr. HALLETT. Yes, Sir, it was Theophilus Parsons who was the author of that, and John Lowell of the other, and good old Tory doctrines they are.

Mr. SUMNER. If these be Tory doctrines, I must think well of Toryism.

Mr. BIRD, of Walpole. The gentleman for Marshfield speaks of the basis of representation in one House. I should like to know what was the basis proposed at that time for the other branch?

Mr. SUMNER. Property, I believe. But, Sir, I put these inquiries aside. I do not concern myself with the authorship of these doctrines, or with the character of other doctrines with which they were associated in the minds of their authors. All this is irrelevant and unimportant. I refer to them in the history of the question and hasten on.

Sir, notwithstanding these appeals, sustained

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by unsurpassed ability, the American system failed to be adopted in the Constitution of 1780. The anomalous English system was still continued; but, as if to cover the departure from principle, it was twice declared that the representation of the people should be "founded on the principle of equality." This declaration still continues as our guide, while the irregular operation of the existing system, with its inequalities and large numbers, is a beacon of warning.

Following closely upon these efforts in Massachusetts, this principle found an illustrious advocate in Thomas Jefferson. In his Notes on Virginia, written in 1780, he sharply exposes the inequalities of representation, and, a short time afterwards, when the victory at Yorktown had rescued Virginia from invasion and secured the independence of the United Colonies, he prepared a draught of a Constitution for his native State, which, disowning the English System and recognizing the very principle that had failed in Massachusetts, expressly provided that, "the number of delegates which each county may send shall be *in proportion to the number of its qualified electors*; and the whole number of delegates for the State shall be so *proportioned to the whole number of qualified electors in it*, that they shall never exceed three hundred, nor be fewer than one hundred; and if any county be reduced in its qualified electors below the number authorized to send one delegate, let it be annexed to some adjoining county." This proposition, which is substantially The Rule of Three, was not adopted in Virginia. This State, like Massachusetts, was not yet prepared for such a charter of electoral equality; but it still stands as a monument at once of its author and of the true system of representation.

The American system, though first conceived in Massachusetts and recognized in Virginia, found its first practical exemplification only a few years later in the Constitution of the United States. By the Articles of Confederation each State was entitled to send to Congress not less than two, nor more than seven representatives, and in the determination of questions, each State had one vote only. This plan was rejected by the framers of the new Constitution; and, another, until then untried in the history of the world, was adopted. It was declared that "representatives and direct taxes shall be *apportioned among the several States which may be included in this Union, according to their respective numbers*;" not according to property; not according to territory; not according to any corporate rights; *but according to their respective numbers*. And this system has continued down to our day, and will continue immortal as the Union itself. Here is the Rule of Three actually incorporated into the Representative System of the United States.

An attempt has been made to render this system odious, or at least questionable, by charging upon it something of the excesses of the great French Revolution. Even if this rule had prevailed at that time in France, it would be bold to attribute to it any such consequences. But it is a mistake to suppose that it was then adopted in that country. The republican Constitution of 1791 was not founded upon numbers only; but upon numbers, territory and taxation combined; a mixed system which excluded the true idea of personal equality. But at the peaceful—almost bloodless—revolution of 1848, under the lead of Lamartine, a National Assembly was convened

on the simple basis of population, and one representative was allowed for every 40,000 inhabitants. Here again is the Rule of Three; but the idea originally came from our country.

Mr. HALLETT. Will the gentleman for Marshfield allow me to make one more inquiry?

Mr. SUMNER. Certainly.

Mr. HALLETT. Do I understand the gentleman to say that the Rule of Three was applied to representation in the United States?

Mr. SUMNER. I mean to say, that the representation in the lower House of Congress was apportioned according to numbers; and this is the Rule of Three. The gentleman has in mind, perhaps, the anomalous exception with reference to slavery.

Mr. HALLETT. No, Sir. I do not refer to that at all. The first apportionment of representation by congress, was made by applying the divisor of 30,000, which was the ratio of representation, to the whole population of the United States. That bill was vetoed by General Washington, upon the ground that the Constitution required that representation should be apportioned among the States according to their respective numbers, and that it did not allow of a numerical representation of all the people of the United States. I ask the gentleman if that rule was the Rule of Three?*

Mr. SUMNER. The learned gentleman is substantially right in his statement; but he will pardon me if I say, that it does not interfere with my proposition. The language of the Constitution is explicit; "representatives shall be *apportioned among the several States according to their respective numbers*." This is the rule; I call it the Rule of Three. There are minor details in its operation, arising from slavery, and from the division into States, on which I do not dwell, as they do not interfere with its paramount principle, and I am admonished to proceed.

A practical question here arises, whether this rule should be applied to the whole body of population, including women, children and unnaturalized foreigners, or whether it should be applied to those only who exercise the electoral franchise; in other words, to voters. It is probable that the rule would generally produce nearly similar results, in both cases; as the voters, except in a few places, would bear a uniform proportion to the whole population. But it will be easy to determine what the principle of the Representative System requires. Since the object of the System is to provide a practical substitute for the meetings of the people, it should be founded in just proportion on the numbers of those who, according to our Constitution, can take part in those meetings; that is, upon the qualified voters. The representative body should be a miniature or abridgment of the electoral body; in other words, of those allowed to participate in public affairs. If this conclusion needs authority, it may be found

* Mr. Hallett referred to Marshall's Life of Washington, vol. I. p. 217. "The Constitution of the United States declares that 'representatives shall be apportioned among the several States according to their respective numbers, not exceeding one for every thirty thousand.' The second, in 1792, passed an act which applied the number thirty thousand as a divisor to the total population of all the United States, and took the quotient, one hundred and twenty, as the whole number of representatives. President Washington vetoed the bill on the ground that the population of each State, and not the total population of the United States, must give the numbers, although, by the other process eight States were allotted more representatives than one for thirty thousand. This veto was sustained and a bill one for thirty thousand was passed. This was sustained and a bill one for every thirty-three thousand persons in each State."

in the words of Mr. Madison, in the Debates on the Federal Constitution. "It has been very properly observed," he says, "that representation was an expedient by which the meeting of the people themselves was rendered unnecessary, and that representatives ought, therefore, to bear a proportion to the votes which their constituents, if convened, would respectively have."—[Madison's Debates, vol. ii. p. 1103.]

The Rule of Three, then, applied to voters, seems to me sound; but whether applied to voters or population, it is the true rule of representation, and stands on adamant principles. In my view, it commends itself so obviously, so instinctively, to the natural reason, that I do not feel disposed to dwell upon it. But since it has been called in question, I shall be excused for saying a few words in its behalf. Its advantages present themselves in several aspects.

First. And I put in the front its constant and equal operation throughout the Commonwealth. Under it, every man will have a representative each year; and every man will have the same representative power as every other man. In this respect, it carries out a darling idea of our institutions, which cannot be disowned without weakening their foundations. It gives to the great principle of human equality a new expansion and application. It makes all men, in the enjoyment of the electoral franchise, whatever be their diversities of intelligence, of education, or of wealth, or wheresoever they may be within the borders of the Commonwealth, in small town or in populous city, absolutely equal at the ballot-box.

I know that there are persons, Sir, who do not hesitate to assail the whole doctrine of the equality of men, as enunciated in our Declaration of Independence, and in our Bill of Rights. In this work two eminent statesmen, of our own country, and of England, have led the way. But it seems to me, that if they had chosen to comprehend the meaning of the principle, much, if not all of their objection would have been removed. It is a palpable truth, that men are not born equal in physical strength or in mental capacities; in beauty of form or health of body. These mortal cloaks of flesh differ, as do these worldly garments. Diversity or inequality in these respects, is the law of creation. But as God is no respecter of persons, and as all are equal in his sight, whether rich or poor, whether dwellers in cities or in fields, so are all equal in natural rights; and it is a childish sophism—of which no gentleman in this Convention is guilty—to adduce in argument against them the physical or mental inequalities by which men are characterized. Now, I do not pretend to class the electoral franchise among those inherent, natural rights, which are common to the human family, without distinction of age, sex or residence; but I do say, that from the equality of men, which we so proudly proclaim, we may derive a just rule for its exercise. For myself, I accept this principle, and just so far and just so soon as possible, I would be guided by it in the system of representation. But there are other reasons still.

Secondly. The Rule of Three as applied to representation is commended by its simplicity. It supersedes all the painful calculations to which we have been driven, the long agony of mathematics as it was called by my friend over

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the way, (Mr. Giles,) and is as easy in its application as it seems to me to be just.

Thirdly. This rule is founded in nature, and not in art; on natural bodies, and not on artificial bodies; on men, and not on corporations; on souls, and not on petty geographical lines. On this account it may be called a natural rule, and when once established, will become fixed and permanent, beyond all change or desire of change.

And, fourthly, this rule removes, to every possible extent, those opportunities of political partiality and calculation in the adjustment of the representation, which are naturally incident to any departure from precise rule. It was beautifully said of law by the greatest intellect of Antiquity, that it is *mind without passion*, and this very definition I would extend to a rule which, with little intervention from human will, applies absolutely to fixed numbers. The object of free institutions is, to withdraw all concerns of state, so far as practicable, from human discretion, and place them under the shield of determined principles, to the end, according to the words of our Constitution, that there may be a government of laws, and not of men. But, just in proportion as we depart from precise rule, it becomes a government of men, and not of laws.

Such considerations as these, thus briefly expressed, seem to vindicate this rule of representation. But let me not forget the arguments adduced against it. These have assumed two distinct forms; one is founded on the character of our towns and the importance of preserving their influence; the other is founded on the alleged necessity of counteracting the centralization of power in the cities. Now, of these in their order.

And, first, of the importance of preserving our towns. Sir, I yield to no man in appreciation of the good done by these free municipalities. The able member for Erving, (Mr. Griswold,) who began this debate, the eloquent member for Berlin, (Mr. Boutwell,) and my excellent friend of many years, the accomplished member for Manchester, (Mr. Dana,) in the masterly speeches which they have addressed to the Convention, have attributed no good influence to the towns which I do not recognize also. With them I agree, cordially, that the towns in Massachusetts, like the municipalities of Switzerland, have been schools and nurseries of freedom; and that in these small bodies, men were early disciplined in those primal duties of citizenship, which, on a grander scale, have been made the foundation of our whole political fabric. But, I cannot go so far as to attribute this remarkable influence to the assumed fact, that each town by itself was entitled to a representative in the legislative body. At the time of the Revolution, this was the prerogative of most towns, though not of all; but it cannot be regarded as the distinctive, essential, life-giving attribute. At most it was only an incident.

Sir, the true glory of the towns then was, that they were organized on the principles of self-government, at a time when these principles were not generally recognized; that each town by itself was a little republic, where the whole body of freemen were voters, with powers of local legislation, taxation, and administration, and, especially, with the power to choose their own head and all subordinate magistrates. Sir, the boroughs of England have possessed the power to send a member—often two members—to Parliament; but

this has not saved them from corruption; nor has any person attributed to them, though in the enjoyment of this franchise, the influence which has proceeded from our municipalities. And the reason is obvious. They were organized under charters from the crown, by which the local government was vested—not in the whole body of freemen—but in small councils, or select classes, originally nominated by the crown, and ever afterwards renewing themselves. No such abuse prevailed in our municipalities; and this political health at home, Sir, and not the incident of exclusive representation in a distant legislature, has been the secret of their strength. This I would ever cherish.

And this brings me, in the next place, to the objection founded on centralization of power in the cities. It is said that wealth, business, population, and talent, in its multitudinous forms, all tend to the cities, and that the excessive influence of this concentrated mass, quickened by an active press, by facilities of concert, and by social appliances ought to be counterbalanced by an allotment to the towns of a representative weight beyond their proportion of numbers. Now, Sir, while confessing and regretting the present predominance of the cities, I must be permitted to question the propriety of the proposed remedy. And here, as I differ in some respects from friends on both sides, I make an appeal for a candid judgment of what I shall candidly say.

I would not be unjust to cities. But no student of history can fail to perceive that they have performed different parts at different stages of the world. In antiquity, they were the acknowledged centres of power, often of tyranny. But in the middle ages, they became the home of freedom, and the bridle to feudalism. For this service they should be gratefully remembered. And now there is another change. The armed feudalism is overthrown; but it is impossible not to see that it has yielded to a commercial feudalism, whose seat is in the cities, and which in its way, is hardly less selfish and exacting than the feudalism of the iron hand. My friend, the member for Manchester, (Mr. Dana,) was clearly right when he said, that the Boston of to-day was not the Boston of our fathers. But let me be understood. I make no impeachment of individuals; but simply indicate those combined influences proceeding from the potent Spirit of Trade—alas! how unlike that Spirit of the Lord, where is liberty!—which are not inconsistent with the most exalted individual worth. I think, while confessing the abounding charities of the rich men, whose eulogy we have heard more than once in this debate, it must be admitted that, those pure principles which are the breath of the republic, now find their truest atmosphere in calm retreats, away from the strife of gain, and the hot pavements of crowded streets. Sir, it is not only when we look upon the fields, hills and valleys, clad in verdure, and shining with silver lake or rivulet, that we may be ready to exclaim:—

“God made the country, and man made the town.”

But, Sir, while maintaining these opinions, I cannot admit the argument, that the centralized power of the cities may be counteracted by degrading them in the scale of representation. This cannot be purposely done without departing from fundamental principles, and without overthrowing the presiding doctrine of personal equality.

Cities are but congregations of men; and men exert influence in various ways; by the accident of position; by the accident of intelligence; by the accident of property; by the accident of birth; and, lastly, by the vote. It is the vote only which is not an accident; and it should be the boast of Massachusetts, that all men, whatever may be their accidents, are equal in their votes. [Here the hammer of the President fell, as the hour expired; but by unanimous consent, Mr. Sumner proceeded.] The idea of property as a check upon numbers, which, on a former occasion, found such favor in this hall, is now rejected in the adjustment of our Representative System. And, Sir, I venture to predict that the proposition, newly broached in this Commonwealth, to restrain the cities by a curtailment of their just representative power, will hereafter be as little regarded.

II. Mr. President, such is what I have to say on the history and principles of the Representative System, particularly in the light of American institutions, and this brings me to the *practical question* at this moment. I cannot doubt that the district system, as it is generally called, whereby the representative power will be distributed in just proportion, according to the Rule of Three, among the voters of the Commonwealth, is the true system, destined at no distant day to prevail. And, gladly, would I see this Convention hasten the day by presenting it to the people for adoption in the organic law. To this end I have striven by my votes. But, Sir, I am not blind to what has passed. The votes already taken show that the Convention is not prepared for this change, and I am assured by gentlemen more familiar with public sentiment than I can pretend to be, that the people are not yet prepared for it.

And thus, Sir, we are brought to the position occupied successively by the Conventions of 1780 and 1820, each of which, though containing warm partisans of the district system, shrank from its adoption; as in Virginia, the early recommendation of Jefferson, and his vehement support at a later day, have been powerless to produce this important amendment. John Lowell, who appeared at the bar of the Massachusetts legislature in 1776, to vindicate the principle of equality in representation, and Theophilus Parsons, the author of the powerful tract which proposed to found the Representative System on the Rule of Three, were both members of the first Convention; and, I know not if the district system has since had any abler defenders. To these I might add the great name of John Adams, who had early pleaded for equality of representation, and had declared in words adopted by the Essex Convention, that the Representative Assembly should be an exact portrait in miniature of the people at large.—(*Works*, Vol. iv., pp. 186, 195, 205.) In the Convention of 1820, the district system was cherished and openly extolled by a distinguished jurist, at that time a Justice of the Supreme Court of the United States, Joseph Story, whose present fame gives additional importance to his opinions. And yet, the desire of these men failed. The corporate representation of towns was preserved, and the district system pronounced impracticable. In the address put forth by the Convention of 1780, and signed by its President, James Bowdoin, these words may be found:—

“You will observe that we have resolved that

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representatives ought to be founded on the principle of equality; but it cannot be understood thereby, that each town in the Commonwealth shall have weight and importance in a just proportion to its numbers and property. An exact representation would be unpracticable, even in a system of government arising from the state of nature, and much more so in a state already divided into nearly three hundred corporations."

The Convention seem to have recognized the theoretic fitness of an "exact representation;" but did not regard it as feasible in a State already divided into nearly three hundred corporations. In the Convention of 1820, Judge Story, who has been already quoted by my eloquent friend, (Mr. Choate,) used language which, though not so strong as that of the early address, yet has the same result:—

"In the select committee, I was in favor of a plan of representation in the House founded on population, as the most just and equal in its operation. I still retain that opinion. There were serious objections against this system, and it was believed by others that the towns could not be brought to consent to yield up the corporate privileges of representation which had been enjoyed so long, and were so intimately connected with their pride and their interests. I felt constrained, therefore, with great reluctance to yield up a favorite plan. I have lived long enough to know, that in any question of government, something is to be yielded up on all sides. Conciliation and compromise lie at the origin of every free government; and the question never was, and never can be, what is absolutely best, but what is relatively wise, just and expedient. I have not hesitated, therefore, to support the plan of the select committee as one that, on the whole, was the best that, under existing circumstances, could be obtained."

Sir, I am not insensible to these considerations, nor to the authority of these examples. A division of the State into districts would be a change, in conformity with abstract principles, which would interfere with the existing opinions, habits and prejudices of the towns, all of which must be respected. A change, so important in its character, cannot be advantageously made, unless supported by the permanent feelings and convictions of the people. Institutions are formed *from within*, and not *from without*. They spring from custom and popular faith, silently operating with internal power, and not from the imposed will of a law-giver. And our present duty here, at least on this question, may be, in some measure, satisfied, if we aid this growth.

Two great schools of jurisprudence, for a while, divided the learned mind of Germany; one known as the Historic, and the other as the Didactic. The question between them was similar to that now before the Convention. The first regarded all laws and institutions as the growth of custom, under the constant influences of history; the other insisted upon giving to them, by positive legislation, a form in conformity with abstract reason. It is clear that both were, in a measure, right. No law-giver or statesman can disregard either history or abstract reason. He must contemplate both. He will faithfully study the Past, and will recognize its treasures and traditions; but, with equal fidelity he will set his face towards the Future, where all institutions shall, at last, be in harmony with truth.

I have been encouraged to believe in the practicability of the district system, by its conformity

with reason, and by seeing how naturally it went into operation under the Constitution of the United States. But there is a difference between that case and the present. A new government was then founded, with new powers, applicable to a broad expanse of country; the Constitution of Massachusetts was little more than a continuation of pre-existing usages and institutions, with all dependence upon royalty removed. This distinction may help us now. If the country were absolutely new, with no embarrassments from existing corporate rights—claims I would rather call them—it might easily be arranged, according to the most approved theory, as Philadelphia was originally laid out by its great founder, on the model of the German city which he had seen in his youth. But to bring our existing system into symmetry and to lay it out anew, would seem to be a task—at least I am reluctantly led to this conclusion by what I have heard here—not unlike that of rebuilding Boston, and of shaping its compact mass of crooked streets into the regular rectangular forms of the city of Penn. And yet this is not impossible. With each day, by demolishing ancient houses and widening ancient ways, changes are made, which tend to this result.

Sir, we must recognize the existing condition of things, remedy all practical grievances, so far as possible, and set our faces towards the true system. We must act in the Present; but be mindful also of the Future. There are proper occasions for compromise, as most certainly there are rights which are beyond compromise. But the Representative System is an expedient or device, for ascertaining the popular will, and though well satisfied that this can be best founded on numbers, I would not venture to say, in the present light of political science, that the right of each man to an equal representation, according to the Rule of Three and without regard to existing institutions or controlling usages, is of that inherent and lofty character—like the God-given right to life or liberty—which admits of no compromise.

Several grievances exist, which will be removed by the proposed amendments. There is one which I had hoped would disappear, but which is the necessary incident of corporate representation; I mean the unwieldy size of the House.

It is generally said, that a small body is more open to bribery and corruption than a large body; but, on the other hand, I have heard it stated, that the larger is more exposed than the smaller. I put this consideration aside. My objection to a large House is, that it is inconvenient for the despatch of public business. There is a famous saying of Cardinal de Retz, that every assembly of more than one hundred, is a mob; and Lord Chesterfield applied this same term to the British House of Commons. This body, at present, nominally has six hundred and fifty-five members. It is called, by Lord Brougham, "preposterously large;" but a quorum for business is forty only; and it is only on rare occasions of political importance, that its benches are completely occupied. The House of Lords, nominally, has four hundred and forty-seven members; but a quorum in this body consists of three only; and much of its business is transacted in a very thin attendance.

The experience of Congress, and also of other States, points to a reduction of our present number. Indeed, for many years, this was a gen-

eral desire through the State. In the earliest colonial days, every town was allowed three deputies; but in five years the number, on reaching thirty-three, was reduced to two for each. At a later day, in 1694, a great contest in the House was decided by a vote of twenty-six against twenty-four. In the agitating period between 1762 and 1773, covering the controversies which heralded the Revolution, the House contained about 110; only on one occasion, the magnitude of the interest is said by Governor Hutchinson to have drawn together 130. At the last session of the provincial legislature, in May, 1774, when the revolutionary conflict was at hand, the complete returns of the journals show 140; and in 1776, there was a House of 260. But this "enormous and very unwieldy size," as it was then called, was assigned as a reason for a new Constitution. I regret that we cannot profit by this experience. A House of 250, or, since we are accustomed to large congregations, of 300 at most, would be an improvement on the present system.

But, there are two proposed improvements which I hail with satisfaction; one relates to the small towns, and the other to the cities. The small towns will have a more constant representation, and this of itself is an approach to the true principle of representation, which should be constant as well as equal. The cities will be divided into districts, and this I regard of two-fold importance—first, as the beginning of a true system; and secondly, as reducing the power, which the cities, by the large number of their representatives, chosen by general ticket, now exercise.

A respected gentleman, now in my eye, has reminded me that in his boyhood, his attention was arrested in this House by what was called the Boston seat, reserved exclusively for the Boston members, who sat together, on cushions, while other members were left to such accommodations as they could find on bare benches. This discrimination ceased long ago. But it seems to me that this reserved and cushioned seat is typical of another discrimination, which Boston, in common with the cities, still enjoys. Sir, in voting for forty-four representatives, the elector in Boston exercises a representative power transcending far that of electors in the country; and the majority which rules Boston and determines the whole delegation, exercises a representative power transcending far that of any similar number in the Commonwealth. This is apparent on the bare statement, as forty-four sticks are stronger in one compact bundle, than when apart or in small parcels. Thus, while other counties are divided, the delegation from Boston is united. In all political contests, it is like the well-knit Macedonian phalanx, or the iron front of the Roman legion, in comparison with the disconnected, individual warriors, against whom they were matched. But this abuse is to be removed; and here is the beginning—I had almost said the inauguration—of a true electoral equality in our Commonwealth.

And now, in conclusion, while thanking gentlemen for the kind attention with which they have honored me, let me express briefly the result to which I have come. I have openly declared my convictions with regard to the district system, and in accordance with these, have recorded my votes in this Convention. These votes, which reveal my inmost desires on this matter, I would

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not change. But the question is not now between the district system, which I covet so much for Massachusetts, and the proposed amendments; but between these amendments and the existing system. On this issue I decide without hesitation. I shall vote, Sir, for the propositions of amendment now before the Convention, should they come to a question on their final passage; not because they are all that I desire; not because they seem to satisfy the requirements of principles which I cannot deny; not because they constitute a permanent adjustment of this difficult question; but, because, they are the best which I can now obtain; because they reform grievances of the existing system; and, because, they begin a change, which can end only in the establishment of a Representative System, founded in reality, as in name, on equality. Their adoption will be a triumph of conciliation and harmony, and will furnish new testimony to the well-tempered spirit of our institutions,

"Where jarring interests, reconciled, create
The according music of a well mixed State."

On motion, the Convention adjourned until three o'clock.

AFTERNOON SESSION.

The Convention reassembled at 3 o'clock, and resumed the consideration of the unfinished business of the morning, viz.: the resolves on the subject of

The Basis of Representation,

The question being on the final passage.

Mr. BOUTWELL, for Berlin. I expressed the intention this morning to speak upon this question; but, I have all along felt some doubt whether I ought again to ask the attention of the Convention to the subject of representation. The position of affairs has been somewhat changed within the last week. The subject has assumed a more definite character, and the Convention, if I understand the nature of the votes which have been taken, has declared that it is in favor of town representation as against the district system. I suppose that there still exists, however, in the minds of many gentlemen here, some doubt as to the expediency of continuing the principle of the existing system; and that doubt arises from two sources, so far as I can understand. One is the alleged, and to some extent, admitted, inequality of municipal representation; and the other is the size of the House, which is a necessary result of a continuance of that system. Now, then, as it regards the first point, that of inequality, I believe that every proposition which has here been submitted, that can in any sense be considered a practical proposition, for a division of the State into districts, has also admitted this inequality, not precisely the same in degree, but the same in kind, that exists in the municipal system; because it will appear, whenever we make the subject of districting the State for the election of representatives a practical matter, that it is to be done by steps. We shall be compelled to recognize the principle and the doctrine which I asserted the other day, that it is the part of wisdom to accept existing institutions as the basis of new ones. In districting the State, therefore, we shall have to abandon, in some degree, the doctrine or theory of the equality of men, politically

speaking. We shall take the step suggested by the gentleman from Taunton, (Mr. Morton,) in the first place, and recognize the counties as the lines and grounds of a division of the State, for the purpose of establishing within those lines the minor representative districts; and thus it has happened in all the other States whose Constitutions are at all analogous to our own. I instanced the State of Louisiana the other day as an example, where they took the existing county lines, and within those county lines divided the State into districts for the election of representatives. The very first proposition avowed by the friends of the district system is, that town lines are not to be disturbed—I mean small towns, those of which two or more are formed into one representative district. It will then happen that there will be inequality in the district system, as we confess that there is and must be in the municipal system of representation. Of course it is understood, that as a principle, I am in favor of municipal representation; but I have a word to say to the friends of the district system by way of ascertaining the extent of the inequality which the proposed measure will work out. For a moment, then, I stand and discuss this subject just as I would discuss it were I a district man, with a view to the inequality of the measure before us, as regards different sections in the Commonwealth, considered with reference to their political rights and political power. I thank the gentleman who represents Marshfield, (Mr. Sumner,) for what he uttered this morning, corresponding with an observation made the other day by the gentleman from Taunton, together establishing the proposition that legal voters stand in the same place now that freemen did in colonial and provincial times, as the proper basis of representation. They are the electors of the representative body, which should be an epitome or miniature of the electoral body. Now this proposition, to which I assent, speaking as a district man, argues necessarily the exclusion of political power from three classes of persons, generally considered, viz.: children, women and unnaturalized foreigners. I do not know that it is necessary for me to state the reasons in detail with regard to one or the other of these classes, why they should be excluded; but, I have this observation to make. The law does not create principles nor often institutions; it recognizes those which exist, and when it has done that, it has done all that it is usually in the power of law to do. Therefore, I take it to be in accordance with the well settled principles of natural right that these three classes are excluded from a direct participation in government. In regard to the first class, children,—I need say but one thing; the law only determines the time when minority shall cease—the fact of minority comes from nature, and the fact that an individual shall attain to majority, also comes from nature. All that legislation can do is, to step in and determine, arbitrarily, when that moment shall arrive. Nature, not law, excludes children from a participation in government; the law determines when they shall take part, from which, by nature rather than law, they are for a period excluded. This class, then, is to be regarded as not of the people, in a political sense.

I come now to the next class, and it may be that in speaking of them—I do not see my friend from Brookfield, (Mr. Greene,) here—I am approaching dangerous ground, when I say that

women are to be excluded from a direct participation in political affairs. And why? Is this a mere ordination of law? No, Sir! Their exclusion is founded upon a principle recognized in nature. You may make whatever laws you please; but you cannot escape from the ordination of nature, any more than this planet on which we are can move from the orbit in which the Creator of the universe has placed it. The family relation is a relation established by nature. Neither history nor tradition informs us of a time when that relation did not exist. And what is the character of the family government? It is a government established by nature, and one from which no community, partaking in any degree of the principles of civilization, can escape. It is a government, neither more nor less; and like every other government it has a head. Having a head, it can have but one will; and the man, who, by nature, is placed at the head of that government, is the only authorized exponent of that will. I say that in theory and as a matter of fact, a family has but one will, and, therefore, neither any moral or political power is gained by the expression of individual opinion, either by children or women. If it were possible for women to participate directly in the affairs of government, it would be a violation of the general rule, that the will of the whole family is represented by the man, who is the head of the family. Politically speaking, therefore, woman has no right to be directly consulted in public affairs. I say this, and I take to myself credit for courage in saying it. [Laughter.] I am, however, past political fortunes of any sort.

Now, with regard to the third class, or unnaturalized foreigners, I will say that the law determines the nature and the extent of their exclusion from public affairs, but it does not create it; because the first idea of government which we have, is that somebody owes allegiance to it. The very existence of a government presupposes individuals owing allegiance to that government. This follows as a matter of course, from the nature of civilized society. Every-body owes allegiance to some government, and nobody can pay his allegiance to more than one government at the same time. Now, the object of the law is, to ascertain when the allegiance of an individual, who was born in one country, ceases to the government of that country, and when it commences with regard to the government of another country. The law comes in here—I am not going to say whether it comes in exactly at the right time or not—whether too soon or too late—but the law determines that at a certain time, and under a certain condition of things, the allegiance of a person born in another country ceases to that country, and commences in this. Therefore, until the moment shall arrive that the allegiance of a person born in a foreign country ceases to that country, and commences here, he has no right, politically speaking, to be consulted in the administration of public affairs.

Therefore, then, standing as a district man, for this moment, I agree entirely in the doctrine that the principles of nature, the principles of reason, and the general usage of civilized countries, make an exclusion of all from a participation in government, except free men and legal voters.

Now we have a representative system in Massachusetts, composed of two parts,—the Senate

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ities of a war, in horrors unequalled in the history of this country. A war brought on, not by the policy of Massachusetts, but by the policy of the colony of New Plymouth. I speak this here, because, I do not agree to the remark of the gentleman from Taunton, (Mr. Morton,) that there is doubt whether Plymouth is a part of the State. The "Old Colony" loses seven, and the loss is in Plymouth County. But the five western counties—Worcester, Hampden, Hampshire, Franklin, and Berkshire, gain nearly eleven representatives. This, Mr. President, is the result, and, I believe, the accurate result.

Mr. LORD, of Salem. If I understand the gentleman, his calculations are based upon the fact, that one senator is equal to ten representatives, in political power, and therefore, in comparing Franklin with Suffolk, he says, that inasmuch as Suffolk is to have six senators, and Franklin only two, the difference being four, in order to effect his theory of equality, Franklin must have forty representatives to match them.

Mr. BOUTWELL. Certainly not.

Mr. SCHOUER, of Boston. The gentleman says that the political power in the Senate is ten times stronger than in the House. That is, that one senator is, in political power, equal to ten representatives.

Mr. BOUTWELL. Yes.

Mr. SCHOUER. Then I ask if, in the election of a United States senator, there should be one majority in the Senate in favor of one man, and nine majority in the House for another man, whether the Senate's favorite would be elected? He certainly would if one Senator is equal in point of political power to ten representatives.

Mr. BOUTWELL. I take it, if a candidate for the United States Senate fail by one majority in the Senate, he would be just as badly off as if he failed by nine in the House.

Mr. SCHOUER. Well, I should say so, too.

Mr. BOUTWELL. The action of the two branches of the legislature must be concurrent. Each has a negative upon the other, and I mean to say that, considered in this point of view, one senator will be equal in power to ten representatives. I take it, that this is a plain proposition in politics, mathematics or ethics. But, I am considering, not the power of the senators or representatives individually, but, I am considering the power of the people of this Commonwealth in their election of senators and representatives. And, therefore, I say, that when you give to the county of Suffolk, in consequence of the Senate being based upon population, one more senator than she would have been entitled to upon the basis of legal voters, that there should be some compensation for that excess somewhere; that is what I say. There can be no equal representative system, if the House is to be based upon voters, unless there be this compensation. This is the ground on which I stand. If, in consequence of the basis of the Senate, there are particular localities which have more power in that body than they are entitled to upon a basis of voters, then the other portions of the Commonwealth, should be compensated for their loss by a corresponding excess of power in the House of Representatives. That is the only correct principle upon which you can act under the existing circumstances. If you want the House of Representatives apportioned in exact and equal parts among the different counties of the Com-

monwealth, then you must go back and base your Senate also upon voters, and not put the Senate upon population, and the House upon electors.

But, passing by the considerations which I have suggested in regard to the constitution of the Senate, and the House, I have to ask those gentlemen who favor the district system, if, after all, this is not a reasonably equal system as regards the voters of the Commonwealth? We acknowledge that it is not mathematically equal in all the sections and localities of the State; how unequal we cannot say; but, I submit, that between the respective counties—upon the doctrine of compensation, which we maintain is the only just doctrine you can adopt—this system is, on the whole, reasonably equal. We are not to consider the House of Representatives alone, nor are we to consider the Senate alone, but in connection with each other. The Senate is equal in power with the House. It seems to me, that running through the entire discussion upon this subject, in Committee of the Whole and in Convention, gentlemen have thought and spoken in relation to the House of Representatives, as though, it, of itself, is the government.

We do not deny that this is a perplexing question. I am very well aware, that as the population of the State increases, and as it collects round a given point more and more, the difficulty of its settlement will also increase. How the problem is finally to be solved, I cannot foresee. We are not here to-day to settle this question for all-coming time. The system of representation has been changed in Massachusetts in the past, and doubtless, it will be changed in the future. But so far as the district system is concerned, I will not invite it. If it comes I will yield to it, and that is the most I will do. But there is nothing new in this matter. We see it in the proceedings of the Essex Result of 1778, alluded to by the honorable gentleman for Marshfield, this morning. We see it brought up again in the Convention which framed the Constitution of 1780, and it again appeared in the Convention of 1820. But on none of these occasions did it meet the concurrence of a majority of either of those bodies; and why? Because our fathers who framed the Constitution of 1780, and the men who framed the amendments of 1820 acted upon the principle, that it was better to accept existing institutions when they were founded in justice, than to seek for new ones. Therefore, in 1780, although they declared the principle of equality they accepted corporate representation.

I had occasion, a few days ago, to say, that I thought our municipal institutions were the life of the State—and that their right of representation was to them a vital element. Now, Sir, I am aware, that it is not possible either for me, or anybody else, to say, that this proposition is absolutely true, and I am, therefore, willing thus far, to qualify the assertion. But then, I think our history all along shows that through these municipal institutions our people were educated to meet, and successfully meet, the exigencies to which they were called. If there are doctrines of patriotism and liberty asserted in the Declaration of Independence, or in the Constitution of this government, that are immortal and destined to live when the names even of their authors shall be forgotten, so upon the pages of our town histories are sentiments and principles equally

worthy of immortality. It is there that you find the doctrines contained in the Declaration of Independence; and it shall be to their name and fame forever, that, when the continental congress on the 4th day of July, 1776, sent forth to the world the Declaration of Independence, that document was placed upon the records of these little municipalities, and the people all pledged themselves to maintain the cause of the country. And, Sir, it is—I will venture to repeat what I have said elsewhere—it is upon the records of one of these little towns that you will find the first distinct declaration in favor of an American republic. Twenty days before the Declaration of Independence, while even Maryland hesitated whether she would endorse the doctrines of that Declaration, one of the towns of Massachusetts declared that they should be unjust to themselves and to posterity, if they did not seek to establish an American republic; a proposition which at that moment had no other abiding place on this continent. And all along in the history of our municipalities, we find that they have taken the lead in the assertion of free principles.

Now, Sir, it may be that a system of representation which has existed here for two hundred years, has had nothing to do with this; but, I have read history all wrong, and the records of the country all wrong, if it has not had something to do with the existence and development of these principles.

Sir, my friend from Boston, (Mr. Crowninshield,) whom I do not now see in his seat, asked the other day what he should say to his constituents with regard to this basis of representation. I say, Sir, that even if the system is unjust as regards the city of Boston—and we hold, that it is not—they put the political power just where it was in 1775 and 1776, when the proceedings of a town-meeting in Boston were law to the State.

My friend from Charlestown, (Mr. Frothingham,) will agree, that had the town governments not existed, the siege of Boston, would not have been raised on the eleventh of March, if that was the day, in the year 1776. Sir, men who look with indifference on the domestic questions which agitate us, have been attracted by the character of our municipal institutions, and it may be, that they are better able than we to judge them. It has often happened in constitutional history, in general history, and in fine, in every department of life and literature, that men who, at the first view, would appear unable to judge the institutions, of which they wrote, have, after all, sent forth the wisest observations and come to the best results. I may refer to the history of the American Revolution, by Botta, to D' Lohme's Treatise on the British Constitution, to D' Tocqueville's Observations on America.

It was in my mind, the other day, to read an extract from a letter written by Bonaparte, upon the Swiss municipal institutions, in which he presents, with much clearness, their character and value. If I mistake not, his words will convey a right idea to the minds of those who may be willing to attend to them. And Bonaparte, from the first, until he found the Swiss mercenaries in the armies of his enemies, was a friend and admirer of Switzerland. Upon a proposition to abolish the system of cantons, he says:—

"These little democracies have been the cradle of your liberty; it is they that distinguish Switzerland from the rest of the world, and render you

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country so very interesting in the eyes of Europe. Without them, you would be like the rest of the continent, you would bear no characteristic sign: mark well the importance of this, it is the peculiar features of your ancient democracies which make you appear unlike any of the modern States, and which, thereby, preclude the idea of confounding and incorporating you with the neighboring countries. I know that the system of those little republics has its inconveniences, that it does not, perhaps, stand the test of reason; but, after all, it has been established for centuries; it has originated in the nature of the country, the climate, the wants, the primitive habits of the people: it suits the peculiarities of the soil, and we must not pretend to be right in spite of necessity.

"The institutions of the little cantons may be unreasonable, but they are established by long and still popular customs."

That is, what I submit here, to the friends of the district system. They still "pretend to be right in spite of necessity."

I will venture, too, to read an extract from a work upon the Constitution of Holland, by Davies, which, I suppose, is good authority. He says:—

"The Constitution of Holland is particularly worthy of observation, as carrying out to an extent greater than that of any other nation, the system of municipal government: a system, which, whatever its defects, contributes, perhaps, more than any modification of civil polity with which we are hitherto acquainted, to promote the civilization, happiness and freedom of society; and which, although it may be better adapted to the wants of a rising, than to the habits of a long established community, has yet been found so beneficial to mankind in every variety of climate and situation, and to accommodate itself so admirably to people of totally opposite religions, laws, morals and manners, that the rulers of every country would do well to pause long, and consider carefully, before they abandon it."

He further says:—

"The municipal system of government, which for so many centuries prevailed in the United Provinces, has been remarked upon as tending to disunion, since attaching its subjects primarily to their own town or province, it caused them sometimes to overlook, in their anxiety for its interest, the interest of the whole. But in circumstances where all were bound together by one strong tie, where the same powerful impulse directed the movement of all in unison, it went far towards rendering them invincible. Accustomed to self-government, the burghers depended in nothing upon the direction or influence of a central power, but adopted upon their own authority and their own responsibility such measures as the exigencies of the case required."

Another advantage of the proposed system, in contradistinction to the district system, is that it distributes the political power of the State among all classes and interests of society. The question before us to-day is not, to be sure, between the district system and the system which has been reported to us from the Committee of the Whole, for the Convention has already decided by a large vote that it will not adopt the former. But the question is between the system reported to us from the Committee of the Whole and that now in existence. This is the only practical question. Now, Sir, by the system in existence, in 1870 more than two hundred towns of this Commonwealth will have only a fractional representation. I do not pretend that by the system we propose, each part of the country will have an exact distribu-

tion of political power in proportion to its population; and the country may even have a larger representation than the cities; but I will suggest whether it may not be well to temper the vivacity and energy of the cities with the slowness or dullness, even, if you will, of country life?

Something has been said, by way of refutation of the statement, that there is a tendency to a centralization or aggregation of power in particular localities. Some gentlemen have imagined that the comparative increase of the cities from 1850 to 1860 would not be so great as from 1840 to 1850. Hence, they infer that there is less reason to preserve municipal representation, and assert at the same time that the attachment of the people to it is diminished.

I feel, that this doctrine of municipal representation is not weaker than it was twenty-five years since; and even, that the time is not far distant when some of the new States may adopt it, for it is in the very nature of American society and civilization that municipal institutions should spring up. Of course, in the new States, which have a large extent of territory and only a very scanty population, it was not possible to establish municipal institutions and base representation upon them, and hence we have, in some of them, representation by single counties, and in others representation by an aggregation of counties. After all, an analysis of every system of representation in this country will exhibit great inequalities, whether you regard population or voters, and while I have showed by the process which I have taken, and which, I believe, to be a just one, that there is a variation of but little more than two per centum with us, it will happen that in many of the States of this Union which are looked to for a precedent which we are to follow, the inequality is much greater. I venture to instance the State of Tennessee, to whose constitution I have given some attention. But to come back to the idea I had in my mind, that there is a tendency to aggregation and population in the cities which is likely to continue for a considerable period of time. The city of Worcester is before me at this moment, and her population since 1850 has gone up from a little less than 16,000 to 21,000, showing that there is to be an increase of population there quite equal to any which has taken place in this Commonwealth. Nor do I despair even of the city of Boston. Some gentlemen thought the other day, that Boston was about full with her population of 138,000. I have a word to say in reference to the capacity of Boston. She has three square miles and four hundred and eighty acres, not including certain public lands of which gentlemen who have had seats in the legislature may know something. She has upon one square mile 99,000 inhabitants. The city of London has about 140,000 to the square mile. Gentlemen who are good in mathematics—and I commend the problem to my friends who have been engaged in calculations upon the district system—will find that Boston has capacity enough to accommodate over half a million of people. Massachusetts has about 125 inhabitants to the square mile. The fact whether Massachusetts is to increase rapidly or not, depends upon certain influences. One of these is the demand for her manufactured articles. Political economy is not with me a favorite science, but I understand that where there is a demand for an article existing in one part of the world, and the ability to supply it in another,

manufactures and commerce follow as a matter in course. Now, in the last five years, or eight, at the farthest, we have had opened to the view of the commercial and political world the Eastern hemisphere, with its four or five hundred millions of people. They have just now been invited to accept the products of the manufacturing industry of this country. They accept those products, and no man can estimate the demand which will be thus created; and, I venture to say, that the capacity of the machinery of this country is not equal to it; and even the slave-labor of the south may be inadequate to produce the necessary supply of cotton. Where is this demand so likely to be met as in Massachusetts? Industry, commerce and wealth revolve around a centre, and that centre is intelligence, because intelligence is necessary to the production of machinery, and machinery is necessary for the production of manufactured goods. At this moment not one-tenth part of the labor of the world is manual labor. It is the intellect producing machinery that enables this age of the world to meet the wants and the demand of civilization. Such is the demand that exists for the products of industry, that human hands, without the intellect which produces machinery, would be totally inadequate for the supply. Massachusetts, then, we take to be the central point, intellectually, around which the manufacturing industry, the commercial power and wealth of the world are soon to revolve, and, therefore, there will be a demand for labor in Massachusetts in the next decennial period such as has not been experienced here or anywhere else.

Here the hammer fell. (Cries of "Go on! go on!")

THE CHAIRMAN. If there is no objection, the gentleman for Berlin will be allowed to proceed.

MR. BOUTWELL, (resuming). From whence can come the supply of labor to meet this demand? Although this is something of a deviation from the strict line of argument which I had intended to pursue, I think it bears upon the point. One cause that operated to force laborers from Ireland to this country has ceased to exist; but the social influence which is so strong in that race, is yet a powerful inducement with them to come to this comparatively sterile land. Germany at this moment takes the lead of Ireland in sending her industrious population here. But it is not to Ireland and Germany that we must look for the industrial population that will supply this demand; but, to a part of the world with which we have had but little intercourse in the past. I refer to China; and shall ask the indulgence of the Convention while I read a letter which I have received from a representative of that country, who has been in America six or seven years, and is now a resident at New Haven. I read it because I think it is calculated to throw some light upon the question of the population of Massachusetts, which is, after all, an element in the consideration of this subject.

"YALE COLLEGE, NEW HAVEN, }
June 30th, 1853.

"Your first inquiry is: 'The probable emigration from China to this country.' For my part I consider Chinese emigration to the western part of this great continent to be not only a probable thing, but also a moral certainty. In the first place the increase of commerce and the rapidity of commercial intercourse between this government and China are alone sufficient, (if there are

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no other causes at work,) to draw the Chinese out of their everlasting confinement, and plant them on American soil. What commerce has done in other places, respecting Chinese emigration, commerce will (and has already) accomplished in relation to Chinese emigration to this country. There are thousands of Chinese in India, resident merchants in the principal cities of that country. In the East Indian Archipelago the inhabitants are nearly half Chinese. Even in the Island of St. Helena, there are about twenty-five Chinese residents. The Chinese in California numbered 22,000 four months ago. The whole of this number may not be permanent residents, but that there are many who have adopted California as their country cannot be denied, for I am personally acquainted with a few. We see, then, that emigration from China to this country is an unavoidable thing—a legitimate result of commerce.

"In the next place, Chinese emigration will increase in proportion as the Chinese become acquainted with the American people, with the free institutions of this country, and with the nature and extent of the vast territory that is waiting to be peopled and possessed. I do not believe that one out of a thousand has any idea where America is, much less of the extent and nature of its territory. Let them hear of America, let them know that there is a land of promise across the Pacific, and they will flock over here by thousands and millions.

"In the third place, emigration into this country is a matter of absolute necessity, for China proper is too narrow a space to hold and support 370,000,000 of inhabitants. There are in China proper 800,829,100 English acres. The quantity in cultivation is about 141,119,347 acres, which gives us nearly three persons to an acre. How long can one acre support three persons is another point, which it is not difficult to decide. In addition to this fact, an oppressive government, and the troubles of the time will drive millions of the Chinese to this side of the Pacific.

"Your second inquiry, viz.: 'The value of labor as compared with its value here,' naturally furnishes me a fourth reason why I believe that Chinese emigration into this country is a moral certainty. The wages of labor of the lowest description in Canton and in other provinces, are as follows: sixty cash per day and food. Even forty in the north, during bad times. (Twelve cash is equal to a cent.) In other cases, eighty to ninety, even as far as four hundred cash, which is considered very high, and given to men who are well versed in their profession. Earnings of weavers of cotton or silk, in Canton and in the northern provinces, are, on an average, two to three dollars per month, one person. Wages of artisans, such as carpenters, blacksmiths, &c., in Canton and other provinces, average five dollars per month. Cost of maintaining a laborer, his wife and three children, in accordance with his wages—lowest, three dollars per month. Now, when we compare the value of labor there with the value of labor here, what great inducement can there be to make the most enterprising laborers remain at home, and not migrate to this country? Let the value of wages be made known to them, and in the course of ten years your Pacific shore will be crowded with those industrious and patient orientals, and nothing but brute force will keep them from landing.

"As to the character of the laborers, which is the third point of your inquiry, I need not say much. But I am confident that they are inferior to no people in industry and patience, and are ready to compete with any class of laborers, from the lowest to the highest. We have farmers who cultivate the most barren soil, and may be seen perched on rocks that would not, apparently, yield a blade of grass, yet from those mountains and rocks, by labor and attention, they extract three crops annually. We have scholars who could boast of greater application than any student in Germany or in England. I do not wish to extol, or exaggerate matters. I speak straight on, and say what I do know. No one, who is

at all acquainted with China, would say anything less than what I have written to you. I trust I have given you what you in some measure expected, and I sincerely hope that with these scanty facts and information you will contribute to bring the American public to a closer association with near four hundred millions of the human family.

YUNG WING."

Let me say, that these people have already touched the eastern shore of the American continent, and are destined to work out a greater revolution, social, industrial, and I do not know but political, on this continent, than has ever yet taken place. And it may be the providence of God, that by and through this exodus of the Chinese, the institution of slavery will cease to exist upon the American continent. Beyond this matter of the probable population of Massachusetts, I care not to go. If gentlemen may, to some extent, upon these facts come to the conclusion, that we ought to adopt the district system, they bring me to no such result. I state, however, what I believe to be facts, without regard to the inferences which others may draw from them.

There is another consideration which will operate more and more to stimulate emigration from other countries to this, and especially to Massachusetts. It is the spirit of revolution, all over Europe, and in China, the necessary result of which is, to give to men a taste for freedom, at the same time, that it places them in such a position that it is difficult to remain at home. And it is in America that

"The free spirit of mankind at length
Throws its last fetters off."

I have also an economical suggestion to make to the members of the Convention in regard to this question. To set aside the doctrine of equality, for a moment, a reduction of the House of Representatives to three hundred, as some gentlemen would have it, or three hundred and sixty as others suggest, would be, in my judgment, a totally insignificant result, when compared with the sacrifices we make to attain it. What is the difference in the expense between having four hundred men upon the floor of the House of Representatives, or three hundred and sixty? Unless the legislature of 1854—as I trust they will not—give themselves and their successors more than two dollars a day, the pay of forty members would not be over sixteen thousand dollars a year. Would any gentleman sacrifice the municipal institutions of Massachusetts, and change entirely the character of its government, in consideration of saving fifteen or twenty thousand dollars per annum? And must not every man be satisfied in his own mind, when he shall vote for the proposition for a House of three hundred, or three hundred and twenty men under the district system, that they will appropriate, one way or the other, more money from the public treasury, than it would cost to pay eighty additional members? I have another argument to suggest upon this question of reducing the House of Representatives. It is this: under the influence of a strong moral sentiment that exists in this country and the world, aided by commercial and political considerations, the system of indirect taxation must finally break down. No institution can resist the operation of commercial law. I do not mean such law as you put upon your

statute book, but that law which induces the merchant to venture his property upon the deep. There seems to be an increasing feeling, not only in this country, but all over the world, to abolish the system of indirect taxation, and that is the complexion to which things will come at last. The system of indirect taxation is to be abolished, because there is a moral sentiment in the country, that demands it, and the principles and spirit of free trade in this Commonwealth, and the world will demand the reduction or abolition of duties on the importation of goods. It may be strange in me to venture such a prediction, and I care not about having the reputation of a prophet in these days—but, I predict, that Boston itself, will be a free trade city within the next decennial period. And why? Because her merchants will see if custom-houses and tariffs do not actually prohibit commerce, they at least, check its expansion. And coöperating with them will be found in this movement the men who are called fanatics. And why? Because they will see, that by the abolition of indirect taxation, the despotisms of the world will be broken down. Whenever despots are obliged to demand directly of the people payment for the expenses they have incurred, they will also find themselves unable to meet the demands, and the consequence will be, that bankers and men having money, will lose faith in their governments.

That would be a happy result, as regards some nations and people. The influence of this idea may, and it is likely to, affect the policy of the State. Then, when your system of direct taxation comes, you want an economical element in the government. I do not mean to say, that a body of three hundred men would not be as economical as one of four hundred, but I have my doubts about it; because men in the rural districts, the laboring population of the State, will have somewhat different ideas of expenditures from those of the men who reside in the city. I make no complaint of it, but that is the fact, and it is within the knowledge and observation of every-body.

I said I would make a remark, in regard to the sentiment quoted by the honorable member for Marshfield, as the language of some cardinal, who asserted that any assembly of more than one hundred men was a mob. The gentleman did not say that he assented to that doctrine, but I suppose he would not have quoted it unless he thought it to be of some value. I cannot agree to that proposition; for if so, then the British House of Commons, consisting of six hundred and fifty-five men, must be a mob. The British House of Commons has had, and now has more power, in reference to political and commercial affairs, than any other assembly which ever met. The House of Commons is the only representative body in the British realm. The Lords is an estate existing in their own right, and the members thereof may vote by proxy, which, of course, contains the idea that they are not responsible to the people. The crown is comparatively weak. The House of Commons is then the only representative of the morals, the intelligence and the political power of England. It has charge of the home policy, the resources of the island—its manufactures—its commerce. It has the control, and to some extent the destiny of colonies, on which the rays of the sun forever linger. Its sphere of legislation embraces every clime. Its laws, are

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adapted to its North American possessions—its islands of the West, and its islands and continental conquests of the East Indies. It establishes principles of government, and systems of jurisprudence for the various nations which acknowledge the power of Great Britain.

Now, if any inference is to be drawn as to the capacity of a large or a small House, I think the inference is irresistible, that there is nothing in a large House which disqualifies it for the performance of the most important public duties. Therefore, I have come to an entirely different conclusion from my friend's friend, the cardinal, that all assemblies composed of more than one hundred members are mobs.

I have wandered, it may be, from the subject too far, and I have spoken too long. It is not in my mind to make any further suggestions to the Convention upon this matter. I think the district system is dead here, and in the State. It has had, for seventy years, about as much life as it has now; that is, from the day of the Essex Result to the present moment. The people of Massachusetts have not adopted it, nor at any period of their history have they demanded it. For my part, I am not inclined to thrust it upon them.

Now, the issue is between the existing system of representation and that which has in its general principles and in its details, I trust, received the approbation of this Convention. That is the issue; and to the small towns, containing less than 1560 inhabitants, those which are represented now only in fractions, I ask why they should hesitate to endorse this system. Sir, they cannot hesitate. And why should the towns containing less than 3300 inhabitants, none of which will be entitled under the present system, to more than a fractional representation in 1870, hesitate to vote for a measure which will preserve their municipal rights?

For as these small towns sink, one by one, beneath the political horizon, they rise not again. And to the friends of an equality of political power, wherever they are, what objection have you to a plan which works no serious injustice to any section of the Commonwealth, is substantially equal as to city and country, and above all, preserves, to so great an extent, our ancient and valued system of town representation?

If this measure shall be adopted by the Convention, and the people, I trust that our friends, nay, our enemies, even, in this city, will at least accord to us the credit of not having sought to destroy or unjustly diminish their political power in the government of Massachusetts.

And to the cities, where men of one party and another have labored long and well to throw off the pernicious general ticket system, which of you will refuse a measure fraught with the highest political benefits and blessings? And to all of us, why should we abandon our system of government, when the history of the world, and the reason of the age are full of testimonials in favor of municipal institutions? It may—I cannot say—it may turn out as gentlemen predict—that the right of representation is not an element of political health; but it may turn out otherwise. If we are to fall into error, the guilt shall not be great, when tradition, history, usage, and reason, are on our side.

Mr. President, I feel, that, having spoken an hour on a former occasion, and something beyond that time on this, I ought to apologize to

the Convention. But it only remains for me to do, in conclusion, what I feel is altogether inadequate—thank gentlemen for the attention which they have given me, and assure them that I will not, except by way of detail, trouble them again.

Mr. HALE, of Boston. I do not rise for the purpose of entering into any discussion upon this question. I should not attempt to do it at this time, if I felt more competent to do it than I do. It is a sufficient objection to my attempting to address this House, that it is impossible for me to make my voice heard by a great part of the members. It is for that reason, that I have forborne to attempt to present some reasons, which I have been desirous to present to the House. But, I rise at this time for the purpose of moving a proposition, which has been very much discussed in this House, but, upon which, no question has been taken—a proposition of districting the State in a form, in which, I believe, it would receive the general support of those who are in favor of such a system. There has been a question taken upon one or two propositions, which were called propositions for districting the State, but they were not defined in their character, and they did not accomplish the purpose, and do not propose to accomplish the main purposes which are designed by the friends of that system. I allude more particularly to the insufficiency of the propositions, which have been made in attempting a reduction of the number of the members of the House. The inconvenient size of the House of Representatives in this Commonwealth has been for many years a serious evil, of which, the people of the Commonwealth are fully sensible, and at this time, I believe, they are prepared to take measures for reducing it; and they are disposed, I believe, to do it by a system of equality, and not by curtailing the rights of a portion of the Commonwealth, for the purpose of giving a representation to every part by municipal elections.

I wish to present the proposition, which I had the honor of submitting here at the commencement of this debate, at the request of a large minority of this select Committee. That proposition was discussed in Committee of the Whole, but has not been submitted in Convention. I will ask, that the proposition, which I now submit, may be read by the Clerk. I wish to remark, that there is a blank in it which I do not propose to fill up at the present time, and I merely submit the proposition to show the form, in which, I propose to carry out that, which was submitted, in general terms, in Committee of the Whole.

The resolution was read by the Clerk, as follows:—

Resolved, That it is expedient so to alter and amend the Constitution, as to provide for a periodical division of the Commonwealth into equal districts on the basis of population, with a view to the establishment of a House of Representatives on the principle of equality, and consisting of such a number of members as may be best entitled to the confidence of the people, and best adapted to the convenient disposition of the legislative business. In order thereto, a census of the inhabitants of each city and town, on the first day of May, in 18—, and on the first day of May in every tenth year thereafter, shall be taken and returned to the office of the secretary of the Commonwealth, on or before the last day of June next ensuing the dates aforesaid. And it shall be the duty of the general court, which shall be next chosen after the taking of each decennial census, to divide the towns and cities of the Com-

monwealth into eighty districts, in such manner, that each shall contain, as nearly as may be, an equal number of inhabitants; and they shall, in all cases where the same shall be practicable, be formed by the union of towns and cities adjoining one another; and, in the formation of such districts, no town shall be divided. But the cities, when containing a greater number of inhabitants than the average of the districts throughout the Commonwealth, shall be so divided, that each district shall, as nearly as may be, contain that number, and any part of the inhabitants exceeding the number required for the entire districts therein, shall be set off to form a part of such adjoining district as the general court shall direct. The division of cities into districts shall be formed, and the inhabitants, who may be set off to an adjoining district shall be organized for the purpose of conducting the elections therein, by the municipal authorities of the respective cities, in the same manner as the wards for city purposes are constituted therein. And the inhabitants of each district shall elect three representatives constituting a house of two hundred and forty members.

Mr. HALE. When I drew up that proposition, my intention was to fill the blank with the year 1855, with a view of submitting a specific plan of districting the Commonwealth; but, not having succeeded in obtaining an opportunity to present this at an earlier date, I conceive it too late to present that proposition at this time, and, therefore, I withdraw the second part of the proposition and fill the blank with the year 1854, so that the proposed census may be taken in May next.

The reason, Mr. President, why I wish to have a particular vote taken on this proposition, is, to prevent it from being misunderstood by the people of the Commonwealth, who have desired that the House should be diminished. I do not conceive that a reduction of the House to three hundred and twenty, or three hundred and sixty members, as has been proposed here, would be in any degree meeting the objects which those who wish the House reduced, desire to attain. A reduction to two hundred and forty members, I conceive to be the highest number for the House that any friend of the district system would sustain, and a proposition for a larger number than that, I think, would not be likely to be satisfactory to the people of the Commonwealth, as one, which should reduce the House to such dimensions as would admit of convenient debate in the House.

I do not wish to forestall debate upon this subject, but, I will allude to one fact, which, as I conceive, affords conclusive proof of the unsuitableness of a House of Representatives consisting of four hundred members, for the purpose of ordinary debate, and the transaction of public business. It must be apparent to every member of this House, that a very large portion of what has been said here, during the session of this Convention, has been totally inaudible to a great part of the members of this body. It is not possible to arrange an assembly of four hundred members within a legislative hall, giving tolerably comfortable accommodations to all the members, in such a manner, that they shall all be within the reach of a single voice; and, it appears to me to be unworthy of this Commonwealth, to continue to sustain a House of so large dimensions as the House of Representatives has been, for the mere reason, that they are unwilling to resort to a system of equal districts, for the purpose of making a reduction. I am unwilling, therefore, that

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this Convention should adjourn without its being distinctly proposed to the members, to record their votes upon a proposition such as the friends of the district system would be prepared to sustain, without having it supposed that the friends of this measure were in favor of so large a House. I do not conceive, that the strongest argument in favor of the district system, is based upon that fact. I consider that very important, but there are others which are even more conclusive, and which have been so fully stated by members of the Convention, that I have no disposition, at the present time, to recapitulate those arguments. I will now merely move, that when the question is taken upon this proposition, it may be taken by yeas and nays.

The yeas and nays were ordered.

Mr. SCHOULER. If the Convention had not voted, that no question should be taken upon this subject, until to-morrow at eleven o'clock, and, therefore, precluded the probability of taking the question to-night, I should not again have intruded upon them with any remarks on this matter. After my proposition was voted down so very unanimously, I did make a vow that I would not speak upon this subject again; I thought it was too bad, but, at the same time, I knew that I was right; and, Sir, I believe, that the people of this Commonwealth, if they shall have an opportunity to express their sentiments upon this proposition, will also, say, that it was right. I was very glad this morning, when the honorable gentleman from Taunton, (Mr. Morton,) made a proposition, which was somewhat discussed in our Committee that reported the original resolution, and which, I believe, was assented to by nearly every one of them—if there was any way by which we could put the alternative proposition to the people, whether they would have town representation, such as is contemplated by the resolution now before us, or a district system such as some of us advocate, that would be satisfactory. I think there is a way, Mr. President; I think there is no difficulty about it. I think there is a way, by which we can present the two propositions to the people, and if they vote down the district system, I shall say "amen" to it for the present. I shall think that they were wrong, notwithstanding; but, I shall submit to it. If, on the other hand, they shall adopt the district system, then I presume, that the gentleman who represents Berlin, and all the rest of our friends who are now in favor of town representation, will become advocates of the district system. Sir, the gentleman for Berlin said that the district system was dead. I felt grieved to think, that that old and favorite proposition of mine should be dead; and, I suppose it is incumbent upon me, at least, to say a word, either in the way of eulogy or obituary, as we should write a notice of a departed friend for the newspapers. But, I am very much inclined to doubt whether it is dead, after all. I believe that there is vitality in it yet. It may show no signs of life here, but it can never cease to live, because it is just and proper.

Now, Mr. President, I was very much delighted this morning, with the speech which was made by the gentleman who represents Marshfield, (Mr. Sumner,) and particularly was I delighted with that part of it which was made just before the hammer came down. The rest of it was beautiful and eloquent; I liked to sit and

listen to it; but, Sir, it made me, from that moment, advocate the one-hour rule. [Laughter.] My opinion is, that a man can say all the good things that are necessary to be said, in one hour. [Renewed laughter.] I had heard it intimated how my friend for Marshfield might come out; but, when I sat listening to his speech, I could not see how he would come out. He did it, however, and did it well. I had considered that gentleman to be one who advocated principle—principle without compromise, and without any regard to the consequences. I like that kind of men. Sometimes I have found it not to be quite expedient to come up to that standard; but still the principle is good, and I like it, and I did feel somewhat disappointed, after hearing my friend lay down those beautiful premises, and quote from those old and glorious records which the gentleman for Wilbraham had not seen,—or at any rate, if he had seen them, he did not quote them, and they were better than all that he did quote. I must say, that I never knew that they were in existence until they were read here this morning, and when I found that I did have some revolutionary ground to stand upon, I felt fortified, and said to myself, "I will speak again"! [Laughter.] Now, Sir, those grounds are true; and, as I happened at the time, to be sitting very near the gentleman for Wilbraham, I heard what he said in a whisper, and I would not now repeat what was said in that way, but that I understand it was heard across the house, and, therefore, cannot be very secret. When he asked who was the author of that document, the honorable gentleman for Marshfield replied, "Theophilus Parsons;" and the gentleman for Wilbraham said "Yes! John Lowell and Theophilus Parsons, those old Tories, and that is regular tory doctrine"! Then, I said to myself, if that is tory doctrine, I am a tory; if acknowledging the complete and perfect equality of man is tory doctrine, then, Sir, I am a tory. But, Mr. President, I never knew before that it was tory doctrine to advocate a principle of that kind. I have heard it said, and I have found it in the course of my reading, that those who advocated, that people in the country and corporate communities were to have power in the House of Commons, merely, because they were in the country, and merely, because they were corporations, throwing aside the people—these were Tories, and that was tory doctrine; while those who advocated the representation of the people—such men, for instance, as Joseph Hume, Cobden and Bright, were fine Whigs—they were destructives. But, I never in my life heard it said, until this day, and in this Convention of Massachusetts freemen, that those who advocate the complete equality of man, advocate tory doctrine. Recommend to me such tory doctrine as long as I live, say I. But passing from that, for I did not wish, if indeed I had been able, to break the spell of that eloquent and learned speech which we heard this morning, although I do not agree with the latter part of it, still I do thank the gentleman for the first part of it, and I am happy to have it go upon the records of our Convention, and to have it stand there as a beautiful commentary upon the institutions of Massachusetts.

The gentleman for Berlin has got a theory which deserves some notice; but when we begin to base our popular branch of the government upon close calculations, I begin to doubt. The

starting point of his theory, is, that one senator is worth ten representatives—that there is just as much political power in my hand if I sit in one of those cushioned seats in the other end of this capitol, as there is in the hands of ten men who sit upon these green cushions in this fine and beautiful hall. Now, Sir, this may be so, but I confess, that I cannot understand it. I never knew a measure that was carried in the Senate by one majority, but was just carried and that was all. I never knew a measure that was carried in the House by one majority, but that it was just the same. There may be some foundation for his theory, but I must say, that I do not know where it is. I recollect that after a great many hard struggles we did elect a senator to congress in this House by one majority, while they had elected him in the Senate by a dozen majority, two months before; but that dozen majority in the Senate, was not enough to send him to congress, and so we kept voting and voting until we had got one majority in the House of Representatives. Now, my judgment is, and I say it with all due respect to the honorable gentleman for Berlin, that he has founded his argument upon a fallacy. Three men cannot be rolled into one, to say nothing of ten. There is no man who has or can have ten votes; and little did I think when I was advocating that proposition brought forward by the gentleman from Natick, whereby we base the Senate upon population, that I was thereby robbing my constituents of the right to a fair representation in the House of Representatives. I venture to say that the gentleman from Natick never supposed any such thing; for if such a proposition had been broached, I doubt whether it would have passed. I am willing to make a further proposition to the gentleman for Berlin; and that is, that if he will agree to give Boston ten representatives we will give up one of our senators. We will give up all claim to more than five senators for the county of Suffolk, if he will give us ten additional representatives. I think, according to his theory, he cannot say, that this is not a fair proposition. I cannot say, that we would give up the whole six senators, if he will give us sixty representatives; but, I would agree to it for one, and I should think that I was making a very good bargain for this city by so doing. That would be centralization carried to a little farther extent than anybody here has proposed to go. I consider this a fallacy, and, therefore, I think it is not entitled to so much consideration as the general propositions are which come from that source. The gentleman throughout his argument, as I understood him, took the ground, that these little municipalities were going to be destroyed by the introduction of this system. This point has been argued over and over again in this House, to show, that it will have no such effect—that these little municipalities will stand exactly where they always have stood. A constable will go around fourteen days before the town meeting to warn the people, and all the usual regulations will be gone through; they will elect their moderators, town clerks, selectmen, school committees and all their town officers, just the same as they do now. They would choose their representatives in just the same way that they vote for a senator who does not live in their town. As I once said before, the gentleman who represents Berlin does not live in that town; and a repre-

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sentative could be elected in just the same way that a gentleman who lives in Groton was elected to represent the town of Berlin. They knew that they were electing a man who did not live in their own municipality, but they did not suppose that they were cutting off that municipality from any of the rights which they claim, or to which they supposed themselves entitled. I, therefore, am of the opinion, that this argument is not entitled to any great weight in our minds. Now, I think, that if we adopt the principle, that no new town shall be incorporated hereafter unless it has fifteen hundred inhabitants, we restrict their right to form themselves into municipalities. It seems to me, that when we come to look at the improvements which are going forward every year, in the building of our railroads and the formation of new villages throughout the various sections of this Commonwealth, we ought to allow those villages which have diverse interests from the main body of the town, and which are, perhaps, separated to a great distance from the other portions, to assert their right to an individual corporate capacity, in the management of their own affairs. In the legislature for the last three or four years, there have been two standing committees on towns, in order to attend to all these applications from new towns that desired to be incorporated; and in a great number of cases, these applications have grown out of the extent of railroads, which have formed new villages. Now, in such cases, which will continue to present themselves, I think they should be allowed to form a new municipality, whether they have fifteen hundred inhabitants in them or not.

Mr. FRENCH. I have listened to the speeches in this Convention, on this question of representation, with a good deal of pleasure, and at a certain time should have been glad if I had had an opportunity of answering some of the matters presented, particularly the remarks of the gentleman from Boston on the other side, who made a long speech.

In the course of this debate, there has been a comparison made between the country and the city in relation to their morality. I ask gentlemen where all the great moral reforms have sprung from, and I hope they will let history answer. Have they sprung from the towns or the cities—the little municipalities or the large manufacturing and commercial districts?

I believe it to be right and proper that these little municipalities should be represented in the legislature, for to my thinking they are the real conservative power of the State. It has been said, that these little republics were inimical to the city of Boston. Is that so? Far from it. When the tocsin of war has been sounded and the far-famed city of Boston has been threatened with invasion, who came to the rescue? Was it not those sturdy fellows who live in our valleys and on the sides of our green hills. I ask gentlemen who are in this Convention, to answer me that. The interests of Boston and the interests of the country are one and inseparable, and when I have been far from these hills I have felt a thrill of pride in being able to say, not that I was a citizen of Rome, but a citizen of Massachusetts, and that the ancient city of Boston was the metropolis of the State.

The gentleman who has recently taken his seat has told us that if we had free trade and manufacturing carried on, there would be no danger to the State. I am in favor of free trade and of

direct taxation, so that the people may know what they have to pay.

If we had direct, instead of indirect, taxation, three-fifths of us would have to pay some taxes for privileges which we do not now pay a cent for. But, Sir, there is a vast tax paid indirectly and out of sight, which, if the people could see it put upon the articles they purchased, would astonish them, and yet they pay it indirectly, and without finding any fault at all.

The gentleman across the way discoursed long and musically upon old women and school-house bells, and said that Boston did not have her share of representation. He talked of liberty and equality. Now, there is not a word in the English language that admits of more definitions than the word *liberty*. An inebriate, when he is prevented from getting intoxicated, thinks he is deprived of all the liberty he ever possessed. The Russian peasantry, when the Czar Peter ordered their beards to be cut off, thought they had lost all the liberty they ever had—for they considered liberty as consisting in the privilege of wearing long beards. So we might go on enumerating a thousand things in which some people think liberty consists. So these small towns think liberty consists, in some degree, in being represented. Though I do not think the bill before us, will give these small towns that representation which they merit and ought to have, still, it is the best that we can get at present, and which the Convention seems willing to let us have, and, therefore, I shall vote for the proposition.

Mr. HALLETT, for Wilbraham. I propose to amend the second paragraph. There was, as I understand, an amendment introduced this morning by the gentleman from Middleborough, (Mr. Wood,) respecting the second paragraph, and which so materially changed it, that I think it must have escaped the attention of the Convention.

The amendment offered by the gentleman from Middleborough, (Mr. Wood,) and which was adopted this morning, reads as follows:—

Any two of such towns may, by a vote of a major part of the legal voters of each, at legal meetings thereof, and held at some time preceding the first election which shall take place under this amendment to the Constitution, and, thereafter, at legal meetings held at some time preceding the first election, which shall take place next after such decennial State census, unite together in a district, which shall be entitled to a representative each year, and which shall continue until the next decennial census, excepting the year in which the valuation of estates is settled.

The amendment which I propose, if adopted, will make it read as follows:—

Any two of such towns may, by a vote of a major part of the legal voters of each, at legal meetings thereof, called for that purpose, unite together in a district, which shall be entitled to a representative each year, and which shall continue at least for two years, excepting the year in which the valuation of estates is settled.

The PRESIDENT, *pro tem*. The Chair understands that the amendment to which the gentleman refers, has been adopted, and, that being the case, no amendment can now be made to that amendment, without first reconsidering the vote by which it was adopted.

Mr. HALLETT. I supposed that a motion to reconsider, was not in order at this stage of the

proceedings, because, there is an amendment pending.

The PRESIDENT, *pro tem*. The Chair apprehends that it would be in order. The motion of the gentleman from Boston, (Mr. Hale,) which is now pending, is offered as a substitute for the resolve under consideration, and is an entire new resolve. The Chair is of opinion, that a motion to reconsider may be made.

Mr. HALLETT. Then I move to reconsider the vote by which the proposition of the gentleman from Middleborough, (Mr. Wood,) was adopted.

Mr. BRIGGS, of Pittsfield. Can a motion to reconsider be in order pending a discussion upon another amendment to the bill. It seems to me it cannot be made at this stage, though it may be at some other.

The PRESIDENT, *pro tem*. The amendment of the gentleman from Boston is a substitute for the resolves now before the Convention, and has passed to a second reading. The Chair believes it to be in order to amend and perfect the resolves before the Convention, before action shall be taken upon the substitute. An amendment to the resolves has been adopted, and a motion is now made to reconsider the vote by which that amendment was adopted.

Mr. HALLETT. This very question has been decided before, that where a substitute has been offered, and it is moved to amend the subject matter under consideration, it was then in order, first to perfect the bill before the Convention. That is what we have now in hand. The proposition made by the gentleman from Boston is the seventh proposition upon the subject of the district system. It has been voted down six times, and probably will be again. The question is, whether we are to be permitted to perfect our own bill, or whether any gentleman who happens to get the floor can, by offering a proposition, prevent us from doing it.

Mr. KINSMAN, of Newburyport. I desire to understand the precise nature of the question. I supposed that, by the rules adopted by this Convention, while an amendment was pending, no proposition could be offered except to amend that amendment. The gentleman representing Wilbraham first proposed an amendment to an amendment, but being told that it was not in order, he moves to reconsider the vote by which the amendment was adopted, for the purpose of introducing his amendment. I should like to know whether, in the opinion of the Chair, under these circumstances, such a motion is in order?

Mr. EARLE. If I understand the matter, the rule is a little broader than was stated by the gentleman from Newburyport, (Mr. Kinsman). It has been the practice in the legislature, I am certain,—and I think cases have occurred in the Convention, though I cannot refer to them at this time—that where an amendment is offered which is substantially a substitute for the whole proposition under consideration, an amendment is in order, to either the original proposition, or to the amendment, on the ground that, you have the right to perfect a bill before you shall be obliged to choose between the two.

The PRESIDENT, *pro tem*. The question before the Convention is the motion of the gentleman from Wilbraham, to reconsider the vote by which the amendment of the gentleman from Middleborough was adopted, for the purpose of

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introducing an amendment. The Chair believes, that it is in order to perfect the resolves, before the Convention can be called to act upon the substitute, and, that the motion to reconsider, is in order at this time.

Mr. HALLETT. I desire that the Convention should understand what my purpose is in moving a reconsideration. The original report provided, that any two of such towns, (that is, towns of less than one thousand inhabitants,) may, by a vote of the major part of the legal voters of each, at legal meetings thereof, unite together in a district which shall be entitled to a representative each year, and which shall continue for a period of not less than five years. I have tried to get the floor to give notice, that I should move to strike out the word "five" and insert as a substitute the word "two," in order to enable towns that are in this condition, that is, having less than one thousand inhabitants, to act together at any time, in forming a district which shall be entitled to a representative every year. I considered that a very important matter to be brought about if we could do it. The proposition, as it stood in the original report, if amended by substituting "two" for "five" years would present inducements and facilities to the small towns, that might result in bringing many of them together into districts, and that would tend to relieve us of the embarrassment, which grows out of the existence of so large a number of small towns.

A decided practical objection to the existing Constitution, in regard to the union of small towns, which has prevented its being adopted, is, that the towns must take steps to carry it into effect, at the beginning of the decennial period, and, if they do not do it then, they cannot do it again until the expiration of another ten years. The result has been that the small towns have not united at all. The original proposition from the Committee authorized it to be done within five years. That is one-half better, but it would be still better to allow it to be done every two years.

But, the proposition of the gentleman from Middleborough, (Mr. Wood,) entirely changes the whole character of that provision and turns the small towns all out of doors, and in fact renders it impossible for them to unite in districts, and, I am sorry to see that the small towns allowed it to pass, to their disadvantage, as they did the amendment to the Constitution in 1835-6. Allow me to say, in this connection, that if the small towns will not stand by themselves, I do not know how we can stand by them. I mean to stand by them as long as I can, and there are abler men than myself, here, who, like Moses of old, are ready to hold up their hands in their behalf; but, if they will not sustain them, they will become powerless, and their hands will fall.

The amendment as it has been adopted provides, that there must be a preceding meeting of the inhabitants of two towns before they choose a representative—and if they do not unite at that time, they are deprived of the opportunity of doing it for the next ten years. The result will be that, they cannot unite at all.

My proposition so far amends the other, as to say, that the towns may unite at any legal meeting called for that purpose. All that is necessary, is, that the warrant shall set forth that the meeting is called for the purpose of saying, whether the towns will unite together and form one represen-

tative district. I think they should have the opportunity of doing that every two years. I would have it every year if we could, but two years is as often as we can do it, for the reason that, if two towns unite for one year to choose a representative, and then separate, the representative being an inhabitant of one of the towns, the operation would be unequal, because you could not tell which town had lost the representative. But if the connection should continue for two years, then the representative will be chosen from one town one year, and from the other the next, and if the towns do not like the arrangement they will separate and neither have anything to complain of.

Allow me further to say a word in relation to one suggestion of the gentleman for Berlin, (Mr. Boutwell,) which was, as to the operation of the gain or loss upon two or three counties, by this proposed system of representation. I do not want the idea of any disparity to a county to go out, unless it is a correct one, and as I understand it, it is not. If I understood the gentleman correctly, his comparison was with the present basis of representation, and I understood him to say that he was under the apprehension that Essex was losing, that Barnstable was losing, and that Plymouth was losing. Do I understand the gentleman as making that statement as compared with the present system.

Mr. BOUTWELL, for Berlin. Perhaps I did not make myself correctly understood. I mean with a line of equality which would proceed from a basis of voters. That is to say, certain counties are not so well off as they would be if the basis were voters instead of towns; but, I believe with perhaps one exception, they are all better off than they would be under the present system of representation.

Mr. HALLETT. I concur entirely with the gentleman, that there is a compensating gain to Suffolk, and other counties, by putting the basis of the Senate on population, in making these comparisons, and thus Suffolk will gain one senator, under the new system. But, after all, there is very little to be ascertained by making these calculations between towns and a voting basis, because the basis of voting is to be changed by this Constitution. Instead of requiring a property qualification or the payment of a tax, no qualification except that of residence is to be required for the voter, and this will very much change the relative number of voters in the different sections of the Commonwealth, from what it is now, and will make the proportion of voters and of population nearly alike, although it will necessarily tend to the advantage of the cities, and I agree with the gentleman, that under this new arrangement, the large towns and the cities will gain in this respect, much more than the small ones. But, I maintain that every county gains on its present representation, and especially in its future ratio of increase, and there is no inequality that should disturb any of the counties. Thus the gentleman supposed that Essex was losing and that Middlesex was gaining. But, let us test this under the present ratio of representation compared with the new.

Essex has now 447 representatives in ten years. By the new ratio she will have 465; a gain of 18.

Middlesex has now 584, and will have 602, a gain of 18. So that Middlesex and Essex gain

precisely alike, although the former has the most population.

Barnstable now has 133 representatives in ten years, and by the new ratio will have 145, a gain of 12.

Plymouth now has 214, and will secure 230, a gain of 16, and there are her Bridgewater within 32, and Hingham within 38 of another representative, each.

Now, Sir, what is Plymouth complaining of? Why should Plymouth and Barnstable come here complaining that they have not got enough? What is the reason they have not got more? Solely, because they have got no more towns, and you must preserve this town basis, unless you mean to reduce the House solely at the expense of the small towns, and thus take from the small towns, and give the gain to the cities of Boston and Lowell. If Plymouth or Barnstable desire to gain nothing themselves, but to take representation from the rural towns by throwing their representation into Boston, and the cities surrounding it, instead of giving it to Franklin and Berkshire, and the agricultural counties where there are no large towns and cities, they might do it; but, what possible benefit, directly or indirectly, could it be to them? But, Sir, I have no sympathy with that view of the question at all. I would sooner see an entire district system at once.

Let Plymouth compare herself with the whole Commonwealth, and small towns, as a class, with small towns, all having the same interest. She gains now. And so of Bristol. She gains now, and has a gain in anticipation. The county of Bristol has two towns upon which she will gain one each in the next apportionment. Plymouth has but two towns, that will, under any possible ratio, ever exceed one representative, and therefore she could gain nothing by any increase of ratio, which must necessarily cut off the small towns.

This I have said, as far as I may, to do away any local, unfounded jealousies between counties, and to induce the great body of towns having one representative, and which can never have any more, to give their aid to this amendment and to the whole proposition to fix the basis substantially as we now have it.

The result would be that every other year, if my amendment is adopted, the towns can, by coming together, try the experiment, if they should think fit, and when they shall once have tried it, my opinion is, that they will be satisfied with it. At least, they will be very likely to try the experiment if they can have the privilege of divorcing themselves at the end of two years, if they do not like the union; but, if it is to be a ten years' marriage, the probability is, that they will be very cautious how they enter into it.

This is the position we now propose to place the towns in, as to representation. To give to the sixty-four towns, with a population of less than one thousand the right to unite and send, annually, one representative, or to send from each, biennially, if they prefer to act separately; that all over one thousand and up to four thousand shall have the right to choose, each, one representative, annually, and when you go above four thousand inhabitants, you have a progressive ratio of four thousand for an additional representative. That is the principle we stand upon, and that brings us in conformity with all the rules of

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representation in this Commonwealth, that have ever been laid down since the formation of the government, and which have ever met with any favor with the people. That, I say, always has been the rule, without exception, and when the gentleman for Marshfield, (Mr. Sumner,) who spoke this morning, said, that the Constitution of 1778 was rejected, because its basis of representation was not founded upon population, I was entirely surprised, because I do not know where he can find any authority for any such assertion. The Constitution of 1778 was rejected because it came from the legislature and not the people, and because it had no bill of rights, and for some other reasons; but, certainly, not because it provided for corporate representation, because, without such representation for every town, no Constitution ever could or would have been made.

Mr. SUMNER, for Marshfield. I certainly had no intention of saying, that the Constitution of 1778 was rejected solely on account of its basis of representation. I said, it was rejected on that account among others. I said, that was one element of objection.

Mr. HALLETT, for Wilbraham. Can the gentleman find any authority in history, in any newspaper, or by tradition, for any such conclusion? Can he find any authority in all the musty volumes which he has examined to bring out what I call the tory doctrines of the old school of federalists, that will go to show, that the recognition of the principle of town and corporate representation was one of the causes of the rejection of the Constitution of 1778?

Mr. SUMNER. The Essex Result.

Mr. HALLETT. The Essex Result, and that is all. But it is very evident that this was not made a ground of the rejection of that Constitution by the people of the Commonwealth. The Essex Result produced no result upon the people, whatever. If it had, the Constitution of 1780 would have been rejected upon the same ground, for it was liable to the same objection. No, Sir. The views of Lowell and Parsons were utterly repudiated; and the peoples' Constitution of 1780 recognized the right of every town, and was adopted by over two-thirds of the people. I refer the gentleman to Shattuck's History of Concord, to show what was the true cause of the rejection of the proposed Constitution of 1778. It was because it emanated from the legislature of the State, and not from a convention of delegates chosen for that purpose. It emanated from an authority which had no power to frame a Constitution. That is the reason the Constitution of 1778 was rejected. The records of town-meetings of that day, all over the State, will prove this.

The gentleman from Boston, (Mr. Schouler,) seems, also, to be in the dark, as to the original government notions of the old federal party, who feared the people so greatly; and, when he speaks of the "Essex Junto" as having nothing of the tory stamp of politics, he has certainly not derived his information from the right source. He is not old enough to understand it, (laughter); but he will be, one of these days, if he reads history enough, or even newspapers enough, of the olden time. He seems to have read history concerning that Essex Junto backwards, as he did the history of town representation, when he affirmed that, it was not the uniform and universal rule of Massachusetts representation from the foundation of our representative government.

Mr. SCHOULER. A short time ago the gentleman represented himself as Moses, and as Moses was the lawgiver of the Jews, I suppose he is the lawgiver of the Convention, and as such, of course ought to be pretty well posted up in history. Now, Sir, I have read the speeches of the gentleman for Wilbraham, and nearly all of them contain something about the Essex Junto; so that I think I ought to understand it pretty well. But, Sir, I alluded to the fact, that the gentleman for Wilbraham had said, Theophilus Parsons and John Lowell were tories. I said nothing about the Essex Junto.

Mr. HALLETT. The gentleman rose for explanation, but has explained nothing. I did not say, that Judge Parsons and John Lowell were tories, but that the doctrines of government they inculcated were tory doctrines, and so has said the voice of the people of this country, which repudiated those tory doctrines. The gentleman says, he has read my speeches. No, Sir, he has not read my speeches, or he could not have shown himself so ignorant upon this subject of the Essex Junto, and the doctrines of the old federal school of politics in Massachusetts. I spoke historically and truly in reference to this matter, when I said that the documents which the gentleman for Marshfield quoted against town representation as revolutionary authority, were not the doctrines of the Revolution, but tory doctrines; and I use the word "tory" in the sense in which Thomas Jefferson used it, when he said, that at the commencement of the Revolution there were two classes of men in the country, one who believed that there was no safety in trusting the people with the reins of government—men who had derived their notions from the monarchical governments of the old world. On the other hand, he said there was another class of persons who believed that government had been long enough in the hands of kings and aristocracy; that it was time to put it into the hands of the people; and, when that class of persons who feared the people, said, that the people were not fit to govern themselves, the people might well reply: "If the people are not fit to govern themselves, have we then found angels, in the form of kings, to govern us? Let history answer." And we may well point to a good many kings who were and are far from being angels.

I desire to quote in part the precise language of Jefferson, it is so significant concerning the old parties:—

"I know too well," he said, "the weakness and uncertainty of human reason to wonder at its different results. Both of our political parties, at least the honest portion of them, agree conscientiously in the same object—the public good, but they differ essentially in what they deem the means of promoting that good. One side believes it best done by one composition of the governing powers, the other by a different one. One fears most the ignorance of the people. The other, the selfishness of rulers independent of them. Which is right, time and experience will prove. We think one side of this experiment has been long enough tried, and proved not to promote the good of the many, and that the other has not been fairly and sufficiently tried. Our opponents think the reverse. With whichever opinion the body of the nation concurs, that must prevail."

Now, that is the history of toryism and republicanism as it has come down to us, and been

developed in the formation of governments, from Hamilton and Jefferson to the present day.

Such men as Theophilus Parsons and John Lowell—I mean the men taught in their school of politics—declared that Great Britain had the right to search our ships before the war of 1812, and justified the attack of the Leopard on the Chesapeake. The same class of men, at an earlier day in the Revolution, contended that the British government had the right to tax the colonies in North America without their consent. That is the result of toryism as distinguished from republicanism, and, therefore, I have no respect for these "Essex Results" which are brought in here; and when the gentleman for Marshfield (Mr. Sumner,) quoted such authorities, I said, and I must repeat it, that the authorities he quoted from were anti-republican, and ought to have no influence upon this Convention. They were not revolutionary doctrines, but the reverse, and if the gentleman had read one sentence farther, he would have found—

The PRESIDENT, *pro tem.* The Chair must remind the gentleman for Wilbraham that the question is upon the motion to reconsider an amendment which does not open the whole subject for debate.

Mr. HALLETT. Well, Sir, I suppose I am out of order. But I was alluding to this matter as important in this aspect, that it affected the rights of the small towns, and I wanted to show the material of the speech of the gentleman for Marshfield this morning, who very generously gave his argument to his opponents, and very kindly proffered his vote to his friends. I hope, however, they may be neutralized in their effect, and that the argument may have the same fate with the district system, for which it was given.

I will only add, that this amendment is not a mere question of expediency, but that it is a practical question. And there again I want to say—and it is all on that point, I shall say—that I congratulate the delegate for Marshfield, that notwithstanding his own argument, he has come out precisely upon the ground where so many others have come, and where all will have to stand, with reference to this very proposition under consideration. He finds that expediency, established usage, old rights, must govern in this as in many other cases instead of what he regards as exact right; and that, while upon most questions it is a correct theory that principle must never yield to expediency, yet there are cases affecting towns in a State, and States in an united state, where abstract principle must yield to a safe and necessary expediency; and thus he now comes to the wise conclusion to preserve the government of Massachusetts by preserving the representative rights of the towns of the Commonwealth, just as I and others have come to the wise conclusion to preserve the union of these States by preserving the right of every State to manage its own domestic concerns.

Mr. GRISWOLD, for Erving. When this subject was up this morning, my attention was called to another matter in conversation with a friend who sat by my side, and I did not discover what the question was until after the vote had been taken. If I had known what the question was, a little sooner, I should have made some remarks in opposition to the amendment which was then adopted. I hope, however, that the motion of the gentleman for Wilbraham, (Mr.

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Hallett,) will prevail, that the vote by which the amendment was adopted will be reconsidered, and that the proposition will be put in the shape proposed by the gentleman for Wilbraham.

But the gentleman makes complaint that somebody did not rise in defence of the small towns. I will remark to the gentleman for Wilbraham, that there are two sides to this question, even among the advocates of the rights of the small towns. The proposition now adopted, is similar to the one in the present Constitution, the object of which was to prevent two small towns from uniting, except at the beginning of each decennial period. Now, Sir, as a matter of fact, the small towns have not united, and as a matter of fact, I presume, with this provision, they will not unite in future. Many of the strongest advocates of town representation, are willing that this trammel shall go into the Constitution, for the express purpose of preventing these towns from uniting; and, as I said before, the tendency will be to prevent them from uniting, because, unless they unite at the beginning of some decennial period, it is not in their power to unite again in ten years, and, therefore, although it operates as a trammel to prevent the full representation of those towns, it also will have the effect to preserve the town representation.

For this reason, I have no doubt, some gentlemen who are friendly to the rights of the small towns, will be willing to have this provision go into the Constitution. For myself, however, I am in favor of the proposition of the gentleman for Wilbraham. I am in favor of giving those small towns an opportunity of uniting oftener than once in ten years. I should prefer fixing a period of two or three years, as proposed by the gentleman, because there may be circumstances that would prevent towns from uniting at the beginning of some decennial period, when they after all, are in favor of such a union. There may be cases where one town may be willing to unite with another, but where no other town adjoining would consent at that particular period, and yet they would be glad to unite a year or two afterwards. This system avoids the evils of the district system, and preserves town representation, and if two towns prefer to unite and send a representative every year, instead of each sending six representatives in ten years, I think they should have the opportunity.

At any rate, Sir, whatever may be the opinions of individuals as to the town system, or the district system, I am in favor of a reconsideration of the vote which was taken this morning, on the proposition of the gentleman from Middleborough; and then, I hope, we shall adopt the proposition of the gentleman for Wilbraham, and thus put it within the power of towns to unite if they please. I think it is safe to lodge the matter within the power of the towns. If they are willing to do it—if two or three of the small towns see an exigency, as they may see one which requires it, and if they are willing to take the district system—for we do not wish to force it upon them—if they are willing to take a constant representation during the whole time under the district system, and to unite together for that purpose, I certainly, for one, shall be willing to put it within their power to do it. I hope, therefore, that the motion to reconsider will prevail, and that the amendment proposed by the gentleman for Wilbraham, will be adopted. I should have

made these remarks this morning, if my attention had been called to the subject a moment sooner.

Mr. BRIGGS. I do not profess to understand this subject, and have not got my mind made up either one way or the other. When the remarks were made this morning, by the gentleman from Middleborough, on the occasion of offering his amendment, I supposed that I saw a good reason to induce me to vote for his proposition. As that gentleman is now absent, I will suggest, that it would perhaps be as well to give him an opportunity to express his reasons upon the subject before we act upon it; and, as we have reached the usual hour of adjournment, I will move that we now adjourn.

Mr. GRISWOLD. If the gentleman will withdraw that motion and move to lay the motion to reconsider on the table, that, I suppose, will leave the debate open.

Mr. BRIGGS. That might answer the same purpose; but, as I suppose the Convention are now ready to adjourn, I prefer to adhere to the original motion, that we now adjourn, and let the subject come up in the morning in the same position in which it now stands.

The question being taken, the motion was agreed to, and accordingly, the Convention adjourned.

Oaths, Subscriptions, &c.

[The following remarks of Mr. Keyes, were accidentally omitted from their proper place, in the debate on the above subject, Wednesday, July 6th.]

Mr. KEYES, for Abington. It has seemed to me, since the discussion has been going on in relation to the last paragraphs, that have been before us, that the Committee who reported these resolves were in some doubt whether they could find subjects enough to bring before the Convention to make it interesting, or whether we should be able to show to the people that we have had subjects enough on hand to make it worth while to have called the Convention.

I very much regretted that they should have seen fit to have recommended any changes in these subjects. It seems to me that there is something grand and imposing in the enacting style provided in the present Constitution. It appears to me to be exceedingly absurd to substitute simply the name of the *General Court*. It is a name which never gained respectability. It was never used—at least I never heard it used—except as a term of derision. I recollect when I first came to Boston, the chief jokes of the young men were made upon the "*General Court*." And the term has been used in that light so long that I do not believe we can restore it to dignity. The name which we have substituted for it, the Legislature—so difficult to pronounce—I do not think is an improvement; but, I doubt whether a change in that name would answer any good purpose.

Now, Sir, the gentleman from Natick seems to have great difficulty about these "straggling councillors," who come in here, one at a time, and occupy so much of the valuable time of the legislature. Well, Sir, I do not believe that the sessions of the legislature are very much prolonged by anything of this sort. Everybody knows that the legislature have nothing to do for a week or ten days after they meet, but to qualify officers; and, I submit, that if you remove all the

formalities of organization, it will not alter the case. Members of the House, when they come here, want to see the senators, and by bringing them in here they will have an opportunity.

Then, Sir, these councillors, who have been held up as a kind of inquisition, who sit in darkness and do deeds of evil, will also be brought in here, where they can be seen. I think, if they are really what they are represented to be, it would be well to have them brought in where their faces can be seen, and if there is anything so dark or awful in their appearance, they may be watched the more closely.

But another difficulty is, that these councillors come straggling in, one by one, and the two Houses are obliged to go into convention to swear them in, one by one, as they come. Well, Sir, as far as my experience and observation goes, they generally get wind of what is going on, and are on hand before they are elected. Indeed, I am not sure but that is almost always the case. But it has happened, and will happen again, that some of them, coming from the more remote parts of the State, will not arrive until the next day. Well, Sir, I never saw any of the useful time of the legislature taken up in that way, that would have been turned to any better advantage. I do not think it is a matter of any great consequence whether the legislature is called upon to go into convention once or twice in the course of the session or not. But, I really hope that we shall not go so far as to change phraseology which is better than that we propose to substitute for it. Whatever was framed by our fathers, I have always believed was well done. They did understand the English language, and I think our Revolutionary state papers, our own Constitution, and the public documents of that day are couched in language much preferable to that used in the documents of more modern times. I do not know whether this is the subject for which the Convention was especially called or not; most of them were, in the opinions of the various gentlemen who have spoken upon them. But, Sir, these changes proposed are not important in the advantages claimed for them, and if I could have my way, I would get out of these resolves both of these subjects. I certainly concur with the gentleman for Wilbraham, that the Constitution in this respect had better remain as it is.

FRIDAY, July 8, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President, at 9 o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read.

Orders of the Day.

Upon motion by Mr. JAMES, of South Scituate, the Convention proceeded to the consideration of the Orders of the Day.

The first subject in the Orders of the Day was the unfinished business of yesterday, which was the special assignment for that day, viz., the resolves on the subject of the

House of Representatives,

The pending question being the motion of Mr. Hallett, member for Wilbraham, to reconsider the

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vote by which the amendment offered by Mr. Wood, of Middleborough, was adopted.

Mr. BARTLETT, of Boston. As I have a vote to give upon this question, I am unwilling to do it in silence. I desire, in a very brief manner, to place before the Convention the reasons which govern my action. Since the Report of the minority was disposed of some three or four weeks since in rather a thin house, I have examined with some care and scrutiny each of the projects not involving the district system, which has been placed before the Convention. I have listened to the remarks by which these projects have been sustained, and have endeavored to do it with as fair a mind as my political associations would permit. I have looked through all of them to find some approximation to a principle, upon which my conduct and action might rest. I regret to say, that I have been unable to find it. Indeed, how could it be otherwise? All of the projects that are not for a district system, are attempts to combine two elements, each of which, is entirely antagonistic to the other. One of them consists in the supposed right of corporate or town representation. The other consists in the rights of men or population. Now, what mind or hand is cunning enough to indicate the point where those two elements can blend in harmony? What gentleman among those, who have offered these projects, has been able to point out to us how much is due to the one element, and how much to the other; what is due to the town element in the distribution of representation, and what to the rights of population? It has not been done, and in my judgment, it cannot be done; and, lacking thus, it has come, and it must come, with no principle to guide in the matter, to a mere struggle for political power. Every man who takes up a project which is made to the Convention, asks, how will that affect my constituency? In default of a principle to guide him, he will be governed by that consideration; and, as it affects the political power of his town favorably or unfavorably, so will his vote be given. I state, and I submit to the Convention, that I state it fairly, that all schemes of that character having nothing of principle to guide, must needs result, as I stated before, in a mere struggle of the various constituencies in the distribution of political power. In that struggle I can take no part. I have no argument to offer to this Convention, why one part of the Commonwealth should be afforded a larger or a less representation than another. Indeed, that whole matter is beyond the reach of argument. It descends to the arena of traffic. I have no wish or capacity to deal on that arena. My first difficulty, then, with regard to the scheme now before the Convention, and all kindred schemes, is, that they are arbitrary and lack principle, that they are conventional and depend for their success, here, entirely upon how much can be gained and how much will be lost by negotiation, and upon the question, which of the projects, by a tender of political power, is best adapted to obtain the majority of suffrages of gentlemen representing constituencies in this Convention. It has been said, and fairly said, that the compromise is as applicable in dealing with facts that belong to political science, as it is in all human affairs, and I acknowledge the justness of the remark. But, will any gentleman tell me, if that can be called compromise in which all is taken, and nothing is given in return. I put it to gen-

tlemen who favor schemes of that character, to answer me this question. I ask the able gentlemen representing Berlin, (Mr. Boutwell,) whose masterly speech has done more, in my judgment, to influence this assembly than the combined debate together, to tell me, if this be called a compromise, what has been given to the large towns of this Commonwealth in exchange for what is wrong from them. Will any gentleman who has proposed a scheme of that character tell me what the large towns get under his proposed system, which can be retained by them, by way of compromise, for what is taken from them?

Mr. HALLETT, for Wilbraham. I rise to a question of order. At the adjournment of the Convention yesterday evening, the subject under consideration was the reconsideration of the amendment offered by the gentlemen from Middleborough, (Mr. Wood,) and which was adopted. I have no wish to interrupt the gentleman from Boston, (Mr. Bartlett,) in his remarks, and I am perfectly willing that he should have the floor for the purpose of commenting upon the subject at large. It was ruled, while that subject was under consideration yesterday, that it was not in order to discuss the subject generally. My only apprehension in regard to the matter is, that the opportunity may be lost for taking the question upon the motion I made, before the hour arrives for the special assignment for taking the question upon this subject, unless there is a vote taken upon it now. I believe there is no discussion likely to arise upon it, and, if the gentleman from Boston will allow the vote to be taken upon the motion, I should be quite willing that he should occupy the floor.

Mr. BARTLETT. I rose to address the Convention, because, I supposed the topic I was discussing was the first and leading topic.

The PRESIDENT. The question of order is well taken. The question is upon the motion made by the gentleman for Wilbraham, (Mr. Hallett,) to reconsider the amendment offered on yesterday evening by the gentleman from Middleborough, (Mr. Wood,) to the third paragraph of the first resolve, and which was adopted by the Convention. That amendment reads as follows:

Any two towns may, by a vote of a major part of the legal voters of each, at legal meetings thereof, and held at some time preceding the first election which shall take place under this amendment to the Constitution, and, thereafter, at legal meetings held at some time preceding the first election which shall take place next after each decennial State census, unite together in a district, which shall be entitled to a representative each year, and which, shall continue until the next decennial census, excepting the year in which the valuation of estates is settled.

The question was then taken on the motion of Mr. Hallett, and it was decided in the affirmative.

So the vote adopting Mr. Wood's amendment was reconsidered.

Mr. HALLETT, for Wilbraham. I now move the following substitute for the amendment of the gentleman from Middleborough, (Mr. Wood):—

Any two of such towns may, by a vote of a major part of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, unite together in a district, which shall be entitled to a representative each year; and which shall continue not less than two years, excepting the year in which the valuation is settled.

Mr. DAWES, of Adams. I should like to make an inquiry of the gentleman as to the meaning of this amendment. Does the gentleman intend to provide, that two small towns, however remote from each other, may join together for the purpose of sending a representative to the general assembly, as for instance, that Hull and New Ashford might unite and form a district?

Mr. HALLETT. Any two towns may have the right which they now have under the present system, of forming one district, wherever they may please to form a district.

Mr. DAWES. The original proposition, as well as the amendment, was silent upon that subject. I thought, myself, that it was open to that construction, but it seems to be rather an unusual proceeding. I do not know that such a case as I have suggested might occur, but there would be propriety in having some limit. If it is the understanding of the friends of the measure, that any two of these towns, however remote from each other, may unite, that is all I desire to know.

The question was then taken upon the amendment to the amendment, and it was agreed to.

The question then recurring upon the amendment as amended, it was taken, and decided in the affirmative.

Mr. BARTLETT, (resuming). In regard to this matter of compromise, there are classes of compromise as in everything else. There are cases where the principle is plain and unambiguous, and the facts are obscure or in dispute. There are cases when the facts are so confused and multifarious, that no principle can be found which shall exhaust them, or be completely applicable to all of them. Those, as I understand it, come within the range of what are known as cases of compromise, but, wherever the great principle is plain, that should regulate conduct, and, wherever the facts are beyond reasonable dispute, compromise is but another name for something wrong by power from weakness, by obstinacy from timidity, and in my judgment, is a misapplication of the term. I put it to the good sense and fairness of the Convention, whether that term is applicable in any sense to the present proposition. If it be so, if it can be shown to be so, I do not mean to stand here isolated and alone, and say, if a fair compromise can be found, based upon principle, that I will not accede to it. Looking at the project before us, my difficulty from the outset, has been, that it lacks, throughout, the element of principle. That it has nothing but what is merely arbitrary to govern the judgment in accepting or rejecting it. But I think, Sir, it is a little lower than that, and that it offers temptation to negotiation and traffic for political power. But, Mr. President, my objection to the scheme as it now stands, is not limited to that difficulty. If I estimate it right, Sir, and I shall put it to the sense of the Convention, it fails to accomplish every one of the great leading aims which this Convention has in view upon this subject, and for which it was principally convened. I repeat it, Sir, because I wish it to be carefully noted if I am or not correct in the statement. I say its next main difficulty is, that it fails to accomplish, justly, each one of the leading objects, which it was the purpose of this Convention to accomplish in dealing with this matter. What are, then, those leading objects? I understand them to be three-fold. I understand the desire of the Convention to be, to permanently reduce the House of Representa-

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tives. I say permanently, for this I have supposed its leading purpose. I understand its second aim to be, so to provide that every man in this Commonwealth, at every annual election, shall have his voice and vote felt in constituting the body that occupies the hall in which we are now sitting. I understand its third great aim to be, Sir, to provide for the security and development of the rights of minorities, by districting the large towns and cities of the Commonwealth. Those are the three great purposes desired, as I believe, to be accomplished by this Convention. I have heard none other from any quarter. I have found nobody in the course of this debate, who has suggested any other. I have found no one, Sir, who denies that these are desirable ends to be attained. Now, Sir, I propose briefly, I hope intelligibly, to examine each of these propositions, and to ask the Convention, does the scheme lying upon your table accomplish any one of these objects?

Let us look at the first. That first is, the permanent reduction of the House of Representatives. Well, Sir, what does this scheme propose? It proposes that at your next census, nominally, your House shall be limited to three hundred and seventy-five members, and that at each decennial period after that, the increase shall not exceed ten. But how does it propose to accomplish that? It proposes to accomplish it, Sir, by the application of this extraordinary principle, that the future growth of this Commonwealth shall be, so far as political rights are concerned, at the entire expense of the leading towns and cities in it. That is, substantially, the mode by which it hopes to accomplish it. For instance, take the calculations of the gentleman for Berlin, in regard to the condition of this Commonwealth in 1860. Take his view of what the large cities will attain by way of population at that time, and apply to it the theory upon which the House is to be limited or reduced, and I ask, if that scheme will be tolerated for an hour? Sir, while its disparities and injustice are trifling, or not glaring and oppressive, perhaps they may be borne. But when it comes to pass, as it is sure to come to pass, that in the application of the principle of this project to the apportionment of representation, five men in the city of Boston, or in the city of Worcester, shall be equal in political weight, to one man only in the town of Erving, the thing cannot stand. Its permanency is lost. The people would resort, if necessary, to revolution, to destroy it. But I take it, that it would be extinguished by a peaceful revolution, through the action of the legislature, or that of another Convention.

My argument upon that first point, then, is, that this project contains, within itself, the seeds of its own dissolution, that the idea of permanency cannot be attached to it; it is impossible that it can long subsist. It is, after all, but a piece of patch-work. It is tampering, for the time being, with an acknowledged evil, for the purpose of accomplishing a temporary end, and it provides no present or ultimate means of establishing what we need, and must, sooner or later, have, a permanent system of reducing and limiting the House of Representatives.

I pass to the second object which it is desired that we should attain, namely, that there be, throughout the Commonwealth, the voice of every legal voter in it, heard in selecting the representation in this hall. Does the proposed

scheme effect this end? The statement of the purpose, and applying it to this project, furnishes the answer. There will be sixty-four towns in this Commonwealth, which it has left wholly incapable of annually exercising that great right. In the transition state, foreshadowed by the gentleman for Berlin, (Mr. Boutwell,) the number will increase, and the evil will increase with it. In other words, instead of reducing the evil which we have deprecated, namely, that there are towns which have only a fractional representation in the House of Representatives, we have left the difficulty precisely where we found it, with the single exception of the melioration suggested by the gentleman who represents Marshfield, (Mr. Sumner). If it was one of the designs which this Convention have in view, to provide for the perpetual right of representation of every town in the Commonwealth, we leave it precisely where we found it in point of principle. Numerically, we reduce the disparity a trifle, and that is all.

Mr. President, the third end to be attained, is to district the cities. And I understand the reason is—and it is a reason which commends itself to my mind, and, indeed, the wonder is, that the evil should have been tolerated so long—to give the minorities among large masses of people, a chance to have their voice more equally heard.

Mr. President, does this scheme accomplish that, in any just manner? Does it accomplish it with the least semblance of right and fairness? What does it do? It takes the cities of the Commonwealth, and deals with them first as a unit, for the purpose of reducing, as a whole, the amount of their representation; and, having done that, it says to them, "After all you are too big, we will make you equal to the medium sized towns in the Commonwealth, and when we have thus divided and reduced you, you shall not have the benefit of representation to the same extent which the other towns in the Commonwealth, of a similar size, have." That is the result precisely. It says to Boston, with her population of 138,000, "you shall be divided into districts. But, first, we will treat you as a town, and your representation shall be reduced as a whole, by the increasing ratio of representation; and, having done that, it is fit that you shall be divided into bodies capable of deliberation, into bodies within some reasonable limits as to size;" and, therefore, by the scheme now before the Convention, it is provided, that no district shall be entitled to elect more than three representatives. Three representatives are, upon the proposed system, given to all towns of eight thousand, and less than sixteen thousand inhabitants.

Let us look at that practically. I have stated the principle; I have stated what this theory purports to effect. I am not very clever at figures, but, I have made a calculation which I believe to be correct, and it shows the practical effect to be this. I suppose, of course, that nobody will say, that the cities will be divided into districts containing a smaller number of inhabitants than such, as, if they constituted towns, would entitle each district to three representatives, namely, eight thousand; because nothing can be gained by it.

Now, I wish to contrast the justness and the fairness of this scheme. Let us assume, that Boston, with its population of 138,000, according

to the last census, is to be divided up into districts or towns of eight thousand inhabitants, and, suppose the Convention should be willing, as it should, to concede to Boston, thus divided, the right, as to each district, that would belong to every town of the size of such district, what would be the result? The result would be, according to the last census, that Boston would be divided into seventeen districts of eight thousand inhabitants each; and these seventeen districts would be entitled, upon this scheme, if they were towns having the same number of inhabitants, to fifty-one representatives.

Apply now to it the scheme, of treating it as an aggregate mass, and thus reducing its representation, and then subdivide it into districts, as suggested, and see how this notable project works. There will be a reduction in the whole, so that it will leave Boston thirty-five representatives only, while, upon a system which applies to every other town, they would be entitled to fifty-one. The result is, that the scheme which purports to work out the rights of minorities, does a double work, and one that can commend itself to no just mind.

Now, my purpose is, simply to array the condition of the argument, as it lies in my mind, in regard to the present scheme, of the member from Lowell, and, at the risk of being tedious, permit me to recapitulate. In the first place, it lacks any principle to guide the judgment in determining the justice of its details, or in coming to a conclusion as to its composition. No man can tell how much he shall assign to the supposed corporate or town principle; no man can tell how much he shall assign to the rights of numbers or population; and, in that state of things, it must all be a mere matter of negotiation or traffic, governed by no great guide, by which the judgment should be shaped and controlled. I think the next difficulty is, that it fails to accomplish, effectually or justly, each and every one of the objects which the Convention has in view.

Mr. President: There is a very considerable temptation, except that the House is weary of the debate, which has been conducted by abler minds than mine, to go further into details, in regard to this present scheme. But, I forbear to do it; because, after all I have stated, what, as they strike my mind, are the great inherent difficulties in it; and, if they can be avoided, the other calculations which show its injustice will be duly regarded or become unimportant; and, now, as the immediate question before the Convention, is the fairness and wisdom of the project on your table, perhaps I should pause here. I have stated, or endeavored to state, plainly, the reasons which have brought my mind to the conclusion, that I cannot support that project. Whether there be any which I could support, perhaps, becomes very immaterial. And yet, at the risk of wearying the patience of the Convention, I desire to say a word or two upon the principle, and not upon the details of another proposed method of disposing of this great question, which has been presented here, and elaborately argued. Of course, I refer to the district scheme, in some form. I have no desire to inquire, whether such district scheme should be based upon population, or upon ratable polls, or upon legal voters. That is a matter of detail. I desire, simply, to present to the Convention, very briefly,

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how the argument lies in my mind, upon the general question of the district system.

I take it to be conceded, by every man in this Hall, that a district system in the abstract, is one that commends itself to every mind and every judgment. It is based upon the great and eternal principle of equality and justice. And, I think it has a feature, which ought not to be lost sight of, and that is, that it not merely effects, but completely effects every one of the objects which we desire to attain. For instance, you may, by the district system, keep your House at precisely the size you desire, and your population and districts may be adjusted to that. The element with which you have to deal, is population merely. Again, it enables every man to have his voice felt and known, at all times, in the election of representatives. Of course it districts the cities, not upon the curious scheme which is now upon the table, but upon the principle that every man is entitled to equal rights. I think, then, that it has the advantage of being a permanent and just settlement of the whole subject.

The concluding remarks of the gentleman for Berlin showed that there lies in his mind, as there does in the mind of every man who has looked at the subject, the fear that we are hereafter, again, to struggle with this great difficulty. We must concede, as I think, from the course of this argument, that he anticipates its future recurrence, but that, his desire is to hold fast to a system of corporate representation for as long a period as possible, and such, I think, is the implied concession on the part of most of those who advocate the proposed system. If so, if we have got to settle this vexed question at some not distant period, will the advantages derived by retaining for a short season the element of corporate representation compensate for the sense of being wronged, which part of the community must feel, and for the ultimate expense which the renewed agitation and final adjustment of the subject must occasion?

But to return to the question of the district system. Its inherent justice and the completeness with which it effects what is desired being shown, it remains to consider the objections to which it is alleged to be exposed. I understand the argument to be in the first place, that there exists in the towns or quasi corporations of this Commonwealth, an absolute right of annual representation in the House of Representatives; this requires to be carefully scrutinized. If that right exists, I think we are met by an obstacle which cannot be overcome. I do not agree with the gentleman for Berlin, that the burden is upon those who propose it to show, that the district principle should be adopted. How do the facts stand? We are here with an acknowledged difficulty in the existing system, and it is confessed by all that the system is to be changed. A principle which it is agreed is right in the abstract, is proposed for adoption, and that principle when applied, works out precisely the end which is desired. Now, when we have advanced as far in the argument as that, when we have succeeded in showing that the principle is a perfect one, and it will work out its perfect end, I think the burden is upon those who reject it to show that it should not be adopted. I think, then, that the gentleman for Berlin is in error in endeavoring to throw the burden of argument upon the advocates

of the district system; I think the burden has shifted and is on the other side, to show why it should not prevail. But to return to the precise question.

Do the towns in this Commonwealth possess the right of representation? I think we are carefully to distinguish between an absolute inherent right and a usage growing out of convenience to the State, which has been accustomed to work out many of its objects through the instrumentality of town governments, incidental to which, while its population was not redundant, the right of town representation has, to a greater or less extent, been exercised, and thus, although such usage may have been continued for a long series of years—we ought to distinguish between this and the absolute right to representation. If towns have the right to representation, upon what foundation does it rest? It is no where found in any frame of government in this Commonwealth set forth as a fundamental right. If it exist, it must be because it is necessarily inherent in the institutions; it must be an essential ingredient in town organization, and there ought to be added in proof of this, that it should be shown to be supported by an unbroken line of history. I will agree, Mr. President, that if the right of towns in this Commonwealth to a corporate representation could be supported by finding, in addition to a judgment that it is a necessary element to their useful existence, an unbroken historical support, looking back through the colonial, provincial and state history of Massachusetts, it ought to be sustained, unless there be some vital difficulty in working it out, which would justify us in throwing it aside. Let us look first at the matter of principle. Is it an essential ingredient in the existence, safety and prosperity of the towns, to have them represented as corporations? That of course, leads us to inquire in the next place what there is in the towns to represent. What laws are there which are to be passed in the course of legislation in this Commonwealth, that peculiarly affect the different towns in their corporate capacity? I am unable to discover anything of this kind, which would make it necessary that there should be this right of town representation. I admit that there may be occasional attempts to form new towns, or to set off here and there a farm from one town to another—there may be controversies with regard to such subjects, but this is merely incidental. I am looking at the great features of legislation; and I repeat the inquiry, has anybody ever known, or can anybody point out to this Convention, what there is in the towns as corporations that requires representation on this floor? The answer suggested is, that this is too narrow a view of the term "town"; that town means nothing more than the aggregate of the individuals who live in it, and that the right to representation is the right of the body of people that the town contains within its limits; but does that advance the argument? I would ask any gentleman if there is any greater right existing in the inhabitants of a town as such inhabitants to representation, than exists in any other class of individuals; what have they peculiar which requires distinct representation? What separate interests have people from the fact that they live in towns? Then, I say, that it does not advance the argument one hair to say, that it is not the representation of an inanimate thing, but the representation of a body of men inhabiting

that inanimate thing, since their interests are identical with those of the people of other towns in other parts of the Commonwealth. It does not advance the argument a step to say, that it is the representation of men and not of an abstract idea.

But, although there are no corporate rights to be represented, and although I can discover no distinct and peculiar rights or interests attaching to men from the fact that, they inhabit towns which can be the foundation of a right to separate representation—yet it is said that the right has been conceded throughout the history of the Commonwealth, and so must be accepted—and cannot rightfully be changed. Take its colonial, provincial and State history; is it true, that the right of town representation has been uniformly recognized in this Commonwealth? Now, Sir, this subject has been very ably examined and discussed, and I think the result should be deemed conclusive. Without going over it chronologically, let me ask the attention of this Convention to the earliest and to the latest history of the Colony and State. Is it not true—do not the records of the Colony which have been produced and read to us by the learned gentleman from Cambridge, show conclusively, that in the earlier history of the government, towns containing less than a prescribed number of freemen were not by law allowed to participate in the government by electing a representative? If this be so, then this corporate right of representation has not an unbroken historical support. I will not stop to discuss the question raised by the gentleman from Dedham, (Mr. Wilkinson,) whether, at any time except for a period under the Charter of William and Mary, and still later under the Constitution of 1780, this supposed corporate right has been recognized and enjoyed, because that is somewhat debatable ground, and I do not choose to enter into it; but let us come down to a later period, and see how this right of towns to be represented has been dealt with. I speak of it as a right; and if it be a right, it is of course a right of annual representation. What have we been doing with that right for the last twenty years? Whence the authority—under what principle have towns, varying in number from sixty-four to one hundred, been deprived of this inherent right, alleged to be so vital to their existence? How did you dare to make your alteration in the Constitution in 1836, and say that a large body of the towns of this Commonwealth should, for the future, have a fractional representation only in the House of Representatives?

I submit, then, that this alleged right has no just foundation in necessity as connected with our town organizations, and that it is not inherent or a vital element, as it has been called, in the existence of the towns; and that the claim of its unbroken exercise cannot be supported historically. It had its origin in convenience, and not right or necessity, and has been so treated from the beginning. But by far the most important suggestion in favor of retaining the supposed right of towns to representation, is founded on an alleged principle of public policy, which, if violated, will lead to results deeply affecting our political system, and which cannot be compensated by any basis of representation, however equal and just.

Mr. President, I have listened with great delight to what has constituted this leading and almost engrossing topic of argument, the praises of those model institutions of government called

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towns, established here and throughout the New England States. Sir, there is not one word of that well-deserved tribute which I would abate or alter. I would yield to no man in my love, or admiration, or veneration; for a system that has produced such striking consequences; and having said that, I may be allowed to inquire, whether the next step in the argument is a solid step. Is it true?—and I think the whole argument turns upon this single consideration—is it true, as the gentleman for Berlin says, that the right of representation is a vital element in the healthy existence of towns? Is it true, as the gentleman for Erving has said, that this is an essential attribute in the existence of towns? Sir, let us see how that argument stands, for a moment. It is conceded upon all sides, that the great functions of town government will continue to be discharged as before, whether the right of representation be allowed to the towns or not. Every town will continue to administer its system of schools, almshouses, roads, taxes, and all else that pertains to its municipal character; and it will do this as heretofore—wisely and well; because whether we regard the benefits they confer, or the burdens they impose, they are too deeply interesting to be neglected. Now, Sir, upon this controverted question, how far the right of annual representation must be superadded, to give vitality to this town organization, we have a test in our own history. Will gentlemen from the smaller towns tell us whether they can see that the ceasing to exercise this function since the amendment to the Constitution, in 1836, has caused them to be dwarfed and lose any of their vitality? Since that amendment, a large number of towns in this Commonwealth that have been deprived of an annual representation, and some of them have been allowed to exercise the right very infrequently in each decennial period, have those towns gone to decay or become dilapidated? I put the question to those gentlemen who are conversant with this matter, if these valuable town organizations have dropped behind, or become enfeebled since 1836. Does any man see in them any symptoms of decay? And if this be not visible, not perceptible, if they still remain in vigor unimpaired, how can it be maintained that annual representation is an essential element, either for the existence, or for the full and entire usefulness of town organizations? Allow me to add, that my admiration for the system is so strong, that if it could be made even probable that, deprived of annual representation, the towns of this Commonwealth would cease to exhibit any of the great characteristics which have made them what they are, I should not hesitate to relinquish my attachment to the district or any other system, though based upon the principles of absolute equality and justice.

Mr. President: There is, connected with this subject of town representation, as matter of public policy, another consideration of great practical influence, namely, that towns are our schools for political education, and that the reward for diligence and success is political preferment. Perhaps this is a delicate topic to discuss in this place, and yet the true extent of its value must be determined in settling the policy of a district system. Now, it must be admitted that the political training resulting from the discussion and administration of municipal interests, is of great importance, and it has been effectively stated in

this discussion. By the few, but not by the mass of solid men of the country, referred to by the gentleman for Berlin, it is sought as a source of political advancement. The chance of success in such pursuit is diminished by a change from a town to a district system. But the question still remains whether, if that incentive be diminished, the real benefits of town organization will be lost. In my judgment, so long as the important interests confided to the administration of the towns shall be unabridged, so long will they command the thought and attention of those whose interests are at stake, and the fact that political aspirants are thrown upon a wider field by the district, than by the town system, is entitled to no considerable weight in the determination of the question under discussion. Let me add, Mr. President, a word or two in regard to another idea, somewhat in the same line of argument, in relation to what has been called—and I think not happily called—a tendency to centralization. I think the language misapplied, because the term centralization, has been used heretofore to designate that system of government where even the smallest emanation of administrative power comes from one common centre, and nothing is left to be acted upon, independently, by the various remote members of the body politic. That was true of the French system, but of course nobody anticipates the peril, that at any time hereafter, the municipal affairs of the towns will be regulated or administered from the metropolis. The true idea intended to be conveyed by the term, is, a predominant influence in the cities, which will affect the political weight of the smaller towns. And what are these influences? The gentleman for Berlin, classes them thus. He says, first, there is a centralization of population, next, that of wealth, next, of talent, and last, that of the press; and, upon these assumed or admitted condition of the facts, he justifies the gross inequality in the distribution of political power, which the pending scheme proposes. Now, Mr. President, my difficulty is, that if the supposed facts furnish a proper principle to be acted upon in determining political rights, it is not carried out thoroughly, and in detail. Take, for instance, the element of wealth, as one of the grounds on which political power should be abridged. Sir, we have undergone a very strange revolution in that respect. Property was at one time deemed an essentially conservative element, fit, of itself, for a basis of representation in one branch of your legislature. In the present view, it is to be a ground for diminishing the political weight of the communities, where it is held, as compared with other communities. Now the difficulty with this, as a principle, is, that those who use it would hesitate to work it out and reduce it to its true results. Why apply the principle to wealth as it is aggregated in the cities, and not to the wealth of the towns of the Commonwealth? Why not graduate political power by a scale framed upon your decennial valuation, or descending still lower, why not distribute political rights so that the wealthy man shall have at the ballot-box, a fractional part only, of the power that is enjoyed by the poor man? The principle leads to a result which no statesman would dare to adopt. There does not exist, and never has existed, a government which has attempted to make a distinction of that sort, abridging the political rights and weight of com-

munities or men, in consequence of their possession of property. If it were worthy of any regard as a basis, it should be applied equally and throughout. An arbitrary application of it to cities, and that too without determining its precise value, or weight, would be a tyrannical exercise of the power of numbers, without principle. A further justification is asserted to exist in the necessity of having the government constituted with checks and balances. The member for Berlin says, as we have got a Senate founded upon a popular basis, why put the House upon the same basis? He desires a check of one branch upon the other. Who ever heard of carrying out a system of checks and balances by arraying one portion of a house against another portion of the same house? Who ever heard in a political organization of checking community against community, wealth against poverty, talent against inanity? Can any government based upon principles to be justified only by a supposed necessity of setting class against class, wealth against poverty, intelligence against a want of it, really have any standing or endurance?

Mr. President: I have about concluded all I have to say. I desire to add but a few words in relation to an ingenious argument advanced by my friend for Manchester, (Mr. Dana). His justification for depriving the cities of their equal political weight, is, if I understand it, this. He says that the cities have voluntarily consented to become such, and thus parted with the power of deliberative bodies, incident to town organization. He says, let us take them at their word. Having consented to become organized as a representative government, having no longer the power of deliberating, treat them as a whole, for the purpose of finding out their maximum of representation, and this done, district them into towns of convenient size—but without the relative political weight of such towns. Now I thought I saw in that, the struggle of an ingenious mind to support a foregone conclusion. I thought I saw, when the argument was made, that my friend for Manchester desired to be convinced that some principle could be found upon which the taking from the cities their otherwise just political rights, could be justified, and that without this he could hardly be induced to adopt the proposition which he was attempting to enforce. Now, has his assumed ground any real foundation? What is the origin of our cities? Why are city governments formed? Are they formed by a voluntary act, from choice or caprice? Or is it not a controlling necessity that drives the people to a form of city government? The history of the formation of cities in this Commonwealth, I take to be this. When the population of a town becomes so large that the masses of men who come together in primary assemblies, cannot deliberate, when the orderly conducting of business becomes impossible, something must be done. And from this condition of things, has sprung the cities of this Commonwealth, and that is their true origin. Now, Sir, I ask, when compelled by necessity, because they are too populous to meet in a body and deliberate, to place themselves under the form of a city organization, and divide themselves into wards, to carry on their government, whether it is quite fair to say that they have parted with their power to deliberate by their own act, and may be justly disfranchised in the mode proposed? If that argument can commend itself to my

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friend for Manchester, and if he finds in it a sufficient reason for adopting the proposed scheme, it must be, I think, that he is content to accept, in political affairs, a basis of action less satisfactory, than under almost any other circumstances, he would be willing to submit to.

Mr. President: It is said by the gentleman for Berlin, (Mr. Boutwell,) that nobody lauds the existing system, or vindicates it. The reason is, that by the common consent of all, it is defective, and is growing more so with advancing years. I do not think, however, the gentleman is quite fair, when he says that the argument in favor of the district system, should be distrusted at the outset, from the fact that it comes from those who were opposed to the calling of this Convention. It has been explained, again and again, that for several years the existing system has been unsatisfactory to all parties, and efforts have been made in the legislature, without distinction of party, to amend it. Gentlemen may well be restless under the operation of the present system, and yet prefer to remedy the difficulty in the way pointed out by the present Constitution. I think the argument not worthy the general merits of that able speech of the member for Berlin.

But to return. We must adopt some system. We may patch up the present one, for such, in effect, is the proposed scheme of the member from Lowell, and we may struggle on with it a little longer, and that is all that can be hoped from it. The argument against this proposition is, that it lacks every element of principle by which the mind can be governed in adopting it, and it wholly fails to justly accomplish any of the great ends which all agree to be desirable. In contrast with this we have a plan which is admitted to be sound in principle, and founded in the loftiest political, as well as moral, justice. I speak of its great features, and not of the question, whether it should rest on a basis of population or legal voters. It is a plan that works out every end we have in view, and that justly and completely. And we are met only by the suggestion, that existing institutions forbid its adoption—that there are corporate rights which are violated by it, and therefore, it is wiser to fold our hands and wait until we are obliged again to face the difficulty. When that time comes, all will admit, that the only system which can be adopted, is a district system, and the advantages, if any, of postponement, can be obtained only at the expense of a sense of wrong and injury.

I know, that in regard to the district system, I am speaking to weary and unwilling ears, and I feel that I speak in vain. In regard to the system of town representation, I feel, and I say it with regret, that that may be said of it which Locke said of eloquence: "It has too prevailing beauties in it to suffer itself ever to be spoken against, and it is vain to find fault with those arts of deceiving wherein men find pleasure to be deceived."

Mr. ABBOTT, of Lowell. I desire to offer an amendment to the third resolve, by striking out, after the word "published," the following:—

And in all apportionments after the first, the numbers which shall entitle any city or town to two, three, four, or more representatives, shall be so adjusted, in proportion, as herein before provided, that the whole number of representatives, exclusive of those which may be returned by

towns of less than one thousand inhabitants, shall not exceed three hundred and seventy-five in one thousand eight hundred and sixty, or be increased more than ten in any one decennial period thereafter.

And inserting, in lieu thereof, the following:—

And in all apportionments after the first, the number which shall entitle any city or town to two, three, four, or more representatives, shall be increased or decreased in the same proportion as the population of the whole Commonwealth shall have increased or diminished since the last apportionment.

I desire simply to state to the Convention the reason for offering this amendment. In looking at this resolve I think it must have suggested itself to the Convention, that there would be serious trouble after the first apportionment after the adoption of this amendment in working out and getting the ratio by which to divide the representatives among the larger towns. If the thing can be done practically, I am free to say I have not been able, from the attention I have given to it, to obtain precisely the *modus operandi* by which it can be worked out. At any rate, it is not so plain, certain, and apparent, as a provision in reference to this important subject ought to be, nor so plain that the rule can be appreciated and understood by every person in the Commonwealth.

There is another objection to the proposition, as it now stands, which is, that by the provision limiting the House to three hundred and seventy-five, with the increase of ten from 1860 to 1870, and every ten years after, you, in fact, are absolutely punishing the larger cities and towns for an increase of their population. In the first place, you have the towns with under one thousand inhabitants, which have half a representative, that is, one every other year; and then all the remainder of the towns and cities, two hundred and sixty-eight in number, which, without regard to their population, have one representative each year. Now, the result of the working of this system will be, that in 1860, taking the tables given in the report of the Secretary of State to the legislature in 1852, you will have one hundred and seven representatives to divide among the large towns and cities which may be entitled to more than one. If the increase of population goes on as it has, mainly in the larger towns, the result of fixing a number, beyond which the House shall not increase, is, that the increase in the larger towns is a positive injury to each one of them. Having but a certain number of representatives to divide among the whole number of towns and cities entitled to more than one, by increasing the number of such corporations, the less each one will have, and by increasing their population the larger will be the number required for each additional representative. As, for example, if the number of towns and cities entitled to more than one representative is increased by ten, the number to be divided among such towns and cities remaining fixed, you, of course, must decrease the number apportioned to each town, as you have to divide the same fixed numbers among a larger number of such towns and cities; and if the population in the same municipal corporations is doubled in amount in any ten years, then, where before four or five thousand was the number required to obtain one additional repre-

sentative, it would require eight or ten thousand for the same purpose. Thus, very apparently, by the resolve as it stands, an increase of population in the large towns would work a decrease of political power to each individual inhabitant.

I apprehend that the advantages in the amendment I propose, are these: in the first place, it states something that is clear and appreciable, something that can be understood by every one who reads the resolves. We know, at any rate, what we are voting for; we know that the number of four thousand, which is established in the first resolves, will be increased for the third and succeeding representative just in proportion to the increase of the population of the Commonwealth. The proposition has, at least, the benefit of being intelligible, the benefit of being so plain that he who can read it can understand it. In the next place, it obviates the objection to the proposition as it stands, that an increase of population in the large towns will positively work to each inhabitant a decrease of political power.

It may be said, in answer, that it will provide for too large a House. That may be brought as an objection to bear against its adoption; but by going into the calculation, gentlemen will find that it does not provide for a House unreasonably large.

I desire to say, before I sit down, that this is substantially the proposition of the gentleman from Quincy. I believe we have everything else in this amendment which was contained in his proposition, and it is, therefore, substantially his. By looking at the tables which that gentleman has prepared, you will find that with my proposition, in 1860, if all the towns elect, you will have a House of four hundred and nineteen. By the system now in existence, as near as anybody has been able to work it out, in 1860, you would have a House of four hundred and five. In 1870, by my amendment, you will have a House of four hundred and thirty-nine, while by the proposition reported by the Committee of the Whole, as it now stands, you would have one of four hundred and twenty-five. If the Convention will consider my amendment, I think they will have no difficulty in adopting it. By the plan, as it now stands, how your apportionment is to be made, is a matter that nobody can tell us. It is a hole in which we are asked to put our foot, without knowing where the bottom is. But by my plan, we do know, at least, where the bottom is. And, in relation to the size of the House, the difference between the proposition as it now stands, and as it will stand if the amendment is adopted, will be just this: in 1860, one will be four hundred and fifteen, and the other four hundred and nineteen; in 1870, one will be four hundred and twenty-five, and the other four hundred and thirty-nine; that is, if all the towns elect which are entitled to a representative.

Now, Sir, I do not desire to take up the time of the Convention any further in this explanation. I think it is a proposition which every-body can understand, and I hope it will be adopted.

Mr. LORD, of Salem. I desire to have the amendment again read.

The amendment was read by the Secretary.

Mr. LORD. I supposed, when I first heard the amendment read, before the gentleman made his comments upon it, that it was his design to keep the House of uniform size; because if you require the number to entitle a town to an addi-

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tional representative to increase in the same ratio that the population of the Commonwealth increases, I do not see how you will get any additional representatives. You use up the entire increase of the population in the number necessary to elect an additional representative, and I do not perceive how it will have the effect to increase the size of the House.

A MEMBER. You will get the additional ones from the small towns.

Mr. LORD. I presume that to be so, that they will all come from the small towns. I take that for granted. But I ask, how, by an increase of population, you are to get any additional representatives by this proposition? Because, I suppose, if the population of the Commonwealth increases 500,000 in the next ten years, the population necessary to give an additional representative must be increased in that proportion. I do not understand how it will necessarily increase the size of the House.

Mr. ABBOTT. The ratio of increase provided for the large towns, in respect to representation, is the ratio of increase in the population of the State, of both the large and small towns. I apprehend that it will continue in future, as it has up to this time, that the ratio of increase in the large towns will be much greater than in the small ones, or much larger than it is in the entire Commonwealth. You will find, by looking at the census returns, that the ratio of increase in the towns of 4,000 inhabitants and upwards, is much larger than it is in the whole State. I apprehend, therefore, that it will be apparent that the House may increase, for that reason, to some extent, because this increased ratio is intended to apply only to the towns of 4,000 inhabitants and over. Indeed, if gentlemen will make the calculation, they will find that it will increase to the extent that I have already named.

Mr. LORD. Well, Sir, I must confess that I cannot understand the proposition, but the reason probably is, that like many others, I have had no opportunity to examine it. It seems to me, and I cannot possibly see how it can be otherwise, that if you increase the number necessary to give an additional representative just in proportion as the population of the State increases, that you will keep the number of representatives precisely the same. Although one town may increase in population faster than another, so long as you increase your number for giving an additional representative in proportion to the whole aggregate increase, I do not see, at first glance, why the number gained by those towns that increase very rapidly—more so than the whole State—will not be lost by those towns which increase much less than the State, and which therefore do not have sufficient increase to enable them to hold their representation under the increased ratio, and therefore cannot see that it will affect, of necessity, the number of the House. I confess that it is a matter that I cannot understand from simply hearing it read at the clerk's table, but I suppose the proposition has been examined, and that it is to become a part of the Constitution.

Mr. ABBOTT. If the gentleman will give way, I will try once more to make myself clear. I supposed that I had made the reason of the matter apparent. At any rate, it is apparent to my own mind, and I am only sorry that I cannot make it equally so to others. However, I will restate the proposition.

By the proposition as it now stands, without amendment, we have a certain number of towns—211, I think, is the number at the present time—which are each entitled to one representative. All the towns in the Commonwealth, with more than 1,000 and less than 4,000 inhabitants, have each one representative. To this extent the size of the House will remain permanent. Every town with as many as 1,000 inhabitants is to have one representative, and that provision is not subject to change. Here, then, you have a certain number of towns which are not affected in their representation by any general increase or decrease in the population of the State. Then there is a certain number of other towns which are entitled to more than one representative, and their representation, when it comes to be apportioned, is to be divided by the increase of the population of the whole State, and not by the increase of these large towns alone. Now, if you will go back to the history of the population of the Commonwealth, you will find that these large towns have increased in a greater ratio than has the population of the whole State. If you calculate the increase from 1850 to 1860 by that of the period from 1840 to 1850, you will find that the principal increase in the population of the State is in the large towns. The effect of my amendment will be, that these large towns shall not increase their number of representatives in proportion to their own increase, but that the ratio shall be fixed in proportion to the ratio of increase of the whole population in the State. If they increase faster than the general ratio of increase, that will give them an additional representative. In that way, it must be, that these large towns will be entitled to an additional number of representatives, because their ratio of increase is greater than it is for the whole Commonwealth. For this reason, I think it must be apparent that the size of the House must be increased in future.

Mr. LORD. I believe, Mr. President, that I understand the gentleman's plan, in general terms, though I know nothing of its details. I differ, however, with him as to the certainty of the result, and I think he will concur with me, that it is not in the power of any man to find out how many representatives a city or town is entitled to, without algebra. I defy any man, taking the Constitution as the basis; taking it that the first 1,000 gives one representative; that 4,000 gives two; that 8,000 gives three; that 12,000 gives four; and so on, to cipher out the proposition which he now makes, and ascertain correctly the proper number of representatives to which the several cities and towns of the Commonwealth will be entitled, without algebra. He cannot do it; and if it is expedient to put into the Constitution a form giving out a system of representation which requires an algebraic problem to solve them, I have misunderstood entirely what the rule of representation, as established by fundamental law, ought to be. And I cannot see how, as the gentleman suggests, it will increase the number of representatives, except it may be by the addition of new towns, which may become entitled to a single representative. But precisely how it will operate in increasing or in diminishing the number from the towns that are entitled to a larger number of representatives than one, I cannot at all imagine; presented as it is, just as the vote is ordered to be taken, and with no time or opportunity for examination or thought upon the sub-

ject. But as I said before, I suppose that this is probably to become a part of the resolve to be adopted, and all I have to say is, that I hope the Convention will adopt it more intelligently than I shall vote against it.

And, Sir, I have no idea of entering upon a set speech upon the basis of representation. I have never, from the time the discussion of the subject commenced, up to this time, entertained the remotest idea of entering into any general argument upon the question. But, Sir, there have been certain principles advanced in support of these propositions, which seem now likely to be recommended to form a part of the Constitution, which I have desired, if nobody else did so, simply to protest against. I should like to have the course, suggested by the honorable gentleman from Taunton, (Mr. Morton,) carried out. I should like to have the system of representation which the Convention has once adopted, and which, I presume, it will adopt again, presented to the people, and called the "mixed" system, because, I believe, it is claimed to be a system made up of town and district representation. And I should like to have the system presented by the gentleman from Boston, (Mr. Hale,)—except that I should prefer the basis of legal voters to that of population—also presented to the people, and called the "district" system. And I should like, if it is understood that this revised Constitution is to be presented for the approval of the people, as a whole, that this matter of representation should be left out of it, and the two propositions, respectively presented for the judgment of the people. I believe in their intelligence and capacity to decide this matter correctly. I am willing to abide by their judgment. Let these two propositions be submitted to them, and let those who are in favor of the proposition which a majority of the Convention now favor, deposit their ballots with the word "mixed" written upon it; let those who prefer the district system, deposit their ballots with the word "district" upon them; and let those who prefer no change at all, vote a general negative. I should like to see the judgment of the people upon the two plans; and I am perfectly willing to acquiesce in the result, whatever it may be; and if such a proposition as that is presented to the Convention, I will give it my hearty support.

The PRESIDENT, (interrupting). Inasmuch as the time is fixed for closing the debate upon this question, the Chair must request the gentleman to confine his remarks to the immediate subject under consideration. The Chair has hitherto not interrupted any gentleman, but in consideration of the fact that the debate is limited to so short a time, he feels it his duty to confine gentlemen, in their remarks, to the immediate subject under consideration.

Mr. LORD. I had supposed I was speaking to the subject before the Convention. I supposed that to suggest an improvement to the proposition under consideration was a proper argument to be used; and I have yet to learn that it is not properly discussing the question before the Convention to suggest how that proposition may be improved.

The PRESIDENT. The Chair begs pardon of the gentleman from Salem. His understanding was, that the gentleman was speaking of alternate propositions to be submitted to the people. If

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such was not the case, then the Chair was in error.

Mr. LORD. I was speaking of what I thought would improve the proposition before us. As an alternative proposition, I am willing to go for it. I am willing to go for a proposition if you will put something else with it. If you will submit this, with another proposition, which I named, to the people, and allow them to judge between them, I am willing to acquiesce in that judgment, whatever it is.

Now, Sir, I do not know but we are really acting upon the doctrine which I heard advanced sometime since, that after all, the legislature was a body of not much consequence; that it was really no very essential part of republican institutions. I shall begin to think there is something in that doctrine, and that free discussion is no part or province of a deliberative assembly.

Although it has repeatedly been said that this question has been argued as if the House of Representatives was the entire government of Massachusetts, I think it is proper to argue it, not as if it was the entire government, but yet as one of the chief essentials to republican government. But, I have heard it said that really a legislature is not a necessity to republican government—that the people may adopt some other mode of accomplishing their object. Now, Sir, without standing upon a necessity for any particular organization of a legislature as essential to republican government, I protest against the doctrine that it can be dispensed with altogether. I hold that a representative assembly of the people, elected to take part in the enactment of laws for the people, is an essential part of republican institutions. When you do not have such representation you have not republican institutions. You may devise new modes, but when you have devised a mode which does not require that the representatives of the people shall take part in the enactment of laws, you have not republican institutions. If this proposition shall be adopted, and there is no protest against such doctrines, it may be understood hereafter that it is adopted upon the basis upon which it has been argued. I have heard it suggested, as I said before, that there was no necessity for a House, and I have heard the argument enforced by the conduct of this Convention in limiting the length of sessions of the legislature, and I felt the force of the argument; it seemed to me unwise to make the limit, even though there were some evil to be corrected. I desire to say that while I listened yesterday with a great deal of pleasure to the speech of the gentleman representing Marshfield, (Mr. Sumner,) yet I desire for one to protest against what I call its leading idea. When I saw, with a great deal of satisfaction, that that distinguished gentleman had been elected to a seat in this Convention, from a locality politically different from that in which he resided, I was rejoiced at it, because I supposed that the people who elected him elected him on account of his wisdom, and that we might have the benefit of that wisdom, that political experience, and those varied attainments which we all know him to possess. I did not suppose that they elected him to vote upon the judgment of other men, but upon his own judgment, because in that they confided more than in that of any of their townsmen. I thought we had a right to the judgment of that gentleman. I do not think he was treating us quite fairly,—if he will excuse

me for using this language, and by using it I do not intend any disrespect to him personally,—while we were expecting to be enlightened by his wisdom that he would tell us that he should vote as somebody else thought was right. I agree that he thought it expedient to vote so. I agree, if I can be said to agree to anything which the gentleman said, that he *KNEW* it was not right but *thought* it was expedient to vote for the proposition before the Convention. I so understood the gentleman, but I thought we had a right to his vote. I think now we have a right to it, and the vote of every gentleman of this Convention who really believes that this district system is a proper system. In my judgment that is the proper mode in which to discharge the duties devolving upon us as members of this assembly; for each gentleman to vote not as he thinks this or that person may desire, not as he thinks this or that community may desire, but according to the dictates of his own judgment. I believe if the gentleman from Natick, (Mr. Wilson,) upon one side of the House, and the gentleman who represents Marshfield, (Mr. Sumner,) upon the other, who have both declared upon their own consciences that they believe the district system is right, had brought their great powers into this debate and had endeavored to convince this assembly that it was best to adopt the district system, that it would have been done. I believe further than that. I believe now, if every gentleman in this Convention will vote precisely for the basis which in his own judgment he thinks should be established irrespective of questions of expediency, that there would be a very large majority of this Convention to-day in favor of the district system; and I believe, too, that the people of this Commonwealth, by just as large a proportionate majority, would also be in favor of the district system. I do not recognize the force of the argument that this town representation has existed for two hundred years; for have not county lines existed just as long, and will any gentleman here undertake to oppose a change in the basis of the Senate because of attachment to county lines? Not one, and yet the system has lasted as long as the system of town representation. What are town lines now? There are probably very few gentlemen here who, even during the brief period of their lives, have preserved allegiance to the same town lines always. Take, for example, the little peninsula of Nahant, and I want to know how much of old associations will be there broken up if the inhabitants should again be required to vote for representatives with the city of Lynn. Take the towns of Swampscot on the one side and Nahant upon the other, which within two years have been set off from Lynn, and I desire to know what great violation of the feelings of gentlemen has been committed by such division, or what great violence would be done to them to be put back into the same district. So there have been seven or eight towns in Essex County cut up and divided. We do not regard town lines. It seems to me, that it is not worth while to approve the system of representation because it has so long been adhered to, and upon the ground that it disturbs an arrangement which has so long existed. When we come upon the next subject proposed in the calendar upon the manner of the appointment of judges, and upon their tenure of office, can not every thing be said in favor of the existing state of things which has already been

said in favor of town representation? Have they not had a life tenure by executive appointment ever since the government had existence? Has not all that lasted just as long, and yet I will venture to say that we shall not hear from one of these gentlemen that the habits of the people have become fixed in this matter, and that it is not expedient to break in upon the system because the people have been accustomed to a judiciary with a life tenure, deriving their appointment from the executive.

Mr. DAVIS, of Plymouth. I rise to a question of order, and it is, that the gentleman from Salem, (Mr. Lord,) is not in order in discussing the general merits of the amendment offered by the gentleman from Lowell, (Mr. Abbott,) at this time.

The PRESIDENT. It is the opinion of the Chair that the gentleman from Salem is not speaking to the immediate question before the Convention.

Mr. ALLEN, of Worcester. May I be allowed to make a suggestion, and request the gentleman from Lowell, (Mr. Abbott,) to withdraw his amendment, or else that the Convention, by general consent, shall allow the gentleman from Salem to proceed, for I think it is unfortunate that the debate should be restricted in this manner. I move that, by general consent, the gentleman be allowed to proceed.

The PRESIDENT. There being no objection the gentleman will be allowed to proceed with his remarks.

Mr. DAVIS, of Plymouth. I understood the gentleman from Salem to say that he is in favor of an alternate proposition, and that he will advocate it. By a vote of the Convention the question is to be taken upon this subject by special assignment, at half-past eleven o'clock, and I understand that there are several members present who have propositions concerning an alternate district system which they are ready to propose, but this cannot be done if the gentleman from Salem takes up a great portion of the time in speaking upon the amendment. I suppose the gentleman, in the suggestion he makes in reference to the alternate proposition, to be sincere, and, therefore, I hope he will allow the vote to be taken in time upon that amendment.

The PRESIDENT. By the general consent of the Convention the gentleman from Salem is at liberty to proceed with his remarks.

Mr. LORD. I never heard of any ruling, in any assembly, where the question upon the amendment did not leave the whole subject open.

The PRESIDENT. Does the gentleman appeal from the decision of the Chair?

Mr. LORD. It is not my habit to appeal from decisions of the Chair.

The PRESIDENT. Inasmuch as the Chair has expressed an opinion upon the question of order raised by the gentleman from Plymouth, the Chair would repeat that, according to parliamentary usage, and the practice of all deliberative bodies, that the remarks of the gentleman must be confined to the immediate subject embraced in the amendment, but the Convention has, by general consent, allowed the gentleman to proceed.

Mr. LORD. I desire to make this suggestion to the Chair. I wish to know, in the first place, if there is a proposition before the House, and the gentleman from Boston moves a substitute, if it is in the power of gentlemen to

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move to amend the original proposition and cut off all debate upon that subject.

The PRESIDENT. It is in the power of any member of the Convention to offer an amendment. But it is the right of any member to have the remarks of any member confined to the question. It is universal parliamentary law that one thing is to be done at a time. It is not in order for the gentleman to debate the proposition before the Convention, except by general consent. That has been given, and the gentleman from Salem has the privilege of proceeding.

Mr. LORD. I do not propose to proceed upon that basis at all, and, therefore, inasmuch as it is suggested that several gentlemen had propositions such as I said I should favor, although I cannot conceive how they can be in order, still, as they desire to present them, I will yield the floor and take my chance for an opportunity to speak upon this amendment.

Mr. MORTON, of Taunton. In the close of my imperfect remarks, yesterday, I stated to the Convention, that I had in contemplation an alternative proposition to offer. Since that time, a great number of the members of the Convention have desired me to present it, and without supposing I can now offer it, I wish to have it distinctly understood that I exceedingly desire to have some opportunity of laying my proposition before the Convention without saying one word upon it, at some stage of the proceedings, before the debate is closed by the order passed for the special assignment.

The PRESIDENT. Unless objection is made, the gentleman will have the liberty of stating his amendment.

Mr. MORTON. If the Secretary will be so good as to read it, it is the only explanation which I have to make.

The amendment was read as follows:—

Resolved, That the Committee "appointed to reduce such amendments as have been or may be agreed upon, to the form in which it will be proper to submit the same to the people for ratification," be instructed so to prepare the amendments in relation to the House of Representatives, as to submit to the people the following questions:—

First. Shall the twelfth amendment in the present Constitution be abrogated?

Second. Shall the system of representation by towns, in the form accepted by the Convention, be ratified and adopted as a substitute for the said twelfth amendment?

Or, Shall the system of representation by districts, in the form hereto subjoined, be ratified and adopted as a substitute for the twelfth amendment aforesaid?

And if a majority of the legal voters voting thereon, shall be in favor of abrogating the said twelfth amendment, then the one of the two proposed systems of representation which shall receive the greatest number of votes, shall be deemed and taken to be ratified, and shall become a part of the Constitution, in lieu of the twelfth amendment of the present Constitution: *provided*, that if the two proposed systems shall receive an equal number of votes, then the system agreed upon by the Convention shall be deemed and taken to be ratified, and shall become a part of the Constitution as above stated.

[Proposed system of Representation by Districts, before referred to.]

The House of Representatives shall consist of two hundred and sixty-one members. Said members shall be apportioned among the several counties as nearly as possible according to the number of legal voters in each.

The Senate, at its first session after the ratification of this amendment, and at its first session after each decennial census, shall divide each county into such representative districts, composed of contiguous territory, as they may deem expedient, so that the basis of each representative shall be the same number of legal voters, as nearly as possible, without the division of towns or the wards of cities: *provided*, that no district shall be so large as to entitle it to more than three representatives; and *provided*, that Nantucket and Dukes County, shall each form one district and be entitled to at least one representative.

Mr. MORTON, of Taunton. I suppose that amendment is not now in order, and I merely offer it, and give notice that if an opportunity may be found, I desire very much to submit it, with an explanation of it, to the Convention.

The PRESIDENT. It is not now in order; but, it will be in order after the time assigned for taking the question.

Mr. ALLEN, of Worcester. Whenever that proposition shall be in order, it may be impossible to debate it, as the rules of the Convention may prevent. I wish to say a word or two in reference to it. I think there is an insuperable objection—

The PRESIDENT. The Chair will suggest that the gentleman from Worcester can proceed by general consent.

[The remarks of Mr. Allen, not being in the possession of the Reporter, will be found, out of place, in some subsequent part of the record.]

Mr. MORTON. I rise, not to discuss the subject, but it has been suggested by some members of the Convention that my proposition seems to take the Convention somewhat by surprise, and they desire to have an opportunity to discuss it, and certainly nothing can be further from my wish, than to call upon anybody to vote upon the subject without a full opportunity to discuss it. I beg leave, therefore, to say that I will withdraw it, and will offer it when an opportunity can be given to investigate it.

Eleven o'clock, the hour assigned for taking the vote, having arrived,

On motion by Mr. EARLE, of Worcester, some verbal alterations were made in the resolves.

The question then being upon the proposition offered yesterday by the gentleman from Boston, Mr. Hale, to strike out all after the word "Resolved" and insert the following:—

That it is expedient so to alter and amend the Constitution as to provide for a periodical division of the Commonwealth into equal districts, on the basis of population, with a view to the establishment of a House of Representatives on the principle of equality, and consisting of such a number of members as may be best entitled to the confidence of the people, and best adapted to the convenient dispatch of the legislative business. In order thereto, a census of the inhabitants of each city and town, on the first day of May, in the year one thousand eight hundred and fifty-five, and on the first day of May in every tenth year thereafter, shall be taken and returned into the office of the Secretary of the Commonwealth on or before the last day of June next ensuing the dates aforesaid. And it shall be the duty of the general court, which shall be next chosen after the taking of each decennial census, to divide the towns and cities of the Commonwealth into eighty districts, in such manner that each shall contain, as nearly as may be, an equal number of inhabitants, and they shall, in all cases when the same shall be practicable, be formed by the union of towns and cities, or parts of cities, adjoining one

another; and in the formation of such districts no town shall be divided. But the cities, when containing a greater number of inhabitants than the average of the districts throughout the Commonwealth, shall be so divided that each district shall, as nearly as may be, contain that number, and any part of the inhabitants exceeding the number required for the entire district therein, shall be set off to form a part of such adjoining district, as the general court shall direct. The division of cities into districts shall be formed, and the inhabitants who may be set off to an adjoining district shall be organized for the purpose of conducting the elections therein, by the municipal authorities of the respective cities, in the same manner as the wards, for city purposes, are constituted therein. And the inhabitants of each district shall elect three representatives, constituting a House of two hundred and forty members.

Mr. HALE. If it be in order, I wish to explain, in very few words, the reasons which have influenced me in offering this amendment.

The PRESIDENT. By general consent, the gentleman can be permitted to proceed.

Mr. HALE, permission being accorded, proceeded to say, that the proposition which he had had the honor to submit, had, at least, the merit of providing for an equal basis of representation. It proposes (continued Mr. Hale) a basis which allows a representation of all classes of the people, and of every locality; a representation as nearly equal in its character as is attainable by any mode of representation that has been adopted in any of the States of the Union.

Besides being in this respect based upon principles of entire equality, it possesses the advantage of a uniform application to all the cities and large towns, as well as to the small towns. It requires a universal districting, not only by uniting the small towns for the purpose of forming districts, but by dividing the cities into districts of the same dimensions. This is so literally true, that there is not a town or city in the Commonwealth which, under the census of 1850, would not, under this resolution, be subjected to the principle applied to all the rest. There is not a town that comes near enough in the number of its inhabitants to the average on which the districts are based, to entitle it to form a district of itself, without being either divided because it is too large, or united with some other town, or some part of a city, because it is too small. The system, therefore, will be uniform in its application to all cities and towns. It calls for no relinquishment of the privilege of corporate representation by a part of the towns for the benefit of the rest, but for a relinquishment by all for the common benefit of the whole. This is one advantage which this system possesses over all others that have been proposed. It places the people of every part of the State on a precise equality, in all respects.

Another advantage of this system is, that it allows three representatives to each district. In that respect, I conceive it has a decided advantage over districts for a smaller number—either for a single representative, or for two representatives. It has an advantage of admitting a much greater degree of equality in the apportionment. If you were to attempt to divide the State into districts to elect a single member, it would be necessary either to divide a great proportion of the towns, or to make the districts extremely unequal; but, I am satisfied on examination, that, in dividing the Commonwealth into eighty districts, which shall have as nearly as possible the average num-

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ber of inhabitants, (which average, I believe, will be exactly 12,171,) the districts can be so formed that not one of them will differ more than six per cent. from that precise average. This, I conceive, to be a great advantage over districts formed for the election of a single member, or even for two members.

There is one other circumstance in relation to this proposition, which I will briefly allude to before I close. I refer to the question of the basis of representation. It proposes to establish the basis upon population. If I were persuaded that a basis upon legal voters would be more satisfactory, I should have no objection to adopt it; but, I conceive the more suitable basis, and one which has been very generally adopted and preferred throughout the United States, to be the entire population of each district, and not any particular class or portion of that population. Believing that to be the true basis, I was disposed, as one of the Committee having this subject in charge, to recommend it, and my friends of the Committee who signed the Minority Report, recommending, in substance, the amendment which I now offer, concurred with me in the proposition, in preference to a basis upon legal voters, which has been urged by a number of gentlemen in the course of the debate.

There is a reason why, in my opinion, very little weight should be given to the supposed difference between the two bases. It is this. We have printed in our documents, a statement of the number of legal voters in the different counties in the year 1850; and, gentlemen have supposed that that statement affords a correct indication of what will be hereafter the comparative proportion of the legal voters, and the inhabitants, throughout the Commonwealth. I believe that that idea is founded in a mistake. It is well known that the number of voters on the voting lists varies very materially in different years, according to the care taken to obtain the names of all the persons entitled to vote. In 1850, there was more attention given to this subject in some parts of the Commonwealth than in others. In Suffolk County, for example, there was no great effort made to obtain an accurate result, while in other counties a deeper interest was felt in the election then ensuing. I am satisfied that the number of voters returned, in proportion to the population, is smaller than it will be found to be when it becomes a matter of importance, in the public estimation, that the voters should all be enrolled. There is another reason why the proportion of voters, in cities and towns where there is a large changeable population, would be increased, provided this basis should be adopted. It is, that no tax being required as a condition of the proposed qualification for the right of voting, a great many persons entitled to be voters will hereafter take care that their names are put on the list, who, at present, do not do so. I conceive, therefore, that it will make very little difference, whether the basis of legal voters or of population be adopted. Mr. President, I thank the members of the Convention for their kind indulgence in permitting me to offer these few remarks, and will take up their time no longer.

Mr. HOOPER, of Fall River. I rise to make a motion to amend the gentleman's proposition. I believe it contemplates the taking of the census in 1854. The Convention, the other day, decided that the census shall be taken in 1855. Unless,

therefore, the proposition be made to conform to that decision, it will require an additional census to be taken.

Mr. Hale accepted the amendment suggested by the gentleman from Fall River, and the proposition was modified accordingly.

The question recurred on the adoption of the amendment offered by Mr. Hale, of Boston, as amended.

Mr. HOOPER. I should like, Mr. President, to give my reasons for the vote that I shall give upon this question.

The PRESIDENT. The gentleman can only proceed by the unanimous consent of the Convention.

Objection was made.

The question was then put, and the yeas and nays, having been previously ordered, were taken, with the following result:—

YEAS.

Abbott, Alfred A.
Adams, Benjamin P.
Aldrich, P. Emory
Appleton, William
Aspinwall, William
Atwood, David C.
Barrows, Joseph
Bartlett, Sidney
Beebe, James M.
Bell, Luther V.
Blagden, George W.
Bradbury, Ebenezer
Bradford, William J. A.
Braman, Milton P.
Brewster, Osmy
Brinley, Francis
Briggs, George N.
Bronson, Asa
Bullock, Rufus
Bumpus, Cephas C.
Childs, Josiah
Churchill, J. McKean
Cogswell, Nathaniel
Cook, Charles E.
Coolidge, Henry F.
Copeland, Benjamin F.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Davis, John
Davis, Solomon
Davies, Henry L.
Dehon, William
Doane, James C.
Easton, James, 2d
Eaton, Lilley
Ely, Homer
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Gardner, Henry J.
Giles, Joel
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Greenleaf, Simon
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Haskell, George
Hathaway, Elnathan P.
Haywood, George
Heard, Charles
Hersey, Henry
Hillard, George S.
Hopkinson, Thomas
Hubbard, William J.
Huntington, Asahel

Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Allen, Joel C.
Allen, Parsons
Alley, John B.
Allis, Josiah
Alvord, D. W.
Ayres, Samuel
Ballard, Alvah
Ball, George S.
Bancroft, Alpheus
Bartlett, Russel
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beal, John
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Bliss, Gad O.
Booth, William S.
Boutwell, Geo. S.
Boutwell, Sewell
Breed, Hiram N.
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Burlingame, Anson
Cady, Henry
Caruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Chester W.
Chapin, Daniel E.
Chapin, Henry
Clark, Henry
Clark, Ransom
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Cole, Lansing J.
Cole, Sumner
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, Robert T.
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
DeWitt, Alexander
Dorman, Moses
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fisk, Lyman
Fiske, Emery
Fitch, Ezekiel W.
Poster, Aaron
Poster, Abram

NAYS.

Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Frothingham, Rich'd, Jr.
Gale, Luther
Gardner, Johnson
Gates, Elbridge
Gilbert, Wanton C.
Gilbert, Washington
Giles, Charles G.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hall, Charles B.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Harmon, Phineas
Haskins, William
Hawkes, Stephen E.
Hayden, Isaac
Heath, Ezra 2d,
Henry, Samuel
Hewes, James
Hewes, William H.
Hindsdale, William
Hobart, Aaron
Hobart, Henry
Hobbs, Edwin
Holder, Nathaniel
Hood, George
Hooper, Foster
Howard, Martin
Howland, Abraham H.
Hoyt, Henry K.
Hunt, Charles E.
Huntington, Charles P.
Hurlbut, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Johnson, John
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Ladd, Gardner P.
Langdon, Wilber C.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Loomis, E. Justin
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Mason, Charles
Meader, Reuben
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morss, Joseph B.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Newman, Charles
Nichols, William
Norton, Alfred
Noyes, Daniel
Nute, Andrew T.
Orne, Benjamin S.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Paine, Henry

Friday.]

HOUSE OF REPRESENTATIVES.—WOOD.

[July 8th.

Parris, Jonathan
Parsons, Samuel C.
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pomroy, Jeremiah
Pool, James M.
Powers, Peter
Putnam, John A.
Rawson, Silas
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Rogers, John
Ross, David, S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sheldon, Luther
Sherril, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stevens, Granville

ADSENT.

Allen, James B.
Andrews, Robert
Austin, George
Baker, Hillel
Banks, Nathaniel P., Jr.
Beach, Erasmus D.
Bigelow, Jacob
Bliss, William C.
Bullea, Amos H.
Butler, Benjamin F.
Carter, Timothy W.
Choate, Rufus
Clark, Salah
Coggin, Jacob
Conkey, Ithamar
Denison, Hiram S.
Eustis, William T.
Fellows, James K.
Gooch, Daniel W.
Gourgas, F. R.
Heywood, Levi
Houghton, Samuel
Hunt, William
Huntington, George H.
Hurlburt, Samuel A.
Hyde, Benjamin D.
Kendall, Isaac

Yeas, 123; nays, 243; absent and not voting, 53.

So the amendment was rejected.

The question then recurred upon the final passage of the resolves.

Upon motion of Mr. GRAY, of Boston, the yeas and nays were ordered.

Mr. WOOD, of Fitchburg, moved a suspension of the Rules of the Convention requiring that the names of members be called in alphabetical order, with the design of moving that the mode of calling the roll be reversed.

The motion was rejected.

The Secretary then proceeded to call the roll, and upon the final passage of the resolves the vote stood—yeas, 233; nays, 131—as follows:—

YEAS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Allen, Joel C.
Allen, Parsons
Alley, John B.
Allis, Josiah
Alvord, D. W.
Austin, George
Ayres, Samuel
Baker, Hillel
Ball, George S.
Bancroft, Alpheus
Bartlett, Russel
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beal, John
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Bliss, Gad O.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Breed, Hiram N.
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Burlingame, Anson
Cady, Henry
Carruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Daniel E.
Chapin, Henry
Clark, Henry
Clark, Ransom
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Cole, Lansing J.
Cole, Sumner
Coledge, Henry F.
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Curtis, Wilber
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Ebenezer
Davis, Isaac
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
DeWitt, Alexander
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Easton, James, 2d
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fiske, Emery
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Aaron

Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pomroy, Jeremiah
Pool, James M.
Powers, Peter
Putnam, John A.
Rawson, Silas
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Rogers, John
Ross, David S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sherril, John
Sikes, Chester
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stevens, William
Stiles, Gideon
Strong, Alfred L.

NAYS.

Abbott, Alfred A.
Adams, Benjamin P.
Aldrich, P. Emory
Appleton, William
Aspinwall, William
Atwood, David C.
Barrows, Joseph
Bartlett, Sidney
Beach, Erasmus D.
Bell, Luther V.
Blagden, George W.
Bradbury, Ebenezer
Bradford, William J. A.
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Bronson, Asa
Bullock, Rufus
Bumpus Cephas C.
Chapin, Chester W.
Childs, Josiah
Churchill, J. McKean
Cogswell, Nathaniel
Cook, Charles E.
Copeland, Benjamin F.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Davis, Charles G.
Davis, John
Davis, Robert T.
Davis, Solomon
Dawes, Henry L.
Doane, James C.
Dorman, Moses
Eaton, Lilley
Ely, Homer
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Gardner, Henry J.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Greenleaf, Simon
Hale, Artemas
Hale, Nathan
Hammond, A. B.

Sumner, Charles
Sumner, Increase
Swain, Alanson
Thayer, Willard, 2d
Thomas, John W.
Tilton, Abraham
Tilton, Horatio W.
Turner, David P.
Tyler, William
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallace, Frederick T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Weston, Gershon, B.
White, Benjamin
White, George
Whitney, Daniel S.
Williams, J. B.
Wilson, Henry
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wood, William H.
Wright, Ezekiel

Friday,]

HOUSE OF REPRESENTATIVES, &c. — MORTON — SUMNER.

[July 8th.

Stetson, Caleb
Stevens, Charles G.
Stevens, Granville
Stevens, Joseph L., Jr.
Stevenson, J. Thomas
Talbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thompson, Charles
Tilston, Edmund P.
Tyler, John S.
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.

ABSENT.

Allen, James B.
Andrews, Robert
Ballard, Alvah
Banks, Nath'l P., Jr.
Beebe, James M.
Bigelow, Jacob
Bliss, William C.
Bullen, Amos H.
Butler, Benjamin F.
Carter, Timothy W.
Choate, Rufus
Clark, Salah
Coggin, Jacob
Conkey, Ithamar
Dehon, William
Denison, Hiram S.
Eustis, William T.
Frothingham, R., Jr.
Gourgas, F. R.
Hall, Charles B.
Hapgood, Lyman W.
Heywood, Levi
Hobart, Aaron
Houghton, Samuel
Hunt, William
Huntington, George H.
Hurlburt, Samuel A.
Hyde, Benjamin D.

Absent and not voting, 55.

And the resolves were finally passed.

Upon motion of Mr. WILSON, of Natick, at 1 o'clock, the Convention adjourned until 3 P. M.

AFTERNOON SESSION.

The Convention reassembled at 3 o'clock.

Basis of Representation.

Mr. MORTON, of Taunton. It will be recollected, that in my remarks yesterday, I expressed a determination to offer, for the consideration of the Convention, an alternative proposition. This morning, by the courtesy of the Convention, I had an opportunity to offer that proposition. It was but a very short time before the vote was to be taken on the general proposition, in relation to representation, and the several amendments. It was suggested by some of my friends who did not agree with me in opinion upon that subject, that it was rather a surprise upon the Convention, and that there was not sufficient opportunity of investigating and discussing it. Being entirely unwilling to do anything which would operate as a surprise, or what would even have the appearance of operating as a surprise, or of preventing a full and free discussion of the subject, I then withdrew the proposition, at the same time declaring, that it was my intention to avail myself of the first opportunity to present it again to the consideration of the Convention.

Mr. President, on this great subject, which we

Walker, Samuel
Waters, Asa H.
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
Wilbur, Daniel
Wilbur, Joseph
Wilder, Joel
Wilkins, John H.
Wilkinson, Ezra
Williams, Henry
Wilson, Milo
Winn, Jonathan B.

have been discussing for a long time, and which, I trust, we are about to draw to a close, there certainly is a great diversity of opinion. Gentlemen have expressed their views with freedom, and we have had a direct vote upon the question; and a great majority of the Convention have decided against my motion. It not my wish, in any form, again to call up that question. But it seems to me, that taking into view the various circumstances attending the transaction, the difference of opinion among the members of the Convention, and above all, their difference in relation to the wishes of the people on the subject, that it would be no more than reasonable and proper to submit to the people the choice between the two systems which have been brought before the Convention, and fully discussed by them. But, my desire is, so to present this subject to the people, that they may have an opportunity to decide, in the first place, whether they will amend the existing Constitution; and in the second place, if they choose to amend the Constitution, whether they will prefer one or the other of the two systems; that is, whether they will choose the district system, or the town system. I do not intend to go into a discussion of the question; but there is one suggestion, which, in the outset, I wish to make.

Many members of the Convention have supposed, that if we presented a town representative system alone to the people, they would prefer the old Constitution to that, and, therefore, we should gain nothing by it. Others have supposed, that if we presented a district system to the people, they would prefer the old system to that, and, therefore, we should get no amendment of the Constitution; but if we can present the subject so as to let them have a choice between the two systems, it would seem to be very manifest, that we should get rid of the old system, which appears to be objectionable to most people, and should adopt whichever of the other two systems the people prefer. For myself, I have a very strong belief, that the district system would be the best for the Commonwealth, and would receive the greatest favor from the people; but if it is submitted to them, and they prefer the other, no man would be more ready to acquiesce in their decision than myself. I therefore propose to submit the same amendment which I offered in Convention, this morning, and I am willing, that such disposition should be made of it as is most agreeable to the Convention, especially those who wish to be heard upon the subject. In order that it may be brought before the Convention, and be fully understood, and discussed just as much as the members of this body choose, I submit it, and would like to have it go into the Orders of the Day, and to have it printed.

The PRESIDENT. As it provides for an amendment of the Constitution, it will be necessary that it should go to the Committee of the Whole.

Mr. MORTON. If that is the opinion of the Chair, I shall acquiesce in it. I supposed, that as it was merely instructions to the Committee, it did not come within the rule. I am perfectly content that it shall take that course. All I desire, is to have a full and free expression of the Convention, upon the question.

The PRESIDENT. The Chair will call the attention of the gentleman to the rule on the subject. The fifty-second rule provides that "every

order or resolution, which proposes an alteration in the Constitution," shall be considered in Committee of the Whole, before it is debated and finally acted upon in Convention.

Mr. MORTON. I will move then, that it be referred to the Committee of the Whole and printed. I am willing to let it take its course and come up at some future time. I hope, however, it will be at no distant day.

The motion was agreed to.

Report from a Committee.

Mr. SUMNER, for Marshfield, from the Committee on the Bill of Rights, submitted the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 8, 1853.

The Committee to whom was referred so much of the Constitution as is contained in the Preamble and the Bill of Rights;

Also, the Memorial of John W. LeBarnes, and sundry petitioners in aid thereof, against any establishment or recommendation of religion;

Also, the petition of J. A. Saxton, and of sundry others, for the protection of fugitive slaves;

Also, the petition of James B. Allen, and of sundry others, for the abolition of imprisonment for debt;

Also, the order of the Convention bearing date May 13th, concerning personal liberty and trial by jury;

Also, the order of May 10th, on the descent of property to aliens;

Also, the order of May 10th, on imprisonment for debt;

Also, the order of June 6th, on the poor debtor's oath;

Also, the order of May 28th, on releases from the payment of honest debts;

Also, the order of May 16th, on the tenure of the Supreme Judicial Court;

Also, the order of May 16th, on the suspension of laws;

Also, the order of May 20th, on the liberty to pursue any business, trade, or employment;

Also, the order of May 13th, on criminal proceedings for libel;

Also, the order of May 12th, on distinctions of color;

Also, the order of May 27th, on a judicial remedy against the Commonwealth;

Have had the same under consideration, and now report to the Convention the Preamble and Bill of Rights, with the following resolutions:—

CHARLES SUMNER, *Chairman.*

1. *Resolved*, That the Bill of Rights be amended by adding to the eleventh article, as part of the same, the following words:—

"And every person having a claim against the Commonwealth, ought to have a judicial remedy therefor."

2. *Resolved*, That the Bill of Rights be amended by inserting, between the eleventh and twelfth articles, the following additional article, being identical with one now in another chapter of the Constitution, and which more appropriately belongs to the Bill of Rights, viz.:—

"VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months."

3. *Resolved*, That the Bill of Rights be amended

Friday,]

LOAN OF STATE CREDIT, &c.—STETSON.

[July 8th.

in the last sentence of the twenty-ninth article, by striking out the words "so long as they behave themselves well, and that they," and inserting, "by tenures established by the Constitution, and"; also, by striking out the words "ascertained and established by standing laws," and inserting, "which shall not be diminished during their continuance in office," so that the whole sentence, as amended, shall read as follows: "It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the Supreme Judicial Court should hold their office by tenures established by the Constitution, and should have honorable salaries, which shall not be diminished during their continuance in office."

4. *Resolved*, That the Bill of Rights be amended by inserting between the twenty-ninth and thirtieth articles, the following additional article:—"This enumeration of rights shall not impair others retained by the people, and no powers shall ever be assumed by the legislature that are not granted in this Constitution."

Loaning the Credit of the State.

On motion of Mr. STETSON, of Braintree, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Boutwell, for Berlin, in the chair, on the unfinished business, being the subject of Loaning the Credit of the State, the Committee on that subject having reported that it is inexpedient for the Convention to act upon the same.

The question being on agreeing to the Report, Mr. STETSON, proposed to amend the Report by substituting for the conclusion of the same, the following:—

Resolved, That the Constitution be so amended, that hereafter the State shall not loan its credit to any corporation, association, or individual, unless the question shall first be submitted to the people, and a declared majority voting thereon, shall sanction the act.

Mr. STETSON. The other day, this subject was somewhat discussed, and a vote was taken thereon. I spoke upon the question at that time, and I shall endeavor, if possible, not to repeat any remark which I then made. I shall confine my remarks, in the first place, on this occasion, to the question of State sovereignty, having regard to the rights of the people; and in the second place, I shall examine the question of the liability of legislative bodies to be influenced by outside, ulterior influences, self-interest and party considerations, in which, I shall, for illustration, show that legislative bodies, heretofore, have failed to represent the will of the people. And then, Sir, I shall inquire into the question, whether or not, this body is charged with corruption. I understood the gentleman from Boston, who spoke upon this question, the other day, to say that he was opposed to the passage of the amendment, because it relinquished the State sovereignty, by giving it up to the people, and that he was in favor of holding the power of sovereignty in a firm grasp. I will ask that gentleman where he can find, that the people ever delegated to the sovereignty of the State, the power to loan its credit to any corporation, association, or individual.

I contend, that no such doctrine can be pointed out in our Constitution; and the doctrine maintained is an usurped power, whenever exercised without the direct assent of the people.

Mr. ALVORD, for Montague. I rise to a point of order. I understand, Mr. Chairman, that the

gentleman is speaking on the amendment that he has proposed, which is precisely the same in substance with the amendment that he proposed several days ago, and which was rejected. I rise to a question of order, whether such an amendment is in order now.

The CHAIRMAN. Upon examination, it is the opinion of the Chair, that the amendment is not in order. When the Convention was in Committee of the Whole, on a former day, the gentleman from Braintree, submitted the following amendment:—

Resolved, That the Constitution be so amended that hereafter no loan of the State credit shall be granted to any corporation or individual, unless the question be first submitted to the people.

That amendment was rejected by the Committee. The gentleman from Braintree, now proposes an amendment in the following words:—

Resolved, That the Constitution be so amended that hereafter the State shall not loan its credit to any corporation, association, or individual, unless the question shall first be submitted to the people, and a declared majority voting thereon, shall sanction the act.

The Chair is of the opinion, that it comes within the rule, being the same in substance, and is, therefore, not in order. The question recurs on agreeing to the Report of the Committee.

Mr. STETSON. If it will be in order, then, I move to reconsider the vote whereby the Committee refused to agree to that amendment.

The CHAIRMAN. The time has passed within which the gentleman could move a reconsideration of that vote.

Mr. STETSON. Well, Sir, I suppose I may as well go on and say what I have to say. I was about to remark, that those prerogatives of power were never yielded by the people, in forming a social compact, and never should be submitted to by a people whose basis of government rests upon the pure principles of democracy; and that is what our fathers fought for and secured to us for all time to come. The institution of government is made and formed by men yielding some portion of their natural rights for self-protection, and for the protection of the whole body of the people.

In a democratic form of government, we yield only those rights which are absolutely necessary to form a social compact, in order to maintain a stable and good government for the whole people. Let me read an extract from the Declaration of Rights. It says: "The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign and independent State, and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction and right, which is not, or may not hereafter be by them expressly delegated to the United States of America, in congress assembled." The question then arises, whether this right of the people of this Commonwealth to loan its credit is one of those rights delegated by the people in forming their organic law; and, Sir, I maintain that it is not one of those rights. I will ask any gentleman in this Convention to point out any place in the Constitution of this State, where the people have ever delegated to their representatives any power to loan the credit of the State to any corporation, or individual, or company. I say it is an usurped power, and that I will maintain. The

power of loaning the credit of the State, for such purposes, is not one of State sovereignty. The people of Massachusetts have never delegated such power, either by any constitutional provision, or statute law. It is one of those acts which are of doubtful authority. It is clearly one of those acts not necessary for the safety, security, or maintenance of good government. Therefore, when such grants are asked for, a clear case should be made out, that the welfare of the people requires such grants. The question should be submitted to the whole people whether they will, in their capacity of town representation, uphold us; let them have an opportunity to say "yea" or "nay" thereon.

It may be asked, why not refer the question to one legislature, and then to a succeeding one? My answer is, the people have never delegated to their representatives or agents any such power. Such powers are implied, and though they have, heretofore, been exercised by the representatives of this State, it is time the people should express their opinion upon such concentration and usurpation of power.

The delegates, or agents, sent by the sovereign people to the legislature, should represent the rights of the people. Now I ask if there have not been instances in the State legislature, and in the congress of the United States, when the representatives of the people, have passed acts in derogation of the rights of the people, and where we may suppose they were corrupted, in some degree, by outside influences, or interested motives, so that the rights of the people were trodden under foot? There have been instances, and with the permission of the Committee I propose to state two or three, which occurred in our colonial history, and two, among the numerous class of cases which have occurred under our present form of government. The first instance to which I would call the attention of the Committee, was during the administration of John Adams. Those who have read the history of those times, know that a company was formed called the Yazoo Company, which obtained, by attending the legislature of Georgia, and bribing its members, the possession of five millions of acres of land, for a trifling sum of money. I suppose the members of this Convention will see in this bribery of the members of the Georgia legislature, a good reason why we should have a large one. They were bribed out of five millions of acres of land, and the parties obtained possession of it. When it became known to the people of the State, that they had been cheated out of this large domain, they reversed the decision of the legislature, and pronounced the law by which the grant was made, unconstitutional, fraudulent and void. It was not only repealed, but it was burnt by the common hangman, and the record of it expunged from the statute book. Yet, notwithstanding these facts, known to all men, a company of individuals in other States, known as the New England and Mississippi Land Company, purchased this claim and fraudulent title, and presented their petition to congress, asking remuneration for the land. This proposition was brought in under the administration of Jefferson, and exposed and condemned by the instrumentality of John Randolph.

Another case occurred under our colonial history, in the year 1740. A company petitioned the legislature for a bank, called a Land Bank.

Friday,]

LOAN OF STATE CREDIT.—STETSON.

[July 8th.

The basis upon which this bank was established, was *land*, and the name arose from the fact, that land was the means by which it was carried on. The process was this: a certain company of speculators and farmers who held land, were associated together, and were to, and did issue bills as money, which represented land, at such prices as the company stipulated, and they were issued to the amount of each stockholder's valuation, without any provision by which they might be redeemed. No provision was made for their redemption. They were to be received as money, at par. It met with general favor, in consequence of the plausibility of the scheme. Hutchinson was then Speaker of the House, and most of the leading men of the day opposed it, with all the power they could command, as a measure fraught with corruption and detrimental to the interest of the colony, yet, notwithstanding every appliance which was brought to bear upon the colonial assembly to put down the iniquitous scheme, it was carried through both Houses. It went through all stages of the assembly, and became a law by a large majority. After the bank was established, it was found that a large majority of the colonial assembly were stockholders in this scheme, while the act was going through the forms of law. Within a year after its existence, they issued £150,000 of currency, which was not worth anything, and the governor finding no other remedy to put a stop to such a system of fraud, applied to the home government, and an act was passed, under King George I., called the Bubble Act. It was made to apply to America, and thus a veto was put upon this iniquitous scheme, which was obtained by fraud and corruption of the colonial assembly, and it put an end to the further issue of bills of credit until the commencement of the revolutionary war.

Another instance of fraud grew out of the establishment of the United States Bank in 1816. The motives of a portion of those who obtained the charter, no doubt, were patriotic and sincere. On the other hand, some members of congress, with outside influences brought to bear, were to obtain a charter for stock-jobbing purposes, in order to enrich themselves and friends. When the bank charter was obtained, it was in the hands of those who committed the greatest frauds at the expense of the public. By the aid of some members of congress, a majority of the board were stock-jobbers, who obtained power for speculative purposes. One of the most notorious was G. Williams, of Baltimore, who obtained eleven hundred shares of stock by signing his name for eleven hundred individuals. He, in consequence, was chosen a director. The stock of the bank, during the year 1817, was run up to \$156 per share. In 1818, the bubble burst, and with it, one of its directors, who had discounts to the amount of three and a half millions of dollars. They lost over one and a half millions by that individual. The bank, in 1817, was insolvent, and history will prove it so; and it never, from 1818, down through its whole existence, was able to pay its debts. I know, that by its transfer to the State of Pennsylvania, it shoved off its iniquitous and bad debts upon the shoulders of the State. The stock, in 1818, was down to 110. It is not my purpose to expose the great frauds committed upon the public at this time; my only purpose now, is to say, that the very inception of the bank was fraud, and was the consequence of more fraud

and injustice to the people than any act of a legislative assembly of the present century. It is not yet time to write its history. I suppose these are some of the public frauds growing out of legislative action. And are we to suppose these are the only public frauds upon the people? There are hundreds of cases which may be cited, in our history, more or less of an aggravated nature.

And, Sir, I ask it as a privilege to state, that I believe, by the truest construction which can be put upon print, that this body, as respectable as it is, is charged with corruption by one of our own members, and I desire to state what I consider to be the charge. I hold in my hand a paper called the *Plymouth Rock*, dated June 30, 1853, and in it I find the following article:—

"The discussion this morning, was upon the question of loaning the State credit, and at no time during the session has Whig intrigue and political duplicity stood out in such bold relief. For the honor of the Convention, I wish it were otherwise, but yet I am forced to the conclusion, that much of the debate to-day was influenced by the money of the Western Railroad. Part of the object of the Whigs has been to distract and divide the reform members of the Convention, but in the main it is a strike at the Hoosac Tunnel."

Now, Sir, I do not believe the gentleman from Plymouth, (Mr. Bates,) intended to charge me with corruption; but he has. And I feel somewhat as St. Paul did, when one of his members suffered, the whole body suffered. I feel so, for the members of this body; and I consider, that if I suffer, they suffer. I ask any gentleman who has heard me read that paragraph, if that is not a charge of corruption. I do not believe that my friend upon the right, (Mr. Bates,) intended to do what he has done. But, Sir, that charge has been made by other persons than himself, and members upon this floor have been charged with speaking here, by being fed with the money of the Western Railroad. I ask, if that were the case, would it not be one of the strongest reasons in the world why the legislature should never have the power of loaning the State credit? When it can be charged upon any corporation, that they come here to corrupt the members of this Convention, is it not time that the Constitution should provide, that State aid should not be granted to such or to any corporations?

But, Sir, I fear nothing from the charge at all; and I only need say, that I do not believe a word of it is true. But I believe this, that such charges are made to prejudice the stockholders of the Western Railroad, and to prevent their being in league and intrigue with some members of this Convention. It is done for the purpose of raising capital out of it, in favor of particular objects. But, Sir, if there is any member of this Convention who has received pay for making speeches here, from the hands of the Western Railroad, I trust, in all conscience, he will rise in his place and own up. [Laughter.]

I do not believe that a matter of so much moment as this should ever be left in the hands of those who will log-roll, and who will, without hesitation, use every means in their power to induce the legislature to carry through certain measures in which members may have a personal interest. I believe this measure is one, that, when taken in all its bearings, is of important import.

I believe it is the duty of every true democrat

to do all in his power to secure the largest liberty of the people, and to oppose, to the extent of his influence, any and every measure that will have the effect to place a restraint upon the liberties of the people. Sir, this proposition will take away from men that right which they possess by nature, and which they never gave up in the formation of the government. Sir, I repeat, that so far as personal liberty is consistent with the maintenance of government, it should be meted out to every individual; and that no power on earth should be brought to bear to detract from or to take away any of those rights which each individual enjoys and which he has the right to enjoy under the Constitution.

Sir, the true democrat has the law of liberty inscribed upon his heart. Jefferson once said: "A wise and frugal government, which shall restrain men from injuring one another; shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned;—this is the sum of good government. I believe this is the strongest government on earth." And let me refer to the opinions of other distinguished men. Grattan says: "The people who take away the liberty of their fellow subjects, lose their empire." Charles J. Fox once said, that, "he was compelled to own, that the democratic form of government gives a power, of which no other form is capable. Why? Because it incorporates every man with the state; because it makes every individual feel that he is working for himself; that it is his own cause, his own safety, his own dignity—on the face of the earth." Legare said: "The law of liberty must be inscribed in the heart of the citizen. The very first pilgrim that set his foot upon Plymouth Rock, stepped forth a living constitution, armed at all points to perpetuate liberty." The law of liberty is inscribed in the heart of every true democrat.

And I wish now to say, notwithstanding the eloquent appeals which I have heard, from time to time, made upon this floor, to the democracy to preserve the purity of our institutions; yet at the very close of the argument, I have seen those gentlemen propose to vote for a measure which could have no other tendency than to corrupt and destroy that purity. Sir, I appeal to this Convention, if there is any act of mine which has been in opposition to the professions I have made. I know that gentlemen have precedents for such a course, and illustrious precedents, too. And this brings to my mind the fact, that Patrick Henry, a man whose fame was world-wide as an orator, whose rhetoric, whose genius, and whose superior talents, probably accomplished very much in securing to us the adoption of true democratic principles, and the liberty which we possess. But after he went into quiet retirement, he became soured from some cause, and what was the result? Why, Sir, he receded from his old opinions. The eloquence and lofty character of that man was clouded. He set at naught, in the sunset of his declining years, the very principles, which, with great eloquence, he had labored to sustain during the trying period of the Revolution, and cast a cloud over the national fame at the very close of his existence on earth. In 1799, he took the stump against the election of Mr. Jefferson, and what did he do? He belied every republican doctrine which he had maintained during the whole course of his political career.

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He supported the alien and sedition law of John Adams, whereby the one-man-power was completely established; which gave to the president the right to lay his hands upon the shoulder of any man who had offended him, by not voting as he wanted him to, or in any way, and put him in prison; and which gave him the right to send back, if he should see fit, every foreign emigrant that came to our shores. In the time of the Revolution, his cry was Liberty! Liberty! but now it was Power! Power! Now, Sir, with such an example, it is not a matter of wonder that men of our day should pursue the same course. John Randolph said that he learned his political principles of Patrick Henry; and when he became just old enough to take the stump, Patrick Henry apostatized from that democratic faith, and he took the stump against him; and John Randolph defeated him upon those issues.

Sir, it was in that school that I learned my political principles: principles which I have held during my whole life, and I defy any man to bring the charge against me, that I have preached good republican doctrine, and then turned round and "kicked the pail over." [Laughter.] I defy any man to show me when I have apostatized from the true democratic faith.

But, Sir, I know some gentlemen who are the lesser lights of democracy, but who, nevertheless, preach the true doctrines of democracy outside of this House; who come in here and preach the worst kind of Tory doctrines that ever existed previous to the Revolution. That is a truth which is not to be denied. But, Sir, I come here a true Jefferson democrat, as far as I understand the doctrines of Jefferson. And I am content with that doctrine. I will not, here or elsewhere, advocate any principle which I believe is not true, is not right, is not just to every man in the Commonwealth. I will not submit to any doctrine of mere expediency in this Convention; although I regret to see that there are men here who will maintain that doctrine. Sir, I look upon this concentration of power as a doctrine which, if carried out, will destroy the rights of the people, and take away their liberties. I want this question submitted to the whole people. I want them to have the power to determine whether the credit of the State shall be loaned or not. Any doctrine which will not accord this to the people, is, in my judgment, anti-democratic; it is a doctrine of the concentration of power; a doctrine which, while it professes to accede to the wishes of the people, will not give them an opportunity of expressing their wishes in relation to it; a doctrine of expediency by which they use the people just as they please, while they pretend to accord to their wishes.

Now, Mr. Chairman, although I have not been speaking to the question to which I intended to speak; that is, to the amendment which is before us, I trust I shall be pardoned for what I have said. The main question before us is, whether we will submit this question to the people or not; whether we shall permit them to govern their own affairs in this matter of concentrating the power of government under the dominion of one man; because that is the result of these resolves, as they were originally reported to us. It is whether we shall take away the rights of the people.

Again, this amendment which I propose to insert is not one which conflicts with the right to

make provisions for internal improvement by law. It does not affect our right to contract debts or to defend ourselves against invasion or insurrection. It has nothing to do with anything of that sort. It is simply a question whether we will allow the voters of the Commonwealth to deprive themselves of the right to control the State debts, or whether they will delegate this most important right to representatives who may be subject to bribery, and under the control of outside influence.

But, Sir, it was said, in debate, the other day, that this was not a measure demanded by the people, and gentlemen were afraid to meet the issue. Afraid of what? Why, afraid that if this provision were inserted in the Constitution, the Constitution itself would lose 10,000 votes on that account, when it came to be submitted to the people. Now, I want to know if there is any man here who supposes he can overawe us by declaring that he, or any other person, will withhold 10,000 votes from this Constitution, because it may contain a provision that will affect certain localities in the State? Sir, if this is the legislation, if this is the purpose for which we came to this Convention, I say, God save the Commonwealth of Massachusetts! If such are the tactics of any party upon this floor; if it is the purpose of any portion of this Convention to effect such ulterior objects by bragging and corruption; and if the Convention are to act under such influences, then I say, good-bye to all our rights—political, moral or civil. But, Sir, I have no fear in this matter. If those persons believe that the people of the Commonwealth are in favor of this measure, why are they not willing to submit it to the will of the sovereign people? Why not provide that the legislature shall submit that question to the people? Sir, I maintain that under the Constitution, as it now stands, the legislature have not the right to loan the credit of the State to any association, individual or corporation, without ascertaining the will of every legal voter in the Commonwealth in relation to it. No man can point out any paragraph in the Constitution under which we live, that confers any such authority; and I say that every departure from that principle of Democracy is one step towards undermining our whole system of democratic republican government. Sir, that is the doctrine for which Jefferson and his party fought; which they obtained, and under which these United States have prospered so well, for the last fifty years.

Sir, if these are the doctrines of conservatism; of conservative central power which we are to adopt, I think it is time to let the people know the exact position we take. I am not afraid to trust the people. I contend that the power of loaning the money or credit of every individual in the Commonwealth is in his own hands. Men, by forming themselves into social compact, do not, and never have yielded any such right, whatever, to the government. Therefore, I hope this Convention will not separate until they have taken away this exciting question, which, otherwise, for all time to come, is to be made an important element in our political contests. Sir, I saw something in relation to this very matter, which was a disgrace to the State, before the legislature closed its session last spring. I was in the city at the time, and I heard fifty or a hundred guns booming away, like the Fourth of July

in March. [Laughter.] I wanted to know what was the matter, and I was told that they were burning up powder at the expense of one of the corporations established by the laws of Massachusetts. And what was the reason given for it? Why, that they had carried through the legislature a measure which they deemed to be for their particular interest. And this State, to its everlasting disgrace, permitted one hundred pounds of powder to be burned in this manner, for this reason, by one of her children. They burned all this powder, and then come here, and ask the loan of the State credit to pay for it! Well, Sir, it is all right, I suppose; but I say it is an eternal disgrace to the State, that ever such a proceeding should have been permitted.

But, Sir, I do not propose to delay the Committee upon this subject. I have said nearly all I have to say; but I think that involved in this matter are some of the most important questions which have arisen, or will ever arise, connected with the welfare and prosperity of those who may come after us. I hope that the Convention will submit this question to the people; and if they will not do this simple act of justice, then I think that they are not proper judges of what the people wish for and demand.

Mr. MORTON, of Taunton, moved to amend, so as to provide that the State credit shall not be loaned without the consent of the people, and that the liabilities of the State shall not exceed, in the aggregate, the sum of one million of dollars, unless incurred to repel invasion or suppress insurrection.

Mr. ALVORD, for Montague, inquired whether this amendment was not identical with the one heretofore proposed by the gentleman from Braintree, and therefore out of order?

The Chairman ruled that the amendment was in order.

Mr. ALVORD, for Montague. I do not propose to discuss the question raised by the gentleman from Braintree, (Mr. Stetson,) of the right of the legislature, under the present Constitution, to loan the credit of the State. To me, that seems to be scarcely an open question now; but I would suggest, if the views of the gentleman from Braintree are correct, and, under the present Constitution, the legislature has no such right, then no such amendment, as that proposed by the gentleman from Taunton, is needed. The whole object is accomplished without any action by this Convention. If the views of those who have advocated this measure here, are similar to those of the gentleman from Braintree, (Mr. Stetson,) I submit to those gentlemen, that they are giving themselves a great deal of unnecessary trouble, and taking up the time of this Convention for no practical object. They have what they want already.

This debate, it seems to me, has proceeded very much upon a false issue. From nearly every speaker who has addressed the Committee, thus far, we have heard of the Hoosac Tunnel, and of little else. This remark may not apply, directly, to the gentleman from Braintree, who last addressed the Committee. He talked to us of the character of Patrick Henry, which had no more to do with the subject before us, than the Hoosac Tunnel, but certainly about as much. In that State paper, sometimes called the programme of the campaign, to which my friend from Brookline, (Mr. Aspinwall,) occasionally calls our at-

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tention, I find no mention made of the Hoosac Tunnel. In the Democratic State Address, which also has occasionally been called the programme of the campaign, I find no mention made of the Hoosac Tunnel. In no speech, in no article in any newspaper, advocating the calling of this Convention, so far as my recollection extends, is any mention made of the Hoosac Tunnel. I submit that we were not sent to this Convention for the purpose of taking any action, one way or the other, upon that subject. We have other duties to perform, we were sent here for other purposes. To me it seems that the Hoosac Tunnel has no business upon this floor, and I desire to call back the attention of the Committee to the real question at issue here. For many years it has been the policy of Massachusetts to extend its fostering aid and care to the internal improvements of the State, extending it in many ways, by the granting of liberal charters of incorporation, and, when occasion required, by more direct means. When any project came up, which, from its newness and the character of experiment which it presented, made capitalists shy in taking hold of it, and investing the necessary funds, when any project has been of such magnitude as to be beyond the reach of private capital, the State has stepped in, and, by the loan of its credit, has enabled the work to be accomplished. I believe all will agree with me, that, to some little extent, at least, the present unexampled prosperity of Massachusetts, in all material things, is due to these improvements, and that, had the policy of Massachusetts been otherwise, the present position of affairs here might have been very different. The question now before us is nothing more than this. Shall such policy hereafter be prohibited? That is the question and not that of the Hoosac Tunnel. Shall the gate now be shut down, and Massachusetts refuse, from this time forth, ever again to extend its aid to these projects of internal improvement? I know that the proposition, in its terms, is not necessarily a prohibition, but such must be its effect, if it shall be adopted. It is possible to cause the legislature to be fully informed of the merits of any particular project, although it is difficult to do even that. It can only be done at the expense of much labor, time, and money. Witnesses must be brought from a distance, and kept in the city many days, or even weeks. Counsel must be employed, surveys must be made, plans and models must be prepared and presented, and often it is necessary to take a Committee of the legislature, or even a larger portion of that body, to the ground where the improvement is proposed to be made, that they may view it and judge of the merits of the proposed undertaking. Through these means, at much expense, it is possible to cause the legislature to be fully informed of the merits of a proposed improvement. How can the whole people of Massachusetts be so informed? I submit that it is utterly impossible. I know that you may have a hearing before a Committee of the legislature, testimony may be taken, arguments made, and the whole subject presented in a document circulated broad-cast through the State; but even such a document, prepared with the utmost care, and circulated through the State, with the utmost industry, could scarcely reach one-fifth of the voters of the State; and of those whom it might reach, not one in ten would ever read it and inform themselves fully of the merits

of the project. So that, necessarily, if this amendment shall prevail, the people must vote upon a question of this kind in comparative ignorance. The result cannot be doubtful. Thus this amendment, though in its terms only a check, is, in fact, a prohibition, and if it is adopted, the gate is shut down for all coming time, to such aids as the State has heretofore granted to works of internal improvement.

Allow me, here, to express my surprise at some developments in this debate. There is probably no member of the Convention who does not favor, to a greater or less extent, appropriations by the general government for national objects, although I know there is great diversity of opinion as to the extent. Every gentleman agrees, that such appropriation should be made for harbors upon our seaboard, for light-houses and other facilities for commerce. Few deny that such appropriations are proper upon the harbors of our great lakes, for the improvement of the navigation of our great lakes and rivers. Indeed, I believe that a large majority go even farther than that, and favor appropriations by the general government, for such great internal improvements as the proposed Pacific Railroad. Congress after congress, intensely democratic, have made appropriations of public lands, in aid of works still more local in their character. I would like to have any gentleman here explain to me the consistency of advocating such appropriations by the general government, and opposing aid by the State, to State improvements. I can well understand how a man might advocate aid by the State, to State improvements, and oppose aid by the general government to national improvements. Such diversity of opinion and action might grow out of the different nature and objects of the two governments, the general government being a confederacy of very limited and restricted powers. But I cannot understand how any man can approve of aid by the general government, to national objects, and oppose aid by the State government to State objects. The State is much nearer to the people, and has a much more direct duty to foster enterprise and improvement. I would like to have gentlemen explain the consistency of their advocacy of the appropriations in the one case, and opposition to them in the other. No gentleman, so far as I am aware, has ever suggested, that the national government should first propose the question to the people, before it extends its aid to the Pacific Railroad, or harbors upon the sea-coast. I would ask if one of our State works of internal improvements, calculated to facilitate the inter-communication of the people of the State, and to aid the trade of the people with each other, and with other States, is not as properly and legitimately an object of State care and aid, as any harbor or river can be of national care and aid? It seems to me that there can be no doubt about this.

Allow me, here, to make another suggestion of a similar nature. We are preparing a Constitution to be submitted to the people. Under that Constitution, as it now stands, county authorities will be authorized to lay out public highways at the public expense, which may be built, in whole or in part, from the county funds, or the expense may be thrown upon the towns through which they run. And yet no gentleman proposes to prohibit the county commissioners from incurring any such expenses without first asking

the leave of the people of the county. Why not? Where is the difference in principle? I know that many distinctions may be drawn, between a county road and a railroad, but I think no distinction can be drawn between them as touching this matter. One has for its object, as much as the other, inter-communication, and to facilitate trade between different parts of the State. The objects and purposes of the two are identical, and can any gentleman give me a reason why it is proper that the public money should be used in one case, and improper that it should be so used in the other? I should like an answer to that question. If it is proper to tax the people directly, for a thousand less efficient means of trade and inter-communication, can it be improper to loan the credit of the State, in aid of more important and efficient means of trade and inter-communication?

I have already said, that the past policy of the State in this respect, has undoubtedly done much towards occasioning our present state of prosperity. How much, no man knows. Suppose that our forefathers, in 1780, and those who succeeded them in 1820, had inserted in the Constitution a clause of prohibition such as is now proposed to be incorporated in that instrument, what would have been its effect upon the prosperity of Massachusetts? I will not say that the Western Railroad would never have been built. It might have proved, in time, within the means of private capital. No man can say, with confidence, that it would have been yet built. This much we do know—if it had proved to be within the reach of private capital, the time of its completion would have been very much delayed, and long years would have passed before the great work would have been finished. What would have been the effect upon Massachusetts, had the Western Railroad been thus delayed? Boston would scarcely have contained one hundred and forty thousand people now. The county of Bristol might have scarcely been at this moment in its present state of prosperity. Taunton and Fall River might not, as now, have been overflowing with a busy and prosperous population. Salem and Newburyport might have languished still. It might not have been thus, but no man can say, with any certainty, how great an effect it might have produced. Suppose the early Constitution of New York had contained a similar clause of prohibition. We know that the Erie Canal, and the great system of canals, which has so added prosperity not only to New York but to New England and the West, would not have been completed. What would have been the effect of such a policy upon the city of New York, and what would it have been upon the cities and towns which dot the Hudson? What would have been its effect upon that great line of cities and towns running through the centre of the State, along the canal, from Albany to Buffalo? Under such a policy, what would now have been the condition of Ohio, Indiana, Illinois, Michigan—to every one of which the Erie Canal has been fruitful in blessings.

Well, Sir, if we can plainly see that such a prohibition in the past, in this State, and in other States, would have been fruitful in mischief, can we know that it will not be fruitful in mischief in the future? If its effects would have been only disastrous in the past, how do we know that they will be anything but disastrous in coming

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time? It is not generally supposed that this country has reached the summit of improvement, and that no such discoveries as have burst upon us one after another during the present century, are to come after us. There has been, during the present century, a succession of discoveries such as have entirely changed the face of things. In the first place, the steam-boat, then the railroad, then the ocean steamer, which was, in fact, another discovery; *then the electric telegraph. And who believes that this is to end here? Who knows but that in the next few years some new discoveries will be made which will as much improve inter-communication above what it now is, as did the discoveries of the steam-boat or railroad improve it above what it was fifty years ago? Those who believe that no such improvements are to be made in the future, have less faith in human progress than I have. And will you put a prohibition into the Constitution of Massachusetts, which will utterly preclude us from participating in the benefit of such discoveries when they shall be made? Will you put in such a prohibition, that until the experiments have been tried in other States, and until others begin to reap the benefit of them, we must stand still, and remain unaided by them? For if you trust to private capital, you trust in vain. Private capital will take hold of nothing new, to any great extent. It must be tried and proved, before private capital will take hold of it upon a large scale. The time may come, within the next few years, when Bristol and Plymouth and Essex and Boston will regret most deeply that they have put a prohibition into the Constitution of Massachusetts, which precludes the State from ever again pursuing a policy which has added so much to its past and present prosperity.

Mr. Chairman, I will notice a single argument which has been urged upon the other side, and then will leave this matter to other and abler hands. It has been urged as a strong argument in favor of the proposed prohibition, that other States have a similar clause in their Constitutions. I agree that some other States have such a clause. New York has been held up as a pattern State, for us to copy. New York has in its Constitution a clause somewhat similar to this. The gentleman from Natick, (Mr. Wilson,) in his address upon this subject the other day, said that the people of New York were tired of the prohibition and were endeavoring to get rid of it. I hold in my hand, Sir, the copy of an act which has just passed both branches of the New York legislature, proposing an amendment to the Constitution of that State. I have but just received it, and have not had time to compare it with the clause which is proposed to be altered. But from a slight examination of it, I can say that it proposes to alter the clause which contains the prohibition; not to abrogate it entirely, but to alter it essentially. I could not tell, from reading it, precisely how much it proposes that the legislature shall be allowed to borrow hereafter; but, I learn by a letter which I have received from a friend, that, under the proposed amendment, money can be borrowed to the amount of ten millions of dollars without obtaining the consent of the people. The clause of the amendment, to which I wish to call the attention of the Convention, is in these words:—

"The provisions of section twelve of this article, requiring every law for borrowing money, to

be submitted to the people, shall not apply to the loans authorized by this section."

They had put in a prohibition in New York, and now, almost unanimously, the legislature is endeavoring to strike it out, in part, and substitute a provision which shall, in effect, nullify it so far as it applies to the great system of canals. That is, as I understand it. They have tried the policy of prohibition, and are backing out from it. Shall we copy their early folly, or their later wisdom? We know that the party whose efforts fastened this clause upon the Constitution of New York, and which endeavored to follow out that policy afterwards, by the action of the legislature of the State, was almost ruined by that course. It was the party with which many of us deeply sympathize, the more liberal section of the Democratic party of that State. I trust that we shall take warning by their example, and as they are now, many of them, zealous to get rid of the prohibition, I hope we shall not enact, in our behalf, that which they have found to be so injurious.

Mr. DURGIN, of Wilmington. I do not purpose to inflict a speech, at this time, upon the Committee, but simply to offer a few remarks upon the subject before the Committee. It has been suggested to me, Sir, that there are two great things in this Convention, but I did not really suppose that either of those two great things were present. One of the creatures, the invisible creatures present, is the great Hoosac Tunnel. The second invisible creature is the great Western Railroad. They tell me that these two things are in the Convention, and no mistake. Well, that may be, Sir, they are both here as invisible spirits; that is, the two separate interests are here. And supposing they are here; what then? Who cares? I do not care a fig. I do not know but that they have a right to come here, if they are the creatures of the State. This is the State House, State property, and I suppose they have a right to come. If they behave themselves well, I am glad to see them. It was intimated to me, not a thousand years ago, by a certain individual who has a seat in this Convention, that he rather thought he should go against loaning the State credit, simply from the fact that the Hoosac folks had passed certain resolutions, holding a rod over the Convention. He said he did not love to work under a rod, and that he would not, any way. Therefore, he thought, he should go against loaning the State credit. Well, if the Hoosac-folks have done such a thing as to shake their rod over us, I do not think it will be like Aaron's rod, and swallow us up. If they have done wrong, we will not do wrong because they have. Two wrongs do not very often make a right. I think we had better do right in despite of their wrongs. Then if the Western Railroad comes here, dignified, as it will come, if it comes at all—for they always move with great skill, pomp, and gravity—and urge something against loaning the State credit, let them urge. I shall not go against loaning the State credit, because they urge. I will do right in despite of the great Western Railroad and the Hoosac Tunnel put together—do right though the heavens fall. My friend here, my very aged friend, (Mr. French,) made a remark the other day, and said it was of no use to lock the door after the horse was stolen. If he had said that ten or fifteen years ago, I think there might have been some propriety in it. I think, Sir, the horse, or the horses, have been

pretty well taken out of the stable, before this. I see but little force in the argument, in locking the door at this very late day.

Then, again, my friend from Braintree, (Mr. Stetson,) who certainly amused us very much, and pleased us, and kept us awake—and I was glad of that, for I love to keep awake, and love to keep other people awake—referred to the corruptions in the State of Georgia. He referred to the frauds which have been practised in that State. He told us, in a very eloquent manner, how they had practised there, and how liable legislative bodies were to be imposed upon. I thought that a good deal like the man down in Oldtown, in the State of Maine. There is, in that place, a tribe of Indians, and they sometimes commit depredations on the timber, and, especially, on the ash timber of the country. One old farmer missed some of his ash timber. He saw an Indian, and he said, "Look here, you redskin, I've set a trap on my land, and if you go there and cut an ash tree, you will get caught." The Indian said, "You no catch me, now you tell me." It is so with regard to the gentleman's argument about Georgia. He has shown us where fraud has been practised, and now catch Old Massachusetts, if you can. He, in his eloquence, and in the honesty and simplicity of his heart—for he is all honesty, and very clear and explicit—has warned us, so that, I presume, Old Massachusetts will never be caught in that wicked thing, never.

Mr. Chairman. He likewise spoke against the loaning of the State credit, because, forsooth, that loan might aid certain localities in the State. That is the argument. Well, Mr. Chairman, that thing would never have come into my head, I know, unless he had placed it there. Then, the argument is this—if there was any argument at all in it—that we will not do right, because, forsooth, in doing right, we shall benefit certain localities. Is that it? It is a strange argument to come from that gentleman. That was the force and the gist of his argument; we will not do right, because it will benefit certain localities in Massachusetts. I say, do right; the more localities it benefits, the better. My friend over here, who goes for the district system, (Mr. Schouler,) says so, too.

There are certain questions which come up in my mind, which I wish to ask. In the first place, is the credit system right or wrong, in itself considered? Is the credit system a *malum in se*, vitally wrong in itself? Who says it? Who avows it? Establish that fact, and I will go against loaning the State credit at once. Sir, if the credit system is wrong in itself, then the whole business world is wrong, decidedly wrong; for nine hundred and ninety-nine portions in a thousand, of the business world, go more or less on the credit system. Therefore, I argue that it is not wrong in itself. Sir, it is the universal opinion that the credit system secures more good than could possibly be gained without it; more good to the world, more good to individuals. This is a universally admitted fact. It has its attending evils, we grant. It has its disadvantages, and it has its advantages; but the advantages are paramount, and, therefore, the credit system exists and is tolerated throughout the world. Who denies it? Can a man deny it? Let us see the man, hoary headed, or bald headed, or with burnished locks, youthful or otherwise. Where is the man?

But, Sir, where credit is given, with suitable

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indemnity, if credit it can be called, most certainly there can be no harm, for the indemnity secures against harm. That is exactly the character of the loan of the State credit. Who supposes that the old Commonwealth of Massachusetts is going to lend its credit without the slightest probability, or even more than probability, of a full indemnity? She never has done it, and I hope she never will. Great credit that, if I want to get a thousand dollars, for me to put something worth two thousand dollars into your hands for security, and give you fee simple in it—great credit, that! My friend who last had the floor, (Mr. Alvord,) spoke so admirably, clearly, forcibly, logically and unanswerably, upon the internal improvements of the nation and the State, that I need add nothing upon that subject. He told the truth, and, I must say, that he stole a little of my thunder; but, it was not thunder, alone—there was a little lightning with it, for I think it killed—it is the lightning that kills. "But," says the objector, "who is going to argue against the internal improvements of the nation or the State? It is not against this that we argue, but it is this," say they. "It is against loaning the State credit to build up private corporations. If the State will take it into its own hands, and own the whole affair, that is a very different thing." But, on the other hand, suppose the private corporation, aided by the State loan, should, in its result, develop the resources of the Commonwealth, or any portion of the Commonwealth, that is just what we want. We want to have those resources developed, and if private corporations can go forward and develop them, I say "Amen" to it—let them do it. I do not care how many corporations, private or public, take this ground, and bring about these good results. They should not be frowned down, or scorned out of existence. Now, Sir, to go against the Report of the Committee would be virtually tying up the hands of the legislature; it would be virtually avowing and announcing to the world that we cannot and we will not trust the legislature of Massachusetts. Now, this is a very broad allegation; and in my estimation this is a very delicate announcement to make in regard to the legislature, that it has been in former days so recreant to its trust—it has been so prodigal, so very imprudent, not to say foolish, that it can no longer be trusted. Who will say this? Oh, tell it not in Boston—tell it not in the nineteenth century. Let us see how Massachusetts has advanced. She has grown from infancy to be a giant—from poverty to riches—from comparative ignorance to be a learned and mighty people. And has all this taken place under bad legislation? No, Sir! It has been under good legislation. Now, I do not believe in tying up the hands of the legislature in any such manner. I do not believe that it is courteous; I do not believe it is dignified; I do not believe that it is necessary. On the contrary, there is something severe and odious about it, which I do not very much like.

What great enterprise can we see now before the State? All the opposition seems to be based upon this—that there is one great enterprise, if it be proper to call it a great enterprise, and that is the little Hoosac Tunnel! That seems to terrify the people; and my friend at my right, (Mr. Alvord,) speaks of the great interests that may arise. Now, Sir, I hope they will arise; and if they do arise, for mercy's sake do not smother them in

their birth. Let them live and prosper. We have children, all over the State, who have received State aid, and we are not ashamed of them. I think we have reason to be proud of them.

Again, Sir, as security, and as good and valid security against the danger of frauds and of log-rolling, and of all this class of wicked things which have been enumerated by my friend from Braintree—we shall have as a guarantee against this, that there is now, and there will probably continue to be, a large House of Representatives. Suppose you have three hundred and seventy-five or four hundred men on this floor, and attempt to roll a log through such a swamp of men, so to speak—through this forest of living, human beings—do you suppose it will go? I tell you, Mr. Chairman, it is not quite so easy a thing to buy up four hundred men, as it is to buy up seventy-five men in the legislature of Wisconsin. No, Sir! It is a hard game to play, and the men who attempt to play it will surely be beaten. They will lose the game, and they will rue the day they attempted any such thing. Here is one of my strong reasons for a large House of Representatives.

Again, Sir, I go for the Report of the Committee upon this ground. The legislature, after having fully investigated a matter, and heard all the evidence for and against the scheme—all the strong reasons for it and the strong reasons against it—after having deliberated for weeks upon the matter, are certainly more competent to judge in relation to it than the people, who have never heard anything about it—who never will and never can hear anything about it. I am not saying that if every individual could be instructed, and, like members of a jury, could hear all the arguments for and against a thing, and the able pleas of counsel upon both sides, the people would not be competent to decide the question; but they do not, and they never will, take the trouble to look into all these matters and to understand them. If so, we are afraid to trust the people; and I insist upon it that such a declaration is a libel. I am not afraid to trust the people of the Commonwealth; I have confidence in their integrity, and I have confidence in their ability. But if we send this question to them, what will they say? They will say something like this: "We have sent men down to Boston to investigate these great matters. They are to act for us as our representatives, and are to carry out our designs and our wishes; and instead of doing this, they have sent the question back to us." Now I beg gentlemen not to say anything more about sending this thing back to the people. I hope this will not be put into the Constitution anywhere, to refer legislative acts back to the people. The people do not want to be troubled with them, and will not be troubled with them; and if they should undertake to decide, they would be ten times as likely to come to a wrong decision as the legislature would. I am, therefore, in favor of reposing some real confidence in the legislature, because I believe there is integrity and wisdom enough in a body of four hundred men to settle these matters correctly. I do not believe they will come here and perjure themselves—I think they have too much regard for the interests of the Commonwealth to do that, and that they will endeavor to maintain the Constitution inviolate. I believe a great deal in the depravity of man, but I am not prepared to go

quite so far as this; this is a step beyond the ordinary depravity of human nature. I hope, therefore, Sir, that the Report of the Committee will be adopted, and that this matter will be suffered to remain just where it is, and let the legislature have the responsibility of this thing rest in their hands, where it belongs.

Mr. COLE, of Cheshire. I did not intend to trespass upon the patience of the Committee at this time, but I rise to express my regrets that the gentleman who represents Montague, (Mr. Alvord,) should have brought up the subject of the action of the State of New York. It was remarked, when this subject was under consideration a few days ago, by my friend who usually sits beside the door opposite, (Mr. Hillard,) that an act had been passed by both branches of the legislature of the State of New York, requiring a modification of the present existing restriction in the laws respecting the granting by the legislature the loan of the credit of the State. This has been referred to again, by my friend from Montague. I rise for the purpose of setting the Committee right upon this one particular, to which I desire to call their attention. The act which has recently been passed by the legislature of the State of New York, refers to what is in the twelfth section of article seven of their Constitution. The ninth section is as follows:—

"The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation."

The Constitution proceeds, in the tenth section, further to make provision that "the State may, to meet casual deficits, or failures in revenues, or for expenses not provided for, contract debts, but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to pay the debts so contracted, and to no other purpose whatever."

The eleventh section provides further, as follows:—

"In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever."

Now, then, we come to the twelfth section, upon which the recent act has been passed. The Constitution provides, in the twelfth section of article seven, that no money shall be raised or appropriated by the legislature for the purposes of internal improvements, without some restrictions. It is well known that the State of New York constructed the Erie Canal at the public expense; they never granted an appropriation to corporations for the purpose, but it was built as a public work. At first the canal cost eight millions of dollars; and at the time this provision was inserted in the Constitution, a project was in contemplation, and had recently been commenced, to widen their canal; and the first surveys and estimates were, that it would require about the original cost of the canal, viz.: eight millions of dollars. About that time the delegates in convention assembled to revise the Constitution, thought it would be perfectly safe to

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throw about the legislature a restricting clause in relation to raising money for internal improvements. Since that time it has been ascertained that the amount of money that will be required to complete this enlargement of the Erie Canal, will be twenty-four millions of dollars. I think the last estimate was between twenty and twenty-four millions, and this great expenditure is deemed justifiable and warranted in view of the increase of transportation required on that great inland river, that connects the ocean with the western lakes; and the inhabitants of the State begin to realize the importance of having a little more power vested in the legislature to raise money to appropriate for the work of internal improvements. I will read the constitutional provision in relation to the raising of money for internal improvements:—

“Except the debts specified in the tenth and eleventh sections of this article, no debt shall be hereafter contracted by or on behalf of this State, unless such debt shall be authorized by a law for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof.”

This refers to the State, appropriating money for its own expenditure in internal improvements, and has no relation whatever to loaning money to corporations. The Constitution further provides:—

“No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes for or against it, at such election. On the final passage of such bill in either House of the legislature, the question shall be taken by yeas and nays, to be duly entered on the journals, and shall be ‘shall the bill pass, and ought the same to receive the sanction of the people.’”

Here is a provision by which the delegates in Convention, to revise the Constitution of the State of New York, saw fit to provide for the appropriation of moneys, on the part of the legislature, for internal improvements in the State. And in view of the great amount of money which it will require for widening the canal, the present legislature has passed a law that the legislature may appropriate money for internal improvements without submitting it to the people. But let it be remembered, that while her example is sought, by some gentlemen in this Convention, to influence the minds of its members against restriction, that neither the legislature of the State of New York nor the people generally, have become dissatisfied with the present provisions of the Constitution in relation to the matter of loaning the credit of the State to private associations and corporations. I simply rose for the purpose of setting this thing right before the Committee, and will not detain them longer.

Mr. DAWES, of Adams. I am aware that the Committee is wearied with this subject, but there is a single point to which I wish to call the attention of the Committee, in reference to the second of these resolves. The second is in these words:—

“The legislature shall not in any manner create any debt or debts which shall singly or in the aggregate, with any previous debt, exceed the sum

of one million of dollars, except to repel invasion or suppress insurrection.”

Now, Sir, it is well known that the resources of the Commonwealth are such that the annual current expenses of the State, from year to year, have been met by borrowing money in anticipation of the revenues. The bank tax, a portion of it comes in in April, and a portion in six months from that time. The expenses of the legislature, and other expenses of that kind, are defrayed by anticipating the revenue. Such has been the necessity of every year for many years past, and such it must be so long as the State depends for revenue upon the sources upon which she now depends. Now, the Commonwealth, to-day, is indebted for credit loaned to diverse associations and corporations—all very worthy objects, and which have resulted in great good to the State—she is indebted in the modest sum of \$6,391,030,56. If this second resolve should pass there is no possible way by which the Commonwealth can defray her current expenses. She cannot anticipate her revenues as she has in years past. She cannot borrow a dollar, because her hands will be tied. She will be without the means of defraying the expenses of this very Convention, and there will be no possible way for the wheels of the government to move. They cannot, in the expressive language of Senator Niles, be “iled.” That consideration, of itself, is a sufficient objection to this second resolve.

The first resolve is aimed at something else, and if I did entertain views in relation to this Convention and its results, with which I am sometimes charged by our friends of the other side, I should sit perfectly still and oppose no obstacle to the adoption of that resolve. But, Sir, I do desire that the Convention should adopt something of good, which shall be approved of by the people. Therefore, I urge upon the Committee the propriety of considering, seriously, whether at a time when there is considerable excitement in the Commonwealth, when there are various interests awakened, and the people are anxious in regard to enterprises similar to those which have found favor at the hands of the Commonwealth, in times past, whether it be good policy to undertake to obtain a snap judgment in this Convention upon any such project as that,—whether it is the part of good policy, in framing the organic law of the Commonwealth, to undertake, by the Constitution, to lay our hands upon, press down, and put to sleep, such enterprises as that towards which this resolution is aimed?

Now, Sir, I do not wish to reflect upon the motives of the honorable gentleman from Taunton, (Mr. Morton,) who introduced this resolve. I know he has long entertained views similar to those expressed in the resolves. But, Sir, there is an outside pressure which comes in and takes advantage of the fact that there exist honest sentiments in the minds of many members favorable to these views, and without the existence of which they would never have come here. I submit, that the gentleman from Taunton, (Mr. Morton,) and his friends, though entertaining themselves these views for a long time, are made the instruments of that outside influence, which, if they would consider with that candor which belongs to them, they would, I think, hesitate in pressing this measure upon the Convention.

I do not wish to weary the Committee with

any extended remarks upon this subject. I feel confident that I might sit quietly in my seat, and let the Committee take what course they please upon the first resolve, because in the end it could not stop, put to sleep, or cripple the enterprise at which it is aimed. But, Sir, it is a little singular when these people who are associated with this enterprise have not troubled the Convention at all, that others should press upon this Convention from the outside, and seize upon the sentiments honestly entertained by many members and make use of them, in conflict with, and in opposition to, their own hitherto avowed principles, and are willing thus to traffic with the fundamental law of this Commonwealth.

Allusion is made to the Western Railroad and the Hoosac Tunnel. Gentlemen of this Convention have tried to suppress those two features of the case, and to debate this question as if they had no interest in it. The gentleman from Abington, (Mr. Keyes,) the other day, in opening this discussion, said that had it not been for certain projects now existing in this Commonwealth, the Report of this Committee never would have been made. I think he was well answered by some one at the time, that had it not been for a certain other corporation which he represents, when not upon this floor, there never would have been an occasion for this Report, and the idea would never have been introduced into this Convention. Well, now, those parties, finding themselves thus situated in this Commonwealth, having drawn their life blood from the Commonwealth, having received their nourishment, their aliment, their support from the Commonwealth, all parts of which have cheerfully rendered their aid, when another portion of the State asks at the hands of the legislature, to be allowed to participate in these benefits, endeavors to put them off. Now I submit, whether it be not a matter of good policy to let that controversy, existing and going on between different corporations within the limits of the State, go on, and let it be carried on in the legitimate field to which it belongs, and not allow it to be brought in here?

Why, Sir, the gentlemen who advocate in this Convention the introduction of such a clause as this into the Constitution, on almost all occasions, claim to be seriously, and I have no doubt, honestly, opposed to monopolies, and opposed to the influence of corporations. Yet, Sir, the policy of Massachusetts has reared up corporations of great power, and those corporations are knocking at the door of this Convention and asking it to throw obstacles in the way of all checks and all competition upon them, and are making use, in this Convention, of the very gentlemen who are thus honestly opposed to all monopoly, to aid them in this undertaking. If I may be permitted to speak out plain, and call things by their right names, the Western Railroad Corporation, the greatest of all corporations in this Commonwealth, having received its birth, its nourishment, its growth, its present prosperity, all at the hands of the Commonwealth, and having now the Commonwealth's credit to the amount of \$3,999,555 56, is undertaking to throw obstacles into this Convention to obstruct all enterprises which will compete with them in that business which, they say, the Commonwealth has given exclusively to them.

Sir, these men who are opposed to monopolies in this Commonwealth, are called upon, in this

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state of things, to see to it, that such corporations as that do not accomplish, by these indirect means, the very thing which has been predicted of them by these very men. Why, Sir, it was once said by a very sagacious politician of Massachusetts, that the Western Railroad, within ten years from the time it went into operation, would be the governor of Massachusetts. It was thought at that time, a very foolish and vain remark.

I recollect, no longer ago than 1849, when I was somewhat conversant with the doings of that road, that it came to the knowledge of members of the legislature that complaints were made of the Western Railroad, that in certain localities they refused to transport the products of the soil of the very towns through which they passed, at any price which fell short of absolute prohibition, because they wished themselves to control the market price of those products and purchase them at their own price. I remember that an individual in 1849 introduced into the House of Representatives, an inquiry, whether the Western Railroad, of which this Commonwealth is a part owner, had not, for the purposes of its own gain, pursued such a course. That legislature ordered an inquiry, and referred the matter to a committee. The committee served a notice upon the president of the railroad company, a distinguished individual, now deceased, to attend before them. The president appeared before the committee with a bland and pleasant countenance, and inquired what the matter was. The charge made against the Western Railroad was read to him. Says he, what do you want? We want to know whether the charge is true. "Well, it is true, and what are you going to do about it? The Western Railroad has a right to set such a price as it pleases, upon the freight it carries, and if it be for the interest of the Western Railroad to put such a price upon the transportation of the products of the soil, which the producers ask us to carry over our road, which shall enable us to purchase it at our own price, whose business is it?"

Then was realized, in the Commonwealth, the prediction made ten years before, by a most sagacious politician of Massachusetts, that the Western Railroad would be governor of Massachusetts. I know it was said to that president at that time, "You manage very well with the power in your hands; true, you are the governor of Massachusetts, and there might be worse ones." I do not mean to say that the Western Railroad is peculiarly wicked in that respect. It is the nature of all institutions, which have it in their power, so to act as will advance their interests. I do not think that road abuses its trust more than any other railroad. But, Sir, it is a great corporation, having its arms stretching across the whole Commonwealth, and having the State as its partner, and having her scrip in the market, which she gave for the very stock she has in that road; and that road so situated has a power which no other corporation in Massachusetts has, or can have. And although I would not hurt a hair of its head, or depreciate one iota from the blessings which it has conferred upon Massachusetts, yet I candidly submit, whether it is not time for those of us who dread the power of corporations, to look after such institutions as this in the Commonwealth? Whether it is not time, instead of helping them on in the attempt to put down competition, and

to stifle all budding enterprises in this Commonwealth which do not flow through their own channels, to restrain themselves from lending their hands to any such work as this?

Now, Sir, the Commonwealth of Massachusetts has lent its aid not only to the Western Railroad, but to all manner of institutions all over the State. The Commonwealth to-day is issuing its scrip to build the Insane Asylum, which is now beautifying the town of Taunton, which the gentleman over the way, (Mr. Morton,) represents, which institution is to scatter its benign influences over the whole community. But if this second resolve, which has been offered by the gentleman from Taunton, had been in the Constitution at that time, it would have been impossible for the Commonwealth to have laid the corner stone of that institution.

Having secured that and kindred enterprises—and the Western Railroad having secured the aid of the Commonwealth in its great work, all now join hands and come up here, because a little corporation up in the north-western corner of the State is asking, humbly and modestly, of the legislature for a little aid from the Commonwealth, though put off from time to time by the good judgment of that body—I say these very recipients now come up here to this Convention with a project not heard of when the matter of calling the Convention was discussed before the people—not broached before the people at all, but raised after the Convention was decided upon—raised after the delegates to the Convention were chosen—brought up here through these divers influences, for the purpose of preventing the loan of the State credit to this corporation. Why, Sir, during the discussion upon the project which has given birth to this proposition in the Convention—while that discussion was going on in the Senate of Massachusetts this idea was first broached, so far as I know. While that discussion was going on, I recollect to have heard a remark something like this: "Let us postpone this matter for this session; let us put it off for this legislature, and we will get a provision inserted into the Constitution next May, that will put an end to the proceeding." Well, Sir, it may be done, but I have confidence to believe that it will not be done by this Convention.

Sir, gentlemen cannot say that this was one of the purposes for which this Convention was called. It was called for higher and holier purposes than to minister to the private ends or purposes of any men or set of men in this Commonwealth. But, Sir, if this Convention shall so far forget the purposes for which we were sent here as to make this body subservient to such a purpose, there is a power behind us, and greater than this Convention, upon which we must throw ourselves, and we will rest satisfied with the verdict.

But we are asked with a good deal of complaisance, why we are not willing to submit such a question as that to the people? Well, Sir, suppose we do submit it to the people, what is the result? We are to contend, single handed and alone, against a corporation in the field with ten or twelve millions in their control, whose shareholders are scattered all over the Commonwealth, and can be reached by some one in the centre by a net-work, as it were, and whose money flows like water, when the interest of the corporation requires it. Why, Sir, we have found it neces-

sary to protect the voters of Massachusetts against the moneyed influence of your manufacturing and commercial institutions. Yet, here is a great mammoth corporation holding a moneyed influence which is not equalled by any manufacturing or commercial company in the Commonwealth. In the amount of capital which it can command at a moment's warning, in the zeal and enterprise of those who manage it, and in all the interests connected with it, there is not the like in the Commonwealth. And we are asked, whether we are willing to go to the polls with such an interest arrayed against us! And we are asked, too, by some gentlemen who talk a great deal about the influence of money upon the voters of the Commonwealth. Now, Sir, I bring no charges against any individual or corporation. I do not think the Western Railroad Company would be any more likely to use their money for corrupt purposes than any other corporation in its circumstances would; but, nevertheless, there are odds against us which none know the power of better than those from outside this Convention who are urging us to adopt this measure.

But, I will leave this matter to the Convention. I do not pretend that I have no personal interest in the matter, or that my constituents are not aroused and intensely excited upon the subject. Sir, my constituents are a law-abiding people. They will abide by the law of the Commonwealth whatever it is; but they will not, in my opinion, sit quietly down and suffer fetters to be placed upon them which shall bind down, for all time, the resources of that section of the Commonwealth, while the other portions of it are enjoying the facilities of those railroads which have been constructed by the aid of the Commonwealth itself.

It is known very well to the members of this Convention, that, to a great extent, the difficulties that surround the subject of the basis of representation, which has occupied the Convention now for three weeks, grew out of the fact that these railroads and other internal improvements have developed certain portions of the Commonwealth more than others; that the city of Boston has been augmented, and others around it; many of them have been brought into existence, and all of them have been built up by this policy, upon the part of the State, and now they come and ask that other portions of the State shall not enjoy the same benefits. But, let Massachusetts stop this policy; let her shut down the gate and say that hereafter no more of her aid, her countenance, her fostering care shall be extended to any of these enterprises, and the Commonwealth will continue to grow one-sided; one portion withering and growing weaker, and the other portion waxing strong and powerful, until these difficulties, which are now matters of imagination and speculation, will become realities. But, let Massachusetts be equal aid just to all portions of the Commonwealth; let her stimulate the enterprises and develop the resources in all her counties, in all her borders; let her summon up the latent energies of all her people in every portion of her territory, and there will be diffused over her an equality of representation compelled from necessity—brought into existence by this policy. Why, Sir, if the good county of Franklin, which has been so jealously guarded upon this floor, had enjoyed the benefit of this policy for the last ten years; if her resources had been developed

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under the fostering care of the State as have some of the more favored counties, there would have been in this Convention no difficulty, no complaint about the difference between the application of your system of representation to Franklin and Worcester.

Sir, that is the only true policy which fosters every portion of the Commonwealth alike. That father of a family who nourishes, protects and guards one member of his household to the exclusion of the others, is false and infidel. And that State which does not look to all its interests alike, but suffers itself to become a respecter of persons or parts, is no Commonwealth.

Mr. HOPKINSON, of Boston. I regret to feel obliged to trouble the Committee with further remarks, so late in the day, upon a subject which has been a good deal discussed in this Convention. I did not have the good fortune to hear the debate which took place upon another occasion upon this subject; and when it was brought before the Committee, this afternoon, not having heard that former debate, and not having expected that it would be brought up at this time, I had resolved to sit still and not say a word—certainly at this stage of the debate. And I should not have departed from that resolution but for some remarks which fell from the gentleman who last addressed the Committee, (Mr. Dawes).

The tenor of the remarks of that gentleman, although it was not expressed in so many words, was to produce the impression upon those who heard him, that the opposition which members of this Convention make to the Report of the Committee and the advocacy of the proposed restriction in the Constitution, arises entirely in consequence of a pressure from without the Convention, and that pressure originating in a moneyed corporation. Now, Sir, what is this imputation? Here are four hundred men, selected from the various parts of the Commonwealth, each individual because he had a reputation that could command the confidence of his fellow citizens, either justly or unjustly. Then, when we are summoned to act upon a matter of the highest concernment to the whole Commonwealth, to wit: the fundamental law of the land; and when a proposition is pending before the Convention, whether it be decided affirmatively or negatively—is a matter of almost as high importance as any that can be brought before us—it is assumed that members of the Convention, about one-half of whom I understand, on a former occasion, voted one way and the other half the other, instead of looking to that high concernment which the importance of the subject involved, are actuated entirely—are governed solely, by a pressure from without—by a moneyed corporation bringing its army and bearing its forces down upon us. That is the assumption, and now I ask you, gentlemen of the Convention, who pleads guilty to the charge? Is there a danger that one-half the members of the Convention are capable of being influenced and actuated by such a power as this? Who was it that brought forward this proposition? Was the chairman of this Committee influenced by any motives of this kind? Have those who have spoken upon this subject been influenced by any outside pressure of this description?

Mr. WILSON, of Shelburne, (interrupting). Do I understand the gentleman from Boston to say that the chairman of this Committee has brought forward any measure of this kind?

Mr. HOPKINSON. I know precisely what I said, and that it is in exact conformity with the fact. I inquired if the gentleman who brought in this proposition and who was made chairman of this Committee, was one of the men bought up by this corporation? Now, I appeal to the record to support me in saying that the chairman of this Committee was the gentleman who moved the order on this subject, and, therefore, I stated what was strictly true. I did not say, what is apparent to every member of the Convention who reads the Report of that Committee, that the Committee brought in a Report adverse to the proposition contained in the amendment. Nor did I say whether the chairman of the Committee voted for the Report in Committee, or whether he voted against it and was overruled by a majority of the Committee. That would not be in order; nor would it be material to my purpose to make such an inquiry. But when we are told that this subject would never have been moved in the Convention—that the proposition to restrict the action of the legislature upon this subject, would never have been brought in here, but for an outside pressure, bolstered up by a moneyed corporation, whose object it was to prevent a certain project from being accomplished, then I think it is proper to inquire who it is that has been brought into subserviency to this great moneyed corporation? I do not mean to say that the gentleman to whose language I am alluding, (Mr. Dawes,) would mean to make such an imputation upon any member of the Convention. Knowing, as I do, the fairness of that gentleman, I believe that in the hasty manner in which he addressed the Convention, desiring, as he said, and as I believe, not to weary the attention of members, he gave utterance to language which would bear a construction which he did not design. I have no doubt that he would deny the imputation that there was any large number of the members of this Convention who could be bought up, or influenced, or carried away, in their judgments, by any such means; but, nevertheless, the tenor and import of the language used by him would seem to imply such an imputation.

Mr. DAWES, of Adams, (interrupting). Did the gentleman from Boston understand me as imputing any improper motives to any member of this Convention? If he did, he certainly misunderstood me, or I was very unfortunate in my selection of language. I intended only to say that there existed in the minds of many of the members of this Convention an opinion in coincidence with this measure; that men outside of the Convention had sought to take advantage of this fact; and that these gentlemen were being unwittingly made the instruments for carrying out that end. But that any member of this Convention has been approached by this outside influence, I certainly never said. I have too high an opinion of every member of this Convention to whisper such a thing in relation to them. But, Sir, I think gentlemen do yield to this outside pressure when they are not aware of it. We are influenced when we do not perceive it. That is what I intended to say, and I hope, if I have said otherwise, this will be considered as a correction.

Mr. HOPKINSON, (resuming). I did say that from my acquaintance with my friend from Adams, and from the fairness I know him to possess, I had no doubt he would deny any

such imputation; but I did understand him to say that this measure would not have been moved here, but for an external pressure arising from the influence of a moneyed corporation, and from the manner in which he spoke, his language seemed to me to carry with it the idea that the weight of this outside pressure had had much to do in bringing the minds of many of the members of the Convention to the conclusions they entertain; but if I had not already said, in advance, that I did not suppose he intended any such thing; if I needed to be corrected upon that point, I certainly should accept the explanation of that gentleman. All I wish to say, in connection with this matter, is, that it seems to me that the tone and tenor of the remarks which have been made upon the other side of the question, have borne the construction, in many instances, which I have mentioned; and I did not think it ought to be passed by without notice. This question is one which once divided the people of the Commonwealth almost equally, and once, I believe, almost entirely put down the party which advocated a liberal loan of the State credit. But it is one which I trust may still be debated upon its merits, and upon which gentlemen differing in opinion, may be supposed to act from conscientious motives. And in the next place, I deny that this question was introduced here in consequence of the matters which have been alluded to. It is a question that has agitated the Commonwealth for a great number of years in past times. Many men thought that it was beyond the pale of government to enter into business relations with corporations or individuals to carry on enterprises of commerce. A great number of intelligent persons seriously entertain doubts upon the subject.

Permit me, Sir, here to allude to a remark made by the gentleman who so ably and fairly debated this question to day, I mean the gentleman from Montague:—If it be unconstitutional, if it be beyond the pale of the government to enter into these business relations, as gentlemen call them, then there needs nothing to be said here, because the advocates of the system have got it already. In my mind, that is not an answer to the argument. In the first place, I believe it is constitutional; but I speak now in the name of those who seriously entertain the belief that it is unconstitutional. Suppose it to be, then, a question of doubtful constitutionality; in the first place, I believe that it has been so long the practice of the Commonwealth—it has gone so far that it will be established, whether it was right or wrong in the beginning, and of consequence, when it comes up now in the court of last resort, this practice will go very far to establish it. But further than that, if it were ever so unconstitutional; if it were really the case that it were not constitutional, how do we stand? It has been assumed to be constitutional, for the advocates of the practice have so represented it, and upon the faith of their assurances, men have received the bonds of the State, which have been put forth; and, Sir, I know that I do not address a single man here who, if he were told to-morrow that the whole proceeding was unconstitutional, would not spurn the very idea of repudiating the obligations thus incurred. He would say at once, if we are wrong, let us retrace our steps for the future; but by all means, let us keep the faith of Massachusetts inviolate. Therefore, I think the reply of the gen-

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tleman on the point of unconstitutionality is not calculated to influence this Convention.

But I say, admitting its constitutionality, and I do admit it, and I believe it will be sustained by the courts of last resort, admitting the constitutionality, I maintain that it was a questionable policy. It was much discussed, and I do not hesitate to say it overthrew the political party by which the system was established. They had commenced, in a single case, and to a limited extent, and that formed a precedent for claiming similar aid in cases of a like nature, and the system extended until it became general; and the financial affairs of the Commonwealth came to be placed in a position of some danger, if not of immediate embarrassment. Having gone so far, it was expected and demanded, that other enterprises should be aided and fostered in a similar manner, and new projects were continually being brought forward, and new enterprises projected, until the public mind became alarmed precisely as the public mind in the State of New York became alarmed; and while in New York, the people, by a large majority, voted to put in the restriction here spoken of, the legislature of Massachusetts, for a long series of years, entirely abstained from the exercise of any such power. I believe that is correct historically in regard to this matter. It was fortunate that the State in so embarking and assuming mutual interest with so many companies, has done it with so much discretion that little ground for apprehension existed, lest by reason of failure on the part of the companies, resort for payment would be had to the treasury of the State.

Mr. BEACH, of Springfield, proposed, if the gentleman would give way, to move an adjournment.

Mr. HOPKINSON yielded the floor for that purpose, and

On motion, by Mr. BEACH, the Convention then, at five minutes past six o'clock, adjourned.

SATURDAY, July 9, 1853.

The Convention met, pursuant to adjournment, and was called to order by the President, at ten o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read.

Hour of Meeting.

Mr. GARDNER, of Seekonk, moved that when the Convention adjourn to-day, it adjourn to meet at ten o'clock on Monday next.

The motion was agreed to.

Mr. WALKER, of North Brookfield, moved that the Convention resolve itself into Committee of the Whole on the Report of the Committee on the

Qualification of Voters.

Mr. BOUTWELL, for Berlin, opposed the motion, and asked for a count.

The question being put, there were—ayes, 39; noes, 34. No quorum voting.

The PRESIDENT. In the opinion of the Chair, there is a quorum present. Gentlemen are requested to vote.

Mr. WALKER. I would like to state why it

is that I desire that the Convention shall go into Committee upon this subject.

The PRESIDENT. It is not in order for the gentleman to do so until it is ascertained that a quorum is present.

The question was again put on the motion of the gentleman from North Brookfield, that the Convention resolve itself into Committee of the Whole, and it was, upon a division—ayes, 98; noes, 14—decided in the affirmative, and the Convention thereupon resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Aspinwall, of Brookline, in the Chair, and proceeded to consider the Report, which was read by the Secretary, as follows:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 7, 1853.

The Committee on Qualifications of Voters, to whom was referred an order of the 19th of May, in regard to the expediency of so amending the Constitution as to provide that no person who shall make or become, directly or indirectly, interested in any bet or wager depending upon the result of any election, shall have a right to vote in such election, or be qualified to hold any office for which he shall be a candidate at such election; also, the expediency of so amending the Constitution as to exclude from the right of suffrage, and the right to hold any office of profit or trust, all persons who may be convicted of bribery, larceny, or other infamous crime; also, all persons who, forcibly, or by promises of reward, shall attempt to induce any voter to refrain from voting, &c.; also, the order of June 18th, on the expediency of providing that no voter, during the time of holding any election at which he is entitled to vote, shall be compelled to perform military duty, attend court as a suitor, juror, or witness, &c.; also, the order of May 31, in regard to the expediency of requiring that all persons who may be admitted to the right of suffrage after the year 1856, shall be able to read the Constitution of the Commonwealth, printed in the English language; also, the petition of Harriet K. Hunt, that she may be excused from paying taxes, or allowed to vote; also, the petition of Wendell Phillips and others, that woman may be heard at the bar of this Convention in support of her rights, report, that it is inexpedient for this Convention to take any action in relation to the same.

AMASA WALKER, *Chairman.*

The question being on agreeing to the Report.

After some remarks by Mr. Walker, on motion by Mr. WHITNEY, of Conway, the Committee rose, and, by their chairman, reported the resolution to

THE CONVENTION,

With a recommendation that it do pass.

The Report of the Committee of the Whole was concurred in.

Reconsideration.

Mr. WHITE, of Quincy, moved a reconsideration of the vote by which the resolves on the subject of the Basis of the House of Representatives were ordered to a second reading, and that that motion be laid upon the table for the present.

The PRESIDENT. Under the Rules, the motion will go upon the Orders of the Day.

Hour of Adjournment.

Mr. WILSON, of Natick, moved that the Rule which requires that the adjournment shall be at one o'clock, be so modified as to make the hour of adjournment two o'clock for this day only.

The motion was, upon a division—ayes, 76; noes, 36—decided in the affirmative.

Presentation of a Petition.

Mr. EAMES, of Washington, presented the petition of Otis F. R. Waite, and eleven others, inhabitants of Pittsfield, for the preservation of town representation.

On motion of Mr. EAMES, the said petition was read, and ordered to lie upon the table.

Closing of Debate.

Mr. WHITNEY, of Conway, moved that debate in Committee of the Whole on the subject of Loaning the Credit of the State, cease at the expiration of one hour after the Convention shall again resolve itself into Committee of the Whole on that subject.

The motion was agreed to.

On motion of Mr. BUTLER, of Lowell, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Boutwell, for Berlin, in the Chair, and renewed the consideration of the unfinished business of that Committee yesterday, namely, the Report of the Committee on the subject of

Loaning the Credit of the State.

The pending question being on the amendment moved by the gentleman from Taunton, to strike out the words, "it is inexpedient to act thereon," and to insert the following:—

The Constitution ought to be so amended as to provide that—

1st. The legislature shall not have power hereafter, directly or indirectly, to grant or loan the credit of the State, or create any inability on behalf of the State in aid of any individual, corporation or association. But the legislature may submit to the people a proposition to make any such loan or grant, which, if adopted by a majority of all the legal voters voting thereon, shall authorize the same.

2d. The legislature shall not, hereafter, in any manner, create any debt or debts, which shall singly or in the aggregate, with any pre-existing debts hereafter created, exceed the sum of one million of dollars, except to repel invasion or suppress insurrection.

Mr. HOPKINSON, of Boston, resumed and concluded his remarks, which were interrupted by the adjournment yesterday.

The amendment moved by the gentleman from Taunton, (Mr. Morton,) provides, in the first clause, that the legislature shall not be empowered to loan the credit of the State to another party. The second clause provides that the legislature shall not create any debts. I suppose it was the understanding of the mover of the amendment that these were two distinct cases; that loaning the credit of the State to an individual or corporation was not creating a debt. This distinction appears to me to be sound in matter of phraseology, and that the language used will effect the purpose designed by the mover. Whether there is a distinction in expediency is another matter. But this being the design of the mover, I am strongly inclined, from the legal character and

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ability of the gentleman who made the motion, to think that the words carry out that intention. I am satisfied that any other form of phraseology should be substituted which will precisely and directly effect that object. The suggestion was made in the Committee yesterday, that if the second resolution was adopted, it would be impossible for the State to carry on the government by those temporary loans which they have been in the habit of effecting for the purpose of meeting the expenses of the year in anticipation of its income. Satisfied that the gentleman who made the motion can take care of it, I propose not to dwell upon that distinction. When the Committee rose yesterday, I was endeavoring to show that it was not the fact that this question was introduced and maintained here having reference to a particular object to be effected, that it was not maintained by the force of external pressure influencing members here in their seats. I had the honor to show that it was an old question, that it had at various times been discussed, and had been a mooted point at times when the State was nearly divided upon that subject. I had the honor to submit that it was one of the leading causes which led to the defeat of the party then in power, and that a general impression prevailed that the policy of loaning the credit of the State to individuals or corporations had been carried to an alarming extent. I also stated, that the same result had followed the same policy in the State of New York, and in that State, notwithstanding the brilliant results of the internal improvements which had been undertaken and carried on, that the people had become so alarmed that this very restriction, or substantially the same, had been incorporated into their fundamental law.

I would say further, that this policy has not only been carried to an extent creating apprehensions in this State and New York, but it has been carried to an extent followed by still more disastrous results in other States, by force of which States have improvidently run in debt. The State of Mississippi was driven to what was, in the opinion of many, a disgraceful repudiation, and although that repudiation was based upon some technical objection as to form, yet, I submit, no honorable man would say that the State of Massachusetts, even if they could find some technical flaw in the proceedings, would think of depriving a confiding debtor of his just due. In Pennsylvania, Indiana, and I believe in Maryland, the same policy drove them to a suspension of the payment of interest due from them upon their debts. It was this series of events which pressed upon the attention of the country. It went to such an extent that made it uncomfortable and mortifying to every American to travel abroad at one time, and meet the taunts and jeers which he heard upon every side, at the credit and faith of this country. I say not that these were well founded. In comparison with many of the states of Europe, our honor, even in this darkest hour in our history, would have been bright and glorious, yet such was the impression made upon the minds of the people, both at home and abroad, that that state of things existed, known to every traveller who was abroad at the time. Now, my purpose is not, by this argument, to show that there should be no power to loan the credit of the State, but it is to meet the precise charge here brought up, that this was a question

existing only because it affected a local issue, at this time, in one part of the State. No. It is a higher question and rises above all temporary considerations. It is a measure of great doubt, at least, as to its utility and expediency, one which has divided the country and will divide it again, and therefore it does not call for the interposition of any such external pressure to introduce it here. Nothing could be more gratuitous than the idea that it comes here only by force of a particular issue. The force of this public sentiment arrested the policy in Massachusetts, and hushed it for years. No person, for a long series of years, would think of violating what, for the time, seemed to be the settled policy of Massachusetts against incurring that kind of liability again, and it is only until a recent period that the question has been re-agitated. I regret, therefore, when we come to this question, that we cannot look upon its merits alone, that we cannot rise entirely above all such considerations, and have sufficient self-respect to decide the question upon our consciences, upon our duty as patriots and statesmen. I would fain place the debate above every peculiar and local interest of time and place. But after the question has been introduced as it was yesterday; after what has been said, I do feel at liberty to answer some of the remarks there made as briefly and as hastily as possible, and I hope not to exceed more than half of the time allotted to me by the Rules. It is distinctly asserted here, that the Western Railroad corporation is here acting and moving in this question, and without that there is very little else. It is asserted that she stands, like a monster, very much like the fabled monster of the deep, with her arms embracing the whole Commonwealth, governing and controlling it. The Arabian Night's has no fiction more gross. The flights of imagination which have been exerted upon this subject, if bent in another direction, would have made the sublimest poet of the age. What are the facts? The fact was that when this subject was introduced into the legislature it was not opposed before the Committee by the Western Railroad at all. Then the gentlemen very ingeniously argued from their not appearing before the Committee that they of course assented to it. When it came up the second time they opposed it, and took a different course. They appeared by their regular counsel, and stated such reasons as they thought bore upon the question before the Committee. The same party who inferred their consent from their not appearing, now charged them with improper interference by appearing. Who do you suppose spent the most money upon that subject. The petitioners or the remonstrants? The gentleman for Montague, (Mr. Alvord,) with great fairness says, that it costs a great deal of money to carry such a measure through, that they have to employ counsel, summon witnesses, to attend meetings of the legislature, necessarily requiring the expenditure of a great deal of money. Do they object that upon the other side there was a hearing also? Do they object that there was not, in the language of the gentleman from Adams, (Mr. Dawes,) a snap judgment sprung upon the legislature by an *ex parte* hearing? Do they object that there was an appearance there, also. Why, if it was to be carried upon money, I venture to say there have been ten dollars spent by the petitioners, where one was spent by the remonstrants. All very proper, of course. What I have to say,

is this. If it was proper that there should be such a hearing by interested parties upon one side, it does not lie well in their mouths to object that the other side appeared also, and submitted their reasons to the Committee. The remonstrants did not hang in effigy men who did their duty, for the purpose of deterring others from doing the like duty. They did not proclaim their triumph by the booming of the cannon, when one vote was taken in one branch of the legislature, for the purpose of influencing the vote in the other branch. They appeared, by their counsel, and they had a hearing. They did right in so doing. They were not amenable to the charge of squandering the money of the State in an improper manner. Not content with raising an impression here against a soulless body, as they have been pleased to term it, pursuing the even tenor of its way, gentlemen are pleased to call up a hasty remark of a gentleman who now sleeps in an honored grave, and bring it before this Convention, and for what purpose? For the purpose of influencing our action here upon a great question of fundamental law, to affect the destinies of the present generation, and perhaps many generations to come. I had many opportunities of knowing the gentleman to whom allusion has been made. I know his history well. From a poor boy, drawing a hand-cart, in the city of Boston, he rose, by honorable enterprise and industry, to take a high rank among the merchants and business men of the land. He became the president of the Western Railroad Company. Like other self-made, self-educated, and self-taught men, he came up with the color upon him of his preceding life, and he carried out into action the indomitable energy which he possessed. Being uneducated in youth, he sometimes spoke without the refinement and courtesies which belong to men of more liberal education. But that he had the stamp of honor upon him—that he was a man—that he was above all petty and low intrigue to carry any purpose, every man who had the honor of his acquaintance will testify. To suppose that that individual, with his enlightened judgment and skill in such matters, ever intended to adopt the policy on the Western Railroad which would limit the business of the community through which it lay, which would curtail the growth of the country upon whose prosperity his corporation essentially depended, to suppose that he was capable of that policy, is entirely to forget the character of the man. Therefore I submit, that, to introduce a hasty remark of his (whether it was ever spoken I do not know, or whether the gentleman speaks from his own knowledge, or only from rumor, I do not understand) upon an occasion like this; to introduce such a remark, is entirely unworthy of the subject and the occasion. Gentlemen have argued that we must not deal with this question, because there is a local issue depending or to be affected by it; that this will detract from the votes which may be given in favor of the doings of this Convention, and therefore it is better to let it alone. I confess I cannot fully understand this argument. I suppose when we go to the people with the results of our labors, we shall separate the subjects that are submitted to them as much as possible, as far as in the nature of the case they are separable, and that we shall submit distinct propositions to be voted upon. Will gentlemen say that the people, in a fit of indigna-

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tion, may reject the whole, because they do not like some one proposition? I hope better for the intelligence of the community. I suppose if we submit this proposition to the people, they can accept or reject it, and it will not affect the result upon any other question which will be submitted to them. But the argument strikes me as having other bearings than this. Is it supposed here, in this sanctuary of the people's rights—for if I have thought sometimes in the initiatory proceedings of this Convention we a little magnified our office, I have yet a very exalted opinion of our position here—in this chosen depository of the people's rights, for the time being, where such influences have much less force, we are incapable of acting upon a matter which may involve a few millions of dollars, in a pecuniary point of view, without being controlled by such influences, may we not well fear to trust such power to the legislature? If it can so disturb us, I should fear it in the legislature, as a great disturbing force, an enormous irregular planet, introduced into the solar system of politics and statesmanship, calculated to turn aside from their regular orbits every other planet. I should say at once, that it affords the strongest possible argument why we should put down the gate. Every person knows that a question of this importance takes strong hold of the legislature. It is vain to disguise it. Importunity will carry many things through the legislature. If a measure cannot be carried to-day, it comes up to-morrow. It abides its time, and awaits its opportunity.

It then weds itself to some other project in some other part of the State, and, putting the influence of the two together, they hope to carry both. I speak of this as the general history of legislation, and not of the particular issue which has been alluded to before. The gentleman from Brintree, (Mr. Stetson,) showed yesterday, very conclusively, that such "jobs"—that is a term which it is very proper to apply to them—have been done in the legislatures of other States besides Massachusetts. I do not think we need to go to other States, however, to find illustrations enough of the history of such measures.

It is a dangerous power to give to the legislature, to permit them to run the State in debt. I would trust my agent, or clerk, or servant, with money or property of any kind, sooner than I would give him that power. That is the last thing, the very highest confidence that I would repose in an agent, to trust him to run me in debt. If I trusted him with my funds, and he squandered them, or made a misapplication of them, I might lose them, and that would be all. If I trusted him with property to dispose of, or to manage in any way, I might lose the proceeds of that, but that would be all. But if I trusted him with the power of using my name and of running in debt on my account, without restriction, I should put in his hands my own independence and honor. That is the very trust we are called upon to give to the legislature.

And it is dangerous, also; because, when it is granted to one individual or corporation, you will be called upon to grant it to another, and another, and another, and thus on, until we shall be entirely unable, honorably, to extricate ourselves. The arguments which have been presented here, prove this. We are told, on the one hand, that we have loaned the credit of the State once or twice, therefore we must go on and loan it again. Upon

that principle, where are we to stop? We are told that, here is a little corporation, wishing to carry out an humble object, and asking a little aid to develop its business, away in one corner of the State. Is that so? Is it this small and insignificant amount which is asked for? If it is, then it does not rise to the dignity of those general questions, those enlarged State claims which demand the use of the State credit. If aid is granted in such a case, another little corner will be found which has not had enough. By and by, the Cape will want a loan to enable it to drain its marshes, or to build a railroad over its sands, to aid in enlarging its prosperity. And when a little is given there, another corner will come up and ask for it. Thus we go on and find ourselves, at last, merged into one great mercantile firm, uniting with every other firm and interest, for the purpose of developing its prosperity.

That is the argument employed on one side of the question, in one of its phases. If it is of that trifling local character, then the loan of the credit of the State should not be made. And if the former grants were wrong, and should not have been made, let us be wise in time and pause here,—

"Be wise to-day; 'tis madness to defer."

But, turning the argument to the other side, we are told that two millions is too vast an amount to expect to obtain from individual enterprise for the purpose of carrying out a scheme in one corner of the State, and therefore there is a claim on account of the greatness of the enterprise, for the assistance of the State! I think this argument equally unfounded in fact with the other. Is two millions too large a capital to be hoped for from any private source? What has Boston done, a thousand miles distant? Has not private capital from Boston principally built two great railroads across the State of Michigan, costing millions? Has it not opened two great railroads across Vermont? What has private capital done in New York? Has it not built one great railroad, from Albany to Buffalo, and another from New York to Lake Erie? The Erie road failed under State direction, and it was only carried through when it had been abandoned by the State to a private corporation. Now, with these two great railroads, one costing \$20,000,000, and the other \$30,000,000, it is proposed to construct another; and the surveys are being made, and capital is the very last thing which they apprehend difficulty in raising to make another road, splitting the triangle between those two great lines up to Lake Erie, and costing \$20,000,000 more. Yet we are told that two millions of dollars is too large a sum to be obtained from private capitalists in Massachusetts. No, Sir; show where there is an exigency for it, show where that money can be properly expended in any deserving public enterprise, and twenty-four hours is sufficient to raise the capital to accomplish such a purpose.

But, Sir, we are told that the Western Railroad is a great monster, already dangerous to the liberties of the State, and soon to become the governor of the Commonwealth in fact, and without election. And what is the remedy which is proposed? Why, to build up another just such monster, by the side of it to hold it in check. This great corporation, in whose board of direction the State is largely represented, and with its immense wealth, is to be held in check by another monster, in which the State is not represented at

all, and thus our liberties are to be saved! This is at variance with all experience and all history on that subject. In England, in New York, everywhere—we know that if you have two roads, side by side, they become like other great institutions, private or corporate. They will not prey upon each other, they will not devour each other; they will find it is easier to prey upon the public than upon each other; and, instead of two such dangerous monsters of ten millions each, holding each other in check, you will have one of twenty millions. This is so, invariably. No two roads will long run a race of competition with each other. After a time they will be sure to combine. If the managers will not do it this year, the stockholders will the next year put in those that will. The idea of putting one against the other to check it, is shown by all experience to be only doubling the momentum and power which you try to get rid of; and the result is, inasmuch as one can do the business cheaper than two, that instead of being benefited by the competition, you enhance the price for the service done.

But it would be out of order to go into the merits of an enterprise which seems to come in here to disturb our deliberations. The question is not whether this or that measure is expedient; but, rising above that, it is whether the legislature shall have power to contract debts without the consent of the people of the State.

It is argued very strenuously here, that such a restriction would control and entirely defeat all internal improvements in Massachusetts. But what is that argument; what does it amount to? Simply and mainly to this—that you are to set the legislature to do a thing which the people would never consent to have them do; that you are to call into action a power to lend the credit of the State, when it would be utterly in vain to think of getting the people at large to consent to it. Is that the way to carry out the will of the people? What is the reason given for this? Why is it that we are called upon to put the servant above his master, and say that the agent shall be empowered to contract a debt notwithstanding the principal will never consent to it?

It is said it is difficult to get the people to understand these subjects. That may be true with regard to a little matter away up in the corner of the State; but I utterly deny, that, as to great and important objects of a general nature, which are the only objects for which the credit of the State should be asked, that the people cannot be made to understand them. I say that the people can be made to act understandingly upon them; and I take issue with those who say that they cannot. If it is some remote object in the corner of the State, the people may not understand it; but if it is a great enterprise which bears upon the welfare and prosperity of the State,—and such an object only has a right to come to the State for aid,—any such great enterprise, the people can be made to understand. Now, it is here seriously contended that even the servants of the people, the agents of the people, the trustees of the people, or whatever you please to call them, when here acting in a legislative capacity, shall not be even required to say, "By your leave," to the people, when they put their hands into the treasury of the Commonwealth. Then, Sir, as a fit corollary to this—and I confess it surprised me somewhat—it is said that if we do adopt any such

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measure here, they will appeal to the higher power, to the people, with this question, which it is said they cannot understand! Why, does not the gentleman know, when he holds that argument, that *he* is the very party that says, you shall not submit this question to the people, and that the motion of the gentleman from Taunton, which he opposes, is nothing more nor less than an attempt to take the will of the people on this subject? If you do not adopt some measure in this Convention, how are you to get the opinion of the people with regard to it? When are the people to act upon it? If you submit that proposition to the people, they will be able to act upon it; and if they like it, they will say so; and if they dislike it, they will say so; and then we shall stand where we do now. With what propriety, then, are we threatened with an appeal to the people? An appeal to the people! We thank you. Give it to us. "Keep the word of promise," not only "to the ear," but in the act and performance, and do not "break it to the hope," as soon as you have given it to us. Go to the people. That is what we ask; that is precisely what the other side say we shall not have. The whole argument of the opponents of the restriction goes upon the ground that, if this question is submitted to the people, they would adopt it. Otherwise, it will be of no harm; the people will reject it, and the gentleman gets all he wants. In answer to that, my opinion is that the people are tired of having their servants running them in debt. This will be adopted if submitted to the people, and that is what they fear. While they talk about submitting it to the people, they act in a way to take it away from the people, with all the force they have, and with a degree of eloquence that it would be vain for me to attempt to rival. There is a manifest difference between the two propositions embraced in the amendment, in their dangerous character and tendency. One of the propositions concerns running in debt. But if a man sees fit to lend his money or use the resources he has on hand, he can do so; but he is likely to look pretty sharply upon the mode and manner of the appropriation. When, on the other hand, a man comes to see that he can run in debt without any expectation of paying, he is much more liable to be reckless. There is that difference between a mere speculator and the man of plain, fair dealing. The one lends money and takes property for security, and he is very likely to make himself safe. The other indorses his name, never expecting to be called upon to pay. That is the speculator upon the chances of another man's ability to pay. That is the ground upon which most persons fail, and the ground upon which States become insolvent. This matter of a government running in debt and having such a debt accumulating as England has, the gold to pay which would sink a navy, is of the same character. And does anybody ever expect that debt to be paid? That government has run in debt till there is a class of persons holding government scrip, who become a class of pensioners upon the industry of the people. No man should ever sign a note with the expectation that he will not have it to pay. He ought to know that he can, if called upon, be ready to pay, and not to guess that somebody will pay it and he will not be called upon to pay. If this is sound policy for men of business, dealing with their own friends, it is, for much stronger reasons,

sound policy for men who hold in their hands, as trustees, the property of other men. The legislature are the trustees of the property of the Commonwealth. They ought, therefore, to treat it as trustees. There can be no doubt that a court of chancery would decree that a trustee who should make such use of trust property would be held responsible for it.

For these reasons, it appears to me highly inexpedient to give the legislature the power of contracting debts, on behalf of the people, to aid other parties; and a limitation of the power to contract debts directly, by borrowing for the expenses of the government, I think highly expedient, as a constitutional provision. For in all these cases it is best not to embark too widely in loaning the credit of the State. The money which is expended, must ultimately come out of the pockets of the people, and the sooner we apply the test the better.

Therefore, I would have these restrictions; and I approve of the second resolution for that reason, as well as for the stronger reason, in my mind, that it is inexpedient to embark the credit of the State to individuals or corporations in this or that corner of the State, simply because it may promote local prosperity.

I have taken up more time than I intended to, and I will bring my remarks to a close. I ought, perhaps, to apologize to those who were not here yesterday—to those who were here and heard the occasion of it, I need make no apology—I ought, perhaps, to apologize for introducing the subject of the Western Railroad Corporation, or any other local interest. I would not have alluded to it except in defence. Before it was broached, I had hopes that we should all rise above any considerations of that sort, and go to the people with a statesmanlike vote upon this question. There are other reasons why I desired not to say a word on this subject. I happen to be connected, officially, with a corporation which is supposed to have some interest in this matter. I never owned a share in the Western Railroad—I wish I did own a good many; but I am connected with a corporation making a line with that, which has been supposed to have some special interest in this matter of loaning the credit of the State. Those who are acquainted with the circumstances know that that corporation has not seen fit to interfere with this affair. Whatever may be the opinions of gentlemen who are connected with that corporation, as a corporation it has entirely abstained from entering at all into this question. I believe that at this day the people at large have an interest against this thing ten fold stronger than that of the Western Railroad Corporation or any other corporation. I do not pretend to say that I am free from influences in relation to it any more than gentlemen upon the other side, or they more than I; but I have endeavored to lay aside all private interests and all pecuniary considerations. I am inclined to think that the gentlemen on the other side are less moved by the particular case which they have introduced here than they imagine. They probably mistook their own feelings when they said that they were afraid that this little question, affecting a small amount of property, influenced them or anybody else, so that they cannot take a statesmanlike view of the subject. Thanking the Committee for their attention, I will now leave the subject to other hands.

Mr. SUMNER, for Otis. Although the gen-

tleman who last addressed the Convention has occupied more than the half hour which he proposed to occupy, I hope there is still time enough left to enable me to present what few suggestions I have to offer in relation to this question. I have no doubt of the honest purpose and intent of the gentleman who has brought forward this proposition for the purpose of ingrafting it into the Constitution. But, Sir, I submit that it is not one of those propositions—not one of those necessary subjects proper to be placed in the organic law of the State. In forming a Constitution we are, in the first place, to have a declaration of rights and a frame of government, prescribing, in general terms, the powers and duties of the legislative, of the executive, and of the judicial branches of the government, and the necessary concomitants connected with these branches; and with these requisites fulfilled, we shall make a Constitution complete, without embracing such subjects as this. This is one of those subjects which, I believe, we may with safety leave to the legislature, and no remark which I have heard yet made, leads me to suppose that there can be any necessity for any provision in relation to the matter. The whole subject, I think, may more properly be left to the legislature. If it is said, as by the gentleman who has just taken his seat, that the subject will be introduced here as a topic for the action of the legislature; and that we may have legislatures who will not appreciate the subject properly and act accordingly; I will reply that I have no fears that subsequent legislatures will not always have in them men of forecast, genius and independence—men who, like the gentleman from Braintree, who addressed us yesterday, (Mr. Stetson,) will never "cave in" nor dodge the question, when matters of this character are before them. Though he may not be here, others like him, I trust, will be here. I am happy to say that in relation to this topic, I have no personal interest whatever. In the excitement which has been created by rival corporations, and in the local feeling which may prevail in some localities in this State, in regard to obtaining the credit of the State, I have no connection whatever. I have been able to stand here and view the subject presented solely as an abstract principle, and pass upon it with my sober judgment, however imperfect that may be, impartially and unbiased.

In the first place, Mr. Chairman, I had supposed, for one, that it had become somewhat the settled policy of the State not to loan its credit. I had supposed that when, in 1841, upon one of the strongest cases which could have been presented, the legislature refused to grant the credit of the State, for the time being, it was certainly laid down as a principle that they would no longer give such aid. But, after all, we are in a world of change, and such are the interests of this Commonwealth, in every point of view, commercial, manufacturing, agricultural, and, above all, the great railroad interest, that circumstances may arise—a case of magnitude may come up, which will be deserving of patronage. It may be a case of lesser magnitude, but alike deserving of patronage; for I do not subscribe to the principle which the gentleman advocates, that it is only the magnificent projects which are introduced into the legislature that are to receive countenance and assistance from the State, while all of lesser concerns are to be excluded. Hence, I should impose no fetters on the legislature; I would bind

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them by no restrictions in relation to this subject. I would trust the matter confidently in the hands of the legislature and of the executive; for, as I apprehend, the veto power will be left as a check upon the legislature, and we may entertain no great fears as to this and other kindred subjects.

Reference has been made, in the course of this debate, to the example of the State of New York, and of other States. I suspect, Mr. Chairman, that we shall gain very little by any such references. There is a vast difference between the State of New York and the State of Massachusetts, and this difference runs all along through the entire line of comparison between the two States. Although the States lie adjoining each other, their features are all different. Their origin also is different. We are of old England, English; they are of the Dutch, Dutchy—with an admixture of Scotch, Irish, and French, and noblest, perhaps, of all, of Yankees. In their cities, in their towns, and in their counties—in all the features of the two States, they are different. What would be the proper financial, commercial, and governmental policy of one State, would not be the proper policy of the other. New York has a great city, with little or no political influence in the administration of her State affairs; we have a great city, whose influence stretches its great palm over the whole extent of the Commonwealth, more beneficently, in some respects, than is appreciated, in other respects with an oppressiveness deserving to be condemned. So unlike are the States of New York and Massachusetts, that when precedents or examples touching the subject under consideration are brought up here from the State of New York, in relation to fixing in your Constitution a provision, restrictive or otherwise, I not only deny their application to anything within our borders, but I protest against them. There is one thing, however, in relation to the policy of the State of New York, that is worthy of imitation. She looks to herself in all her legislation; in all her progress she looks to her own resources, to her own originality, to her own power, and she guides herself accordingly. Sir, that policy of the State of New York, is a policy to be commended to the people of the Commonwealth of Massachusetts. It is said that "the poet paints with language, and the painter speaks with works." The noble Empire State "paints" with the glorious exhibition of her magnificent territory, and "speaks" in the beautiful picture of her thriving millions, and their progress—*speaks*, also, in the sagacity and wisdom of her statesmen. She has her own laws and her own legislation; and she looks to her own resources, to her own elements, to her own strength, and governs herself and progresses accordingly. Massachusetts should do the same; she should lead and not tamely follow. I repeat, there is no call whatever for our adopting such a provision as is proposed, in our Constitution. Let the legislature take care of the exigencies of the several cases as they shall arise. What are we doing? We are occupying ourselves at the present moment by going into the arena which has just been occupied by the general court, and picking up in that arena a matter over which there has been a hot conflict between two rival corporations, and between the citizens of different sections in the Commonwealth. We are not here under favorable circumstances to legislate by constitutional enactment upon a matter of that kind. The sub-

ject is yet too warm—the cinders are yet too hot—the ploughshares over which our legislature have just trodden, are yet too heated for us to follow them, and handle the same subject which they have just handled, and incorporate a provision in relation to it, into the organic law of the State. I know it is said by some gentlemen with great effect, "why not let the matter go to the people?" Sir, there are enough of other matters which *must* go out to the people; we must send out to them the propositions which will produce enough of dispute and conflict and controversy. Unnecessary propositions let us avoid. It will be enough for them to consider the Bill of Rights which will be presented to them—enough for them to consider the plurality question—enough for them to consider the changes which will be made in your representation, and in the great variety of subjects which must be acted upon by them, enough in all conscience, I submit, without troubling them with this unnecessary matter.

Finally, Mr. Chairman, it seems to me this question, having been submitted to a Committee of the Convention, who have examined it patiently and fully in all its details; I think we ought to be content to abide by the result to which they have arrived. I believe, by so doing, we shall hereafter have the assurance that with that contentment was the greater gain.

The hour to which debate upon this subject in Committee of the Whole, was limited, having expired, the question was stated to be on the amendment moved by the gentleman from Taunton.

Mr. MORTON said he wished to make a slight modification of his amendment, so as to avoid possible misconstruction, without changing the meaning in the least. It was to insert the word "hereafter." It was so modified.

Mr. BUCK, of Lanesborough, asked for a division of the question, so that it might be taken separately on each of the two resolutions embraced in the amendment.

The question was taken on the first branch of the amendment, and it was decided in the negative.

The question was taken on the second branch of the amendment, and it was also decided in the negative.

So the amendment did not prevail.

The Report was then agreed to, and on motion by Mr. CUSHMAN, of Bernardston, the Committee rose, and by their chairman reported the same to

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With a recommendation that it do pass.

The question being on concurring in the Report of the Committee of the Whole.

Mr. BIRD, of Walpole, demanded the previous question.

Mr. MORTON. That motion, I believe, is not debatable to any considerable extent.

The PRESIDENT. No, Sir; debate upon it does not embrace the merits of the main question.

Mr. MORTON. In the limited range allowed to the discussion of the subject, I shall trouble the Convention with but few remarks. And I must be allowed to say that I am somewhat surprised that the proposition for the previous question should be made at this time, when it is well known to the gentleman who moved the previous

question, and to others, that amendments are to be proposed. I hope it is not out of order for me to say, that I stated before the question was taken in Committee of the Whole, that it was my purpose to move my amendment in the Convention. Now I ask the Convention, if it is not a matter of right, or at least of parliamentary courtesy, that those who desire to propose amendments, should have an opportunity to do so, afforded them. Therefore, I must hope that the Convention will not think proper, at this time, to order the previous question and thereby preclude gentlemen from having an opportunity to offer amendments, which, it is perfectly well known to the Convention—to many of its members, if not all—it is their purpose to offer.

The PRESIDENT. The previous question has been demanded, and the question is, shall the main question be now put? The demand for the previous question was sustained, and the main question ordered.

Mr. WEEKS, of Harwich, moved that when the question was taken, it should be taken by yeas and nays.

The motion was agreed to, and the yeas and nays were ordered.

Mr. BIRD inquired, if it was in order to withdraw the demand for the previous question.

The PRESIDENT. There has been a decision of the Convention upon the gentleman's motion. He cannot now withdraw it, unless by general consent. The Chair understands that no objection is made. The gentleman, therefore, has leave to withdraw his demand for the previous question.

It was accordingly withdrawn.

Mr. MORTON, of Taunton. I propose, now, Sir, to submit the amendment which was offered by me in Committee of the Whole, and seeing the impatience of the Convention, to settle this question, I shall endeavor, in making a very few remarks, to be as concise as I can in conveying my ideas on this subject.

It has been suggested, in relation to this matter, that it is uncalled for by the people. On that point I take issue with the gentlemen on the other side. I contend that this subject has engaged the attention of the people for the last fifteen or twenty years, and I hope it will not be considered as being out of order or indecorous, for me to say, that it has been one of the cardinal points in the creed of the democratic party from the beginning; and has been used as one of their standing arguments, on all occasions. It was embodied in written addresses to the people, and was discussed in all primary assemblies, where political subjects were brought forward. There are many gentlemen who endeavored to influence the public mind in regard to this matter. I believe in 1839 it was one of the principal causes of changing the majority.

We all heard of the improvidence and folly of granting the credit of the State to private corporations, and the lien and mortgage which it fixed upon the whole State. I was one who advocated it. I believe it was a doctrine which prevailed throughout the Commonwealth. I advocated it in all sincerity, and I will not come here now and acknowledge that I used it merely as an electioneering argument. I will add that I brought it forward here under the implied instructions of my constituents.

Now, since gentlemen have seen fit to go into

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local allusions, I beg leave to say that but for temporary influences, or for the agitation of certain questions before this Convention, I could not entertain a doubt, that this proposition would pass almost without opposition.

It has been intimated that we are under the influence of certain great corporations in this Commonwealth. I wish to rebut anything of that kind, and am sorry to say, that I am not without fear, that there was some reason why this should occur to the minds of gentlemen who make the charge.

Mr. DAWES, of Adams. I rise for the purpose of an explanation. I do not know that the gentleman from Taunton alludes to me, but the gentleman who preceded him, alluded to me in the same connection, and now I suppose the gentleman from Taunton did so.

Mr. MORTON. It is quite probable.

Mr. DAWES. Had the gentleman been here when I spoke, he would not have supposed I had any personal allusions to himself. I did say that I believed this to be the sentiment of the gentleman from Taunton; but that there were other gentlemen who could not claim the same credit for consistency as the gentleman from Taunton.

Mr. MORTON. I did not hear the gentleman from Adams, upon this subject, but I understood it was maintained by some gentlemen in my absence—that those who were in favor of this restriction in the Constitution were under some secret influences of which they were not aware. Now, as gentlemen have entertained different views, I beg to say that no feeling of interest can have the slightest influence upon my mind. I do not own a single dollar's worth of stock in any railway in the world. I do not know a single stockholder in the Western Railroad, or in the proposed northern route. No man of either party has made any suggestion to me on the subject, and I have no wishes or preferences in relation to either, which can have the slightest influence on my mind. I beg leave to say, that when I came here, I brought with me a resolution which I had prepared, with an intention to offer it at an early day. But I conferred with the friends of the northern railway, and lest it might possibly have some influence upon their application then pending before the legislature, I withheld it till the legislature adjourned. With this explanation I wish to proceed to the examination of the subject.

The real question before us is, whether we shall grant to the legislature the power to pledge the credit of the State, or whether we shall retain it in the hands of the people. That is the substance of the matter. Now, I do not agree with my friend from Braintree. I have no doubt that in the general powers of the legislature, the power to pledge the credit of the State is included. But now the whole subject is before us for revision; and the question is, whether we shall vest in the legislature this power, or retain it in our own hands, and exercise it ourselves. If it is necessary for the proper administration of the affairs of the government, that it should be granted to the legislature, then it ought to be granted. If not, then we ought to withhold it.

Sir, I contend, in the first place, that there is no necessity for this grant. When the grant was originally made to the Western Railroad, I was not in favor of it; but, whether it was right or wrong, it is inexpedient to make any such grants in future. It might have been necessary then,

but it is not necessary now. I cannot agree with my friend who said that we are indebted for these grants to the establishment of the Western Railroad. I believe that all past experience has shown, that these things are better carried on by private enterprise than by the use of the public credit; and I have no doubt that the wealth of Boston would have carried through your Western Railroad better than it was done by the use of the State credit.

Things, however, have very much changed of late years. We have had vast accumulations of wealth, and with satisfactory security any amount of money can be obtained, but no man can expect to effect large loans at less than the legal rate of interest, unless the security is extraordinarily good. Either the applicants for State aid will give good security, or they will give doubtful security. If they give good security they can obtain loans at any time, and to any amount; if the security is doubtful, then the State ought, certainly, not to loan its credit. I hope that no one will attempt to advocate such a principle; and, Sir, we all know, that private persons will discover the value of any security much better, and much more readily than any legislative assembly of four hundred men can do. In this view, therefore, I contend, in the outset, that there is no necessity for making this grant; and not only do I contend that it is unnecessary, but that it is a dangerous power to grant—a power that is so liable to abuse, that it should never be exercised without the greatest necessity. If any project offers a doubtful or uncertain security, then the Commonwealth ought not to invest anything in it. If it is good and sufficient, then there is an abundance of private capital to carry it through without application for the loan of the public credit. Nothing is more easy than to get up these plausible projects; and a body of men not feeling that their own personal interest is at stake, are very apt to be led away by specious arguments. I therefore hold, that this is a power which no legislator ought to desire to possess, because a man under such circumstances is so liable to be imposed upon, that he should feel under constant apprehensions that by his vote he might divest himself and others, of property in which, for the time being, he felt little interest, and when he supposed he was only voting for a harmless grant of the credit of the State.

Again, Sir, there is another argument which is not without weight upon my mind. I think that the adoption of this proposition will remove what might otherwise become a source of disgrace to our Commonwealth. If the legislature have not the power to grant the credit of the State, you will not find applications made to that effect. You will not have lobby members watching their opportunity to take legislators by the button and ask them to vote in this or that mode, on such and such a question. I think that the accumulation of lobby influence which has arisen to such an astonishing degree in this Commonwealth, has, of itself, sufficient weight to induce us to take away one of the chief temptations to resort to it; that we should shut the door against it, that we may hear no more of it; and, while I do not wish to impute any improper motives to any gentleman, we all know what means have been resorted to by applicants for aid from the State. Excursions, and parties, and dinners, and eloquent speeches, have been resorted to

in times past, as we all well know, and if not from any dishonest motives, at least for the purpose of influencing the members of legislative bodies in some measure. Whether all these things have been proper or improper, it cannot be denied that they have had an influence upon the reputation of the Commonwealth which is not to its advantage; nor that they have been the means of carrying measures through the legislature which I regret should have been adopted by the good old State of Massachusetts. If we can by any means remove the causes of these imputations we are bound to do so.

But, Mr. President, we have had some experience upon this subject. It is rather a recent thing that this plan of raising money has been resorted to. It is but a few years since the thing first started; and we find it has been practiced, more or less, in a majority of the great States of this Union. This facility of accomplishing great objects by the use of State credit captivated the minds of persons in legislative bodies, and we find, in a great number of the States, that the legislatures run their States recklessly into debt, and even went so far, in some instances, that these States could not meet the interest upon their public debts, and attempted that which was a disgrace to them, throughout America, as well as throughout Europe—repudiation. Now, it is against the liability to these disasters that I wish to shut the door. It has been argued that the State of Massachusetts is too wise and too prudent to suffer herself to become involved in such embarrassments. I hope, Sir, that we are wise and prudent; I believe that we are; I pride myself upon it; and in order that we may retain our reputation for wisdom, and prudence, and purity, I would remove all temptation to what may lead to a contrary result.

It is said that we have loaned our credit, again and again, and that we have not suffered from the experiment. That is no proof that we may not suffer by a repetition of the same thing. It is also said, by some, that we are liable for the debts of some corporations whose stock is not very high in the market. Whether that is so, or not, I cannot say; but we ought to guard against any such possibility in future. Because we have been successful heretofore, it does not follow that we shall always be so, or that we may not be taken in by some parties. It would indeed be remarkable, if, pursuing this line of policy, we should not. In making these remarks, I have not the slightest idea of making any allusion to any particular investment or grant which has been heretofore made; I have no opinion to give in regard to any of them; all I contend for, is, that if we make grants to one company or corporation, we shall have to do so to another; and it is beyond the wisdom of man so to act in all these cases, that we shall not, in some of them, be deceived. In consequence of the course which has been pursued here, and also in consequence of the influence which that course of conduct has had upon the prevailing party, I would desire to see a change in this respect. I believe it is now about a dozen years since any such grant was made.

Mr. GRISWOLD. I am sorry to interrupt the gentleman from Taunton, but with his permission, I would like to ask him a question.

Mr. MORTON. I yield to the gentleman for Erving.

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Mr. GRISWOLD. I wish to ask the gentleman, whether he means to convey the impression, that there is any danger of the State suffering loss from any loans that have been already made?

Mr. MORTON. I thought I was very explicit upon that point. I said, that I believed that a member of this body had so intimated, but that I did not know whether his remark was well or ill-founded; but that, so far as I knew at present, I was not aware of any danger.

Mr. GRISWOLD. I rose merely to ask a question, but, with the permission of the gentleman, I wish to say, that I have taken the pains to examine, personally, in regard to every one of the loans, and, so far as I can see, there is no probability nor any possibility of any such danger. I have the opinion of the State Auditor upon the subject.

Mr. MORTON. I am glad to hear that the gentleman for Erving is so well satisfied that there is no danger. I hope it may be so. It gives me pleasure to hear him say that he has examined into the matter, and come to that result. I did not intend to found my argument on the supposition that there was any danger, but meant only to argue, that if we continue these grants, we shall be in danger, because there can be no doubt that local influence will have a bearing upon grants of this description, and, if you make them, you cannot be certain that you are always free from risk; and, if you make a grant in one section of the Commonwealth, claims will arise, and be brought forward from other quarters of the State, which it will be exceedingly difficult to resist. How much wiser is it, in the outset, to decide that we will not, through the legislature, make these grants.

I was about to say, Sir, in continuation of these remarks, that in consequence of the discussion and agitation of this subject throughout the community, and the embarrassment which other States have been brought into, by this loaning of State credit, that nearly or quite every State, that has recently formed or revised its Constitution, has inserted a provision quite or nearly similar to this. I requested a friend to look over the Constitutions of the different States, with a view to ascertain in how many States that was the case. He did so, and informed me that he found the Constitutions of nineteen out of thirty-one States, containing the provision. Upon investigating the matter myself, I found that they were not repudiating States only that had involved themselves in difficulty and embarrassment, but they were States as prudent and wise as ourselves, and some of them brought up and educated by us. Our daughter, Maine, had a provision of this kind in her Constitution. Experience has led these various States to adopt that provision, and is it unworthy of us to follow their example? I trust not. We have, near us and far from us, instances of this kind. There is the little, prudent, but much-abused State of Rhode Island, and I am delighted to say a word or two in her defence, because I believe she is unjustly judged of by the community at large, in relation to her civil and religious character and institutions. I know of no more moral or religious population, than that of a large portion of that State. The wise and prudent State of Rhode Island, which, I believe, has but seventy members in her House of Representatives, and which

transacts her legislative business in a session of five days instead of five months, thought it wise and best to insert into her Constitution that provision.

The great State of New York, too, embarked beyond precedent in internal improvements, and which has had success unequalled by any portion of the world; that great State, with its immense resources, thought fit to adopt a provision precisely in principle like the one which has been offered here; that is, that a grant of the State credit should not be made without the question being first submitted to the people. And what has been the result of that? The gentleman for Otis, (Mr. Sumner,) referred to that State, and praised her wisdom upon certain subjects. I will defend her wisdom upon this subject as an example worthy of our imitation. That provision has saved millions to that State, and it has removed, from her a degree of infamy which never attached to any other State in the Union. Notwithstanding the constitutional provision, the legislature, desirous of going on with her public works, set it at defiance, and made a grant of loan of nine or ten millions of dollars, and in the expenditure of that money, corruption between the government and the agents, who undertook to disburse it, was unexampled. But, thanks to Providence, it was all resisted, and stayed by the firmness and independence of the judiciary. A more valuable instance of the importance of the judicial power and of the independence of the judiciary, never existed in the world. And in justice to many friends who may differ from me, by and by, upon another subject, I wish to say, in this connection, that those judges were elected by the people, and yet they stood up in opposition to the majority of that legislature, and resisted the most nefarious project that ever was set on foot. Now they have come back to the right source, and are looking to the people. They have come back to where I wish that we should come in forming this constitutional provision—to the people themselves. They have determined to ask the people for those ten millions of dollars, and I have no doubt the people will grant it, and I hope they will take care that it is not a source of corruption by being improperly expended. As careful as they may be, I believe that seven or eight millions of dollars in the hands of private individuals would accomplish more than ten millions in the hands of the State.

But I do not wish to take advantage of the indulgence of the Convention and trespass upon them beyond what is reasonable. I wish it distinctly understood that this provision does not prevent grants from being made to corporations or individuals. It only retains the power of making those grants in the hands of the people. My friend for Montague, (Mr. Alvord,) who has set an example of dignity and moderation in the discussion of this subject worthy the imitation of older men, maintains that the people never will make any such grants, and that such a provision will be fatal to any future project. Now, I have some confidence in the people, and the example of New York shows that they may be trusted. If the people are there willing to expend ten millions of dollars upon their improvements, I have no doubt, and can there be any doubt, if you bring forward a proposition here that shall interest the whole community,

and be a general benefit to every portion of the State, that the people will give their consent.

Mr. President, I desired, though it is not very important, to avail myself of the illustration brought forward by my friend from Charlemont, (Mr. Foster,) though not personally acquainted with him, I take the liberty of calling him my friend, without any fear that he will not reciprocate the favor, for, from the benignity of his countenance and the kindness of his heart, and his general aim to accomplish that which he deems right and good, I cannot doubt that his heart is filled with benevolence, and that he will be delighted to acknowledge every one of the human family not only as friends, but brothers. I say I desire to avail myself of the illustration which he brought forward, although I do not exactly recall it. It was something like this: it seemed to carry the idea that the Commonwealth was a great rich parent, and that the corporations in the Commonwealth, numerous as they are, were her children. I suppose, in some sense, that is true. He went on to illustrate his view of the subject by suggesting that the parent had given something to "A" and something to "B," and so on with half a dozen children, and now, all at once, it was going to shut down the gate, and deprive the youngest children of their share. The illustration was something like this: he had given "A" something to buy a ticket in the lottery, and so on nearly through the alphabet, and finally, the youngest comes up and says: "You have made these grants to my older brothers, now let me have my share." But, says the parent: "You may lose it or draw a blank." He replies: "All my brothers before me drew prizes—enough to pay expenses, and have not lost anything." But, says the parent: "I do not like the principle, and besides, some of the tickets have not been drawn yet, and I am not certain that they will draw prizes." "O, but the man who sold me the tickets warranted them to draw prizes." The parent says: "I do not like the principle, and I am sorry I ever made the grants to your elder brothers, and I think it is my duty to stop here, and not lead you into the temptation of getting money by lottery tickets; but I should rather encourage you to gain your living by honest industry." Now, Sir, I think the illustration very much in my favor.

I propose to leave the first proposition and say a word or two in relation to the other. I hope, therefore, we shall proceed and restrict this power of loaning the State credit, and, taking it away from the legislature, leave it with the people. In their wisdom and discretion in this and other acts, I have the highest confidence, and with them I think the power is much safer than in other hands.

The second proposition is entirely different from the first. The first prohibits the granting of the credit of the State to individuals or corporations, and the second prohibits the legislature from running into debt beyond the sum of one million of dollars. Neither of them have reference to what now exists, but both are prospective. I think the management of the pecuniary affairs of a State and nation is one of the most difficult connected with the government. Its exercise leads to more corruption, and holds out more temptation, than the exercise of any other power. I see the effect of it in our general government, and what reason have we to

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suppose that the same will not be the case with our State government? You hear of the Galphin case, and of the Gardner peculation, and a thousand things of that kind, which never would take place, if the money thus thrown away had to be raised by a direct tax upon the people, so that every man could see exactly the number of dollars he paid for the support of the government. Then they would be careful to see what disposition was made of it.

My object in offering this amendment is, that the legislature, in their administration of the government, shall be constrained to resort to the taxing power for their support. It is merely to require them, when they make an expenditure, to lay a tax to pay it. I will not now discuss the subject, which I have much at heart, in relation to direct and indirect taxation. But I wish to compel the legislature, when they make a grant, to make a provision for the payment of it, and a margin of one million of dollars is quite sufficient to enable them, at all times, to anticipate their expenditures. If we place that check upon their action, we shall have the assurance that they will not make a grant, without at the same time making a provision to meet it; and in this view, it will commend itself to the consideration of the members of this Convention.

Mr. HALLETT, for Wilbraham. I would not have said anything upon this resolution had it not been presented precisely in the form in which it now comes before us. Let us lift this question out of the local considerations and interests which surround it. Let us withdraw it from the conflict of rival corporations. What have we to do with them? The moment you begin to talk of corporations in this Commonwealth, you talk about an empire within an empire. You talk about associations which that Report from the Secretary of State, now upon your table, shows has an invested capital of \$400,000,000; compared with which, the revenues and credit of the State, I had almost said the property of the State, is as nothing in the balance. And now, to-day, begins in this Convention that conflict, which is the conflict of modern times—a conflict between the people and incorporated wealth. It proposes precisely that change in the Constitution which must be looked at by every man who would maintain republican governments, and who would do so by observing the progress in governments from that age when land was the ruling and despotic power, to the present time, when incorporated wealth is the ruling power. The question comes to us, in this Convention, who are the principals, and who are the agents, in contributing to the establishment of this great incorporated power of wealth? The people are the principals in government, and the legislature is the agent, and nothing but an agent. The Constitution is the power of attorney of that agent. Now, Sir, we stand here to-day acting as if we were the whole people, about to make a power of attorney—the Constitution—for our agent, the legislature. That is our position, and the question put to us is simply this: Will you authorize this agent, without restriction, to use the credit of the State, or will you say that your agent shall come back to the people, and ask them whether it shall use their credit or not? What is the credit of the State? It is the power of taxation, and that is the whole of it. What does taxation apply to? To the property of the

whole State. Who owns the property of the State? The individual citizens, the people. Then how does the question stand? Shall the agent take the property of the individual citizens of this Commonwealth, and pledge it without their consent? That is the question.

The illustration of the gentleman from Charlemont, (Mr. Foster,) alluded to by the gentleman who preceded me, (Mr. Morton,) was, that the parent himself was to decide—as between his elder and younger sons—whether he would loan money to the child or not. That might well do in family affairs, because the parent himself judges. But you propose that there shall be an intervening power to say whether the parent shall loan the money or not, without consulting the parent at all. Will you say that the legislature of Massachusetts may, without any restriction, take the credit of this Commonwealth, and loan it to whom they please, and to any amount they please? That is the proposition, if you reject the amendment which is upon the table.

Why, Sir, if you want projects of this kind, there are enough of them besides the Hoosac Tunnel and the Western Railroad.

There is the project of the dykes to transform the salt marshes of Cape Cod into luxuriant meadows, and that child has in vain asked for a very small loan from its parent, who is so lavish of his money and credit upon railroads that ruin poor Cape Cod. If you have no generosity but for railroads, then Cape Cod has her railroad to Provincetown for which she should demand her share of State credit. Let the people decide.

The question is this: will you so leave this matter that some great power, some great corporation, may come into the legislature and draw to itself the credit of the State for its own purposes and benefit, while at the same time you will throw out all the smaller interests which come here struggling to get their share of it?

And who is to judge of this? The people? No, you say the people shall not judge. You say that the legislature shall judge; and who are the legislature? Why, men elected by these very corporations, whose object it is to carry through a particular project—chosen when the people are asleep upon the subject, and know not the purpose for which their representatives are elected. They will have a majority of the legislature, and that majority can pledge the credit of the State for ten, twenty, thirty millions, or for any amount of money they may think proper. And what is the effect of pledging the credit of the State? Is it not to mortgage every farm in the Commonwealth? I know the idea has been ridiculed that the farms of the Commonwealth are mortgaged, but I ask if that is not the practical result? What is the credit of the State? It is a pledge to redeem money. It is an indorsement of the note of a corporation. It is precisely the same as indorsing a note of hand given by an individual in trade. When the question of the payment, either of principal or interest, comes up, the indorser is as much bound for it as is the maker who gives it. If he hesitates, his credit fails. Now will Massachusetts hesitate upon such an occasion? Why, Sir, if the occasion should arrive when it were required to put all the farms in the Commonwealth up at auction to redeem the credit of the State, I undertake to say there is not a man who owns an acre of land in the Commonwealth, who would not say: "Sell

my farm, but save my honor. Let not Massachusetts repudiate." Sir, for whatever amount you pledge the credit of the Commonwealth of Massachusetts, she is bound to redeem that amount, if it should ever become necessary for it to be redeemed, even should it involve every dollar of taxable property owned by every citizen in the Commonwealth.

Now is not this a matter of some importance? You say the credit will always be safely used. Well, Sir, who is the better judge of what is safest and best? Are the representatives in the legislature, who come here under influences about which the people know nothing, or are the people themselves? That is the proposition. You cannot escape from the principle laid down here, which holds the credit of the people subject to the will of the people, and therefore, we ought to say it shall not go beyond their power. Sir, I have considered every grant of this description, from that to the Western Railroad down, as in its origin, absolutely unconstitutional. And why? Because there never was one particle of power or authority in the Constitution to authorize it. When the Constitution was made in 1780, and when it was revised in 1820, nobody dreamed of such a thing as a loan of the State credit. It is a modern invention, and therefore there was not a word put into the Constitution about it. The legislature, it is said, may pass wholesome and necessary laws, and under that clause they have sought to find the authority for granting these loans. The question has never been brought before the Supreme Court, whether these loans were constitutional or not, and therefore you have not had even an adjudication upon the subject. I think if the question had come before the learned gentleman from Taunton, (Mr. Morton,) who preceded me, and who has so ably argued this question, when he was in the possession of judicial power, he would have come to the conclusion that there was no authority under the Constitution for making these grants.

But now you have got a new construction put upon the Constitution by usage. And what is it? The legislature have gone on and made these grants. It at one time pledged the credit of the State for \$7,000,000. Gentlemen have said it was all safe, and perhaps it is all safe. I have nothing to say against these corporations. I am rejoiced at their prosperity. But I am looking at the principle. I do not wish to incur the risk again. We have incurred it once. Sir, that risk was pointed out in 1839, by a good many of my friends who are now so anxious to have the credit of the State scattered all over the State. I wish to go back to the fundamental principles upon which the democratic party stood in 1839. I am rejoiced to find men who were of a different opinion then, coming now to stand upon that principle. And shall we now depart from that which has become the governing principle of nineteen of the States of this Union? When, moreover, it is now admitted to be sound doctrine, by many who were opposed to the principle in 1839 and 1840?

Now, when we are making a Constitution, shall we hesitate to incorporate this principle in it? Is there any danger in putting it there? I maintain that it is our duty to put it there, because a practice has grown up—a construction has been put upon the Constitution, and sanctioned by usage, by which the legislature may grant the loan of

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the credit of the State, without any limitation or restriction whatever. Well, Sir, that being the usage under the Constitution, and a proposition having been introduced here to limit that usage in future, and voted down by the Convention, what is the result? It is directly saying, by the Convention, that the legislature is at liberty to make unlimited loans of the credit of the State. Now, Sir, if this is the object, I say, put it boldly into the Constitution, and do not have an evasive construction of public welfare upon this point. If you mean to say that the legislature shall not loan the credit of the State without the consent of the people, then put such a provision into the Constitution and say so. But if you mean to reject that proposition, then put into the Constitution a provision that the legislature shall have power to loan the credit of the State to corporations for purposes of internal improvement, or for any purpose you may see fit to authorize. Say that, and I am content, if it is the judgment of the majority, for if I cannot get all I want in this Constitution, I will go for what I do get. Put that to the people and you will not evade the question. The people will have the opportunity either of accepting it or rejecting it. If they accept it, then the legislature will have full power over the subject, but if they reject it, then you may know that they mean to restrain the legislature in the exercise of this power. But if you evade it, if you lay it upon the table, if you refuse to put any provision in the Constitution with reference to it, then you say to the legislature: "Go on, and we will not allow the people to say you shall not go on."

Then, Mr. President, one other point. Why do gentlemen object to this proposition? Why does my friend for Erving, (Mr. Griswold,) object? Why do our friends on the line of the Hoosac Tunnel, which I hope will go through, one of these days, come here and make this a local question? What do we propose to do? Do we propose to prohibit the credit of the State from being loaned? Certainly not. We propose that when a corporation need such a loan, that they shall come to the legislature, and if they make out a reasonable case, the legislature will submit the question to the people, and if it can command a majority of their votes, the credit of the State will be granted. Make such a provision, and you will have such a power in your Constitution as you want to enable the legislature to submit the question to the people; for I hold, and I think your judiciary would hold, that under the existing form of government, with the limitations which are placed upon each department of your government, the legislature has no right to submit a proposition of loaning credit to a corporation, to the people. But if you put this proposition into the Constitution, you put it in the power of the legislature to bring the question directly before the people.

Now, is there one man in this Convention who is prepared to say that a loan of \$3,000,000 ought to be given to any corporation in this Commonwealth, unless a majority of the people of the Commonwealth are in favor of it? I do not believe one man will say that. Well, then, if he admits that no loan of the State credit ought to be given against the consent of a majority of the people of the Commonwealth, why does he hesitate to ask their consent? Why does he hesitate to provide that it shall be put in a form in which it

shall be submitted directly to the people? Is not that bringing the question directly to the point? If gentlemen will reject that proposition, is it not virtually saying: "I have a project to secure the credit of the State, which I dare not submit to the people, for fear they will reject it, and I will therefore go and lobby with the legislature and see if I cannot get it from them?" Is not that the position of gentlemen who will not put this provision in the Constitution? Why not provide to put each question that may come up, distinctly to the people, if the legislature deem it of sufficient importance? Let any corporation that has a great public object, say, here is a proposition which we submit to the legislature and ask them to submit it to the people. Then if they do submit it and a majority of the people vote in favor of it, such a corporation will have the support of the people to the utmost extent, and its power will be greater, infinitely greater for the public good, than if a loan were obtained under the doubtful authority of the legislature, as it now stands.

Then in relation to this matter before the legislature, how much more time will be spent if you leave the question an open one on its merits, to go to the people, than to leave it for a lobby contest in the legislature. By the existing practice you invite applications from all quarters. You make your legislature a mere stock-jobbing board, for the purpose of dealing out stock to the associations which come there for their particular projects, because every man will maintain, and I shall maintain this doctrine—that if you authorize the legislature to grant the credit of the State to one project, you are bound to grant it to all, with reasonably fair claims. You have no right to stop any where short of that. You have no right to lend \$3,000,000 to tunnel the Hoosac Mountain, in order to draw away the trade of the coasting vessels of barren Cape Cod—you have no right to destroy the little that remains of the heavy freighting business of Cape Cod, from which hundreds have already been driven, solely by the operation of the Western Railroad, unless you also give \$300,000 to run a railroad down to the extreme point of Cape Cod, to meet the landing of the Pilgrims. You ought at least to do that, in justice to that industrious people whose business you have already helped to take away. Claims will come here from all over the Commonwealth, of so nearly equal justice, that if you grant one you must grant all, or you will be partial and unjust.

But if you put this proposition into the Constitution, what do you do? You impose a limitation upon applicants, as well as upon the legislature; you give some sort of protection to the legislature from the applications that will otherwise be made. When they bring forward a project which carries with it any considerable force, it will be submitted by the legislature to the people, and if it is an object of manifest general interest or importance, they will go for it; but if they find it is for a merely local purpose, to build up one section of the State at the expense of another, they will reject it, and there will be an end of it.

Now, Mr. President, I say that upon every rule which should govern legislation and which should govern fundamental law, this provision ought to go into the Constitution; upon every rule of expediency it ought to be placed there,

not for the benefit or disadvantage of this corporation which comes here and asks so large a share of the credit of the State, nor for the benefit or disadvantage of that other corporation which, after having had one-half of the share of the credit of the State already, comes here and complains that another corporation wants the other half. Not for the benefit of any of these corporations, but for the benefit of the whole people of this Commonwealth, should you fix some limit to these grants. Then you will stand upon a principle that is uniform in its action, and which the people will approve. But if you say to the people of the Commonwealth that you will not allow them the privilege of deciding whether they will restrict the legislature in regard to the use of their own credit, they may well complain that you did not give them the power of expressing an opinion upon a question of the greatest interest to them.

Now a word in regard to these examples in other States. We might leave the Constitution as we found it if we had not been called upon to amend it; but being called upon to amend it, let us look at what has been done in other States. And what is the example of the great State of New York? The gentleman from Taunton has referred to a judicial decision which was made there against the attempted action of the legislature to create a loan of nine millions to the Erie Canal, in violation of the Constitution. But the work for which the aid of the State was asked, was one of great public importance—one in which the State alone was interested, and doubtless the people will, in some constitutional form, or by an amendment of the Constitution, sanction the loan of the credit of the State for that purpose. And that is precisely what the result would be in Massachusetts, if a project of any great public interest should be submitted to the people. The people of the State of New York wanted their own canal enlarged. The legislature had no power to grant any aid upon the credit of the State, beyond the revenues derived from certain sources, but they undertook to make the grant in violation of the Constitution. They passed a law for that purpose, without the consent of the people, and the judiciary of that State declared that law null and void. And let me say to the gentleman from Taunton—(Mr. Morton,) and I want him to bear that fact in mind by-and-by,—that the judiciary which made that decision was an elective judiciary, not one which had the power of holding their tenure of office for life, but an elective judiciary, independent of mere executive appointment. What has been the result in New York in this respect? Why, Sir, it has preserved its Constitution; it has vindicated the independence and purity of its judiciary, and it has secured its great internal improvement in a constitutional and proper manner. It is true that, by these means, it has been delayed for some two years, but what is two years in the life-time of a State compared with the question whether that State should carry on its operations in a constitutional and lawful manner?

Let us, then, establish that principle. Let us not approve or reject any of these claims, but let us say what we are called upon to say, that if any great work comes before the legislature, with claims upon the credit of the people, the legislature shall submit the question to the people, and if they say aye, the credit of the State shall

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be loaned, but if they say no, it shall not. It seems to me that is the least we can do in the position in which the question now stands.

Mr. STEVENSON, of Boston. I desire to ask the Chair whether it is now in order to move a substitute for the resolve reported from the Committee of the Whole?

The PRESIDENT. It is not, at this time. A substitute is already pending, offered by the gentleman from Taunton, (Mr. Morton).

Mr. STEVENSON. Then I give notice that if the amendment of the gentleman from Taunton fails, I shall offer a substitute for that resolve. I desire to give this notice in order to avoid the previous question.

As the question stands before the Convention now, it seems to me to be this: Will you allow your government to aid, by the use of the credit of the State of Massachusetts, a great public undertaking? According to the views of some gentlemen here, we will deny that power, and withhold it entirely. Will you agree to the proposition of the gentleman from Taunton—as I understand it—and confer upon your legislature a power only to be exercised by an appeal to the people?

I think the power ought to rest in the government itself, to aid in great public undertakings, to aid in the prosecution of works of internal improvements, when it can be shown that the general interests of the community would be promoted in the prosecution of those works; because, as was well said by the gentleman from Greenfield, you are making an appeal from a tribunal itself which has the opportunity to make a thorough investigation, to another tribunal, which has not the power of making such investigation, and hearing the evidence upon the merits of which each case ought to rest. This power is to be exercised in individual cases. The merits of these cases rest upon, and must be developed by, evidence which the majority of the voters of this Commonwealth cannot and will not investigate—which the legislature can obtain for itself. Each of these laws, if laws are proposed upon this subject, will rest upon the result of the investigation which voters are not prepared to make. For that reason, I cannot vote for the amendment proposed by the gentleman from Taunton, (Mr. Morton). Neither could I vote for a proposition which should take from the government the power of aiding in the prosecution of public works, after it shall be shown that it is palpably important for the interests of the people that these public works should be promoted. The first proposition leaves the power, as stated by the gentleman for Wilbraham, (Mr. Hallett,) entirely with the legislature. I am ready to leave it there. I agree with the gentlemen who have addressed the Committee upon the subject, that this is a power which it may be very desirable sometimes to exercise. It is the abuse of the power which leads gentlemen here to ask the Convention to propose to the people that they shall take away that power. If we can find some little ground where we can leave the power in the legislature, and then render its abuse improper, that would be the ground upon which I should like to stand. We all know that there is a vast difference in the minds of men in regard to loaning the credit of the State, and loaning the actual moneys of the State. There is a vast difference, not only in the minds of men

in regard to their public acts in that direction, but there is also in the conduct of their private business. You shall go to one commission merchant and pay him a commission for making you an actual advance of money for your purposes, and you shall go to another commission merchant and pay him a commission for making you an actual advance of money for your purposes. One you call a speculator, because he takes pay for a mere risk that he runs, and the other you do not call a speculator, because he does not use the means in his hands for profit. The amendment which I desire to offer, and which I suppose is not in order, is this. I propose that the Constitution should take from the legislature the power to loan the credit of the State, but leave in their hands the power to loan the moneys of the State, in aid of any great public undertaking, provided that the same bill should lay a tax to replenish the treasury for a like amount. What would be its practical operation? As I look at it, the real practical operation of such a proposition as that, would be this—that where there was a clear case, which could be fully made out, and which would justify the legislature in granting aid, such aid would be granted, and it would be done on account of the fact that the legislature individually, and committees of the legislature would believe, and have a right to believe, that the people would approve the course they would take, because the work was to be of general and public interest, and it would prevent the loaning of the credit of the State to the creation of a State debt, in cases where it could not be clearly and fully justified. It would prevent, therefore, the abuse of power; it would leave the power to be exercised in a clear case, and it would withhold the power in a doubtful case. I wish, if the amendment of the gentleman from Taunton, (Mr. Morton,) does not prevail, to propose an amendment in the form I have suggested.

Mr. DANA, for Manchester. It is with a great deal of diffidence that I venture to address the Convention upon a question of finance, because, if there is anything in the world of which I am ignorant, it is the subject of finance. Fortunately, my ignorance upon that point is balanced by ignorance upon another, the merits of the Western Railroad and the Hoosac Tunnel, and this balance of ignorances, I hope, may qualify me to say something upon this question. I feel no particular interest in this debate upon the Western Railroad and the Hoosac Tunnel, and I confess that whenever I have heard gentlemen in this debate speaking of these works, I have taken up an interesting pamphlet and have begun to read. It seems to me that this question ought to be decided upon general principles, and those general principles do not relate to finances, but they relate to the very theory of government. They have been so met by the gentleman for Wilbraham, (Mr. Hallett,) and many others who have spoken here. The question now before the Convention is, whether we shall go on as we have done, and leave it to the legislature to say whether the credit of the State shall be lent or not. I wish to use the word "loan" out of respect to the Committee, but I would rather refer it to a Committee on the Advancement of Learning, to say whether there is such a verb in the English language. I am not quite certain about it, but out of respect to the Committee I will say "loan." The question is, whether the loaning

of the credit of the State shall be left to the legislature or referred by the legislature to the people. The proposition is undoubtedly true that the people have a right to decide, if they choose, all these questions. The real question here is, whether this is one of those things that the people wish to decide; whether it is one of those cases which it is judicious that the people should decide, or whether it can best be decided by the legislature. It is very frequently said upon this floor by gentlemen, that they are willing to trust the people. I hope we are willing to do so. I hope so, because as I happen to be a member of that respectable body called the people, I wish to see them complimented, but I do not wish myself to be the complimenter. The real question is, whether these particular cases are the cases upon which the people in Massachusetts, I mean the 200,000 voters of the Commonwealth—I believe we have something like that number—can better decide than the tribunals can decide. There are some questions which the people can decide best, and there are some questions which the tribunals can best decide. I should be very willing to submit the question to the people, whether there shall be capital punishment. But I submit to every gentleman upon this floor, whether he would be willing to submit the question to the people, whether each particular man ought to be hung or not. I understand that these questions of loaning the credit of the State are each to be decided upon its own circumstances. I would submit very willingly to the people to say, whether the credit of the State should ever be loaned or not. The question whether the credit of the State shall be loaned in this particular case, would be a great deal like taking a case from a court and jury and submitting the question whether a particular man should be punished or not in a particular case. It argues no disrespect to the people to say, that I prefer that the question should be lodged with the court and jury to determine how the law should be applied in each particular case, although the people might decide the question generally. I do not understand that the question is, shall the credit of the State never be loaned, or shall it always be loaned. Either of these propositions the people could well pass upon. The real question is, when shall the credit of the State be loaned? I suppose that circumstances will decide each case. You wish to know in the first place the state of the finances of the Commonwealth. In the second place you wish to know what the project is for which they wish the credit of the State. You wish to know the prospects of this corporation. What does the corporation propose to do? What great object has it to answer? What security is the corporation to give, and what is its nature? How good is it? When is the work to be built and under what circumstances, and by what instrumentalities? These are questions of fact and circumstances, which must be developed by careful examination, and thoroughly understood, before any man can pass upon them. I submit to gentlemen of this Convention to take them home to their own judgments. Could you pronounce now upon the question of loaning the credit of the State without a careful examination? I should wish to see the directors of the corporation before a committee, who may examine them under oath. I should wish to know exactly what kind of security they offered to the whole Commonwealth

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—I wish to know how and when they purpose to accomplish their object. Until I have got all these facts and under the most solemn sanction of an oath, I could not vote intelligently to loan the credit of the State, nor could I vote intelligently to refuse the credit of the State. I think it very likely were these questions to go to the people that they might generally refuse. Our judgment in a mass is good upon great propositions, but I submit, with the utmost respect for ourselves, that we are not the tribunal for deciding questions which involve complicated details and circumstances to be ascertained with a great deal of care and research, and not to be determined upon without great application of time. The tribunal we have established, the legislature, is the best adapted for that purpose.

Another reason which leads me to believe it is better that all these questions, in each particular case, should be decided by the legislature is, that one great point is to bring home responsibility. I honestly believe if you were to provide that the legislature should not decide these questions, but simply pass them through to the people, that the sense of responsibility in the legislature would be impaired if not lost. I have never had an opportunity of being a member of a legislative body—I have heard something about them, and have sometimes seen them at a distance, but I submit to the judgment of members of this Convention, who have been in the legislature, whether the result would not be very much like this. Here is a powerful corporation or powerful section of the country that comes to the legislature for a loan of the credit of the State. As it now stands, the responsibility is with the legislature, and when the yeas and nays are taken, and when you vote as a member of the legislature, you vote finally, whether the credit of the State shall be loaned or not. If the enterprise turn out badly the responsibility is traced home by the yeas and nays to you, me, and every man. Now, suppose the legislature did not decide finally, and your powerful corporation or section of the country asks permission of the legislature to go to the people. The legislature become the mere door-keeper, and the corporation comes up and asks admission to go through to the people. It claims the right to do so. I can imagine how they might press upon the legislature a scheme of appropriation and say to the legislature, you are not the people, you are not the law-making power, you are put forth as an advance guard to look at things and see that nothing frivolous or scandalous goes to the public. The people is the tribunal and we wish to go to them. It is evident with how much force these considerations might be pressed upon each member of the legislature. I wish to know whether any legislature can stand between the corporation or section of the country and such arguments as these. I do not mean to say such arguments as I have presented here so imperfectly, but such arguments as might be presented, with greater power, in actual cases, to the legislature, and where each man is taken by the button and privately told, my dear Sir, we do not mean to make you responsible; we only desire you to say to your constituents that it was a question which it was best to leave to the people. Let me suggest another consideration here, and that is the veto power in the governor. I believe that to be not only a strong conservative and popular, but an essential power. Under

what responsibility does he exercise that power now? While it will not be unconstitutional to loan the credit of the State,—although in the opinion of my friend for Wilbraham, (Mr. Hallett,) it will always be so,—where does the governor stand?

Then where does the governor stand? He stands to watch over the action of the legislature, to see that nothing grossly partial, nothing that hazards the finances of the State shall be done by the legislature. He signs the bill if he approves it, and now becomes responsible for that bill for ever. And if the credit of this State is to be loaned to the Hoosac Tunnel, or any other tunnel, or the Hoosac anything else, the governor is responsible for that, and his name goes down to posterity with it; and if it turns out to have been an improvident loan, he must bear the blame of it. But what will the governor have to do under the proposed plan? Why he has simply to say whether that question shall go to the people or not. And what is his veto responsibility good for then, in such a case? Will he exercise it? I speak under the correction, for I am in the presence, of three governors, and I wish to know how they would like to exercise the power. The legislature have said here is a case for the people; and the governor would say, it is constitutional, the people are to pass upon it, and why should I say the people shall not pass upon it? I beg the Convention to consider that no governor would say that the people shall not pass upon it. For when no constitutional question is at stake, what is the governor but the servant of the people? I venture to say that no governor would exercise the veto power in such a case. Every law has these two great guards, the responsibility of the legislature and the responsibility of the governor. Then what do you gain instead of it? You gain the necessity of submitting to two hundred thousand voters a proposition, the merits of which depend upon its details, and those are to be submitted to two hundred thousand voters. And how are these details obtained? You get them thoroughly in legislation. But if the legislature come to feel that they are mere door-keepers you will not get them thoroughly. No, Sir. Consider that. The moment you make this change the reports of committees will be less valuable than now, and the controlling power of the legislature will be less valuable; the votes in the legislature and the debates will be less valuable, and the people will have inferior means of information; and the question, the merits of which depends upon its details, will go before the two hundred thousand voters, and they will vote upon the details and that is all. And often these are sectional questions. Now is not that the least of all desirable to put to the people of the State, the decision of a sectional question? I should regret to see put to the people of the State a question which lay, or which was supposed to lie, between the interests of the sands of Cape Cod, where the affections of the gentleman for Wilbraham are, and the hills of Berkshire. I submit that sectional questions are most fairly decided by tribunals, and not so well decided, not decided with so much coolness and calmness by the people in masses. For if one of these sectional questions should arise in connection with a general election in this State, the result of the election would be most unfortunate; most unfortunate, not only on that issue, but on all issues. Imagine a contest between Berkshire and Cape Cod thrown into the issue

of a state election. What would the popular vote be good for? It would all turn on the question between the sands and the rocks, and that would be the whole of it. I think sectional questions are bad questions to put to the people at excited popular elections.

The delegate for Wilbraham says that if money is given to aid one corporation it should be given to all. Does not that apply to the question which is to go to the people as well as to the legislature? If the legislature ought to give to one because it has given to another, so ought the people. It applies to one as well as to the other.

Reference has been frequently made to the action of the legislature of New York, and I will detain the Convention for a moment to refer to that subject. The legislature of the State of New York granted the loan of the State credit to widen the Erie Canal. Was not that measure a proper one in itself? Certainly it was, only it was not constitutional. Because the people of New York, in their alarm lest they should get into debt and repudiation, had taken away the power of the legislature to act without referring to the people. But the legislature did grant the credit of the State; and the matter went to the supreme court and the court said that the act was unconstitutional. Then they went back to a new legislature and got the same thing done in another form after a delay of two years. So that the amount of the New York precedent is, that a very proper act, which every-body believes to be proper, the loaning of the credit of the State to widen her canal, was delayed two years on a matter of form.

If the legislature had decided one way and the people another, then the benefit of the constitutional provision would be seen; but as the legislature and the people agreed in their act precisely in that particular case, the provision of the Constitution simply caused a delay of two years.

Mr. HALLETT. The gentleman will allow me to say that that question is still pending; it has not been finally disposed of.

Mr. DANA. So I understood the gentleman to say.

Mr. HALLETT. The people indicated by the choice of their rulers what they would have done. It is recommended by their governor and the question is now pending, but it is the very question which is to come to the people for confirmation.

Mr. DANA. I would ask the gentleman whether he does not suppose that the people will approve of the bill finally?

Mr. HALLETT. I presume they will; because it is a question which they have already passed upon in another form.

Mr. DANA. Then the result is precisely as I stated. It only caused two years' delay.

Mr. MORTON, of Taunton. It is only one year since it was passed.

Mr. DANA. But it will be two before the law can go into effect.

Mr. HALLETT. That act was in reference to their canal project, from which all their proceeds, and income to support the government are derived. Our proposition is for the approval of a loan from which we shall receive no proceeds.

Mr. DANA. That is a matter of detail. As to the proposition of the gentleman from Boston, (Mr. Stevenson,) I shall be somewhat diffident in speaking of it, because he is decidedly a financier, and I am most decidedly not. But I un-

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derstand him to say, that the best security is, that the State shall not loan its credit, but may loan its money. Now, if a State must get the money elsewhere, in order to lend it, the result is the same in the end. He says that is not his plan. Then the result is, they must get it by taxation. And, if they get it by taxation, it strikes me that the taxation would operate very unequally; because it would have to fall on one period of time, so as to make the tax far greater at that time than another. I may be wrong, but it appears to me there are some objections, if the money is to be raised in one limited period of time, because there will not be such a distribution of the tax as ought to be made. I speak, however, under correction, as I profess to know nothing on the subject.

I return to the main question. It is my belief, and I submit it to the judgment of the Convention, that if you adopt this very plausible system of referring these questions to the people, you lose the benefit, in the first place, of the legislative responsibility. You lose the benefit of the gubernatorial responsibility, and you submit to the people a question, which, because of its sectional character usually, and because its merits turn upon its details always, is one upon which the people are little qualified to judge, and one upon which, I am inclined to think, the people by no means desire to decide.

Mr. GRAY, of Boston. I should not have been willing to take the floor, when the floor is very naturally so much in demand, except, that as my name is to be called to give a vote on this question, I would like to give a reason for that vote. I feel compelled to vote against the amendment of the gentleman from Taunton. In the first place, Sir,—and I am glad that the fact is so,—I have been anticipated by the remarks of the gentleman for Manchester, (Mr. Dana). He has well set forth the doctrine, I think, that by adopting an expedient of this kind, we destroy responsibility. I take the theory of our government to be this: that if we were a small community in the cabin of the Mayflower, or in the little town of Plymouth, we should meet together probably, not a larger number of persons than there are at this Convention, and govern ourselves in that primary meeting. Because, then, Sir, those who govern could discuss, could confer, and could deliberate. But, Sir, when we are multiplied—and I speak now of those eligible to office and capable of discharging its duties—to two hundred thousand, and when we are spread over some hundred square miles of territory, such deliberation becomes impossible. And what do we do? We appoint those who can deliberate, and confer, and act for us. Well, now, Sir, admit that the people—and I am far from denying it—could be dwarfed and crowded into this hall—and the great poet of England speaks of a body in a lower region, where they compressed themselves together into a meeting of tens and hundreds of thousands, in a hall—I am not going to say, that if all the legal voters could come here, and bring themselves within these walls, they would not do the business better than we, or than any legislature can do it. But that is not the case. You propose to call upon the people to act, while, however wise each of them may be, individually, they have no chance to confer with each other. How often does the gentleman from Greenfield, whose doctrine I

have heard referred to, and with which I agree, how often does he see me, and what else could he do, in his mortal lifetime, if he was obliged to come and consult with me, and with all my constituents, on public measures? In order to remedy this evil, we give it, not to a single assembly of men, but we have two bodies to be a check upon each other. And then we establish a strong, one-man power, that is the veto, democratic as we are, to check these two assemblies; and that is the substitute for the action of the people where it is impossible for the action of the people to be had. Now, in that case, the responsibility is in each man, not alone under his oath, but with his obligations to his constituents; and, if he be a man, he feels it.

But, Sir, I do not think my friend for Manchester, who anticipated much that I should otherwise have said, carried the doctrine out. He showed, truly, that the responsibility of the agent is destroyed. Now we go to the responsibility of the principal, to the people. Well, I do not say that is destroyed, but it is weakened. For what is the proposition? The legislature will say: all we are asked to do, is to submit this project to the people; we merely give the party a hearing, therefore the responsibility is not here. The people will say, even under these circumstances, that the legislature have indorsed this proposition; they have thought it worthy to be recommended deliberately to us; they have looked at the details, and they alone could look at them thoroughly, and, therefore, there is the responsibility in adopting it. To sum up in one word, I agree with my friend for Manchester, and I think he would have agreed with me, had he gone one or two steps farther in his reasoning, for it is sustained in principle. There is another reason, which I have not heard urged by any one, and that is, that this security, as it stands, is fallacious. It is not said that the appeal is to be final. Suppose we take the question of the Hoosac Tunnel. And I beg leave to say, I am entirely uncommitted upon that question. I was applied to, to sign a remonstrance on one occasion, but I refused because I did not know enough about it. I am alike ignorant and impartial with regard to it, and I beg pardon for alluding to it. But is that appeal to be final? Suppose that the Western Railroad question had been put in 1836, and the people had been called to decide upon it. What would have been the consequence? Would the numerous and zealous friends of that road have rested there, if the question had been decided against them? No, Sir. They would have put the question again to the people, the next year. You may depend that where there is power enough to control the majority of the legislature, to induce them to give the credit of the State, there would be power enough to keep up an agitation among the people. If I was a popular orator, and I wanted to agitate the people, I would go to them every year, and continue to bring the subject before them, and by my importunity, and for many other reasons, I think the project would finally go. I think the project, with the aid of the talent of a popular man, would finally be carried, and when a vote has once been taken by the people, we go to the legislature with it. Would any such legislature, after such a vote in favor of it, resist it? Would they resist the voice of the people, after it had been pronounced deliberately? Would they

consider it anything else than an instruction to them? But, suppose the legislature refuse to grant the credit of the State to any great project, and the refusal is sanctioned by the people collectively?

Gentlemen are mistaken if they suppose that the people would be freed from taxation by that. Single towns will come and ask for power to tax their people in their respective towns. The thing has been done, however objectionable it is, and it may be done again. And an attempt has been made to do it far oftener than it has been done. Now, if gentlemen are to tie up the hands of the legislature, they will, to be consistent, go one step farther and restrict cities and towns also, and not leave the city of Boston to be controlled in favor of any project which is not a wise one. Of course I refer to no project now existing.

Now, Sir, I beg leave to say, that if gentlemen think that a simple majority of the legislature ought not to be intrusted with power to loan the credit of the State, and that it is wise to impose some restriction upon them—if they feel alarmed at intrusting even their own chosen agents with unlimited power over the property of the State, I say that the proper restriction is of a different kind, and if such a restriction shall find favor with the Convention generally, I am not prepared to say that I shall oppose it. So far as I know, however, that has not yet been proposed; and what I would suggest, is to require something more than a simple majority vote in one legislature, or in one or two successive legislatures. That would remove all the responsibility from the people, and it would leave it resting in full force upon the shoulders of the legislature. The responsibility would no longer be, as I am afraid it would be if the proposition of my friend from Taunton prevails, thrown from the shoulders of the legislature upon the shoulders of the people. It would, in that case be suspended, as the lawyers say, in the clouds, and would be nowhere; but I say we ought to leave it in the legislature, and restrict them by requiring more than a majority vote.

Again, Sir, if we apply a sum as a maximum, either one million or any number of millions of dollars, that may do very well for a restriction; but I have some doubts about the propriety of the amendment of my friend and colleague, because I think, as was suggested by the gentleman for Manchester, that it throws all the burden upon the present generation. That operates as more of a restriction than we wish to impose; for, Sir, that the legislature will ever lay a direct tax to the amount of a million of dollars for any purpose, in any one year, is what I believe no man expects to see. I suppose the Convention is hardly prepared to make the restriction total, and to say that the legislature shall in no case loan the State credit; but that would be more consistent than this amendment.

I will now come back to the first amendment, for a moment; and I remark, further, that I think the security which is supposed to be afforded by that amendment will be fallacious, for two reasons. First, you leave the towns at liberty to tax their inhabitants to the last dollar, and if the friends of these projects are shut out from prosecuting them by the aid of the State treasury, they will go to the town treasuries; and it is our duty to protect the rights of the people from oppressive taxation; we ought to guard

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that point, I think, if this amendment should be adopted. But secondly, and I think this reason is of some considerable force, if you say that they must go to the people with their applications, you weaken the responsibility resting upon the legislature, for their decision will not be final, and they can go to the people year after year, and thus the community will be kept in a constant agitation upon these subjects.

I have one more objection, Mr. President. The gentleman for Wilbraham said that he thought it was a sound doctrine, that the legislature had not the right now to appeal to the towns or the people, to sanction the passage of laws generally. Well, Sir, I think that is a very sound doctrine; but it is hard to say, upon a general instrument like the Constitution—it is hard to say, after acts are done by the legislature—whether such acts can be so brought under the terms of that instrument that the judiciary cannot vote against them, or set them one side. I think, with the gentleman for Wilbraham, that is wrong in principle, but the opposite side has sometimes been taken by respectable authority. But if we sanction that course in the Constitution, I will suggest that we may insert a provision making that expressed, which the gentleman for Wilbraham thinks is now clearly implied.

If the provision before us is adopted, the legislature will resort to the people upon every occasion; and the first thing that the legislature will do, when a measure comes up which tries their sense of responsibility, and of which they doubt the popularity, will be to throw it off upon the people. I therefore think, that we ought to follow the Report of the Committee, and if we vary from it, that there should be a restriction of a different kind from any that has yet been proposed, and somewhat like those which I have suggested.

Mr. BUTLER, of Lowell. Anxious that this matter should be brought to a close, and having heard two very able speeches for and against, a considerable time having been taken up on this amendment, and the whole matter having been fully discussed in Committee of the Whole, I feel it to be my duty, even at the risk of provoking a call for the yeas and nays, now to move the previous question.

Mr. MORTON, of Taunton. I wish to make a single verbal modification to the amendment, if it is in order.

The PRESIDENT. It can be done by general consent.

Mr. MORTON. I simply wish to add the words "hereafter created" after the word "debt," so that the clause shall read as follows:—

The legislature shall not, hereafter, in any manner, create any debt or debts, which shall singly or in the aggregate with any preexisting debt hereafter created, exceed the sum of one million of dollars, except to repel invasion or suppress insurrection.

No objection being made, the amendment was modified accordingly.

Mr. HOPKINSON. I rise to make a suggestion to the gentleman from Lowell, whether he will not gain the object that he has in view, and yet take a course which will be more satisfactory to the Convention, by modifying his motion so that it shall be a motion that the question be now taken, or that it be taken at a specified

time a few minutes hence. This would give gentlemen an opportunity, after the present amendment shall be rejected—provided it shall be rejected—to move other amendments without debate. I know that there are several other plans which gentlemen would like to propose and have them acted upon without discussion; but if the motion for the previous question should be sustained, no other amendment can be offered after the one now pending shall be disposed of.

Mr. BUTLER. In accordance with the suggestion of the gentleman from Boston, I will modify my motion so that the question be now taken after such amendments as may be proposed without debate.

Mr. GILES, of Boston. I should like to have about five or ten minutes to present my views upon this question; for I think it has not been presented in its true light.

Mr. BUTLER. I will then modify my motion so that the question be taken at ten minutes before one o'clock.

The motion was agreed to.

Mr. STETSON called for the yeas and nays on the amendment of Mr. Morton, of Taunton; and they were ordered.

Mr. GILES. I will endeavor to keep myself within the limit that I have mentioned. I am in favor of some restriction upon the granting of the State credit; but I am not able to accede to the proposition of the gentleman from Taunton, as that now stands; and I will present my views in the shortest possible space to the Convention. I believe, Mr. President, that great public improvements are to be made. That is a fact; but in this country where there is a call for so many of these improvements, and where the supply of capital is limited, another proposition is equally the fact; and that is, that these improvements are to be made upon credit. The question then arises, upon whose credit—that of the State, that of the Union, that of your towns, that of your corporations, or that of your individual citizens? They are to be made—they are to be made upon credit; and they are to earn enough to pay for making them, to give those interested in them a profit, and at the same time to bless the whole community. Now let us take a short view of the history of internal improvements in this country. First they were favored by the government of the Union, but to an extent which many deemed an abuse, and those who had the influence put a stop to that. The States then took it up, and they carried their favor and patronage of these enterprises to an extent which was, in fact, an abuse, and the consequences we know. The result was what has been stated; clauses were introduced into the Constitutions of something like nineteen or twenty of the States, prohibiting, or limiting, the exercise of this power. What was the next step? Your cities, towns, and villages, which had a local interest in these enterprises, came to your legislatures and asked for liberty to tax themselves, and they got it. They have taxed themselves to such an extent, that in many of your towns and cities the citizens have moved away because they would not submit to such taxation. That was deemed an abuse. Then what shall we do? I accede to the proposition of the gentleman from Manchester, and that of my colleague who preceded me, that these cases are cases to be determined upon their own merits, which merits must be investigated by some body or tribunal compe-

tent to judge upon them; yet I do not accede entirely to the conclusions which they draw from that fact. If the State may enter into the business of patronizing these public enterprises in the same manner that individual capitalists would do, their conclusion would be just; but I hold that the State never should enter into such enterprises upon such grounds, even if it does know that the enterprise is safe, is of a public character, is demanded by the people, and is good in a business or financial sense. To authorize the State to tax the citizens, or to appropriate the money of the citizens which has already been raised, two things more are wanted, and of those two things, the State at large is as capable of judging as the legislature. Those two things are these: first, that the exigency is of an extraordinary character; and second, that the demand for capital is so great as to take it out of the means of private capitalists. Now, whether the exigency is of an extraordinary character in its public influence and importance, and is also extraordinary in the extent of means demanded, the people at large are as well able to judge as the legislature. But, Sir, I object to sending things back to the people, which the people have sent us here to decide. I do not like to see agents who are appointed to do any business, turn about to their principals and say: "the business is not done, but it is in a condition for you to do." I was happy, therefore, to hear my colleague indicate his approval of the proposition, that in all bills granting the credit of the State to corporations or to individuals, more than a majority vote should be required. I would require that as the cheapest, the most efficient, and the most just limit; for while I am in favor of the principle of the present amendment, I cannot consent to the form in which it now stands. The legislature should first examine each case, and be convinced that it is a good business transaction, and a sound public enterprise; they should also be convinced, to such a degree, at any rate, as to secure a two-thirds vote, that it is a public exigency of an extraordinary character—that it will demand more than ordinary means, and that it will operate beneficially in its consequences upon the whole State, to an extent that ought to satisfy every individual voter, and every man interested in the public prosperity, of the propriety of granting the public credit.

I would say, then, that the limit which I desire to see—and I most ardently desire it—to this granting of the public credit of the State, would be the requirement of a two-thirds or three-quarters vote of both branches of the legislature. If any project and its friends can obtain that number, it ought to gain the people, and if the people assent, they will receive the benefit of it, and they will see that the credit is redeemed. Credit, private or public, is based upon capital, upon intelligence, upon enterprise, and above all, upon character. We have all of those, except capital. That we have limited. Credit is the breath of life to enterprise, and this country is full of enterprise. I would not lay the hand of ice and death upon that trait of our national character in any form. I would sustain, but I would guide it, and I would limit it within the sound, second thought and judgment of every tribunal called upon to act upon questions of granting the credit of the people.

Mr. HATHAWAY. Mr. President, the proposition of the gentleman from Taunton, (Mr.

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LOAN OF STATE CREDIT. — HATHAWAY.

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Morton,) does not exactly suit me, and still I shall vote for it. The reason why it does not satisfy me is, that it does not go far enough. I would limit the power of the legislature without reference to the people. I would limit the power of the legislature entirely, as to granting the credit of the State to any individual, association or corporate enterprise. I would not by any means put the question to the people, whether they approve of it or not. The reason why I would do this is, because of the abuse of this power, in loaning the State credit, which has been seen and felt in other States.

Permit me to say in reply to the gentleman from Boston upon my left, (Mr. Stevenson,) that the reason why we want a Constitution is, to prevent the abuse of power by the legislature of the people, and the people themselves, of minorities and individuals. 'Those who have looked into the history of repudiation of State debts in this country, know something about the reasons why repudiation has taken place in various Western and South-western States. I know there has been a great abuse in the exercise of power, by the legislatures of various States in this Union, in reference not only to the loaning of State credit, but in authorizing, under color of law, the loaning of the credit of municipal corporations. I would go further than the gentleman from Taunton goes, and would not permit the citizens of a municipal corporation, as a corporation, to loan the credit of such corporation, whether it be a county or a town, for the encouragement of any enterprise or project of any private individual, or any corporation, where such corporation was other than the municipal corporation, that shall undertake to loan its credit. I would further, not even permit the legislature to grant to town or county, that power. And the reasons for it, Sir, I would give, if the time at which the debate, on this matter is to close, would permit—

Here the hammer fell.

Mr. HATHAWAY. Sir, I will take another opportunity, if it shall present itself in the course of the session of the Convention, to present these reasons.

The question being on the adoption of the amendment proposed by the gentleman from Taunton, (Mr. Morton,) the yeas and nays were taken with the following result—yeas, 104; nays, 137.

They are as follows:—

YEAS.

Abbott, Alfred A.
Abbott, Josiah G.
Allen, Parsons
Austin, George
Ayres, Samuel
Barrows, Joseph
Bartlett, Russel
Beach, Erasmus D.
Beal, John
Beebe, James M.
Bliss, Gad O.
Breed, Hiram N.
Brewster, Osmyn
Briggs, George N.
Bronson, Asa
Brown, Hiram C.
Brownell, Frederick
Buck, Asahel
Bumpus, Cephas C.
Chapin Daniel E.
Childs, Josiah
Churchill, J. McKean
Cogswell, Nathaniel
Cole, Lansing J.
Cole, Sumner
Copeland, Benjamin F.
Crane, George B.
Crowell, Seth
Crowninshield, F. B.
Davis, Solomon
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Doane, James C.
Dunham, Bradish
Earle, John M.
Easland, Peter
Fitch, Ezekiel W.
Fowle, Samuel
Gardner, Henry J.
Gilbert, Wanton C.
Gooch, Daniel W.
Gooding, Leonard
Goulding, Dalton
Hallett, B. F.
Hammond, A. B.

Hapgood, Seth
Haskell, George
Hathaway, Elnathan P.
Heard, Charles
Hersey, Henry
Hobart, Aaron
Hobart, Henry
Hopkinson, Thomas
Hubbard, William J.
Jackson, Samuel
James, William
Jenkins, John
Johnson, John
Knight, Hiram
Knight, Jefferson
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Littlefield, Tristram
Mixer, Samuel
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Nayson, Jonathan
Newman, Charles
Nichols, William
Norton, Alfred
Oliver, Henry K.
Orcutt, Nathan
Orne, Benjamin S.
Parker, Adolphus G.
Parker, Joel
Pease, Jeremiah, Jr.
Perkins, Noah C.
Rantoul, Robert
Richardson, Daniel
Sargent, John
Simmons, Perez
Simonds, John W.
Stevens, Granville
Stiles, Gideon
Stetson, Caleb
Talbot, Thomas
Taylor, Ralph
Tilton, Horatio W.
Turner, David P.
Tyler, William
Wales, Bradford L.
Wallis, Freeland
Walker, Samuel
Ward, Andrew H.
Weeks, Cyrus
Wilbur, Daniel
Wilbur, Joseph
Williams, Henry
Williams, J. B.
Wilson, Willard
Wlod, Otis

NAYS.

Adams, Benjamin P.
Adams, Shubael P.
Aldrich, P. Emory
Alley, John B.
Allis, Josiah
Alvord, D. W.
Aspinwall, William
Baker, Hillel
Ballard, Alvah
Ball, George S.
Bancroft, Alpheus
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Bennett, William, Jr.
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Boutwell, George S.
Booth, William S.
Boutwell, Sewell
Braman, Milton P.
Brimley, Francis
Brown, Hammond
Bryant, Patrick
Butler, Benjamin F.
Cady, Henry
Chandler, Amariah
Chapin, Henry
Clark, Ransom
Cleverly, William
Cook, Charles E.
Cooledge, Henry F.
Crittenden, Simeon
Cross, Joseph W.
Cummings, Joseph
Curtis, Wilbur
Cushman, Henry W.
Cutler, Simeon N.
Dana, Richard H., Jr.
Dawes, Henry L.
Day, Gilman
Dennison, Hiram S.
Duncan, Samuel
Durgin, John M.
Eames, Philip
Eaton, Calvin D.
Eaton, Lilley
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fisk, Lyman
Foster, Aaron
Foster, Abram
Freeman, James M.
French, Samuel
Gale, Luther
Gates, Elbridge
Giles, Charles G.
Giles, Joel
Goulding, Jason
Graves, John W.
Gray, John C.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hapgood, Lyman W.
Harmon, Phineas
Hawkes, Stephen E.
Hayden, Isaac
Heath, Ezra, 2d
Hinsdale, William
Hobbs, Edwin
Holder, Nathaniel
Hood, George
Hoyt, Henry K.
Jacobs, John
Kellogg, Giles C.
Kendall, Isaac
Kingman, Joseph
Knight, Joseph
Knowlton, William H.
Ladd, John S.
Langdon, Wilber C.
Lawrence, Luther
Loomis, E. Justin
Marvin, Abijah P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Moore, James M.
Nash, Hiram
Nute, Andrew T.
Ober, Joseph E.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Park, John G.
Parris, Jonathan
Parsons, Samuel C.
PHELPS, Charles
Pierce, Henry
Pomroy, Jeremiah
Pool, James M.
Reed, Sampson
Richardson, Nathan
Richardson, Samuel H.

Ring, Elkanah, Jr.
Rockwood, Joseph M.
Sanderson, Amasa
Sanderson, Chester
Sherril, John
Schouler, William
Sikes, Chester
Sleeper, John S.
Souther, John
Spooner, Samuel W.
Stevens, William
Stevenson, J. Thomas
Sumner, Increase
Thomas, John W.

Thompson, Charles
Train, Charles R.
Underwood, Orison
Viles, Joel
Wheeler, William F.
White, Benjamin
White, George
Whitney, Daniel S.
Whitney, James S.
Wilder, Joel
Wilkins, John H.
Wilson, Henry
Winn, Jonathan B.

ABSENT.

Allen, Charles
Allen, James B.
Allen, Joel C.
Appleton, William
Andrews, Robert
Atwood, David C.
Banks, Nathaniel P., Jr.
Bartlett, Sidney
Bell, Luther V.
Bennett, Zephaniah
Bigelow, Jacob
Blagden, George W.
Bliss, William C.
Bradbury, Ebenezer
Bradford, William J. A.
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brownell, Joseph
Bullen, Amos H.
Bullock, Rufus
Burlingame, Anson
Carter, Timothy W.
Caruthers, William
Case, Isaac
Chapin, Chester W.
Choate, Rufus
Clarke, Alpheus B.
Clark, Henry
Clarke, Stillman
Clark, Salah
Coggin, Jacob
Conkey, Ithamar
Cressy, Oliver S.
Crockett, George W.
Crosby, Leander
Cushman, Thomas
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, John
Davis, Robert T.
Dehon, William
DeWitt, Alexander
Dorman, Moses
Easton, James, 2d
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fellows, James K.
Fiske, Emery
Fowler, Samuel P.
French, Charles A.
French, Charles H.
French, Rodney
Frothingham, R'd, Jr.
Gardner, Johnson
Gilbert, Washington
Gould, Robert
Gourgass, F. R.
Greenleaf, Simon
Hadley, Samuel P.
Hale, Artemas
Hale, Nathan
Hall, Charles B.
Haskins, William
Hayward, George
Henry, Samuel
Hewes, James
Hewes, William H.
Heywood, Levi
Hillard, George S.
Hooper, Foster
Houghton, Samuel
Howard, Martin
Howland, Abraham H.
Hunt, Charles E.
Hunt, William
Huntington, Asahel
Huntington, Charles P.
Huntington, George H.
Hurlburt, Samuel A.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jenks, Samuel H.
Kellogg, Martin R.
Keyes, Edward L.
Kinsman, Henry W.
Kimball, Joseph
Knowlton, Charles L.
Knowlton, J. S. C.
Knox, Albert
Kuhn, George H.
Ladd, Gardner P.
Lincoln, Fred. W., Jr.
Little, Otis
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marble, William P.
Marcy, Laban
Marvin, Theophilus R.
Meader, Reuben
Miller, Seth, Jr.
Morey, George
Morss, Joseph B.
Morton, William S.
Noyes, Daniel
Paige, James W.
Parker, Samuel D.
Partridge, John
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Jonathan C.
Phinney, Sylvanus B.
Plunkett, William C.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Putnam, John A.
Rawson, Silas
Read, James
Rice, David
Richards, Luther
Rockwell, Julius
Rogers, John
Ross, David S.
Royce, James C.
Sampson, George R.
Sheldon, Luther
Sherman, Charles

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THE JUDICIARY, &c. — THOMPSON — HALLETT — WILSON — MORTON.

[July 11th.]

Smith, Matthew
Sprague, Melzar
Stacy, Eben H.
Stevens, Charles G.
Stevens, Joseph L., Jr.
Storrow, Charles S.
Strong, Alfred L.
Stutson, William
Sumner, Charles
Swain, Alanson
Taber, Isaac C.
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d
Tileston, Edmund P.
Tilton, Abraham
Tower, Ephraim
Turner, David
Tyler, John S.

Upham, Charles W.
Upton, George B.
Vinton, George A.
Walcott, Samuel B.
Wallace, Frederick T.
Walker, Amasa
Warner, Marshal
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
Wetmore, Thomas
Wilkinson, Ezra
Wilson, Milo
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Woods, Josiah B.
Wood, William H.
Wright, Ezekiel

Absent and not voting, 178.

So the amendment did not prevail.

Mr. GILES, of Boston, moved to amend so as to provide that no loan shall be granted, without a two-thirds vote of each branch of the legislature.

The amendment was adopted—ayes, 114; noes, 76.

The resolves, as amended, were then ordered to a second reading. And, on motion, the Convention adjourned until Monday morning, at ten o'clock.

MONDAY, July 11, 1853.

The Convention assembled, pursuant to adjournment, and was called to order by the President, at ten o'clock.

Prayer by Rev. Mr. COGSWELL.

The Journal of Saturday was read.

Reconsideration.

Mr. THOMPSON, of Charlestown, moved a reconsideration of the vote by which the resolves on the subject of loaning the credit of the State were ordered to a second reading.

Mr. GRAY, of Boston, inquired of the Chair whether these resolves would not be susceptible of amendment when they came up upon their second reading.

The PRESIDENT replied that such would be the case.

Mr. GRAY said, that being the case, he could see no necessity for reconsidering the vote by which they were ordered to a second reading. He had no intention, however, to oppose the gentleman's motion.

Mr. THOMPSON said he would prefer to have the question come up upon the motion to reconsider, as that would open the whole subject and gentlemen would have an opportunity to express their views; and if the motion prevailed, there would be an opportunity to amend at that stage of the proceeding when amendments were more usually made.

The PRESIDENT. The motion to reconsider will be entered upon the Journal, and will come up to-morrow for consideration.

Resolution.

Mr. HALLETT submitted the following resolution, which was read, and, on his motion, referred to a select committee of five, to be appointed by the Chair:—

Resolved, That the Constitution ought to provide, in addition to the remedies now recognized therein for all injuries to person and property, that a remedy shall be given to the legal representatives of any deceased person whose death was caused by the negligence or misconduct of a railroad corporation, in the same manner as for like injuries resulting in disability and not in death.

Orders of the Day.

On motion by Mr. EARLE, of Worcester, the Convention proceeded to the consideration of the Orders of the Day, the first item on which was the motion of the gentleman from Quincy, (Mr. White,) to reconsider the vote by which the resolves on the subject of the House of Representatives were finally passed.

On motion by Mr. WHITE, said motion was laid upon the table.

The next item on the Orders of the Day was the resolve on the subject of general laws for corporations.

Mr. WHITNEY, of Conway. At the request of a gentleman who is now absent and who expects to be here to-morrow, I will move that this resolution, relating to general laws for corporations, be passed over until to-morrow.

The motion was agreed to.

The next item, being the resolve to amend section 2, chapter 5, of the Constitution, by striking out the words "University of Cambridge," on its second reading, was taken up.

Mr. BRIGGS, of Pittsfield, suggested that it would be better to pass this by until the subject of the University of Cambridge, concerning which a proposition was pending, or under consideration by a committee, had been acted upon.

The resolve was passed by with unanimous consent.

Mr. BUTLER, of Lowell, moved that the remaining item on the Orders of the Day, viz.: the resolve on the subject of loaning the State credit, be laid upon the table, with the view of going into Committee of the Whole on the resolves on the subject of the Judiciary.

The motion was agreed to.

The Judiciary.

On motion by Mr. BUTLER, of Lowell, the Convention then resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Hallett, for Wilbraham, in the chair, and proceeded to consider the resolves on the subject of the Judiciary. They were read as follows:—

Resolved, That it is expedient to amend the Constitution by substituting for the second article of the third chapter, the following:—

The governor and the two branches of the legislature, respectively, shall not hereafter be authorized to propose questions to justices of the supreme judicial court, and require their opinions thereon.

Resolved, That it is expedient to amend the Constitution by substituting for the last two clauses of the thirteenth article of the first section of the second chapter, the following:—

The judicial power of the Commonwealth shall be vested in a supreme judicial court, and such other courts as the legislature may from time to time establish.

The justices of the supreme judicial court shall receive honorable salaries, which shall not be diminished during their continuance in office.

Resolved, That it is expedient to amend the third chapter of the Constitution by substituting for the fifth article in said chapter, the following:—

The legislature shall have power to make laws regulating marriage, divorce, and alimony, but shall in no case decree a divorce, or hear and determine any causes touching the validity of the marriage contract.

Resolved, That it is inexpedient to make any further amendment in the first, second, and fifth articles of the third chapter of the Constitution.

Mr. WILSON, of Natick, moved to amend the last resolution, by striking out all after the word "Resolved," and to insert the following:—

That it is proper and expedient so to amend the Constitution as to provide that the justices of the supreme judicial court shall be appointed for the term of ten years, and the justices of such inferior courts as are or may be established by law, for the term of seven years; said justices to be eligible to reappointment, but in no case to continue in office after attaining seventy years of age.

Mr. MORTON, of Taunton. I do not rise to detain the Committee with a lengthy speech, but to suggest a mode of proceeding, which I hope will meet with the approbation of the whole Committee. The Report of the Judiciary Committee presents three distinct propositions, upon separate and distinct subjects. I hope they are propositions which will at once command the support of the whole Committee. I wish now merely to suggest whether it would not now be expedient to take up and dispose of those different resolves by themselves, and leave the other one, in reference to the tenure of the office of the judges, which is the more important one, and about which, probably, there will be not only a greater diversity of opinion, but much more discussion, to be acted upon afterwards. I hope, therefore, that we shall take up the resolves in their order, and dispose of them in some way or other, and then have the distinct proposition in reference to the tenure of office of the several judges brought up by itself. If this suggestion meets the approbation of the Committee of the Whole, I should be pleased to explain, in a very few words, the reasons upon which the Committee founded their first three resolves, and leave the other subject open for discussion hereafter.

The CHAIRMAN. The Chair would state that that can only be done by unanimous consent, or by the withdrawal, by the gentleman from Natick, (Mr. Wilson,) of his amendment. As it stands, the question being upon the adoption of the Report of the Committee, the amendment is strictly first in order.

Mr. GRAY, of Boston. I would suggest whether my friend from Taunton, or any other gentleman, could not call for a division of the question which is before the Committee? If it were a single question I should not doubt that the decision of the Chair is correct, and which, as a general decision, I do not object to at all.

Mr. MORTON, of Taunton. I am inclined to think that the view of the Chair is the only correct one. But it is proper, if the Committee choose to pursue that course, to receive all the amendments which may be offered, and then consider them as they may come up in connection with the several resolves to which they are offered. I hope, from the distinct nature of these several resolves, and the facility with which they can be disposed of, that there will be a general consent to consider them separately.

Mr. WILSON, of Natick. I suggest that it would be as well to take up and consider each

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one separately, and when we reach the last resolve, the amendment which I have offered can be taken up in that connection. By the general practice in this body, that course has been pursued, and I hope we shall do so now.

The CHAIRMAN. That can be done by unanimous consent, and if there is no objection to that order of proceeding, the Chair will consider that course to be in order, and the Committee will proceed with the consideration of the several resolves as they stand, and defer the consideration of the amendment of the gentleman from Natick until they reach the last resolve.

Mr. MORTON, of Taunton. I suppose it will be expected of me that I should make some explanation of the reasons which induced the Committee to report these resolves. From the nature of the resolutions, I think very little explanation will be required. However, with the permission of the Chair and of the Committee, I will proceed very briefly to explain those reasons as far as the first resolve is concerned.

It will be recollected that the present Constitution provides that the legislature or the executive may call upon the supreme court for their opinion on questions of law, or matters of great importance and interest. This provision the Committee thought ought to be expunged from the Constitution, and the substitute just read, placed in its stead—that is, that the power should be taken from the legislature and from the executive of calling upon the supreme court for their opinion in the cases referred to.

There were several reasons which induced the Committee to come to that conclusion. In the first place, you provide that the several departments of government—the executive, judicial and legislative—shall be kept entirely distinct, and that the officers belonging to one department shall never exercise the powers belonging to the others. This is deemed an important provision, and it is one which is contained not only in the Constitution of this State, but in those of several other States of this Union, and in the Constitution of the United States. Wherever free governments exist, it is deemed important that these several departments should be kept entirely separate and independent of each other. The object of the introduction of this provision is to carry out that principle. The provision of the Constitution as it now stands, is inconsistent with the other clause of the Constitution, because it authorizes one branch to call upon another for their opinion in relation to matters which come before the first branch, and therefore we thought that there should be a change made in that respect, so that there should be no interference whatever between one branch of the government and the others.

Another reason which operated strongly upon the minds of the Committee, was that the courts of the Commonwealth, and above all the highest court, ought never to be made liable to be drawn into the vortex of politics, and that it should be so removed from all political transactions, that the whole community might be satisfied, that in appealing to them, they were appealing to a tribunal so constituted, as to be as far removed from such influences, as it is possible to remove them, in the nature of things. The judiciary is now exposed to be drawn into the discussion of great and important interests which excite the community. The experience of our legislature shows, that upon many occasions the opinion of the

court has been asked upon subjects greatly exciting either to a section, or to the whole, of the Commonwealth. The importance of avoiding such a discussion on the part of the court, presented itself as one worthy of the consideration of this Convention.

Again, there was another consideration, which is the last one I shall mention in relation to this resolve. The court is liable to be called upon to decide questions of law, without there being a full and proper hearing of both sides of them,—to decide questions of law, affecting private rights, without the parties who may be affected by them, having an opportunity of being heard in relation to those rights. Any one who has had as much experience as I have had upon the subject, can fully appreciate the importance of having all questions, which the court are called upon to decide, discussed by individuals having diverse interests to be affected by the decision. Therefore, it seemed to the Committee highly inexpedient that the court should be placed in such a situation; for the reason, that their decision might deeply affect the rights of individuals, without their having an opportunity to be heard.

One word more, and I will relieve the attention of the Committee. It is important, as we all agree, that every person in the community should have the right of a fair and impartial trial, and it is important to the peace and happiness of the community that every one should be satisfied, whether the case be decided for or against him, that he has had a fair and perfect trial, as far as it is possible for him to have. In this view of the case, I hope the resolve will recommend itself to the favor of the Committee, and that it will be adopted.

Mr. FRENCH, of Berkley. This Report of the Committee has reference to the second section of the third chapter of the Constitution of Massachusetts, which is as follows:—

“Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions.”

I have had occasion to know that in one case, at least, this provision has been beneficial to the whole State. There was a time when the standard of the qualification of voters was different in almost every town in the State, and it arose out of the different constructions, which different parts of the State put upon a constitutional provision, and it seems to me that there should be some mode provided, by which the selectmen should be able to ascertain what the Constitution requires, so that they might know how to perform their duties. Now the different boards of selectmen have disagreed, and if doctors disagree who is to decide? One board followed one counsel, and another board followed another; and there was no uniformity of opinion or action throughout the State; and the board of selectmen were liable to be prosecuted for mal-administration, when they were discharging their duties according to the best light which they could obtain. What could be done? Here was this provision of the Constitution, and the application of it, according to the understanding of the different boards of selectmen. The decision of the judges of the supreme court was taken upon the question, and uniformity of action followed. Now I put it to

the Committee, if that was not a case in which this provision was not beneficial. Why shall we strike it out of the Constitution? It certainly cannot do any injury by remaining in the Constitution. I believe other cases have occurred where recourse has been had to the opinion of the judges of the supreme court, besides the one which I have specified. That was a case in which it was important that there should be an uniformity of action throughout the State. The boards of selectmen, could not, from all the counsel they could get, hit upon a plan of action in which they felt themselves safe. One board adopted one plan, and another board another; but when the opinion of the supreme court was taken, they had a rule by which they could safely be governed, and there has been no diversity of opinion or action since, upon that question. Why then should this article be expunged? It certainly has been beneficial, and it has never worked any harm, as far as I, or anybody else, know. Cases may arise where the people may be placed in the same embarrassing position they were then in.

I hope this Report of the Committee will not be adopted. I think it is for the interests of the whole State that this provision should be retained.

Mr. WARNER, of Wrentham. Is it in order to offer an amendment to the pending resolve.

The CHAIRMAN. It is.

Mr. WARNER. Then I move to strike out from the Report of the Committee, the whole of the first resolve.

I do not design to say more than a single word in explanation of the motion, or rather with the view of assigning the reasons why I make it.

I quite agree with the gentleman from Berkley, (Mr. French,) that the supreme court of the State can render no better service to the Commonwealth than in answering such questions as may be propounded to them by the legislature. The questions which that court have already answered, which have been thus propounded, have been of great service, in my judgment, to the selectmen in the county of Essex, as well as of much service in various other respects. Fully believing this, I have moved that the clause as it is in the present Constitution, shall be retained, and I hope that it will be retained.

Mr. MORTON, Jr., of Andover. I rise to ask whether this motion is in order. The question before the Committee is on the acceptance of the Report from the Committee to which this subject was referred. The motion at present, is merely to strike out; and I would suggest that if the question is taken on the adoption or rejection of the Report, that would be the most proper course. If it is rejected, then the motion to strike out is wholly unnecessary. It would certainly be in order to perfect the proposition by any amendment, before the motion to strike out can be put.

The CHAIRMAN. The proposition of the gentleman is in the nature of an amendment to the resolution, and is therefore in order.

Mr. MORTON. A motion to strike out and insert would be in order; but I do not understand the gentleman from Wrentham as proposing to substitute anything in the place of that which he proposes to strike out.

The CHAIRMAN. The motion to strike out is in order.

Mr. EARLE, of Worcester. It does not ap-

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pear to me as making any difference at all, because the question before was on the adoption of the resolution. If the motion to strike out be adopted, it would only be equivalent to a rejection, and if it is rejected, why of course, it is stricken out.

Mr. WARNER. I do not see, on second consideration, that any material object will be gained by my motion. If it is rejected, it will, of course, be equivalent to the adoption of a motion to strike it out. I therefore withdraw my motion.

Mr. HOOPER, of Fall River. I do not see the necessity of this resolution, provided the last resolution as reported by the Committee should be adopted. I understand that the second article of chapter third, of the present Constitution confers this power positively, without which the supreme court would have no right to report any such decisions. This article expressly gives them the power. If, therefore, this last resolve should be adopted, what necessity would there be for introducing the article. It has merely a negative effect, in saying that this power shall not be exercised; and for this I conceive that there is no necessity when there is no authority given for its exercise.

In regard to the second article, I am in favor of abolishing it. In common with the gentleman from Berkley, I am inclined to think that these decisions have not unfrequently relieved municipal officers from positions of embarrassment; and they have now the power of settling all these questions without the necessity of parties having recourse to protracted and expensive litigation. I have heard of no injury resulting from the exercise of this power, and therefore hope that it may be retained.

Mr. LORD, of Salem. I believe, Mr. Chairman, that in making this Report, the Committee to which this matter was referred were unanimous in regard to its propriety. I did not hear all the remarks of the gentleman from Taunton, (Mr. Morton,) this morning; and it is possible that he may have given all the reasons which influenced the Committee in recommending its adoption. There was one reason, however, which operated very strongly on my mind, and I believe it operated with equal force upon the minds of the Committee, and which I did not hear that gentleman refer to. That reason was this: that the retention of this provision in the Constitution permits the legislative or executive department of the government to put, in many important instances, the whole responsibility of their action upon the judicial department, while a fundamental provision of the Constitution is, that these several departments shall be independent of each other, and that neither of them shall undertake to exercise the powers of the other. But, Sir, as the thing is now, it seems to me to be liable, also, to this further objection—that it is very little different from permitting the judiciary to control the legislative and executive powers. We have now a law-officer, an attorney-general, and I hope from the experience we have had of the advantage of such an officer, the Commonwealth will sustain the office. That officer is the proper person to whom application should be made in all cases of doubt or uncertainty. The attorney-general—although it was contended for a long time that we could get along without such an officer—is the proper officer to give opinions

upon doubtful questions of law. If it is important for the governor in many cases to have the opinion of the supreme court to regulate his action, the same importance equally attaches to many other important offices. Take the office of sheriff, for example. We all know that sheriffs have urgent and difficult duties to perform, involving great liability and responsibility. They must very often act to the peril of themselves and their sureties upon their bonds; and they cannot take the opinion of the supreme court so as to protect themselves. And so I might enumerate other officers to whom it is important that there should be some protection; and if the legislature and the executive may have an *ex parte* hearing before the supreme court, why not administrative officers.

The article in the Constitution as it now stands, it seems to me, infringes upon another principle, which I regret, as peculiarly important, and that is, that every department of a government; and every officer of a government, should act upon his or their own responsibility.

I did not anticipate that this subject was coming up this morning, and am not so fully prepared to meet it as I would wish; but the reasons I have given had weight upon my mind, and perhaps I would not have repeated them had I supposed that the chairman of the Committee, to whose mind also I know they appeared in a strong light, had stated them here. I regret that the subject should have come up at this time, because it appears to me, that there are very few of the members of the Committee here which made this Report.

Mr. GRAY, of Boston. If it had not been for what my friend from Salem, (Mr. Lord,) has just observed, that the greater part of the Committee to which this subject was referred are absent, I would have felt some delicacy in standing up to defend their Report; one in which I understand they concurred unanimously. I had hoped that under these circumstances, the Report would be unanimously concurred in.

The gentleman from Salem has anticipated one important branch of the argument—that which proposes to have an attorney-general, and to make him elective by the whole people, and which, I suppose, is very likely to be the result of the doings of this Convention. I merely mention this to show that we may have such an office; that it was an important office; and that as such, we might presume it would be filled by a competent man. Such an officer is the proper adviser of the governor and his council, or of the legislature, in all cases of doubt or contest. I know that it has been convenient to have recourse to the supreme court; but that was partly because there was no other source to which to go. But the objections which we have heard here appear to me to be very grave objections, and I have no doubt that they had their weight with the Committee. In the first place, I think it is by no means proper to take the opinion of the judges of the supreme court on questions which have not been argued before them. If we provide for taking their opinion, I think we ought also to provide that such opinion shall only be taken after argument before them by counsel learned in the law. I recollect the first instance in my day—a very important instance too—in which the opinion of the judges of the supreme court was taken. The question and the times were both

exciting. It was a question as to granting the militia in compliance with the wish of the general government. It was a question of great difficulty, and the court was requested to answer it, and they put the militia in opposition to the general government. I am not now going into that question. I am not going to say which party was right or which was wrong; but this I do say, that, having read and heard the arguments on that question more than once on both sides, if those judges had heard the question argued by able counsel, they might or might not have come to the same decision; but I cannot but think they would have given many different reasons for their decision. Whether that decision was correct or not, it placed the State and the government in a very delicate position towards each other. This was an actual case.

Now I will refer to a supposed case. Suppose that the governor of the Commonwealth, and the legislature, at their last session, had seen fit to repeal the act authorizing the calling of this Convention, would any friend to the judiciary have felt it proper to call for an opinion of the supreme court as to the constitutionality of such a law? I think, therefore, and, as a friend to the judiciary, I will say it, that they should not be called upon to decide—I will not say on *ex parte* statements but—without argument on important and exciting questions, these being the questions of all others, most likely to be pressed upon them for their opinion.

And, Sir, there is this other objection. No man can tell, when a question is proposed, how far the decision may affect private rights; and nothing is more likely than that the judges should give an opinion when required by either of the other branches of the government, that they may give such an opinion as they may be called upon to revise in their judicial capacity on a question of private rights. That appears to me to be a clear case. With all the questions of right on the one hand, there is nothing on the other but that of having a legal functionary to whom the executive and legislative branches of the government may have recourse. I think, when we have our attorney-general, we have such a functionary; and for these reasons and many others that strike one, I think we had better let the Report stand as it is.

Mr. EARLE, of Worcester. I concur entirely in the object intended to be effected by this resolution; but I think it may be better accomplished by simply striking out the existing provision of the Constitution; and that it is not necessary to substitute what is here proposed. I therefore propose to amend the resolve by striking out the words "substituting for" in the second line, and inserting instead the words "striking out;" and also to strike out the words "the following," and the whole of the second section of the resolve; so that when thus amended, it will read:

Resolved, That it is expedient to amend the Constitution by striking out the second article of the third chapter.

That leaves the proposition simply one to strike out, without inserting what it is proposed to insert, taking away the authority without saying anything about whether you shall exercise it or not.

Mr. FROTHINGHAM, of Charlestown. I was about to make the motion which has just

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been made by the gentleman from Worcester, for I am in favor of the object designed by the Report, and it struck me that that was the simplest way to accomplish it.

Mr. SUMNER, for Otis. I do not think that striking out the proposition immediately before us is of much consequence in any respect. The object aimed at by the resolution, as I conceive it, is to present to the Convention a distinct proposition; and the form in which that proposition is presented, is perhaps not of a great deal of consequence, because, as has been suggested, there will be a revision of all our amendments, and of phraseology. When that revision takes place, the proper words and phrases will be supplied for the purpose of embodying all the different provisions of the Constitution in a proper form. I do not conceive, therefore, that it is of any great consequence, whether the proposition to amend prevails or not.

I wish to say, neither anything to favor it nor to oppose it, but I have a single word to offer in relation to the proposition itself. I hope it will prevail. I did not suppose that upon this question there was any great diversity of sentiment in this Convention; for, although it may have been, as I have no doubt it was at the time of the formation of our Constitution, in 1780, an exceedingly proper, and, if you please, important provision, and one that should have been incorporated into that Constitution,—although it may have been important and necessary that the different branches of the government should call upon the judges of the supreme court for authority upon important matters—in the language of the Constitution: “upon solemn occasions,”—yet I had supposed that at this period of time, after seventy years had elapsed, that that necessity, or that expediency had, to a very great extent, passed away; because, in relation to the foundation, and the entire edifice, so to speak, of our government, our governmental policy, in the variety of questions which are connected with it, have, to a very great extent, been perfected within that time, so that no necessity, no “solemn occasion,” in the language of the Constitution, can hardly be conceived of which would render it imperatively necessary to call upon the judges of the supreme court for their *ex parte*—for after all it must be an *ex parte* opinion—upon any subject that may arise. Their opinion must be given without argument, without any presentation of a case to them, and without the discussion which is always necessary in settling an important case upon a “solemn occasion.” That there is now any necessity for any such provision in the Constitution, I greatly doubt. And I repeat that I had supposed this opinion had, to a very great extent, obtained throughout the Commonwealth. Indeed, I happen to know, that in a great many instances, not the most solemn that could occur, subjects have come up in the different branches of the government, and propositions have gone out for the opinion of the supreme court, which could not, in any sense, be said to be important or solemn in their character, and which did not at all, in my judgment, come under the spirit of the provision in the Constitution. The legislature themselves have said that it was not proper as a general thing to go to the judiciary for opinions upon these subjects. I do hold that it is preeminently true, as has been suggested by other gentlemen who have preceded me, that it is a direct

violation of that clause of the Bill of Rights, which provides that the different branches of the government shall be kept distinct from each other.

Now, under the provisions of the Constitution, as it now stands, it is competent for either of the different branches of the legislature, or for the governor and council, to go to the judiciary with any question which may occur to them as one desirable to be settled. If they deem it expedient they may go to them with questions which may be intermixed with political matters; intermixed, it may be, with some exciting topic which is creating a fever in the country. I believe the history of our government in regard to this subject, will show that some propositions of this kind have been made if they have not finally been submitted to the judiciary. To prevent such an occurrence in the future I would go for an amendment to the Constitution like that now proposed.

It has been stated that the Committee who have had in charge the subject of the judiciary, of which I happen to be one, were entirely unanimous in that opinion upon this subject, and it seems to me that when the subject is properly and candidly viewed in all its aspects, that there will be as great unanimity in the Convention in favor of sustaining the Report of the Committee as there was in the Committee in presenting it.

Mr. BRIGGS, of Pittsfield. I do not think I can add anything to the reasons which have been presented by the gentlemen who have spoken in favor of this Report. I rise merely to express my concurrence in the conclusions to which they have come, and in the reasons which have been offered upon this subject. I have no doubt that there are cases, or have been cases, where the opinion of the supreme court has been asked where it was for the interest of the public that their opinion should be known, and upon the other hand, I believe their opinion has been asked upon many cases where the public interest did not require it. But upon principle, I think this clause in the existing Constitution ought to be stricken out. Indeed, I do not very well see how that provision consists with the last article of the Bill of Rights, which declares that to the end that this may be a government of laws and not of men, the judicial department shall never exercise the legislative powers, nor the legislative ever exercise the judicial powers. Yet, in the face of that declaration, here is another provision which authorizes either of the other departments of the government, that is, the governor and his council, or the legislature, to call upon the judiciary, upon any occasion, for their opinion.

Now Sir, in the first place, no doubt, cases have occurred where these departments of the government might be influenced by a double motive. One is to simply get a judicial opinion upon an important question, and the other is to throw off the responsibility, which naturally and properly devolves upon them, which should rest upon their own shoulders, upon the shoulders of another department of government.

Sir, the judiciary is the weakest branch of the government, and the most defenceless. The judges can have no will, no action, but can merely exercise judgment and pronounce opinions. For this reason, it seems to me, that it places it in the power of one of your departments of government to require another to perform duties and assume responsibilities, which should rest upon their own shoulders. On the other hand, it im-

poses upon the judiciary a burden which I think belongs not to them, but to another branch of the government. My friend from Boston has alluded to one important case, to show the evil of this state of things. I was never able to see how that case was properly submitted to the supreme court at all. I understand that the duty of calling out the militia, at that time, devolved upon the governor, and the governor, alone, has no right to ask the opinion of the supreme court. The executive, at that time, was a distinguished man—a man whose reputation will always stand; but, upon this occasion, he brought the question before his council, and he and his council called upon the supreme court for an opinion. They placed the whole responsibility of the proceeding upon that tribunal; and they were obliged to assume it, and give their opinion, because it is not a matter of discretion upon their part. Either branch has the power of calling upon them, at any time, and they are bound to give their opinion. That tribunal, on that occasion, were compelled to give a decision upon a question of great national and State importance. They did give a decision, but it was one which, as my friend remarked, was afterwards overruled by the supreme court of the United States, and probably by the unanimous opinion of the present generation. I never would involve the supreme court of Massachusetts in such a difficulty again. I would say, to each department of the government, as these questions come up, you must take the responsibility upon yourselves. You must judge for yourselves, in all matters which properly come before you, and not throw the responsibility for your action upon the supreme court of Massachusetts.

Now, one word with regard to the amendment. I like the proposition, as it comes from the Committee, better than I do that of my friend from Worcester, (Mr. Earle). I am, therefore, opposed to the amendment now pending. It has been remarked, that it is not a matter of any great consequence, and perhaps it is not, but suppose the amendment prevails, and the provision in the present Constitution, giving the governor, or any department of the government, power to call upon the supreme court for an opinion, is stricken out? Why, Sir, the legislature, upon some solemn occasions, may take it upon themselves to call upon the supreme court for an opinion, and there is nothing to forbid them. I submit, that if the matter is thus left, without making any provision upon the subject, it may give rise to a great deal of embarrassment between the legislature and the judiciary. I much prefer to say, in express terms, that those departments of the government shall not have the power to call upon the supreme court for an opinion. There can be no misunderstanding such a provision. I like that form of resolution, and I hope, therefore, that the amendment will not prevail.

Now, let me advert to one or two other reasons. These questions often involve considerations of the highest possible moment to individual citizens of our Commonwealth, yet they must be decided, as my friend remarks, by the supreme court, *ex parte*—without argument, without the benefit of discussion.

I remember, during the last session of the legislature, there was a movement made to submit the question to the supreme court, with regard to

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the constitutionality of what is called the "Maine Law." Now, I ask gentlemen to look at the difficulties which must have arisen, if the legislature had submitted that law for the decision of the court, as to its constitutionality. It could not be argued before them, yet there were, at that time, many cases of indictments against individuals, pending all over the Commonwealth, under that law, which would have to be tried, ultimately, by that court. Well, Sir, suppose the court had given a decision in favor of the constitutionality of the law. The judges go upon their several circuits in the different portions of the Commonwealth, and decide suits brought against individuals, resting upon the constitutionality of the law. What will these courts say? Will they say they have settled this question? Where have they settled it? Why, in their chamber in Boston. The general court have asked for their opinion, and they have given it. They have given that opinion, without a hearing and without argument, it is true, but they have given it, and they cannot hear you. They must either say, they have given an opinion to posterity which they cannot change, or else they must say, that, inasmuch as that opinion was given without a hearing, without argument, they do not feel themselves bound by it, but will hear the cases of the people as they are presented. If they took this latter course, it would not be very unlikely—if the judges were what they ought to be, and such judges as we have now—that, upon a solemn argument, upon discussion, views might be presented to them which would change their opinions, and they would give their decisions in accordance with that change. And what is the result? Why, it is, that, in their chamber in Boston, upon the request of the legislature, they pronounced an opinion one way, and when they went into the courts, and came to hear arguments upon the subject, they changed their opinion, and pronounced an opinion directly the reverse.

Now, Sir, I would not expose this tribunal to any such inconsistency as this. I think, therefore, that for many and weighty considerations, the Report of the Committee ought to be sustained. I am very glad they have brought in this Report, and I am glad they were unanimous in presenting it.

Mr. DAVIS, of Worcester. I do not rise for the purpose of discussing the resolution, but rather for the purpose of offering an amendment. I agree with the Committee, perfectly, in the object they seek to attain, but I would rather adhere to the provision in the present Constitution, substituting the attorney-general for the supreme court. I propose, therefore, in the third line, to strike out all after the word "following" and to insert the following:—

Each branch of the legislature, as well as the governor and council, shall have authority to require the opinion of the attorney-general upon important questions of law, and upon solemn occasions.

As we have already provided in the Constitution, for continuing the office of attorney-general, it seems to be very proper that he should be made an authority for reference, instead of the supreme court. I therefore propose to leave the article just as it now stands, substituting the attorney-general for the supreme court.

The CHAIRMAN. The Chair is of the opin-

ion, that the amendment of the gentleman is not now in order, because it relates to matter different from that now under consideration. The gentleman might attain his object, by allowing the question to be taken upon the motion to strike out, and then his amendment would be in order.

Mr. EARLE, of Worcester. I should like very well to know, in what position the Convention stands, in relation to amendments which are offered to these resolves? A few days since, it was stated—and the statement seemed to receive the unanimous assent of the Convention—that all these resolves must be put in precisely the form in which they are to go into the Constitution; that the Committee, whose business it shall be to put together the several amendments which may be proposed by the Convention, must incorporate them into the Constitution in precisely the form in which they were adopted by the Convention. I say that seemed to receive the consent of the Convention, but a few days afterwards I made a motion to amend by striking out a great deal of superfluity which had been retained in consequence of other amendments which had been adopted, and I was met by the remark that there was no occasion for such amendment, because, when it went to the Committee to put it in form, they would alter it and shape it as they pleased, and upon that suggestion the amendment was voted down.

I wish that the Convention would adopt either one rule or the other, and have a distinct understanding as to the course to be taken in this matter. Here is a distinct proposition to strike out and insert something else. My object is simply to strike out, and it appears to me that what is here proposed to be inserted is not what we desire. If it is meant to make a prohibition, as has been said by the gentleman from Pittsfield, (Mr. Briggs,) let us then at once strike out the words "be authorized to," and then say, "the governor and the two branches of the legislature respectively shall not propose questions to justices of the supreme judicial court, and require their opinions thereon." That would make a prohibition; but as it now stands, it is no prohibition. I would not disfigure the Constitution by incorporating anything of the kind proposed in it. It has been said sometimes—I do not profess any knowledge of law, but I do profess to have some little modicum of common sense—that the object of lawyers in making laws is to frame provisions in such a manner that there shall be some place left for doubt and evasion, and that they do leave loopholes whereby men can evade their effect, because it makes it better for their profession. I do not believe, that any member of the Committee had any such intention in proposing what they have presented in this Report, but it certainly appears to me they have left this matter in a position where it may be construed as a prohibition, as it has been by gentlemen, when in fact it is no prohibition. I would either incorporate something definite in regard to this matter, or else I would have nothing in relation to it. I would either amend this provision by striking it out, or by changing it so as to make it an absolute prohibition.

Mr. BUTLER, of Lowell. I do not wish to take part in this debate at all, but I wish simply to call the attention of the Convention to the opinion of the supreme court upon this subject.

In the fifth of Metcalf, they gave an opinion which they have reiterated under these circumstances. The Provident Institution for Savings in this city believed that they had the power to loan money upon notes, independent of the law about savings banks, because they were incorporated before the general savings banking law, and they proceeded to exercise the power. The question of their charter came before the legislature, and that body directed an opinion of the supreme court to be taken upon that subject, involving, of course, a very great class of private rights. The supreme court gave their opinion, and in giving it expressed great doubt of the propriety of so doing, in these words:—

"This question relates directly to the rights and duties of a private corporation under existing laws. The embarrassment felt by the justices of this court in expressing an opinion in this manner, in such a case, was particularly stated in an opinion heretofore given to the honorable House of Representatives. In giving that opinion, it was said: 'As the questions, on the face of them, seem to involve a controverted question of right, between the Commonwealth and a private corporation, a question apparently and peculiarly fit to be decided in a regular course of judicial proceeding, we had doubts, at the first view of the subject, whether it was a case coming within the intent of the Constitution, pursuant to which, questions of law are to be proposed; and whether it might not be expedient first, to submit to the consideration of the honorable House, whether it would be expedient to request an *ex parte* opinion in such a case. Our doubt was this: as we have no means, in such a case, of summoning the parties adversely interested, before us, or of inquiring, in a judicial course of proceeding, into the facts upon which the controverted right depends, nor of hearing counsel to set forth and vindicate their respective views of the law, such an opinion, without notice to the parties, would be contrary to the plain dictates of justice, if such an opinion could be considered as having the force of a judgment, binding on the rights of the parties. But as we understand that the session of the legislature is drawing to a close, and it might be inconvenient to the House to refer the matter back to them before acting upon it; and as an opinion upon an abstract question, without any investigation of facts, and without argument, must be taken as an opinion on the precise question proposed, which cannot affect the rights of parties, should they hereafter be brought before the court in a regular course of judicial proceeding, we have thought it best, without further delay, to submit an opinion upon the questions proposed.'—5 Metcalf, 597.

"The above remarks have been quoted at length, as applying, with full force, to the present case, and the same doubt expressed in the case referred to, is now felt, in an equal degree by the undersigned."

This is signed by the then justices of the supreme court. They set forth two things: first, that an opinion in such a case was always embarrassing, and that, as an opinion, it is to have no more weight or force than a private opinion, or that of any other body of gentlemen who should be assembled in the city of Boston, and that they should not hold themselves bound by it one moment, when it should come before the court in a regular form. One word upon another matter, for I do not propose to argue this subject at great length. The amendment of the gentleman from Worcester proposes that the attorney-general—

The CHAIRMAN. That question is not before the Committee.

Mr. BUTLER. I would simply suggest, how-

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ever, as bearing upon this subject, whether it is needful for us to retain the provision that the judges shall give opinions to the legislature; as it is provided by the Revised Statutes that the attorney-general shall attend the legislature, and give them his opinion whenever required, and it was formerly the practice for that officer to give his opinions, a practice which has now fallen into disuse. The thirty-third section of the thirteenth chapter, which has relation to this matter, reads as follows:—

“The attorney-general shall, when required, attend the legislature during their sessions, and shall give his opinion upon all questions of law submitted to him by either branch of the legislature, or by the governor and council; and shall give his aid and advice, in the arrangement and preparation of legislative documents and business, when required by either branch of the legislature.”

This was afterwards reënacted, when the office of attorney-general was reëstablished. I think, therefore, there is no need of retaining this power in the Constitution, because we can always have access to the legal opinion of the attorney-general, which ought certainly to be a sufficient guide for the legislature. Again, it is proposed, as I understand by the gentleman from Worcester, (Mr. Earle,) to strike out the whole provision in relation to this matter from the Constitution, and not incorporate in it any prohibition.

Mr. EARLE. The gentleman will excuse me for interrupting him. I say I am perfectly willing that there shall be a prohibition, and I would make a prohibition. What is reported by the Committee is not a prohibition. It does not grant the power necessary to require an answer, but still leaves them at liberty to propose questions for decision.

Mr. BUTLER. “They shall not hereafter be authorized to propose questions,” &c.

Mr. EARLE. I would strike out the words “be authorized.”

Mr. BUTLER. If the legislature have not authority to do it, I cannot see how they are going to do it. But, to return to what I was saying a while ago, I have had some experience in this matter. A long time was taken up by the legislature at the expense of a great many hundreds of dollars to the Commonwealth, in discussing the question whether we should submit the license law, or rather the no-license law to the supreme court for their opinion. The question was greatly mooted at the time, and I believe it would have been a dangerous matter to have submitted it in that manner. As one of the committee to whom that matter was referred, I was of the opinion, that it ought never to be done. Let me here refer to the court of New Hampshire, by way of an illustration, not by any means wishing to throw any odium upon that learned court, than which there is no more able and learned court in the United States, who had that question presented to them in a bill of seventeen sections, and was asked, what is there in it contrary to the principles of law and the constitution. Without argument, and without research, any more than they could give in the short time allotted them, they gave an opinion in which they said this, among other things, that that clause of the law which permitted a master to be punished for the criminal acts of his servant, in the course of his business, was unheard of in the laws of any civilized people; whereas, it turns out, that

that has been the common law of England and of this State, ever since 1740, when Lord Mansfield pronounced a very learned and able judicial opinion in the case of *Rex vs. Almond*, where it was decided, if a bookseller's servant sells a libel, in the usual course of his business, he is responsible. This doctrine has been tacitly adopted in our own courts in the tenth of Metcalf, where it has been decided, under our old license law, that if a clerk sold liquor, his employer was liable to punishment, and yet the learned court of New Hampshire declared that such a provision was unheard of in the laws of any civilized people. I only give this illustration to show how easy it is for men to make mistakes under such circumstances, and that they are not omniscient. I trust that the Report will be sustained, and for the reason that it is competent for the legislature to order their attorney-general to keep an office here and advise them as much as they wish.

Mr. HOOPER, of Fall River. It is very possible that this authority has been so broad, that it may have been used in too extensive a manner, but it does seem to me that there ought to be a power retained in the Constitution, which will give that Constitution a uniform application throughout the Commonwealth. We are now about to submit a new Constitution to the people. The practice under the old Constitution is now pretty uniformly established, but under the new, there will be questions likely to arise, demanding interpretation, and which may prove embarrassing. How are we to get at an uniform interpretation?

Some gentlemen say that we should take the opinions of the attorney-general. The attorney-general may be a wise and a learned man; his opinion may be given as a lawyer, but it is not conclusive. Other men may differ from him, and the question may still have to be brought before the supreme court, to be settled at last. Why not take the provision which is simple, easy and perfectly practicable, that the decision of the supreme court may be taken for a uniform purpose. I do not think it would be wise to have the supreme court decide on questions affecting the private rights of individuals. Gentlemen complain that it must be decided without argument. I think we should retain a provision so as to permit the legislature to get the opinion of the supreme court so as to have a uniform construction to guide municipal business. If gentlemen agree to that, I am perfectly willing to leave it there. I think that, at least, should be retained.

Mr. MORTON. ‘I will detain the Committee but a single moment. When this resolution was first brought up, this morning, I supposed there would be no diversity of opinion with regard to it; and, therefore, I merely alluded to one or two general reasons that influenced the Committee in favor of the adoption of that resolution. I did not intend to go into an argument on the subject, because I am unwilling to consume the time of the Committee, and, because I did not deem it at all necessary in the consideration of this case. And it has since been so fully investigated, that I should find no excuse in going into the argument on the subject. I wish to state, however, in the first place, that the Committee was in favor of this resolution, because we thought the present provision of the Constitution on this point in conflict with the fundamental principles of our government, and with the expressed provision of the Constitu-

tion in other parts, and we wished to remove that inconsistency, and that absurdity which we supposed existed in it.

Another reason why we were in favor of it, was, because we thought it immensely important, and we supposed that the whole community would agree with us, that the supreme court should be entirely withdrawn from the vortex of politics, and all exciting questions which might agitate the community. We wished to keep them clear from improper influences, and from all suspicion of being under improper influences. They have been called upon, heretofore, and in some instances in a way that affected and shook their standing in the community. These cases, I forbore to allude to when I was up before, but since they have been alluded to, and being a man in active politics at that time, I wish to say a single word. When the war of 1812 was in progress, a question arose which agitated the whole community, a question about which there was more excitement than there ever had been before, or will be likely to exist for half a century to come; the question in relation to calling out the militia was got before the supreme court in some manner, I do not recollect how, and they gave an opinion which produced an immense excitement in the community, and which was arraigned throughout this State, and throughout the United States, which opinion was reversed by the whole court of the United States, and which opinion would have destroyed the utility and confidence in the court in this Commonwealth, had it not been founded upon a basis which could not be shaken, and had it not been supported by a law-loving community.

The gentleman from Fall River speaks of the importance of the decisions of the courts on these questions. They cannot make any decision. They always tell you they cannot make any decision. What is the course pursued? They are called upon to give an opinion, when loaded down with labor, and almost always under circumstances when the question requires to be immediately answered. They have to put off all other things and attend to this, as well as they may, without a hearing, without argument, and without time to investigate authorities, and very likely in a remote part of the Commonwealth, where they are not able to get authorities. They, however, feel bound to give an opinion, but that is not a decision. On the contrary, it is possible they may often give an opinion which may lead people into errors and involve them in lawsuits, which result in great expense to them. Under these circumstances, the Committee thought they should not be called upon to give any opinion, though the judges cannot, under any circumstances, be bound by that opinion. The Committee, therefore, deemed it wise that this change should be made, and I feel satisfied that they decided right, from the discussion which we have had on the present occasion.

One word in relation to the motion before the Committee. It seems to me, upon reflection, that the Committee have adopted the best course which they could. They thought it expedient, in the first place, that this article in the old Constitution should be abrogated. Then it occurred to that Committee to decide what would be the best mode, and, after a good deal of consideration, they adopted this mode. It will be recollected that our Constitution is very different from the Constitution of the United States. It does not confer

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specific powers and withhold all others; but in our Constitution, the legislature have general powers and they do not have to look about and see a specific clause that authorizes them to do this or that. Therefore we thought it best merely to strike from the old Constitution this clause, and lest the legislature should think proper to continue the old practice, it was deemed but proper to insert a clause prohibiting the continuance of it, and they adopted such language as they thought proper. I know of no more decorous or better language than that which was adopted, to wit: that the legislature should not be authorized to do it. I am surprised that anybody comes here and says that they may do it, when we say they are not authorized to do it.

One word more in relation to the form. That not only had the deliberate consideration, but it had the unanimous consent of the Committee, and they were aided by taking the very words of the Committee which had the same subject under consideration in 1820; and I will inquire, when you take the language adopted by the Committee with Chief Justice Story at its head, and the present chief justice upon the Committee, whether we could take any language more appropriate than they used. Under these circumstances I hope the Committee will not only retain the principle, but retain the very words which the Committee have proposed.

Mr. HATHAWAY, of Freetown. After the very lucid explanation which has been given of this matter by the chairman of the Committee, it seems to me quite superfluous for me to say a single word. But having been a member of the Committee that reported this resolution, I feel it incumbent upon me to give one or two of the reasons which induced me to favor the Report.

In the first place, all of us who have mingled in party politics, know that the executive branch of the government must be connected with the parties in this Commonwealth. We all know that the legislature is necessarily connected, somewhat with the parties that elected it. My wish about this matter was that we should have one branch of the government that never should be drawn within this maelstrom of politics. I would have one branch above suspicion, like Cæsar's wife. I think the supreme court heretofore—speaking generally of that body, and not particularly—have sustained in this government, that position. I hope they may hereafter sustain that position so far as the confidence of the community is concerned. That was the leading reason which influenced me in reference to this matter. The other reasons given by the honorable chairman of the Committee, also had great weight on my mind, as well as the reasons given by my friend—and I trust he will permit me to call him so—from Pittsfield, (Mr. Briggs,) that all these departments should be kept distinct. I would have the very language which the Committee have recommended still retained, not only for the reasons which have been so efficiently argued by the chairman, but for other reasons.

Sir, if I understand the Constitution in reference to these matters, the legislative branch of the government has the right to make what are denominated in the Constitution wholesome laws, and all the necessary and wholesome laws which in their judgment should be made for the government of the people. I look upon the proposition made by the Committee as far better than the in-

timation which comes from the gentleman from Worcester, (Mr. Davis). The reason is this. If you accept of the proposition which he has intimated, then there is nothing in the Constitution to forbid the legislature from requiring the supreme court hereafter to answer. Whereas, if you allow the proposition to remain as it is, you not only forbid them to put questions, but you say the supreme court is under no obligation to answer those questions, and you, in fact, prohibit them from enacting a law by which they may put the question. Hence I prefer the resolutions of the Committee, so that the legislature cannot, by any possibility, without transcending the limits prescribed by the Constitution, submit a question to the supreme court, and they cannot bring them within the maelstrom of party politics. I would not give the legislature power to drag the supreme court into politics or any existing party questions such as that of the Maine Law; and no decision should be required of them except it should be given after full deliberation and after solemn argument. I would not permit the legislature to be following them, and if I may use the expression, hounding them upon the circuit and pressing them, almost upon the instant, to give their opinion. By no means; for the supreme court, as has been well said by the gentleman from Taunton, (Mr. Morton,) in ninety-nine cases in a hundred will be required to answer immediately.

Mr. WARNER, of Wrentham. I do not wish to protract the discussion upon this question, but I desire to say a word or two in explanation of my position; for I find I stand nearly alone; though I have the aid of the gentleman from Fall River, (Mr. Hooper,) and of the gentleman from Berkley, (Mr. French,) who is a host in himself. Notwithstanding the Report has been sustained and advocated by the Committee on the Judiciary unanimously, and also approved, as I understand, by the supreme judges of the Commonwealth, I do not think the reasons lie altogether on one side. I am of the opinion that something may be said on the other side also. I have no doubt that the judges of the supreme court desire to avoid the decision of questions submitted by the legislature. I do not blame them for it. They ought not to be blamed for it. It is an arduous part of their duties laid upon them by the present Constitution; and no man can blame them for desiring to avoid being called upon to decide such questions. But I ask the members of the Committee on the Judiciary and the members of this Convention, to what tribunal can they go with so much confidence as to the present supreme court?

Notwithstanding all that has been said of the haste with which they are called upon to give their decisions, and notwithstanding their desire to avoid this labor, after all, to what tribunal or what man or set of men can we go with so much confidence as to our supreme court? I say it is wise to leave it where it now resides; it is wise to leave the power of deciding these questions to that tribunal to which our fathers left it. I would be content to leave it there.

All the gentlemen who have spoken upon this subject admit the necessity of taking advice. They say that cases may arise where the legislature ought to be advised. What do they propose? They propose to change the officer who shall give the advice. Do not the same arguments apply against submitting these questions to the attorney-

general, which apply against submitting them to the supreme court? Is not the consideration on the part of the attorney-general *ex parte*, also. Is he to have power to bring witnesses and to have parties before him on one side and on the other? Does he not stand precisely as the judges do in that respect? What is the benefit of shifting it from one to the other? It seems to me that the same argument will apply which is urged against leaving it to the judges to decide; and with greater force, too, because in the one case we shall have the decision of five men, and in the other, of only one man. I have not heard that any evil has grown up from the practice which has been pursued heretofore. I have not heard one word spoken of any evil which has resulted from the practice; at least, if any gentleman has said anything of the kind, I did not so understand him. But, on the contrary, as has been urged by the gentleman from Fall River and the gentleman from Berkley, great good has resulted from the practice of allowing the legislature to refer questions to the supreme court for its decision.

Now, Sir, when the supreme court have given their opinion upon any question referred to them, so far as my knowledge extends, the people have always acquiesced in that opinion; they have always submitted to their authority and have been governed by them. I have heard no word of complaint on that subject.

I hope, although I presume it is a forlorn hope, from what I have observed in this Convention, I really hope that the Constitution will be suffered to remain as it is, and that the proposition of the Committee will be rejected.

Mr. EARLE. Inasmuch as the Committee seem to be very well satisfied with the Report which they have made, and inasmuch as they say they intended to do what I supposed they did not intend to do—to make a specific prohibition—I am inclined to withdraw the amendment which I offered, although I still think that if they intended to do no more than their proposition says, they do not make any prohibition at all. The article which they have reported, and which they propose to incorporate into the Constitution, simply says that they do not give any authority to propose questions and to require an answer, but it leaves them just as much liberty to propose questions as they had before, although they cannot require them to make any answer. It leaves the matter without any absolute prohibition. It is simply a negative proposition. It does just as much and no more than is done by the present provision of the Constitution. The words "shall not be authorized" do not, in my view of the subject, make a prohibition; but if we should strike out these words, and make it in the form of an absolute prohibition, that will effect the object. Until we do that, it will be merely a matter of construction and a matter of inference whether the Convention intended to take away this power absolutely or not, whether they intended to prohibit the legislature from going to the justices of the supreme judicial court with such questions, or whether they left it so that they might go to them with questions, and leave them at liberty to answer or not, as they might think proper. Under these circumstances, I am disposed, in order to expedite business, to withdraw my amendment; and if the Committee are satisfied with the proposition as they have presented it, I shall acquiesce.

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Mr. MORTON, of Taunton. As I said just now, there are a few words which were accidentally omitted, and the omission has been very kindly suggested to me by a member of the Convention. I will, accordingly, move to amend the first resolution, by adding, after the word "Governor," the words "and Council," and by striking out the word "respectively" and inserting the words "or either of them," so that it will read as follows:—

The governor and council, and the two branches of the legislature, or either of them, shall not hereafter be authorized to propose questions to justices of the supreme judicial court, and require their opinions thereon.

Mr. GARDNER, of Seekonk. I would suggest to the chairman of the Committee whether it would not be proper further to amend the resolve by inserting, at the end of it the words, "but may propose them to the attorney-general."

The CHAIRMAN. The Chair has already suggested that that is a different subject from the one under consideration, and the proposition is, therefore, not now in order.

Mr. GARDNER. Would it not be in order to move an amendment to the amendment? The gentleman from Taunton has offered an amendment, and I wished to submit that this would be proper as an amendment to that.

The CHAIRMAN. The subject now under consideration is with regard to obtaining the opinions of the justices of the supreme judicial court, and the gentleman proposes to obtain the opinions of some other tribunal. In the opinion of the Chair, that is a distinct and different subject.

The question being then taken on the amendment of Mr. Morton, it was agreed to.

The question recurred on the adoption of the resolve as amended.

Mr. HOOPER, of Fall River. I wish to correct a mistake that occurred in the remarks which I made just now. My impression was, that the amendment did not pass the Convention of 1820. I find, upon examination, that it did pass that Convention, and was submitted to the people; but it was rejected by the people.

The first resolve, as amended, was then agreed to.

The question was then stated upon agreeing to the second resolve.

Mr. GARDNER, of Seekonk, moved to amend the third paragraph of the resolve, by inserting after the word "receive" the words "ample and," so that it would read as follows:—

The justices of the supreme judicial court shall receive ample and honorable salaries, which shall not be diminished during their continuance in office.

The amendment was not agreed to.

Mr. MORTON, of Taunton. I deem it incumbent on me, Mr. Chairman, as I see no other member of the Committee present, with but one exception, to make a very brief explanation in relation to this matter. The old provision in the Constitution is, that "permanent and honorable salaries shall be established by law for the justices of the supreme judicial court; and if it shall be found that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time, be enlarged, as the general court shall judge

proper." That, I suppose, was thought to be sufficiently explicit when it was adopted; but questions have since arisen with regard to it, and different constructions have been put upon it by different individuals and different parties. The intention of the Committee was to make it so explicit that it would not be misunderstood; and therefore they reported the clause which is now before this body, that the justices shall have honorable salaries, which shall not be diminished during their continuance in office. That will remove all doubt. Many seem to think that this is merely a reenactment of the former provision; but this clause was put in so that there should be no power to reduce the salaries of the justices. This, I believe, received the unanimous assent of the Committee. I feel bound, however, to state that a modification of this proposition was favored by a number of the Committee, of whom I was one; but the majority were against it, not deeming it important. As I do not see any of the advocates of that proposition present, it may not be improper for me to state what that provision was. The minority of the Committee proposed that it should read as follows: "The justices of the supreme judicial court shall receive honorable salaries, which shall not be increased or diminished during their continuance in office." The reason why certain members of the Committee wished to have the clause provide that the salaries should neither be increased nor diminished, was this: they wished that the justices of the supreme court of the Commonwealth should have an independent provision made for their support, so that there should be no question arising whether their salaries could be reduced during the term of their continuance in office, and also so that there should be no inducement for either them or their friends to importune the legislature to increase their salaries. I did not believe that this was very important, and I am disposed to acquiesce in the decision of the majority of the Committee. I regret that I do not see any of the members of the Committee who advocated that provision present, with possibly a single exception; and therefore I have taken the liberty to make these suggestions.

The question being then taken on the adoption of the second resolution, it was agreed to.

The third resolution reported by the Committee was then agreed to.

The question then recurred on the amendment proposed by Mr. Wilson, of Natick, being to strike out the fourth resolve, and substitute, in place thereof, the following:—

Resolved, That it is proper and expedient so to amend the Constitution, as to provide that the justices of the supreme judicial court shall be appointed for the term of ten years, and the justices of such inferior courts as are, or may be established by law, for the term of seven years; said justices to be eligible to reappointment, but in no case to continue in office after attaining seventy years of age.

Mr. WOOD, of Middleboro', moved to amend the amendment, by striking out of the third line the word "appointed," and inserting instead thereof, the words "chosen by the qualified voters of the Commonwealth," and also by striking out the word "reappointment," and inserting instead thereof, the word "re-election." He also gave notice that he should subsequently move to strike out the last clause, in these words: "but in no

case to continue in office after attaining seventy years of age."

Mr. WOOD said: I had supposed it to be the intention of the Committee to pass upon this question in some form, but it appeared to me that this resolve would conform to my ideas better than any other before the Convention, with this change, to have the judges elected by the people, instead of their being appointed. I suppose all will agree that we, the people, have the right to elect our judiciary as we elect the other departments of government, as, for instance, the legislative and the executive departments. No one will doubt that the power in this matter rests wholly with the people; and the question, then, for us to determine is, whether we think it judicious for us to keep this power in our own hands, and elect the judiciary, or whether we would do better to delegate this power to some other body, either to the executive or the legislative departments of the government.

Now, if it is proper for the people to keep the power in their own hands, then the only way in which that can be done is to provide for the election of these officers by the people, as we provide for the election of all other officers. If it is not proper that the people should retain this power, it must be on account of one of two reasons—either, first, that the people at some time may not be desirous of electing proper officers; or else, secondly, because they have not sufficient intelligence to make a proper selection.

In regard to the first of these reasons which may be adduced, namely, that the people may at some time become so corrupt, or take so little interest in the matter, that they will not care whether proper persons shall be elected or not, no one, I presume, will undertake to sustain such a position for a moment. They are interested in this matter above all others. They are the only parties who are interested, for any one of us may be under the necessity of falling back upon the judiciary for the protection of our interests and our liberty. The whole people, then, are interested; and it cannot be otherwise than that they must always be anxious to keep the bench filled with honest and upright and learned and independent judges.

Then, secondly, are not the people sufficiently informed to be able to carry out what it is so much to their interest should be accomplished? They must, in such a matter, always design to do right, and to ascertain, as well as may be, who the competent persons are. Then the question appears to me to be the only one—have they now sufficient intelligence to do this work, and may we depend upon the fact that in this Commonwealth they always will have sufficient intelligence and discrimination to make a proper selection. This question cannot be less answered in the affirmative than the other one. We all believe that the people have sufficient intelligence to accomplish this work. We all believe that they have sufficient power of discrimination. They are brought into contact with their judges in various ways—as parties to suits in court, as jurors, and as witnesses; and in these and various other ways they have the means of ascertaining the qualifications of their judiciary. It appears to me, therefore, that it is eminently proper to leave this matter to them.

But, I suppose the only objection which will be urged against this will be in regard to the

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tenure of office. It has been said here—I believe by more than one gentleman in the debate, in reference to judges of probate—that they believed that the *people* would require more ample qualifications in their judiciary than the *executive* would require; but that the fear was in having them chosen by the people that the tenure would be less than for life; that the judges would be subject to reelection. We shall then come back to this point. If your judges are to be elected by the people, what shall be the tenure of their office? It is here provided that the supreme judges shall be elected for ten years, and judges of the inferior courts for seven years. The fear here expressed is that your judges will be so much influenced by the popular will that they will cease to be independent; that is, that when the time comes for reelection of judges, they will be so much influenced in regard to the popular will, that they will cease to do right—will cease to have that uprightness and independence which they now have, when not dependent upon the people. But, let me ask, are not the judges men who can understand what the people wish? If they are anxious for reelection, will they not endeavor to ascertain what kind of judges the people want? And can we fail to perceive that that the very qualifications which will insure their reelection, will be just those qualifications of talent and uprightness and independence which caused them to be elected at first, and at which we are all aiming? The people desire, and always will desire, judges of this class; and the judges themselves will know that the only way to secure their reelection, will be to pursue this course of uprightness and independence. To believe otherwise, would be to believe that the people did not want this uprightness and independence in their judges, or that they were too ignorant to appreciate it.

But, it may be argued that we have now an upright and independent judiciary; that in this respect we stand fairer than some of our sister States; and that where the other States elect their judges, we can compare better with most of them. But why have we an upright and independent judiciary? Is it owing to the fact that they have been appointed by the executive? Let us see if we cannot find an argument in the history of the mother country in this respect. Let us ask whether the mere fact of their being appointed by the executive, has at all times secured upright and independent men to sit in judgment in that country? I only need mention one name in answer—"Jeffreys!" That is not alone sufficient. And if it has not been sufficient there, it may not always be sufficient here. What is the reason, then, that we have had such a judiciary as that of which it has been our good fortune to boast? It is because we have had an intelligent and upright people—a people at once desirous and capable of electing an executive that would be careful in these matters—an executive backed by the people desiring such appointments; and had these appointments been otherwise, they knew that the people would have demanded a change, and the appointment of men having the qualifications they desired. I therefore come back to the point that we have an able and intelligent people—a people desirous of having, and determined to have, an upright and independent judiciary.

Then the question recurs whether this can best

be effected by vesting these appointments in their agents, by delegating their power to others, or by acting directly by themselves? I believe that all this results more from the fact of the people themselves being intelligent, and upright, and discriminating, than from any other cause; and I believe further, that they can carry out this matter better by taking it into their own hands, than by delegating their power to others. The people can always do better for themselves than their agents can do for them; except perhaps in some very particular cases, where they cannot investigate testimony, or in regard to some very particular appointments about which they cannot know sufficient. But with regard to an important matter like this, the people themselves always can and will know what is proper. I believe, therefore, that we may have as upright, and if possible, a better judiciary than we now have, if the power is left in the hands of the people.

But another consideration that weighs upon my mind, apart from the fact that it is necessary for the people to elect their officers in order to have proper men, is that it will have a reflective influence upon the people themselves. Suppose that the people could have just as good and proper a legislature, in all respects, and have all their wishes carried out just as well without the trouble of electing their legislators themselves; suppose that they could delegate this power of election to a single individual; does not any man see at once that such a thing would have a blighting influence upon the public interests. The people are called upon now to make their election of legislators in both Houses, and also to elect a supreme executive of the State; and by the very exercise of this power they become better acquainted with their rights, and thus acquire a larger amount of political intelligence. Now, in the election of their judiciary, here is another field for them. The consideration as to what are the proper qualifications for such men, is brought home to their minds. And inasmuch as it is always better for the people to do their own acts, rather than by the agency of others, I would give them this power not only in regard to this matter, but in every instance in which it is practicable. I think it is best for the people to be brought into contact with their government in as many points as possible. It is beneficial to themselves as well as to their officers, who are thus made to feel their obligations to the people.

For these, and other considerations that might be adduced, I am in favor of making this amendment to these resolves.

Mr. HOOPER, of Fall River. I hope this amendment will prevail. The principle laid down by the gentleman from Taunton, (Mr. Morton,) as well as by the gentleman from Lenox, (Mr. Bishop,) requires that this change should take place. They laid down the position that it was proper that the sovereign should appoint its own agents, and took occasion to make that an argument in favor of the election by the people of judges of probate. Now I see no reason why the same argument will not apply to the election of judges of the supreme court with as much force as to these inferior judges. It seems to me that we ought to carry this principle fully out.

It may be argued, perhaps, that this was not one of the inconveniences which was complained of by the people, and which originated the call for this Convention. I am quite willing to admit

that we have now a competent and upright judiciary; but, Sir, we are called upon to revise the Constitution; and I apprehend that that call was not with a view merely to one or two points, but to the whole instrument. Whatever, therefore, we permit to remain in that Constitution, we sanction just as much as we sanction any new provision which we may adopt.

Now, it being admitted that the people are sovereign, and that the sovereign should appoint its own agents, I think that this is unquestionably one of those cases in which that power should be exercised by the people, and that this is the proper time and occasion in which that duty should be committed to their charge. Nor do I believe that there can be any solid objection to this. I do not believe but that we shall obtain just as good a judiciary as we have now, and, if possible, perhaps a better one. I believe that so far as the elections of judges have been made in our sister States—and it is quite proper to refer to their example by way of illustration—I do believe that they have been entirely satisfactory; and that not one of these States would be willing to go back to the old method of appointment. I saw a gentleman here the other day from the State of New York, who belonged to the party usually considered conservative in this State—the Whig party. He was an alderman of the city of Brooklyn, and spent a day in our Convention. He heard an argument here against the election of judges of probate, made by the gentleman for Wilbraham. He expressed his utter astonishment at the doctrine advanced, and said that since the elective system had been adopted in the State of New York there was scarcely a fraction of any party in that State that would be willing to return to the old system. Now the voice of these States has come up to us in favor of the practice, and their united testimony is that the system works well. If that is so, why not adopt it here? Is it contended that the people are incapable of electing proper men? If that is an argument to have any weight, let me ask are they not equally incapable of electing their governor? Who is to appoint these judges? I cannot believe that any gentleman here will attempt to maintain that doctrine. It is admitted—because it has been demonstrated in other States—that the people of other States are fully competent to perform this duty, and surely no one will place the people of Massachusetts in an inferior position to the people of any State in the Union, in regard to intelligence and capability of self-government. Why, then, should they be denied the exercise of this right?

But, it is said, that the judges ought to be rendered independent of political influences. I ask how that is to be done? I ask, if our judges heretofore have been independent of such influences? It is true that their tenure of office has been what some gentlemen would call an independent one; and it was supposed that that tenure would render them independent. But what has been the history of the past? Do you suppose that they have not held as decided political sentiments as any other class of the community? Have they not exercised as strong a political influence as any other men in the Commonwealth? How many of them have been taken from the bench and placed in the executive chair? And could this have been done, if they had been independent of political influence? They have been repeatedly selected as the standard-bearers of

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their respective parties in consequence of their known and decided political views. And yet who will contend that this fact has ever influenced their decisions in a single case? I do not believe that their election, by the people will have the slightest effect in rendering them less independent and impartial than they are now. They are political men now, and exercise perhaps more political influence than any other class of our citizens. The very fact that they have been repeatedly taken from the bench to fill the highest office in the State shows this.

Now, I contend that their present position is such as to render them political to a greater extent than they would be if elected by the people. They now hold an independent tenure of office, and they have their views, as all persons in our community have, in relation to political questions, and they are now in a situation to give effect to those views, without being liable to be reached by anybody. You cannot call them to account, as they are not to go before the people for their reelection. They therefore can exercise as much political influence as they see fit, and you cannot hold them responsible for the manner in which they exercise it. Now from the very fact that all men in a community constituted like ours hold political opinions, and will exert political influence, the more independent you make them of the public voice, the more they will be liable to be swayed by such influences. But if you provide that they shall come before the people for reelection, they will take care that their opinions reflect justice and right, because they cannot stand upon any other basis. The very theory of our government rests upon the idea that the will of the majority reflects justice and right, otherwise our system of government could not stand for a day.

Now, Sir, so far as the assertion that by rendering them independent in their tenure of office you render them independent of political influence or bias is concerned, I have no confidence in it. In my opinion it is a fallacy. Our courts will be as reliable if the judges are elected by the people as they are now. The fact of their being elected would not change them. An opposite argument is one upon which we cannot rest, and therefore it is time that we changed the system.

There is another consideration connected with this matter. The system of appointments has great evils connected with it. That was found to be the case in the State of New York. Their judicial system broke down under them. And we are not entirely free from them here. These appointments are often confined to cliques and circles of a few politicians, who dictate the appointments, and those who do not belong to them, however well qualified they may be, can never hope to rise to the bench. They are frequently made as rewards for party services. And the man who stands upon his own personal merits and reputation, independent of cliques and parties, has no chance. He must give a *quid pro quo* in the nature of party services. But make the judges elective by the people, and if a man has ability, honesty, and legal reputation, the people will find it out, and in that way they will break up this kind of cliquism which will always be found to prevail wherever the present mode of appointment exists.

For these reasons, Sir, I hope this amendment will be adopted. I believe we shall not do justice

to ourselves, or to the expectations of the people, if we do not make this change. I am aware that some persons believe that the people are not ready to adopt such a proposition. I have heard several gentlemen say that they believed the principle to be right, but that the people are not ready to embrace it. So far as I know, the people are ahead of us in this matter. We have adopted a resolution this morning, which I do not believe the people would adopt, if submitted to them by itself. It was submitted and rejected by the people in 1820, though sanctioned by the Convention of that year, and I am inclined to think they would do the same now, if separately submitted to them. But if you will send to them a proposition to elect the judges, one at a time, and for a suitable term, the people, in my opinion, will accept it. As far as I have ascertained the opinion of the people whom I represent, there is no fear among them that any bad result would follow the adoption of that proposition. I hope, therefore, that the amendment will be adopted.

Mr. DANA, for Manchester. I should like to say something upon this point. It is the most important question that has come before this Convention. There is no doubt of it. But as the time of adjournment is near, I would move that the Committee rise, report progress, and ask leave to sit again.

The motion was agreed to.

The Committee accordingly rose, and by their chairman, (Mr. Hallett,) reported to

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That the Committee had had under consideration the resolves referred to them, had made some progress therein, and had instructed him to ask leave to sit again.

Leave was granted.

On motion of Mr. PERKINS, of Malden, the Convention then adjourned until 3 o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at 3 o'clock.

Reconsideration.

Mr. WHITNEY, of Boylston. I am sorry, Sir, to be obliged to do what I am about to do, yet I do not see how I can very well avoid it. I waited here on Saturday for some time, in the hope that the matter then under consideration would be disposed of, so that I might move that the Convention take up the Report of the Committee on the Qualifications of Voters, on the petition of Francis Jackson and others, that the word male may be stricken from the Constitution. I learn this morning that that subject was disposed of before I arrived on Saturday morning. I move, therefore, if it be in order, that the vote by which the resolves were passed be reconsidered.

The PRESIDENT. The gentleman is misinformed. The matter has not been acted upon in Committee of the Whole.

Mr. WHITNEY. I saw it so stated in the public prints.

The PRESIDENT. The subject has been referred to the Committee of the Whole, and the papers ordered to be printed.

Mr. WHITNEY. That being the case I withdraw my motion.

Mr. MARVIN, of Winchendon, moved a reconsideration of the vote whereby the Conven-

tion adopted the Report of the Committee on the Qualifications of Voters, that it is inexpedient to act upon the subject of the several orders and petitions referred to them.

The PRESIDENT. The motion will be placed upon the Orders of the Day for consideration tomorrow.

The Judiciary.

On motion of Mr. WHITE, of Quincy, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Hallett, for Wilbraham, in the chair, on the unfinished business of the morning, being the resolves on the subject of the Judiciary, the pending question being on the amendment proposed by the gentleman from Middleborough to the amendment of the gentleman from Natick.

The question was taken on the pending amendment, and it was, on a division—ayes, 76; noes, 102—decided in the negative. The question recurred on the amendment of the gentleman from Natick.

Mr. BRADFORD, of Essex, moved to amend the same by striking out the word "eligible," and inserting the word "ineligible."

The amendment did not prevail.

Mr. KINGMAN, of West Bridgewater, moved to amend by striking out the word "ten," where it occurs, and to insert "seven," to strike out "seven" and to insert "five."

Mr. WILSON, of Natick. I hope my friend from West Bridgewater, (Mr. Kingman,) will not press his amendment. I understand, Mr. Chairman, that the judges of the supreme court, from the origin of our government down to the present time, have held their offices for a term, on an average, of thirteen years, and the judges of the court of common pleas, for about six years. I think there should be a difference between the term of office of the judges of the supreme court, and that of the judges of the court of common pleas. I hope, therefore, that the amendment of the Committee will stand as it is. Whether it does, or not, I think I shall give my vote for a limitation of the term, and not in favor of an elective judiciary, for I do not believe the people of the Commonwealth are prepared for it.

Mr. KINGMAN. It seemed to me to be the determination of the Committee to provide that the judges should be made elective, and my object in offering the amendment to reduce the term of office, was to remedy, in part, the difficulty which the people would experience if they should happen to have a man appointed or elected—which I suppose and hope will not be likely to occur—who is incompetent to fill the position. That occurrence is, however, within the range of that reasonable contingency which should be provided against, and if it should happen, there will be a chance, by my amendment, for their removal sooner than there otherwise would be. And if they are, in every respect, desirable judges, as it is the purpose of the amendment to provide that they may be reappointed, I do not anticipate that any inconvenience will arise from shortening the time, in the manner I have suggested in my amendment.

Mr. KEYES, for Abington. I rise for the purpose of asking for a division of the question, because I cannot see any reason, if the term is limited at all, why one class of judges should

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hold their offices longer than another. Why should the justices of the supreme judicial court hold their offices seven or ten years, while the judges of the inferior court hold theirs for only five or seven years? It struck me, upon a moment's consideration, that if there were to be any difference between the two, the terms of office should be transposed, and the longer period given to the judges of the court of common pleas. In the first place, the judges of the supreme court are older men, than those of the latter court. The judges of the common pleas are apprentices, as it were; they are there studying and fitting themselves to be judges of the supreme court, and their term ought to be the longer of the two. They are also younger men, and they are in a better condition to remain for a longer period in office, than their older brethren upon the higher bench, and perhaps the longer they serve in the inferior capacity the better they will be fitted to perform the more important duties of judges of the supreme court. As I said before, the judges of the supreme court are older men, and the period of seven years is with them as long a time as ten years is with the judges of the inferior courts. I suppose that some persons would prefer to reduce the term of ten years to seven, and allow the other to remain as it is, and thus make the tenure of all the judges the same.

Mr. KINGMAN. At the suggestion of a friend near me, I wish to modify my motion so that the judges of the supreme court shall hold their offices for seven years, and leaving the provision in relation to the other judges as it is now.

The question was then taken on the amendment, and it was decided in the negative.

So the amendment was not agreed to.

The question then recurred upon the amendment offered by Mr. Wilson.

Mr. DANA. I do not rise for the purpose of discussing this question, because I am not prepared to discuss it in a manner in which it ought to be discussed before this Committee. I had no idea, and I suppose no gentleman present had, that with four subjects before us partly finished, we should have taken up this new, most important, and vital subject of the judiciary. Therefore, I think that on Monday morning no person expected that it would be taken up, and after we adjourned at one o'clock, on my suggestion, other occupations from which I could not escape, have taken up every moment of my time, and I have had no opportunity to put my thoughts into form and order, so as to make them deserving of the consideration of the Convention, nor, indeed, have I had time to obtain the necessary sustenance to impart that strength which is sufficient to enable me to express the remarks I should like to make. I do not ask the Committee to give any indulgence to me to discuss this question, because it can be discussed after it is reported to the Convention, but I simply desired to state the reasons why I am not prepared to discuss it now. I doubt whether gentlemen generally, are prepared to enter upon it; because I think the taking of it up was a surprise upon the Committee. Preceding this subject on the calendar, we had the motion of Mr. White to reconsider the vote by which the resolves on the subject of the House of Representatives were finally passed; the subject of general laws for corporations; the resolves to amend certain parts of the Constitution by striking out the words "University of Cam-

bridge;" the subject of loaning the State credit, and the resolves on the subject of amendments of the Constitution; most of which, as also the subject of elections by plurality, which has been partly discussed, we could take up now.

With the distinct understanding with every gentleman here, that I wish no one to vote out of consideration for me, but as a general question in which we are all interested, I move that the Committee rise, report progress, and ask leave to sit again.

Mr. KEYES, for Abington. Is this a debatable question?

The CHAIRMAN. It is not.

Mr. KEYES. I was only going to remark, that I consider the great question as having been decided. I came up here this afternoon to hear arguments against the election of judges by the people, but that having been decided after slight debate, I consider it a matter of small importance whether this is decided at all or not.

The question was then taken on the motion of the gentleman for Manchester, (Mr. Dana,) and it was decided in the negative.

So the Committee refused to rise.

The question then recurring on the adoption of the amendment of the gentleman from Natick, (Mr. Wilson,) it was taken, and decided in the affirmative.

So the amendment was adopted.

Mr. WILSON. I now move that the Committee rise and report the resolutions as amended, to the Convention, with a recommendation that they do pass.

The motion was agreed to.

The Committee accordingly rose, and the chairman of the Committee, Mr. Hallett,

IN CONVENTION,

Reported that the Committee of the Whole had had the subject of the resolves in relation to the Judiciary under consideration, had made amendments thereto, and had directed him to report the same to the Convention as amended, with a recommendation that they do pass.

Mr. BIRD, of Walpole, requested that the amendments might be acted upon separately.

Mr. HOOPER, of Fall River, moved that the question on the first resolution be taken by yeas and nays.

Mr. SCHOUER, of Boston, suggested to the gentleman from Fall River to ask for the yeas and nays on the final passage.

Mr. HOOPER. I renew the motion to amend, that I made in Committee of the Whole, to strike out the word "appointed," and to insert the words "elected by the people of the Commonwealth," and upon that motion I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. HALLETT. It is not my intention to make a speech in explanation of the vote that I shall give. I must be permitted to say, however, that I hope the amendment will not be adopted. I think we shall make greater progress in regard to the matter of the judiciary, if we now only go so far as to limit their tenure of office. The judiciary power is a great and important branch of the government. It construes our laws; it construes our Constitution. The practice of our government has been to give to the judges a life tenure of office, following the example of Great Britain, where it was found neces-

sary that the judiciary should be independent of the crown, or of the royal power. In this country, the same necessity for providing for what may be called an independent judiciary does not exist; for we have no royal power to guard against or hold in check, and therefore I shall be content to go so far as to limit their tenure of office. And I think the sense of the people generally will go with us on that point. I believe it would not be judicious, whatever may be my private opinion on that subject, to go any further than that at present. I hope, therefore, we shall concentrate on that point, and thus commend our action to the whole body of the people of the Commonwealth.

Mr. WILSON, of Natick. Mr. President: This is a question of transcendent importance—perhaps the most so of all the questions that have engaged, or that may hereafter engage, the attention of the Convention. Whatever may be the views and wishes of the people of this ancient Commonwealth as to the mode of action in relation to the judiciary, all are united in regard to the importance of securing and possessing an independent, able and learned judiciary. All men of Massachusetts look to that department of the government with profound regard, respect, and veneration. All deeply realize the inestimable importance to life, liberty, and property, of preserving the judicial system of the Commonwealth as pure "as the lot of humanity will admit." Some of the brightest names in our history have adorned and illustrated our judicial history. The talents, learning, and purity of those names have cast a halo of unfading light over our judicial history, thus winning the admiration and affectionate attachment of the people for our judicial system. It becomes this Convention to approach the discussion of this great question with caution, care and deliberation. Mr. President, there are differences of opinion in relation to the action of the Convention upon this question. Many members of the Convention—whether a majority or a minority, I am not able to say—are opposed to any action whatever upon the subject of the judiciary. They wish to preserve that department of the government as it now stands. They love, honor, and venerate our present judicial system, as the best that can be devised by the wisdom of man. They cling to it with all the tenacity of sincere conviction. They look upon all changes as hazardous and untried experiments, dangerous to the independence, purity and ability of our judiciary. These members will sustain, with all the ability and influence they can command, the Report of the Judiciary Committee now under consideration. A large portion of the people concur fully with these members. This class of men, in and out of the Convention, look upon any change of our judicial system with apprehension and alarm.

There is, Mr. President, another portion of the Convention—and I think a decided majority of the members of the Convention—in favor of some action. There is, also, a large portion of the people—I think a majority of the people—in favor of some action upon this question by the Convention. But the friends of action upon this question are not agreed as to what that action shall be. They differ in principle—differ widely in policy.

Some members are in favor of an elective judiciary for a limited tenure; others are in favor of an

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elective judiciary for good behavior. They wish to change the mode of appointment, but to preserve the tenure of the office. This class of men, in and out of the Convention, are few in number, men, I take it, who have been disappointed in regard to executive action at some time in their lives. Many members are in favor of an elective judiciary for a limited tenure of years—say seven or ten. This class of men are strong in numbers, in and out of the Convention, and it must be admitted, that this class of men are rapidly increasing. They think an elective judiciary more in accordance with the theory of our democratic institutions, more in harmony with the genius and spirit of our American ideas. These men believe that the people of Massachusetts are ready for an elective system, and that if the Convention will give the people an opportunity to do so, the people will take an elective system. The gentleman from Fall River, (Mr. Hooper,) has embodied the opinions of these members in the amendment he has proposed to the amendment now pending.

There are many members, however, who are in favor of an elective judiciary, that do not think the people ready to adopt such a system. If they believed the people ready for it, they would at once vote for it. Believing that the people are not yet ready to accept an elective system, these members will unite with those members who are in favor of limiting the tenure of the office, but not in favor of changing the mode of appointment. Sir, the friends of a limited tenure, and the friends of an elective system, who believe the people unprepared for an elective system, will unite in the support of the resolution which I have moved as an amendment to the Report of the Committee on the Judiciary. If the friends of an elective judiciary will abandon all efforts to secure such a system, if—when the amendment to the amendment moved by the member from Fall River, (Mr. Hooper,) fails, as fail it must—they will vote for the resolution now pending, it will receive the sanction of the Convention, and the approbation of the people. This resolution will secure all that most of us will desire, and I hope that gentlemen will abandon all efforts to obtain the impossible, and content themselves with securing the adoption of the amendment now pending, to wit:—

Resolved, That it is proper and expedient so to amend the Constitution, as to provide that the justices of the supreme judicial court shall be appointed for the term of ten years, and the justices of such inferior courts as are, or may be, established by law, for the term of seven years; said justices to be eligible to reappointment, but in no case to continue in office after attaining seventy years of age.

This is all, Mr. President, any of us can hope to obtain at this day. In my opinion it is all the people are prepared to accept, even if the Convention should venture to go farther. This system, I am confident, will meet the just and reasonable expectations of the people. I am not prepared to go farther at this time. I am not ready to peril the Constitution in an effort to gain an elective judicial system, a system which does not meet the cordial assent of all the people in those States where it has been adopted.

Mr. President, I feel that I am pledged by every obligation that can bind a man of honor not to propose, advocate, or vote for an elective judiciary,

in this Convention. Other members may not be under any pledges or in any way bound by obligations either expressed or implied. I may err in opinion, but it seems to me that the majority are pledged to the people, at least, by the obligations which the silence observed during the canvass imposes, not to press upon the Convention an elective system. I put it to gentlemen to say, if it is consistent with the fairness, with the candor and frankness which should ever mark the actions of public men, to avoid, studiously avoid, the question before the people, and then come here and advocate a system they kept out of sight during the canvass? Is this fair dealing? Is it honest towards the people? Is it fair towards our associates who were and are opposed to an elective judiciary, and who would rather have let the Convention fail than to take such an elective system? Having blinked the question during the canvass, I cannot consent here to advocate it. I may err in my opinions, but I am confident, that some of our best friends would have voted against calling the Convention if they had supposed that the Convention would make a change so radical as an elective judicial system in Massachusetts.

At any rate, Mr. President, I am pledged by every obligation that can bind an honorable man not to vote for the election of judges by the people. During the two years that the Convention question was canvassed before the people, I took some little interest and some little part in advocating the Convention. At all times and upon all occasions, in public and in private, I said to those who approached me upon the subject, that it was not the purpose of the friends of the Convention to make the judiciary elective. I suppose, Mr. President, that there are from fifty to one hundred letters of mine scattered over the Commonwealth upon the question of the Convention, in which I have expressed my opinion, that the Convention was not called to make the judiciary elective—that the friends of constitutional reform were not agreed upon either the principle or the expediency of making the judges elective, and that the question would not be pressed by the leading friends of the Convention. I had, Sir, a right to say and write this to our friends, who were in doubt. In all our documents—in our addresses and resolutions we observed a “masterly” silence in regard to the question. In the report of my friend for Erving, (Mr. Griswold,) which gentlemen all over the house are so fond of referring to as the chart by which their course is guided here, no reference is made to that question. In the addresses put forth by state committees and state conventions, the question was studiously avoided. During the last year's canvass some five hundred speeches were made under the direction of the State Central Committee of the Free Democracy. My eloquent friend for Northborough, (Mr. Burlingame,) the representative of “young America” on this floor, will tell you that our speakers were urged to advocate the Convention, but they were cautioned to avoid committing the friends of the Convention upon the question of an elective judiciary. My eloquent friends, the delegate from Lowell, (Mr. Adams,) and the delegate for Abington, (Mr. Keyes,) will remember that on this question we were to maintain a prudent silence. In my opinion this prudent policy carried the Convention. Now, Sir, after going through a two years'

canvass in silence upon this question, giving pledges to hesitating and doubtful friends to win their support, it would not be manly or honest in me to vote for an elective system. If the result depended upon my vote I would not, I could not, vote for it. I have thus frankly stated the position I occupy upon this great question; I cannot, therefore, vote for the amendment to the amendment proposed by the member from Fall River, (Mr. Hooper).

Mr. President, I have put the question of a limited tenure of office to gentlemen of all parties, men of intelligence and character, and the response is almost invariably in favor of such limitation. Men who are in doubt concerning an elective judiciary readily assent to the proposition to limit the tenure of office. It is more in harmony with American ideas and institutions. A leading member of the Boston bar—not a friend to this Convention, a gentleman who has served in the legislature many years—expressed to me the opinion, the other day, that two-thirds of the Boston bar were in favor of a limited tenure of the judicial office. A day or two ago a leading member of the profession, not long ago a distinguished district-attorney, expressed to me his entire assent to the amendment I have proposed, limiting the tenure of the judges of the supreme court to ten years and the judges of the common pleas court to seven years, these judges to be eligible to reappointment, but in no case to continue in office after attaining seventy years of age. Sir, in my poor judgment, the adoption of this limited judicial tenure will meet the approval of members of the legal profession generally, and of the people. All learned and upright judges will be reappointed. Chief Justice Greene, of New Jersey, a Whig, was reappointed last winter by a Democratic governor, with the cordial assent of the bar of that State, of all parties.

I am told, Mr. President, that the tenure of office is too brief—that men of learning and talents will not go upon the bench for so brief terms. Now, Sir, it so happens that the justices of the supreme court have held their offices, on the average, about *thirteen* years; and the justices of the court of common pleas about *six* years. During the past twelve years eighteen judges of the court of common pleas have been appointed. The rapid changes in that court go to show that gentlemen go upon the bench of that court—not to continue for life—but to increase their reputations, and then go again into practice. This practice will continue until the salaries are larger than they now are. If the term of office is fixed at seven years, judges will feel bound in honor to remain in office, at least, during the term for which they were appointed. I may be mistaken in the opinion, but I believe that if the tenure of office is fixed at *seven* or *ten* years, the justices of the court of common pleas will continue in office, at least, as long as they now do.

Sir, objection is made to the length of the term I propose for the justices of the supreme court. I think the tenure of *ten* years none too long. We want upon the bench of the supreme court of Massachusetts, men of eminent ability, of profound learning, and of ripe experience—men who will illustrate and adorn our judicial history. We must hold out inducements enough to satisfy the most gifted men of the legal profession to accept seats upon that bench. The tenure of *ten* years, with the power of reappointment, so

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far as the tenure of office is concerned, will secure the services of men of exalted talents for that tribunal. My friend for Abington, (Mr. Keyes,) opposes the length of the tenure. He tells us that the justices of the supreme court are older men than the justices of the court of common pleas, and, therefore, the tenure of office should not be so long. My friend is mistaken, I think, in his views upon this question. If we wish to have upon the bench of the highest judicial tribunal of the State the first legal talent of the profession, we must pay good salaries, and make the tenure of office long enough to secure that talent. I am, therefore, clearly of opinion, that ten years should be the tenure of the office. I had rather fix the tenure of the justices of the common pleas at ten years, than to reduce the other to seven years.

I am, Mr. President, as anxious as any one can be to secure the independence of our judicial tribunals. To that department all of us should look with entire confidence. The humblest man in the Commonwealth should repose in security upon the inflexible justice of the judicial tribunals of the land. No one, here or elsewhere, desires more sincerely than I do to secure and preserve an able, learned and pure judiciary—as impartial “as the lot of humanity will admit.” If I supposed that the limitation of the tenure of office would impair the independence, or lessen, in any respect, the exalted character which the most devoted admirers of our judiciary claim for it, I would not advocate or vote for the limited tenure.

Gentlemen seem to fear that if the judiciary is made elective, or the tenure of office limited, that political considerations will influence the choice of judges. Have not political influences controlled the choice of judges under our present system? Have not our judges been strong political partisans? How does it happen that only two judges of the supreme court were members of the Democratic party, for more than half a century? Yes, Sir, for more than fifty years, the judges of that court, with only two exceptions—governor Lincoln for a short time, and governor Morton for about fifteen years—were Federalists or Whigs. Many of these judges were not only politicians, but ultra politicians. Chief Justice Parsons was the brain of the famous Essex Junto. Chief Justice Parker was an ultra Federalist, and the present Chief Justice, I venture to say, entertains his political opinions with all the ardor and zeal of sincere conviction. Some of the most active, I may say violent politicians of the Commonwealth have been appointed judges; and political considerations controlled their appointments. Every man of ordinary intelligence knows this to be so. Then why this extreme fear that politicians will be elected to the bench, or that politics will influence their appointment? It has ever been so, and I venture to say that it will continue to be so, in the future as in the past. It is said, and I have reason to believe it to be so, that Judge Fletcher desired for several months to leave the bench before he did so, but that he was induced to continue upon the bench until a Whig administration came into power. Then, in haste, he resigned, and a successor was appointed—of the Whig school of politics—an able man, I know, and an able judge I am sure he will be; but a more violent political partizan it would be difficult to find in the State or in the nation. Sir, I venture to say that the judges of our supreme court have

been, and are now, strong, zealous politicians—as much so as any other class of public men. It has been so in other States. Chief Justice Spencer, in New York, played, while upon the bench, a leading part in the political intrigues that have ever marked the political history of that great State. He was the Warwick of New York politics and politicians, while on the bench. That great State has adopted the elective judicial system. Politics may now influence her judicial officers; but the judges under the present system will not influence so powerfully the political affairs of that State as they did from 1800 to 1825, especially while the judges were members of the council of appointment.

Sir, our history affords abundant evidence that the judges in this and other States have been men of as active and strong political feelings, prejudices, and opinions, as any other class of public men. And I am sure our history shows that in the exercise of their judicial functions they have not been influenced, to any great extent, by their political opinions. I have no fears that the limitation of the judicial tenure will tend to the introduction of political influences into the judicial tribunals of the Commonwealth—at least, to any greater extent than they now are and ever have been. Do not gentlemen, who are so keenly alive to the dread of political influences, know that the Lord High Chancellor of England is placed in power solely on political considerations—and that he holds his office on the sole tenure of the political power of his party? The tenure of the highest judicial officer of the British Empire depends upon the power of his party to retain the control of the government. Yet gentlemen are alarmed at the idea that the tenure of office in Massachusetts shall be fixed at ten years.

If the friends of constitutional reform desire to do anything, I hope they will sustain the resolution I have proposed. It is all we can do at this time, and I believe it will meet the wishes of the people, who I am quite sure are not yet ready to adopt the elective system. Other States have adopted it. Let them try fairly the experiment. If it works well we can follow their example. Massachusetts should

“Be not the first by whom the new is tried,
Be not the last to lay the old aside.”

Mr. SCHOULER, of Boston. I said a few words, the other day, in favor of an elective judiciary of probate. But, Sir, I am opposed to making your judiciary, either of the supreme court or court of common pleas, elective. The gentleman from Natick, (Mr. Wilson,) said, that in all the circulars they had sent out, in all the addresses that had been written, or in all those one hundred and fifty letters which he had written, in answer to inquiries about the Convention, there was not one word said in favor of an elective judiciary. Now I should like to ask that gentleman, if there was anything said, in any of those documents, about limiting the tenure of office of the judges of our courts? I ask him if there was anything said, in any of these addresses which have been issued by either party, or if there was anything said, in the address or report of the committee, of which the gentleman for Erving, (Mr. Griswold,) was the chairman, in favor of holding the Convention, which took ground in favor of limiting the term of the judges? I think he will find, that there is as little said

upon one question as the other. Now, Sir, I prefer to let the Constitution, with regard to the judiciary, remain just as it is now; that is, that judges shall hold their offices during good behavior—that, as long as they perform the duties of their offices well, they shall remain there, uninfluenced, either by an outside, popular pressure, or by legislative or gubernatorial pressure.

Now, Sir, according to this Report, we are to limit the term of the judges of the supreme court to ten years, and of the court of common pleas to seven years. Just so soon as a judge has been on the bench long enough to acquire a thorough knowledge of his profession, you would have him liable to removal. Now, Sir, I would not make any such provision. I believe, that when a man goes upon the bench, he goes there for a good purpose. He goes there to study his profession, and to prepare himself in such a way, that he will be able to give judgment in accordance with the law, and in accordance with what is just and right. And I cannot see any difference in principle, between the amendment proposed by the gentleman from Fall River, (Mr. Hooper,) and that adopted by the Committee of the Whole, offered by the gentleman from Natick, (Mr. Wilson). As far as any expression of public opinion goes, there is just as much to be said in favor of one plan as the other. If either question has been discussed at all, in opposition to the present system, it has been discussed in favor of an elective judiciary, and not in favor of limiting the term of the judges to a certain period, and then reappoint or elect them, as the case may be. Now, Sir, as far as the popular argument is concerned, it is in favor of the proposition of my friend from Fall River, and against that of the gentleman from Natick. But as I am opposed to both propositions, and as I believe the people of the Commonwealth, a large majority of them, are opposed to both, I shall vote against the amendment of the gentleman from Fall River, and then against that of the gentleman from Natick.

The gentleman from Fall River, this morning, spoke in favor of an elective judiciary, and, as I understood him, brought up some historical facts in regard to England, to support his argument. He said, that in England, where the judges had been appointed for life, they had not always been free from bias in their decisions, but that they had lent the great weight of their decisions in favor of the strong arm of the crown. Well, Sir, that may all be very true, but the gentleman did not tell us the whole facts of the case. It is very well known, that when such men as Jeffreys, were appointed by the crown, they were appointed from the fact that they could be made the tools of the crown. Now, Sir, I am opposed to having judges sit upon our bench, who can be made the tools of the executive, of the legislature, or tools of the people. I care not which. And, so far as I know, since the Revolution of 1688, the judges in England have been honest men. At any rate, I think we have had none who were not honest.

But, Sir, the reason why I am opposed to an elective judiciary, or in favor of the judges of our courts being appointed for a limited time, is this: I do not see that they are not likely to be as much influenced by popular argument, and popular impulses, as other men, and I wish to have them so constituted, so that we shall feel

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that they are not influenced—so that we shall feel, when we go before a court, that we have a judge upon the bench, or judges there, who are so constituted that none of those popular appeals or popular influences can warp their judgments. I wish to have all the other departments of government made as popular as they possibly can be, by election; but that great stand by, that tribunal which is to construe our laws, which has our lives, our liberties, and our property in its hands of such a character that we should feel, when we go before it, that we are before an impartial and fair tribunal, free from party influence, and free from all other influences—that we are before a court of justice where justice will be meted out to us.

It is for these reasons, that I am in favor of the Constitution remaining as it now stands, in reference to this branch of the government. I would not touch it, in one way or the other. But as to the propositions of the gentlemen from Natick and Fall River, I would not toss up a copper between them. Upon the popular ground, I should prefer that presented by the gentleman from Fall River, and let the judiciary be made elective. But I cannot see any distinctive argument that can be raised in favor of either above the other. Any gentleman who will go for the proposition of the gentleman from Natick, cannot possibly object to that of the gentleman from Fall River. But I believe a majority of the Convention are opposed to both propositions. Let the judges of your courts remain in office during good behavior, subject to removal by the governor and council, upon the address of both branches of the legislature, and I think we have a perfect assurance that our judiciary will be well guarded, and that they will guard well the rights of the people. With these views, I shall vote against any proposition which may be made to affect the tenure of the judiciary of Massachusetts.

*Mr. HOOPER, of Fall River. With the gentleman for Manchester, (Mr. Dana,) I can truly say, that the discussion, upon this subject has come up very unexpectedly to me, at this time. I did not suppose that it would come under consideration to-day, and I was in hopes that I might have had an opportunity to have made some little preparation, to have presented my ideas in a clearer and more collected form. But it has been my misfortune in attending the sittings of this Convention, that I have had no opportunity of making preparation of any kind upon any subject presented for consideration here, as I ride over one hundred miles every day, in the cars, and walk more than two miles, in travelling to and from the Convention, besides attending to considerable professional business. [Laughter.] The only time I have had to investigate any subject, was while riding to and from the Convention. I have not attempted, therefore, to make a set speech on any subject, nor do I intend to do it. What I say is, consequently, always upon the spur of the moment. This question has come up unexpectedly. It is a question of great importance.

I was not aware that gentlemen of this Convention were committed and precluded from coming to a free and unbiased decision of it upon its merits. I was not aware that this thing had been settled prior to the Convention being convened. I had not seen it agitated in any addresses and

circulars, it is true; but I did not suppose that that was any reason for precluding us from discussing it, like all the other questions which might be raised in relation to matters embraced in this Constitution. I supposed that we came here for the purpose of revising the Constitution, and that the majority could act upon whatever questions they saw fit, and send out the result of their deliberations for the acceptance of the people. If it be a fact, that this matter has been prejudged, and the whole thing settled upon the part of some gentlemen, I presume it does not preclude other gentlemen who are not so situated upon this matter, from carrying out the views they may entertain, or what they may suppose to be the wishes of their constituents. It is upon this ground, that I make this motion. I advocate it because I am individually in favor of it, and because I believe it will be acceptable to my constituents. It strikes me that this is one of the reforms which we are called upon to make, and although, as I have admitted before, there is no great evil existing under the present system, nor do I suppose that we shall suffer very materially if we do not change it, still I think it better to carry out the theory of our government in the fundamental laws, and make them harmonize with each other, rather than retain this relic of monarchy, which has come to us from our ancestors across the water. I say that we had much better place this thing in harmony with the theory of our institutions, and let the sovereign people, if the sovereignty resides in the people, appoint their own agents. That they are as fully competent to decide in this matter, as in any other, I presume no gentleman upon this floor, will pretend to deny. It seems to me, the amendment which has been offered by the gentleman from Natick, (Mr. Wilson,) is open to the same objection, that has been urged against making the judiciary elective for a term of years, on the ground that these officers will be influenced by party considerations. Will not the judge upon the bench whose term of office is about to expire, and who desires a reappointment, be as apt to enter the arena of politics and endeavor to secure the ascendancy of his party in order to secure a reappointment, as the judge who depends upon the people for a reelection? Will not the judge be as liable to be influenced by these considerations, when holding his office under an appointment from the governor, as when holding it under an election by the people? I think he would be influenced more under the appointing power than he would be under the other method. We have had experience of the working of the elective system in various parts of the country, to which we can refer, and we find that judges of the most upright and estimable characters, have been selected. I believe in Vermont, a chief justice, who was chosen by the legislature, was reelected more than twenty years in succession, by his political opponents. In New York, the judicial system to which the gentleman for Manchester, (Mr. Dana,) alluded, as being so corrupt that it could be endured no longer, was a system of appointment, but now they have changed it to an elective system, to get rid of the corruptions. There, the judges, and the higher judicial officers, were appointed, until by the revision of their Constitution in 1846, a change was made, and the judges are now elected by the people. One good feature about this system is, when you get a very good judge, the people will

be very apt to reflect him as long as he chooses to serve, and if, unfortunately, a bad judge should have been elected, they will be very apt to reject him if he should again come up as a candidate. This, it seems to me, is an important point. I think the adoption of this system will have another effect, and one which I think highly desirable, and that is, that it will elevate the character of politics. It will induce the more respectable class of citizens to mingle in the primary assemblies, to see that the right class of officers are nominated, and not leave the matter in the hands of mere politicians. I am in hopes that we shall carry through this measure and send it to the people, and I believe that it is a measure which they will sanction, and one which is greatly desired by them.

Mr. KEYES, for Abington. I trust this may be the commencement of a debate which will last long enough to give us all an opportunity of investigating this subject thoroughly, so that we may be able to vote upon it intelligently. I do not certainly feel prepared to vote upon this question to-day. So far as regards electing judges by the people is concerned, I see nothing so alarming about it. I do not understand how gentlemen who are for stripping the governor of all power, authority, and dignity, taking away the appointment of every officer from him, and leaving everything to the people, upon the ground that they are the best fitted to decide in these matters, should hesitate when it comes to the election of judges by the people. I do not see what there is in the character, or office of a judge, to prevent him from being selected by the people, just as well as any other officer. My early predilections were not democratic, but rather the reverse, and I was rather disposed to invest the governor with some dignity and authority in his own hands, and if I could favor the appointment of judges by the people, it would be somewhat upon the ground of not stripping the office entirely of its importance, dignity and authority. But, I believe, of all the officers which the people or the governor would be called upon to appoint, that the people would make the best selection, use the most discretion, and come the nearer to a correct decision, in the election of judges. It so happens that judges are placed in a position in the discharge of their duties, which makes them stand out more conspicuous than any other class, and their characters are better understood, are more open to discussion and scrutiny, and the people can judge better of their ability, integrity, and personal honor, than almost any other class of men. The people are more conservative even than governors themselves, and where officers of this character are to be elected, the fault generally is that they keep on electing them continually, until they become incapacitated for the discharge of the duties of their offices. Take, for example, the case of county registers, treasurers, and other county officers. They are elected, generation after generation; the offices are kept in the same families, and they are elected in spite of political parties. Even in my own county these offices have been kept, for two or three generations, in the same family. In regard to the argument which has been used here about the political influence that will be exerted upon judges, let me say one word. It is very rarely that a legal question has anything to do with politics. It is rarely that a question arises in any court, the decision of which

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affects parties or politics one way or the other, and whenever such a question should arise, why the judge may be influenced as well by somebody else as by the popular voice. Judges are mere men, are subject to this influence, and are as liable to act under it, perhaps, as any other class of men. It is not a new thing that men have given solemn judicial opinions in their law offices, and afterwards reversed them when upon the bench. I do not know as it makes any very great difference whether the influence which acts upon them comes through the party clique or class into which they enter when they become judges, or whether it is the great voice of the people which shall influence them. Why is this popular influence more dangerous in regard to judges, than other officers? That is what I desire to find out by the discussion. I am not prepared to say that I shall vote for an election of judges by the people. If the people do not desire them elected, they ought not to be elected. I have one reason for wishing them to be appointed by the governor, and that is, that he may have something to do, that he may have some responsibility, and that it will give to his office more character, dignity, and responsibility, especially as it is intended to strip him of all other kind of appointments. They elect judges in some of the States, and the system has worked well. I think it is the greatest bugbear which has been introduced into this Convention, that, by the adoption of this system, our judiciary is to be destroyed, and our courts of justice corrupted. I think it is time the idea was dissipated, for no reasons are given by gentlemen who have held it up before us. If there is any foundation for it, I should like to know what it is. In Vermont, the system of an elective judiciary has been tried successfully. I have been there myself at repeated times, have seen the judges upon the bench under the operation of the different systems, and I could never tell the difference, and after going there six or seven years, I am not sure that I found out that they were the judges elected by the people. As I intimated before, I came up to the Convention to-day to listen to the debate upon this subject, and hear the various arguments urged for and against the election of judges by the people. I think the limitation of time already adopted is a great improvement, because the tendency is not to take men at the end of their term and turn them out of their office, if they are proper men. You do not find, every hour of the day, men who are fit to be judges of the supreme court, and whom the people would wish to elect, or whom the governor would wish to appoint. I happen to have some experience in this matter, and I know that it is somewhat difficult to find men whom the people will clothe with the high and distinguished office of judge. So far as regards politics, that matter seems to be left entirely out of sight. You may take the bitterest politician, one who has rendered himself even obnoxious to a large majority of the people, and place him upon the bench, and he drops his political mantle at once, and ceases to be, to some extent, a politician. I do not know as I may allude to a case of this kind within my own personal observation, where, after an individual was elected judge, it was never supposed that party considerations had the slightest influence in his decisions, and not one intimation of that kind was ever made against him. Gentlemen are willing that the people should do

everything but elect their judges. Why cannot the people elect these officers as well as anybody else? The danger apprehended from any supposed political influence which might be exerted upon them, has been denied, and proved to be false, in every case where it has been tried. They had a ticket for judges a few years ago, in the State of Pennsylvania; and there was one man nominated on the ticket with the rest, who, for some cause or other, was not thought to be a proper person for a judge. What influence did party considerations have in that case? The other members of the ticket were elected by triumphant and overwhelming majorities, but he was left far behind on the ticket, and utterly defeated. This fact, and others of a similar character, show that wherever judges have been elected, party considerations have had but little to do in their election, and it seems to me, from the observation I have had, that of the various kinds of offices, there are none more out of the reach of political partizanship, or would be affected by party politics so little, as this very office of judge. We have had in the last year or two, upon the bench of the supreme court in this State of Massachusetts, an individual who, not three years ago, was the most unpopular man in the Commonwealth, and who had been renounced, abandoned, and abused by all parties. He was taken and placed upon the bench, and, if the people had selected him, it would have been one of the strongest arguments that could have been urged against an elective judiciary, and yet three months had not elapsed before he became one of the most popular judges in the State. I did not rise to argue in favor, and I do not know that I shall vote in favor, of electing judges by the people, but I believe there is a groundless and unnecessary fear upon this subject. I believe that thousands of people who hold up their hands in opposition to such an act, do not know why or for what they do it. It seems to me to be a little inconsistent, while we are talking about the people being the conservators of virtue, intelligence, and honor, the only reliance and source of safety, to tell them that they are not to be trusted with the election of those officers in whose administration of office they have a great and vital interest.

Who cares who is elected sheriff unless he expects to be hanged or put in prison? [Laughter.] Nobody. But every-body, even without their own consent or control, will be at the mercy of the judges, and the people feel and know that they have a solemn interest in the character of the bench; and if they can take care of anything, I believe they can take care of that. I do not believe the people rule in virtue and righteousness any more than some single men, but I believe that if any business can be safely and securely intrusted to their administration, it is the election of the judges, just as much as that of the governor himself, and even more than that.

I hope, Sir, that before I shall be called upon to vote upon this subject—and I hardly know how I shall vote—I may know what the people in various parts of the Commonwealth think of it. I think there has been a change in the views of the people on this subject; for formerly, I know there was an almost unanimous voice against it. I know I have been led to look upon it with different eyes from what I had formerly, in consequence of hearing the testimony of men from other States in regard to the results of

the election of judges by the people in those States.

The arguments in the newspapers within the last fortnight, as reasons why the judges should not be elected by the people, are the very reasons why they ought to be elected by the people. Still they were not good reasons. A man in Virginia or North Carolina, whose character was such that he ought not to be a judge anywhere, whom his very neighbors hated and vilified, said himself that if it was to depend upon a popular vote, he would not have been elected, and therefore it was his opinion that judges ought to be appointed. [Laughter.] Such arguments do not convince me that it is best to retain the appointing power.

But I have said more than I expected to when I got up. I am not the proper person; my life and education have not been such as to enable me to judge on this subject, perhaps. I have sat in a jury box, and attended courts as a loafer, and seen how things occur, and I know from the experience of men that it is one of the safest duties which can be left with the people, to allow them to elect the judges.

Mr. HOLDER, of Lynn. I was a little surprised, this morning, when I heard the subject which is now before us, announced for discussion, but still more surprised when I found that the question was near being taken; for it is a question which I consider of great magnitude, and one which should call out all the talent of the Convention. I hope, however, the amendment now under consideration will be adopted. I believe the people are ready and anxious to assume the power of electing their judges; and the remarks made by the gentleman from Middleborough, for Abington, and from Fall River, meet my approbation.

It has been said that the election of the judges by the people would destroy their independence, and make them subservient to political parties. I beg leave to differ from gentlemen who take that view of the subject. I believe it will clothe them with a true and god-like independence, based upon the popular will of the people. That Sir, is always true and unerring, and should always be regarded by all men who are in authority. I would ask gentlemen of this Convention if they wish to give the judge a salary and continue to guarantee it to any class of individuals who shall not be chosen by the people, and who are not popular with the people? If we do this, what kind of men are we to expect will be appointed? Are we to expect men of the full growth and stature of men? Are we to expect men who regard the interests of the community at large? Are we to expect men whose interests will be blended with the people's interests, and whose actions will be based on justice, mercy, and all those kindred virtues, which go to adorn humanity? If we should be so fortunate as to obtain men possessed of these virtues, under the appointing power, as we have always been fortunate enough thus far to do, it will not be on account of our action. If we reject this amendment, the result will be to make men morose and unkind, and will tend to make them irresponsible on account of the security of the tenure of office.

Now I wish to have the judges elected by the people for the purpose of placing them in the right position. If we take a retrospective view of our own lives, we shall find all the attain-

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ments we have made in virtue were on account of our dependence on, and connection with, the people. I advocate the election of the judges by the people, because I believe it is an American principle. I know we learn from history that the time was, when rulers even fixed the price of the wages for men, and seemed to think that mankind could not go alone unless they directed their steps. But in these States, in the nineteenth century, are we not willing to take the responsibility to elect the men who have the care of the lives, the property, and the dearest rights of our citizens? For one, I am ready, Mr. Chairman. And I feel that it is based upon every principle which it has been my province to know or learn in this goodly State in which I live. I believe it is the duty of this Convention to take away this appointing power and give it to the people, and not only proclaim their love for them, but trust them with entire confidence. This is what I believe, and I believe that no man who would be a governor in this State would wish to have that vast responsibility placed upon him, of appointing the judges for the people. And if gentlemen in this Convention will look at the matter right, even if governors are willing, I hope they will not be willing to intrust them with it. It is a power which belongs to the people; they are ready to exercise it and I hope they will retain it.

Mr. HOYT, of Deerfield. It was not my purpose to say anything upon this subject, but I wish to say a few words in regard to some remarks that have fallen from other gentlemen. It has been said that this proposition was not sent forth to the people generally when the call for this Convention was issued. That, I believe, is true. I know very well, however, that the constituency I have the honor to represent, regarded this question as one of the first and most important questions which were to come before this Convention; and I know that the proposition for calling this Convention obtained many votes among them, on account of the hope that this reform might be effected. I also know, that it was regarded by the friends of constitutional reform, as one of the most vital questions which would come before this Convention, and I believe that if the proposition to elect the judiciary by the people, is to go forth to the people, that it will be the most popular proposition, in that part of the State where I reside, of any proposition which has yet been adopted by this Convention. It is not my purpose, however, to say a single word with regard to it; but it does seem to me, from what I know of the views of the people in various parts of the Commonwealth, that it is regarded as a most important object, and one which will be hailed with the utmost satisfaction by almost every friend of the Convention among the constituency which I have the honor to represent. And I know something of the feeling in the towns in my vicinity, and I think that it will give great satisfaction there, also.

Mr. FRENCH, of Berkley. I have listened with a good deal of attention to this debate, but still I am unable to understand how a judge, elected by the people, should be so much more deeply impregnated with political matters than one appointed by the governor. I do not see why a judge appointed by the governor would not be as liable to be led astray by political prepossessions as a judge elected by the people. I am for retaining in the hands of the people all

the power that belongs to them. Power, it is said, is always stealing from the many to the few; and that power which belongs to the people, I want them to hold. The gentleman from Boston, (Mr. Schouler,) tells us, that he wants the judges appointed for life. Now, suppose these men, appointed for life, should happen to die. [Laughter.] We should have nobody left who would be able to take their places. I think that it is proper, and necessary, and right, that judges, and all other officers of the government, should remember that they are mortal, and that they ought, at certain seasons, to retire; and then if the people think that they are the best, they can reelect them and still let them go on. But there is something which strikes my mind as a rather curious question—how it is possible that a judge appointed by the governor, should have less political matter about him, than one elected by the people. I cannot say that it is not so, however. I hope that the amendment of the gentleman from Fall River will be accepted, and let the people see whether they are capable, inasmuch as they are capable of electing a president of the United States, of electing their judges. If there is talent in the whole State of Massachusetts, I guess the people will find it out, and I guess they will make no mistake. But if they should happen to make a mistake, it can afterwards be corrected; but to create an appointment for life is to make them wholly independent, to make them independent of everything on earth, with nobody to call them to an account; and if they should happen to be arbitrary, they may do just as they please, though that has never yet happened in this State, and I hope it never will.

Mr. WOOD, of Middleborough. If I was in favor of the amendment made in Committee, of course I should favor this proposition, which is now before the Convention. I presume I am like many who came to this Convention, who came, not having looked into this subject thoroughly, and fully made up an opinion. I was against the election of the judges by the people; my habits of life and education were such. I believe it is the case with the legal profession generally, that they get a reverence for the judiciary from their leading influence and from reading their decisions, which causes them to suppose that their appointment by the governor, as heretofore, is necessary. But when my mind was led to follow out the principles which have been acted on here, I came to a different conclusion; and I believe we should come to a different conclusion by an application of those principles, and that the election of the judges should be by the people.

The gentleman from Natick, (Mr. Wilson,) has stated that he believes it was not one of the purposes for which this Convention was called. Now, I believe that no gentleman knows better what objects the people wished to accomplish than that gentleman. But I take it that no one knows or can tell for what purposes particularly this Convention was called. It appears to me that what has been called the reform party, the friends of this Convention, have in some things not been quite bold enough, have been too fearful of carrying out their own ideas, lest the people should not sustain them; and therefore they have taken a kind of middle ground. It appears to me that this is one of those cases in which we should not leave the judiciary as it was, nor provide for their

election by the people, as other States have by their modern Constitutions; but should take a middle course and provide that their tenure of office shall be limited, while they are still appointed by the governor. It appears to me that is the right course for this Convention—to submit that proposition to the people and let them pass upon it.

We are called here to deliberate and submit propositions to the people. Some say the people are not ready for this. Others say they are, and wish for it. Why, then, not submit it to the people, and let them act upon it? I know that many people are expecting it, if others are not, and many people wish to act upon it, if others do not. Why not put it before them, and let them vote upon it?

Reference has been made to other States. I submit to this Convention that there are fourteen States, if I have counted right, which elect their judiciary. This practice has been gradually increasing, and where can you find a State which has once adopted the plan of electing by the people, going back again to the old plan? Can any one present any such case, of any State? If they cannot, letters received from individuals, and opinions of different men, cannot weigh much against the deliberate opinions of these fourteen States, which, beginning with a few, have gradually gone on to this number, and these among the most influential States, like New York, Ohio, and nearly all the Western States, and some of the Southern States, which have adopted this plan.

Why not submit this to the people, now that a Convention has been called by them, and pursue the course which other States have done which have altered their Constitutions recently. Go forth with it to the people, and not hold back because we fear the people will not sustain it. Let us try it.

With regard to the tenure of office, my reason for desiring that it should be limited, is this. It is found in the present Constitution:—

“In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail of discharging the important duties of his office with ability and fidelity, all commissions of justices of the peace shall expire and become void, in the term of seven years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the Commonwealth.”

This is a good reason, and it is a reason that should apply to other cases as well as to justices of the peace. Why not make the tenure of other officers limited also, for the same reasons? It has been stated here that if a judge did not behave well, he can be removed. How? In two ways; first by address, at it called, to the governor, requesting him to remove a judge. I think that course has been pursued once, and so far as I am able to ascertain, once only, since the formation of this government. About the year 1803 or 1804, a judge of the supreme court who became incompetent on account of a paralytic shock, and was unable to preside, was in this way removed. An attempt has been made, as many here present will recollect, to remove justices of the peace in this way, when they were acknowledged to be incompetent; but it could not be carried through the legislature, and why? It was said that the pro-

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vision in the Constitution was not intended to apply to persons where charges of criminal conduct were not preferred against them. Then you must pursue the mode of impeachment, and that applies to these cases and also to cases of mental or physical inability, like insanity or old age, and some such cases. It has in fact become inoperative except in these cases. If a judge becomes unpopular—if he has done anything for which he ought to be removed, he can only be reached by impeachment. I suppose it is pretty well understood now, after the experience of three or four years, that you have only your impeachment. Gentlemen know, if they will look into the history of impeachments, the difficulties that arise here; and these are so great that there have been only six impeachments in this State—one of judge of probate, Judge Prescott; one of notary public, one of sheriff, and three of justices of the peace. These are all the cases in which officers have been removed by impeachment since the formation of our State government. Why, Sir, gentlemen know very well that such a stain is thrown upon a man's reputation if he is impeached, that nothing would induce a legislature to present an impeachment, except in a case of the most urgent necessity. Nothing but the most gross cases could be reached in that way. People would hesitate to do it, seeing that it was casting a very great stain upon a man's character to have him removed in that way. He might commit a great many indiscretions, and might be very unpopular before they would proceed to such a course; they would wait for some evidence of criminality or immorality, or very great incompetency to perform his duties, before you could make an impeachment lie against him. It is next to an impossibility, although not entirely impossible. These are the two ways. Now why not have the other mode of doing this—why not let the people select their officers? Let them select them because they wish to have them selected in that way; and the effect would be good, not only upon the people, but upon the judges themselves. They now know that it is almost impossible to remove them; but let the tenure of office be limited, and I think it would operate well—it would meet the wishes of the people, and relieve every difficulty with regard to this subject. For these reasons, I am strongly in favor of this amendment.

Mr. MORTON, of Taunton. I rise to make a suggestion, which I do with unfeigned regret and reluctance. I am entirely unwilling, at this stage of our session, to do anything which should seem to delay the progress of business; but, Sir, all seem to agree that this subject came up very unexpectedly at this time; although it may have been very properly called up by me, yet members of the Convention, were somewhat taken by surprise. All the gentlemen who have expressed an opinion upon this subject have said, that it was one of very great importance. Some gentlemen, to my knowledge, deem it the most important subject which can come before this Convention during its session; and nearly or quite every gentleman who has spoken upon this subject, either upon one side or the other, has said that he was compelled to speak without that preparation, that deliberation and that arrangement of his ideas which are important to a proper discussion of a subject. About one-half of the Committee on the Judiciary are either absent or unable to

address the Convention at this time; and I believe that nearly or quite every one of those who were very desirous of making an argument against this proposition, are either absent or unable to speak at the present time. I am constrained, therefore, to suggest, in their behalf, the propriety and the expediency of postponing this subject to some future day. I ask nothing upon my own account, but I feel that it is due to other members of the Committee with whom I am associated, to ask that the further consideration of this subject be postponed until Wednesday next, at ten o'clock, and that it be made the special assignment for that hour.

The motion was agreed to.

Amendments of the Constitution.

Mr. NAYSON, of Amesbury, moved that the Convention resolve itself into Committee of the Whole upon the resolves reported by the Committee on so much of the Constitution as relates to Amendments and Enrolment.

The motion was agreed to.

The Convention accordingly resolved itself into

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Mr. Griswold, for Erring, in the chair, and proceeded to consider the said resolves, which were read.

The CHAIRMAN stated the question pending to be on the motion of Mr. Hale, of Bridgewater, to strike out the second resolve.

Mr. HALE, of Bridgewater. On the occasion when this subject was before the Committee, the other day, it was in the afternoon, and very few members were present. I then made a few remarks, stating briefly the reasons which induced me to make this motion. The subject now comes up before a fuller Committee, and I hope I shall be pardoned, if I restate very briefly the object which I have in view in proposing this amendment. The principle reason is, that it is entirely unnecessary. It seems to me intended to meet the case, that if the legislature in the year 1873, should fail or, refuse to comply with the express provision of the Constitution, then the sense of the people may be taken without the subject being submitted to them by the legislature; and reference was made to the circumstances, under the Constitution of 1780, when the time passed by and the people did not act upon the provision of that Constitution for calling a Convention in a particular year. But, by reference to the first resolution it will be perceived that the contingency is already provided for. The legislature, in any year, are authorized, by the first resolution, to submit that question to the people either before or after the year 1873. Therefore, it seems to me to be entirely unnecessary to have this second resolution inserted into the Constitution. I consider it unwise to insert any provision into the Constitution but those which may be absolutely necessary. At the same time, it is implying that the legislature may refuse to comply with the express provision of the Constitution. I do not wish to put anything into the Constitution which shall convey such an imputation as that.

Besides, it seems to me very imperfect. It is to be done merely by notice from the secretary of State. The resolution provides, that when the legislature shall fail to submit to the people the question of calling a Convention, the qualified voters in State elections in the several cities and

towns may, at the next general election thereafter, and upon notice of such failure by the secretary of the Commonwealth, proceed to vote upon the said question. They may or may not, as they choose. Suppose, for instance, that one-half of the towns should vote, and the other half should not; is the governor then to issue his proclamation for the calling of that Convention? There are many amendments to the Constitution proposed, imposing duties upon the legislature; but in no one that I know of, has there been any provision, nor has any disposition been manifested to have a provision, that in case the legislature should not comply with the duty assigned them, other steps should then be taken to supply the deficiency. I do not think that it is expedient that the question of revising the Constitution should be submitted to the people very often—certainly not every year. If the legislature on this particular year fails to present the question to the people, as here provided in the first resolution, and the people desire to have the question submitted to them, and desire the calling of a Convention, they will, in all probability, elect a legislature who will present the question to them. I therefore think, that it is entirely unnecessary to have any provision made for the anticipated failure or neglect of the legislature to perform their duty.

Mr. NAYSON. I would inquire of the Chair whether an amendment is in order at this stage.

The CHAIRMAN. The question is on striking out the second resolution. An amendment will be in order, if it be desired to perfect the part to be stricken out.

Mr. NAYSON, of Amesbury. When this subject was under discussion the other day, it was objected to the second resolution by the gentleman from Boston, that it failed to provide for the basis of a Convention, which, it was presumed, might be called in case the legislature should fail to perform the duty prescribed to them by the Constitution. Although this subject was fully considered by the Committee in order to prevent any misconception on the matter, I have consulted with several members of the Committee, since then, and now offer the following amendment. At the end of the resolve, add the following words:—

The said delegates to be chosen in the same manner, and in the same proportion, as the representatives to the general court are by this Convention directed to be chosen.

The CHAIRMAN. The question before the Committee is on the motion to strike out. But it is in order first to amend, and the proposition of the gentleman from Amesbury is, therefore, in order.

The question being taken, the amendment was adopted.

The question now recurred on the motion to strike out the resolution as amended.

Mr. WHEELER, of Lincoln. I understand that the question is on striking out the second resolution as amended.

The CHAIRMAN. That is the question.

Mr. WHEELER. I hope that that resolution will prevail. I was opposed to this resolution in the Committee, and I am opposed to it still. It seems to me, in the first place, that there is no rule or precedent for this in any other part of the Constitution, or in any Constitution of other States. You propose that the legislature shall,

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before they enter upon the discharge of their duties, take an oath to support the Constitution of the United States, and of the State of Massachusetts, and you propose, also, to submit to the people, twenty years afterwards, whether they will call a Convention to revise the Constitution you are now making. Then, by the second resolution, it is proposed to provide, that if the legislature in 1873, should evade or refuse to comply with this provision, some other officer—the secretary of State, I believe—shall perform it. Sir, this seems to me to be not only wholly unnecessary, but somewhat absurd. If this provision is to prevail, why not also incorporate one in the Constitution, providing that in case the legislature should neglect or refuse to pass wholesome and necessary laws, some other power shall take upon itself that responsibility, and pass such laws? That if our judges of courts should refuse or neglect to enforce the laws of the Commonwealth when they are appealed to for that purpose, some other power shall take their place and perform the neglected duties of these judges? Or that if the governor of the State should neglect or refuse to perform the duties which the Constitution devolves upon him, some other officer shall perform these duties? It seems to me, Sir, that such provision would be just as sensible and proper as the provision contained in this second resolution. You might just as well provide that, if the legislature should refuse to pass laws, a Convention should be called to pass them; that if your judges should refuse to enforce your laws, that duty should fall upon your sheriffs, or that, if the people of the Commonwealth should refuse or neglect to elect a governor, then that functionary should be chosen by your justices of the peace.

Sir, I am also opposed to this resolution on the ground that it implies what appears to me to be a very unwise distrust of your legislative assemblies. It is not courteous, to say the least of it. And, more than that, I am not quite of the opinion that all the wisdom, either of the past or the future, is to be found in this Convention, and that when it finally adjourns, all honesty, and truth, and patriotism, will die with it. Gentlemen seem to think that this Convention, in point of patriotism and wisdom, is as much above all future legislatures to be chosen by the people, as generals in the army are, in point of rank, above corporals. This is a sentiment in which I cannot participate, however much it may be indulged in by others. Even if you grant, that at the expiration of twenty years the legislature might fail to perform this duty, why then the legislature assembling the next year after that, or in any subsequent year, would have the power to perform it, seeing that the power to call a Convention rests with the people; so that if the legislature should continue to neglect, the people will still have the remedy in their own hands; and in this respect the provisions of the present Constitution are more liberal than those of 1778.

But, Sir, if all this neglect should arise, the same thing could only happen which has happened before; and when the people are fully prepared for a change, and convinced of the necessity of it, the demand will be made; and, having in themselves all power, that demand will be answered in conformity with their desires. Now, if this Convention should succeed in framing a Constitution which will be perfectly satisfactory to

the people of the Commonwealth for the next twenty years, I think they will have wisdom enough to elect such legislators as will not refuse or neglect to perform their duties.

For these reasons, and especially on the ground that it implies an unwise and unnecessary distrust of the legislative branch of the government, and regarding it as being wholly unnecessary, I was opposed to the resolution when it was under consideration by the Committee on Amendments, and I trust that it will be stricken out.

Mr. WILSON, of Natick. I have read these resolves as reported by my friend from Amesbury, (Mr. Nayson,) and I am satisfied that the first resolution is all that is necessary for us to pass. The proposition contained in the first resolution is this, that in the year eighteen hundred and seventy-three, and in each twentieth year thereafter, and also, at such other times, preceding or succeeding the above-named year, as the legislature may by law prescribe, the question—“*Shall there be a Convention to revise the Constitution, and amend the same?*”—shall be submitted to the qualified voters in State elections; and, in case a majority of the same thus voting, shall decide in favor of a Convention for such purpose, the legislature, at its next session, shall prescribe by law for the election of delegates to such Convention.

Now, I do not think that the second resolution is necessary in order to carry off the first one, because, in the year 1873, and in every twentieth year afterwards, it is not for the legislature to put the question to the people, but the Constitution itself does so. I would therefore prefer to have the first resolution stand, and to have the second and third ones stricken out. That is all that we wish, and I believe that such a course will meet with the general approbation of the Convention.

In regard to specific amendments, I prefer the Constitution as it now stands to the plan proposed. A majority of the Senate and two-thirds of the House of Representatives for two successive years, may propose specific amendments to the people. I think that is better than this third resolution, which allows a majority of the Senate and House of Representatives to propose these amendments to the people. I propose that the legislature shall have very little to do in regard to future amendments of the Constitution. I would allow the legislature the power of making specific amendments on some points of no great interest, but I would not allow a bare majority of the Senate and House of Representatives to do it. I, therefore, am clearly of opinion that we had better strike out the second and third resolutions, and have a Convention every twenty years, or as often as the legislature may think proper to put the question to the people, the people concurring therein; and allow the Senate and members of the House of Representatives of two successive legislatures to submit specific amendments to the people. I again repeat the hope that the Convention will strike out these two last resolutions, because I think that the first will answer every necessary purpose. I like the first resolution very much; but I think the others are wholly unnecessary.

Mr. NAYSON. It is to me a matter of entire indifference what disposition the Committee may make of the resolves now under consideration. They were canvassed before the Committee on Amendments as honestly and faithfully as under

the circumstances it was possible for them to be. They were fully considered—the whole matter, in all its bearings; and knowing the anxiety of a majority of this Convention to institute some measure which would hereafter prevent all possibility of doubt or cavil as to calling future Conventions, the Committee gave the question their most serious attention, and it was thought necessary that we should provide for the case of the neglect or refusal of the legislature to put the question to the people in 1873; and hence this second resolve was drafted and submitted to the Convention. If, however, the Committee of the Whole should be of the opinion of the gentleman from Natick, that these provisions in the second resolve are unnecessary, and that there will be no probability, on the part of the legislature, of any such contingency in 1873, then the Committee will do as the gentleman from Natick advises: they will strike out this resolution.

As to the third resolve, it was drafted by a gentleman who is not now here, and who unfortunately has not been present at any time when this subject has been discussed. It was adopted in Committee, as I supposed and believed, with entire unanimity, until I heard the remarks of the gentleman from Lincoln, (Mr. Wheeler,) a few moments ago. It is, however, entirely in the hands of the Committee, and whatever disposition may be made of it, as I have said, is a matter of indifference to me personally. I hope that such action will be taken as the case requires; and to the wisdom of the Convention, as manifested in its decision, I shall bow with deference.

Mr. HALLETT, for Wilbraham. I think we have now got upon a subject of a great deal more importance in regard to principle, than the Committee seem to be aware of. We are at the very foundation matter of things; and, if there be one subject on which we should act with more caution and deliberateness than another, this appears to me to be the very subject. It has occupied my mind not a little ever since this Convention came into session. Sir, we are now testing the value of our own principles—the method of carrying our principles of popular sovereignty into practice, as this Convention laid down and enforced them in debating the question of the Berlin vacancy, during an early stage of our labors; and it is now for the Convention to say whether it is the right of the people of the Commonwealth of Massachusetts to amend their own Constitution, or whether that right is to be given away. I want the fact distinctly stated. I do not want that either we, or any who are to come after us, shall sit in another Convention in which any member can rise and say, that they sit there merely at the mercy of the legislature, which might at any moment declare them an unconstitutional body; or, at the mercy of any governor of the State, who might disperse them at the point of the bayonet. Yet every gentleman knows that that was the precise condition in which we sat during the whole of the time that this Convention and the legislature of the State were contemporaneously in session, according to the avowal of some of the best judicial minds of the Commonwealth. And that denial of the people's right to hold a Convention without the consent of the legislature, was said to be a legitimate result, and a legal construction of one of the provisions of our present Constitution.

Now, Sir, we have in the existing Constitu-

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tion two principles laid down; one is in the Bill of Rights, that "the people have an incontestible, unalienable, and indefeasible right to institute government, and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it." That is in the Declaration of Rights; and the practical construction put upon it by some of the leading judicial minds of our State, who politically differ from the majority of this Convention is, that the people have a right to do this only provided the legislature of the State will permit them to do it; but that without that permission, no such right exists.

Now I want this sovereign right made plain, and I desire to say, on that part of the subject, that it has been thoroughly discussed in the Committee on the Bill of Rights, and so far as that Committee is concerned, you can get nothing out of them. They stand still upon the old Blackstone doctrine, that the practical sovereignty is in the government, and not in the people. The question has also been referred to the Committee on Amendments and Enrolments, and I must confess that it appears to me that that Committee have not done very much better than the Committee on the Bill of Rights. They have failed to recognize the right of the people to make or amend their own Constitution, without the consent of the legislature—they come back here and thus report it. Taking, therefore, the Report of this Committee and that of the Committee on the Bill of Rights together, it will be seen that you are put in a position declaratory, that the sovereignty is in the government and not in the people; for if, after the question has been raised here, you leave the Constitution as it has been construed, you exclude the conclusion of any popular right in it to hold Conventions to revise it. And thus we should be practically resolving to undo all we did and said in the "Berlin case." I do not believe that this Convention, or that the Committee mean to do any such thing; and therefore I would have them look carefully to the action of their Committees, both of which, in my judgment, have failed to reach this question.

And what is the question? In the first place, in the Bill of Rights we declare what rights the people have, and not what the legislature has; and therein have laid down, as is well laid down now, that the people have the right to change their own government. This provision has failed to produce its effect. It was in danger of being subverted. We have just escaped that, and now are called upon to change the Constitution in that regard. We are forewarned now, and we should do precisely as a principal would, whose agent had exceeded his power of attorney, or threatened to eject his principal, when he comes to the question of revoking that power, or giving a new one. He takes care to limit his agent expressly upon the particular point in question. So we must limit the legislature upon this question, that they may not undertake to interfere with the rights of the people to exercise the privilege of holding Conventions to reform their Constitution without being threatened with the bayonet, or with legislative repeal.

The other proposition before us regarding the mode in which the Constitution shall be amended, by a proposition coming from the legislature, refers to the power to be given to the legislature for that purpose, and therein the people are to

say just what the legislature may do concerning this question—and in this respect the proposition is a proper one—as to what powers the legislature shall have in calling a Convention.

The first proposition provides that the question shall be submitted, by an act of the legislature, to the people, whether they will have a Convention once in twenty years; and in case a majority shall decide in favor of a Convention, then the legislature, at its next session, shall prescribe the manner of the election of delegates to such convention. Now that leaves the matter entirely with the legislature, to act or not, as they see fit, and I do not believe that my friend from Natick, (Mr. Wilson,) will, on reflection, consent to leave that power, which belongs to the people, unrestricted in the hands of the legislature, because the legislature may, without any penalty whatever, refuse to submit this question to the people. How was it in regard to the first Constitution of 1780? If anybody can find out how the votes of the people upon that question were obtained, I should like to see the historical facts in regard to it. Though we know that the Constitution was adopted in 1780, yet when, in 1795, fifteen years afterwards, it was required that it should be submitted to the people, something or other was in the way, and it was so contrived that a majority of the people had no voice in that matter. And now it is assumed, from this neglect of the people, that they have given away all power forever to amend their Constitutions, without asking the consent of the government. And that is what the legislatures of 1873 and '93 will do if they do not choose to have a Convention; and therein, if the first resolution passes in this form, the second is extremely important, though I should prefer a different form. I wish the attention of the gentleman from Natick for a moment, in order that he may see whether, upon a re-examination of the subject, he is willing to leave the power unrestricted with the legislature, to say whether the people shall have a convention or not; or whether he will not rather leave it to the people, under a constitutional law, that shall execute itself? From this source has arisen the trouble from the beginning, between the people and the government, and therefore this second resolve is an important one, if we adhere to this as the best form; because it declares that in case of a failure by the legislature, and upon official notice of that fact, the people shall proceed to vote upon the question, in precisely the same manner as if the legislature had propounded it to them. That is a proper reservation of power. If the legislature fails to do it, the people should spontaneously do it. But under the existing doctrine, if the legislature fails to put the proposition to the people, the people cannot get at it in any way at all, so as to collect and enforce their own will—because we are told that if we hold a meeting illegally, without the authority of the legislature, or against it, we are a riotous assembly, and the governor, the justices of the peace, or the mayor, can call out the militia, read the riot act, and thus we are put in the condition of rebels. And if the people, being a large majority, muster a larger force than can be thus easily disposed of by the local authorities, or the volunteer militia, and the governor happens to be opposed to us, he sends off to the president of the United States, a case of domestic violence, which requires only his word for it, and down comes

upon us the whole military and naval power of the United States, if the president happens to be of the same party with the governor.

Now, Sir, I want to get away from such a state of thralldom, and put this matter in such a condition that if the legislature shall not make a proper provision in regard to calling and holding a convention, the people shall have some remedy of their own, which is practical and peaceful, and some mode of collecting the votes upon the question. And upon the point of making reservations in this respect, we have the wisdom and experience of ages, and we ought never to depart from it. I want to read what Jefferson himself says in relation to the right and duty of making amendments to a constitution. I will take a very remarkable passage found in the selection of his "cabinet opinions" in Rayner's Life of Jefferson, p. 377. Speaking of the elder age, he says:—

*"We have not yet penetrated to the mother principle, that 'governments are republican only in proportion as they embody the will of the people, and execute it.' Hence our first Constitutions had really no principle in them. Though we may say with confidence, that the worst of the American Constitutions is better than the best which ever existed before in any other country, and they are wonderfully perfect for a first essay, yet every human essay must have defects. It will remain, therefore, to those now coming on the stage of public affairs, to perfect—what has been so well begun by those going off it." * * * "Laws and institutions must go hand in hand with the progress of the human mind. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors." * * * "Each generation is as independent of the one preceding, as that was of all which had gone before. It has, then, like them, a right to choose for itself, the form of government it believes most promotive of its own happiness; consequently, to accommodate to the circumstances in which it finds itself, that received from its predecessors."*

Again he says:—

"It is now forty years since the Constitution of Virginia was formed. Within that period, two-thirds of the adults then living are now dead. Have, then, the remaining third, even if they had the wish, the right to hold in obedience to their will, and to laws heretofore made by them, the other two-thirds, who, with themselves, compose the present mass of adults? If they have not, who has? The dead? But the dead have no rights. They are nothing; and nothing cannot own something. Where there is no substance there can be no accident. This corporeal globe and everything upon it, belongs to its present corporeal inhabitants, during their generation. They alone have a right to direct what is the concern of themselves alone, and to declare the law of that direction; and this declaration can only be made by their majority. That majority, then, has a right to depute representatives to a Convention, and to make the Constitution what they think will be best for themselves. If this avenue be shut to the call of sufferance, it will make itself heard through that of force, and we shall go on, as other nations are doing, in the endless circle of oppression, rebellion and reformation; and oppression, rebellion, and reformation again; and so on, forever."

Upon that very principle it was, that Mr. Justice Wilson, of the supreme court of the United States, one of the ablest and truest commentators on systems of government we have ever had; whose Lectures on Government are eminently

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American; declared that the only panacea in politics was the peaceful mode of reforming government by the expression of the will of the majority whenever they desired to give it. I will quote a single passage from his speech in the Pennsylvania Convention, on adopting the United States Constitution, in 1787.

"Oft have I viewed with silent pleasure and admiration, the force and prevalence, through the United States, of this principle, that the supreme power resides in the people, and that they never part with it. It may be called the *panacea* in politics. There can be no disorder in the community, but may here receive a radical cure. If the error be in the legislature, it may be corrected by the Constitution; if in the Constitution, it may be corrected by the people. There is a remedy, therefore, for every distemper in government, if the people are not wanting to themselves. For a people wanting to themselves there is no remedy; from their power there is no appeal; to their error there is no superior principle of correction."—*Works of James Wilson, LL. D.*, vol. iii. 293.

Now we come to the simple question, 'How shall you collect the will of the majority?' In that is the only difficulty. Those who are in favor of a high toned government say you shall not collect that will but by the consent of the legislature, and therefore those who hold the power in the legislature can control the people. Now, I want a distinct provision to guard against that, and I want it put in such form as precisely to say to the legislature what power the people mean to delegate to them to touch the Constitution; and then I want a proposition brought in here in connection with this Report, that shall definitely secure the right to the people themselves to collect their own will, and put it in force, if the legislature will not do it; and thus practically carry out what I am sure we have maintained, and well sustained, in the argument upon that point, of the right of the people to reform their own government.

In the earliest period of our history, even before our own Declaration of Independence was made, we had one of the best commentaries upon this very question, in a work by James Burgh. After reviewing and refuting the then recent doctrine of Judge Blackstone, that the sovereignty was in parliament—the legislature—he said:—

"As the people are the fountain of power and object of government, so are they the last resource when governors betray their trust. And happy is a people who have originally so principled their Constitution, that they themselves can, without violence to it, lay hold of its power, wield it as they please, and turn it when necessary, against those to whom it was intrusted, and who have exerted it to the prejudice of its original proprietors."

These "Political Disquisitions" of Dr. Burgh are the most remarkable productions on government of that day. They were republished in Philadelphia in 1775, by Robert Bell, under the immediate patronage of Washington, Jefferson, Hancock, Wilson, Thompson, Sullivan, Dean, Rush, and the continental worthies. In them the doctrines of Blackstone, which gave all power of sovereignty to the parliament, were completely refuted. On this point of the people reserving the power of amending Constitutions, Dr. Burgh says:—

"In planning a government by representation,

the people ought to provide against their own *annihilation*. They ought to establish a regular and constitutional method of acting by and from themselves, without, or even in opposition to their *representatives*, if necessary. Our ancestors, therefore, were provident, but not provident enough. They set up parliament as a curb on kings and ministers, but they neglected to reserve to themselves a regular and constitutional method of exerting their power in curbing parliaments when necessary."—*Political Disquisitions*, vol. iii. 6.

That was a prophetic declaration for that period, and one which ought to be adopted and ingrafted into every constitution.

Now, to bring these remarks to a direct point. I want to put into the Constitution an amendment which shall say how much power the legislature shall have to propose amendments or conventions, and how much shall be left to the people independent of the action of the legislature; a power which shall enable the people to act in case the legislature refuses to act. For those reasons, I am in favor of the first and second resolutions as they are reported by the Committee, unless I can find a provision more direct and explicit. Then, having disposed, Mr. Chairman, of the principle contained in the two first resolutions, which is, in substance, for that is what we want, that a convention may be called whenever the legislature see fit to call one, and that they shall call such a convention once in twenty years; and if they refuse to do it, the people may call the convention themselves; then comes the third proposition, and to that I ask the attention of the Committee. It proposes to amend the present mode of making amendments to the Constitution by authorizing the majority of the legislature to send out propositions of amendments to the people for their adoption. Now, Mr. Chairman, I am opposed to that amendment, and for the reason that I think the legislature generally a very poor body to amend or make a constitution. I had much rather that a constitution should be made or amended by a convention. Nevertheless, I admit that there are occasions—but they are rare ones, and ought to be rare ones—in which it is desirable that the legislature may have the power to propose amendments and send them out to the people. Now, how much power shall they have, is the question. Shall they have the power to do so by a bare majority, or shall we require a two-thirds vote? The present Constitution requires a vote of two-thirds of the House, and a majority of the Senate; and it further requires that proposed amendments shall be approved of by two successive legislatures. That is, the amendments shall be proposed by one legislature, and then that they shall lay over a whole year, during which time the people will determine whether they will send back to the legislature representatives who are in favor of the amendments, and who will again recommend them to the people.

Here I stand upon somewhat of a conservative ground, and I ask whether the power which the legislature now possess is not as much as is necessary to give them, in the matter of amendments to the Constitution? True, no one proposes to authorize the legislature to amend the Constitution without consulting the people; but if you give them the power to propose amendments by a majority, they will be constantly harassing the people with amendments. What will be the

result of such an arrangement? If the legislature shall happen to be Whig, they will commence proposing one amendment after another, according to some peculiar views they may entertain. The very first proposition they would make to the people, would be to abolish the secret ballot which we have determined upon; and although they may fail the first year and the next, they will continue to harass the people, year after year, in the hopes that by finally wearying them out, they will succeed in removing it from the Constitution.

On the other hand,—for I do not think one party will differ very much from the other party in that respect,—if you have a Democratic legislature, they will find some features in the Constitution which they dislike, and they will send out propositions of amendment to the people in the same manner.

I am opposed to so great a facility of change. The Constitution should not be a repealable statute. I do not want the Constitution to be fixed in the position that Lycurgus placed his when he made laws for Sparta, and then provided that the laws should not be changed until he returned, and then went off to Delphi, and put himself out of the way, and never came back, thereby hoping to preserve the constitution forever and ever. But the constitution was soon departed from, and Sparta lost her glory and her power, and was absorbed in the Roman Empire. Neither would I have it as John Randolph proposed to have the Constitution of Virginia, in the Convention of 1838, which was, that there should be put into the Constitution no power by which the legislature could ever propose alterations, because he wanted the Constitution unalterable for at least fifty years.

Upon that suggestion, the old Constitution of Virginia had no provision for its own amendment, and the only power of changing it, was that recognized in its Bill of Rights, "a majority of community."

For these reasons, I am in favor of striking out the third resolution, which will leave the question in relation to legislative amendments precisely as it stands in the present Constitution. I do not think it is prudent or desirable that the legislature should have any more power, in that respect, than they now possess. Having done that, I hope to see another provision which shall secure to the people the right to vote for a convention, whether the legislature will it or not, and that we shall thus set an example to all free people to provide in their frame of government for a peaceful mode of change, by collecting the will of the people or holding conventions, without the power or possibility of the legislature, should it be in the hands of a party or of a minority, defeating that will."

Mr. HALE, of Bridgewater. The gentleman for Wilbraham, (Mr. Hallett,) seems to have overlooked, or very slightly touched upon an important provision in the first resolution—I mean that which gives the legislature power, in any year, to submit to the people the question whether they will have a Convention to revise the Constitution of the State or not. Now an emergency can hardly be supposed to exist, requiring a revision of the Constitution, when a legislature could not be elected by the people within two or three years, which would submit the question to them. I think such a contingency could not happen, but

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if it should, the gentleman for Wilbraham seems to suppose the second resolution is quite adequate to protect the people from the legislature. Now I would ask, if it is any more safe to trust the secretary of State and the governor, than it is the legislature. If I understand this resolution, it provides, that before the people may act upon the expediency of calling a Convention, the secretary of State must notify the people that the legislature have failed to comply with the provisions of the Constitution, in presenting the question to them. But, suppose the secretary of State should refuse or neglect to give that notice, what then? Are the people authorized to vote at their regular town meetings, or at their annual elections, without such notice? Certainly not. It seems to me, therefore, that you are relying entirely upon the secretary of State, to supply the omission or failure of the legislature to do their duty.

But, suppose the secretary of State should give the notice, and the governor should not issue any proclamation for a Convention, what then? Would the people go on, and elect their delegates and send them here, without any action upon the part of the governor, required in this resolution, being had? It seems to me there is no provision in this second resolution, that would give them that authority which the gentleman for Wilbraham seems to think they should have. I think it will be very difficult to call a Convention for the revision of the Constitution of the State, without some preliminary steps being taken upon the part of some branch of the government itself. I do not see how it can be done without some detail, some legal provision upon which the people are to act, except by revolution, and that may be accomplished without incorporating any provision into the Constitution to provide for it. They must have some prescribed form of action, before it will be possible to call a Convention by any constitutional process.

As to the third resolution, I do not think it is as good as the provision in the present Constitution. But I am really opposed to the second, and I hope it will be stricken out.

Mr. WHITNEY, of Conway. I do not rise, at this late hour, for the purpose of discussing these resolutions, but to say, with all due deference to the gentleman for Wilbraham, (Mr. Hallett,) I am compelled to differ in opinion with him, as to the relative importance of these resolutions. I believe this last resolution to be a very important one—and why? It provides, that a majority of the two branches of the legislatures of two successive years, may submit specific amendments to the people, which, even after such submission, cannot become a part of your constitutional law until a majority of the people have passed upon them affirmatively. And why should not such amendments then, become a part of your Constitution? After two successive legislatures, elected by a majority of the people, in their wisdom, submit an amendment, and the voice of a majority of the voters of the Commonwealth, in their primary meetings is obtained, favoring that amendment, I contend that it should then, in every case, become part of your constitutional law, and when that voice is legally obtained, will any gentleman tell me why such amendment should not then be considered a part of the Constitution? Sir, I think, in all reason, this third resolution should be retained.

In relation to the second resolution, I was in hopes the gentleman for Wilbraham, with all his knowledge of constitutional law, would have submitted an amendment which should carry out the idea which he seems to have advocated, and, I think, with much ability. I have not prepared any amendment to accomplish that result, but I hope some gentleman, better able to do it, will prepare one which shall recognize the right of the people, at all times, by a majority of the votes in the Commonwealth, legally expressed, to call a Convention for the revision of the Constitution of the State. I suppose the gentleman for Wilbraham will not contend that we can confer power upon the people, any more than the legislature can do it. For we met here, merely as the representatives of the people, and we cannot, by any resolution of ours, confer power upon the sovereign people. We can recognize their right, at all times, to assemble, and reform or alter, or make over, their Constitution. But we can no more confer power upon the people than the legislature can. I should prefer, therefore, an amendment to this second resolution, recognizing distinctly, the right of the people, at all times, to assemble by their delegates, properly chosen, for the purpose of reforming their Constitution; and, without such a recognition, I see no virtue in this resolution at all.

The first resolve provides, that the legislature shall submit, at certain specific times, and also at such other times, preceding or succeeding the above-named year, as the legislature may, by law, prescribe, the question, "*Shall there be a Convention to revise the Constitution, and to amend the same?*" Now, I take it, if you provide that the legislature may, by a majority of its members, submit that question, there will be no difficulty in relation to it. There will be no danger that you will not have the question submitted to you, whenever you want it. The trouble in getting specific amendments, which resulted in calling this Convention, was not that questions were not agitated in the legislature; they have been agitated in that body, for the last four or five years; questions were agitated in 1851 and 1852, and passed one house, and obtained majorities in the other, but in consequence of failing to receive a vote of two-thirds in the House of Representatives, as was required by the Constitution, they could not be submitted. If these questions could have been submitted to the people, by the vote of a majority of both Houses of the legislature, there would have been no difficulty in relation to some alterations. This subject is somewhat a new one to me. I had not examined it, until it came up for consideration to-day. But I hope the third resolution will be retained. The second I consider of little importance, and I do not think it is a matter of any considerable consequence, whether it is retained or not. I cannot see that it will do any good, in its present form, and I should much rather see a provision adopted, recognizing the right of the people to meet at all times, when, by a majority of their votes, they elect so to do, such votes being legally given, I would then make it the duty of the legislature to provide for the choice of delegates for the purpose of revising the Constitution.

I hope that the gentleman for Wilbraham will prepare and offer an amendment to these resolutions, more perfectly expressing his idea and my

own, and that something more directly to the point may be presented for our action and final adoption.

Mr. GILES, of Boston. I am in favor of the first resolution, and opposed to the second and third. I wish to see the second and third resolutions stricken out and the first adopted. In regard to amending the Constitution by legislatures, as the gentleman proposes, I am opposed to it. I think the provision in our present Constitution, authorizing amendments to be made by the legislature, was introduced for this object. When the Convention had settled all the great principles and established all the great leading propositions in your Constitution, and those principles and propositions came to be applied to the wants and exigencies of the State, as a matter of course it turns out that certain minor provisions are necessary in the course of events to enable your great fundamental principles to take effect readily and effectually, and it is therefore provided in our present Constitution that such provisions may be made or rather initiated by the legislature, with a view to meet a specific want which appears in the course of time, but was not foreseen by the Convention making the Constitution. That is to say, the principle is this: the Convention makes the machine, but not being able to foresee all the impediments to its safe and easy action, it gives the engineer the power to carry out the great principles upon which the machine is constructed, and to remove such impediments as shall arise. Now, Sir, I would confine the legislature, in amending the Constitution, to that class of exigencies—to those which arise, in the course of events, which have not been foreseen and provided for—which are wanted to carry out the great principles established in the Constitution, but which are hardly of sufficient importance to make it worth while to call a Convention. I would make a broad distinction between the action of the legislature, which is an agent, a mere creature of the people, and the action of a Convention, which comes directly from the people, for the express purpose of making a Constitution. I would hold the great provisions of your Constitution sacred, so to speak, and not subject to amendment and alteration at the mere whim or caprice of your legislature, like the laws which I have known to be repealed before the session in which they were enacted had closed. I would establish your Constitution as the "blue book" of laws in the estimation and confidence of the people; and for this reason I would make it as permanent as possible until the people see fit to call another Convention to alter and revise it. And this brings me to say, with my friend for Wilbraham, (Mr. Hallett,) that I am one of those who believe in the inalienable right of the people to amend their Constitution whenever they please; and I therefore do not feel the need of a declaration to that effect in the Constitution, so much as some gentlemen seem to, because I believe it is a right which we can neither give to the people nor take from them. No convention or legislature can do any such thing as that. But if it is thought desirable to insert into the Constitution a declaration which shall effectually take it out of the power of the legislature or any other body to prevent the people from calling another Convention when they shall think proper, I have no objection, and I will go with any man who will make such a proposition. But to do that we must incorporate

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into our Constitution a convention electoral law; that is to say, a provision upon which and by which the people may, by their own motion, without any preliminary steps upon the part of the legislature, and independent of that body, proceed to elect delegates to alter and amend their Constitution."

But by this second resolution as it now stands, if the legislature fails to provide for submitting the question to the people, it becomes the duty of the secretary of State to notify the people, and they may go on and elect delegates. But suppose the secretary of State declines to give that notice, the people cannot go on and elect their delegates without; so that you would still leave them at the mercy of the legislature, or what is worse, at the mercy of an executive officer of your government. Now your object is to take the people out of the power of the government, in other words, it is your object to let every-body know that it is the people who have the power of calling a Convention whenever they choose, and that the power does not rest with the legislature or secretary of State.

Now if you wish to provide against that difficulty, and forever secure that right in the hands of the people, I repeat, you must incorporate in your Constitution a convention electoral law, so that the question shall go to the people whenever it may be desirable, whether the legislature will or not. But I would alter the phraseology of this second resolution, because it does not, as it seems to me, accomplish the object for which it is designed. If the gentleman for Wilbraham wishes to attain his object, I can see no objection to it, and I will go with him for attaining it if he deems it important.

I call the gentleman's attention to the phraseology of the first resolution. The question is printed in italics—"Shall there be a Convention to revise the Constitution and to amend the same?" That question is to be "submitted to the qualified voters of the State," says the resolution. Submitted by whom? By the legislature. But the next resolution says that in case the legislature fail to submit it, the secretary of State shall submit it. But suppose he fails, then what? You may provide, if you choose, that your town officers shall act, but if they fail, the people are still unable to have the question submitted to them.

Mr. NAYSON, of Amesbury, (interrupting). I would ask the gentleman from Boston, if in case the emergency should happen that the legislature should fail to provide for submitting the question to the people, the remedy according to his own admission, would not be found in that declaration of principles which gives the people the right and power at all times, to alter, control and change their government, and whether by making the declaration which he proposes, he could accomplish any purpose which is not already accomplished in that section of the Bill of Rights, which, as I understand, it is the purpose of the Convention to retain?

Mr. GILES. I agree with the gentleman so far as that declaration is concerned. I was expressing my willingness to go with the gentleman for Wilbraham in the accomplishment of the object he had expressed a desire to accomplish. I shall go for this first resolution as it stands.

But why I am not content with simply this declaration in the Bill of Rights, is that it is merely a declaration that certain things are right,

and certain things are wrong. It contains a law which is written in every man's heart as well as in the Bill of Rights. But that law is inoperative, unless every citizen, of his own free will, chooses to obey it, and that is the reason why we have special laws to carry out the Bill of Rights, and to enable the people to carry into effect the great principles therein contained. And therefore it is that the declaration in the Bill of Rights does not go far enough for this purpose.

I would amend this first resolution in one or two particulars. Instead of saying, "shall be submitted to the qualified voters in State elections," I would say "shall be voted upon by the qualified voters in State elections."

And in case the legislature should fail to submit the question to the people, I would make some alteration in the next resolution. Instead of saying "the qualified voters in State elections, in the several cities and towns may, at the next general election thereafter," I would say "shall, at the next general election thereafter, proceed to elect delegates for that purpose, in the same manner as the representatives are annually chosen to the general court."

You would obtain by that amendment just exactly what the gentleman for Wilbraham, (Mr. Hallett,) wants, and you would enact in your Constitution a fundamental law for the election of delegates to a Convention, by which the people, whenever the legislature fails, may every twenty years proceed, of their own mere motion, to have a Convention according to the Constitution, peaceably and without violence, and without the power in the legislature, or any department of government, to send bayonets here to drive them out of the hall belonging to themselves and their fathers.

Mr. HALLETT, for Wilbraham. I most heartily concur in the suggestion which the gentleman from Boston, (Mr. Giles,) has just made in the matter of construction, and I think it covers precisely the ground, that is to say, it makes the submission of this question to the people, once in twenty years, a fixed constitutional provision, requiring no laws in regard to it, and that it shall be voted upon by the qualified electors once in twenty years, without reference to party. The only difficulty that remains is in relation to the power of calling the Convention within the period of twenty years. I do not want to tie the people down so that they shall only have a Convention once in twenty years, if they desire one oftener. So far as the submission of the question to the people every twenty years, is concerned, the amendment offered covers the whole ground, and I should be glad to hear a suggestion from the gentleman with regard to calling a Convention within twenty years.

Mr. GILES, of Boston. The law with an amendment in two words can be made active, living and effectual at all times. There may be an addition to the first resolution of the following words: "as often as the legislature shall so provide." It is impossible, as the chairman will see, to effect this by the amendment we now have before us, because it involves striking out a part of two resolutions. I heartily agree with the gentleman for Wilbraham, (Mr. Hallett,) in the idea that the people should have the power of calling a Convention whenever they please, but I would hardly wish to call it in question by asserting it. It is one of those things which I look

upon as being as clear as the light of the sun, and which needs no provision here to make it plain and palpable. If it would be in order now, I would move the amendment I have suggested.

The CHAIRMAN. The question now is upon striking out the second resolution.

Mr. GILES. I see it is impossible to present it now. I have expressed my views, briefly, in relation to this matter, and should be happy to concur with the gentleman for Wilbraham in carrying them out, if agreeable to the Committee.

Mr. HALE, of Bridgewater, moved that the Committee rise, report progress, and ask leave to sit again.

The motion was agreed to, and the Committee rose and reported to

THE CONVENTION,

And obtained leave to sit again.

On motion of Mr. PARSONS, of Sandisfield, the Convention then adjourned until to-morrow at nine o'clock.

TUESDAY, July 12, 1853.

The Convention assembled, pursuant to adjournment, and was called to order by the President at nine o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read.

Harvard University.

Mr. KNOWLTON, of Worcester, from the Committee on the University at Cambridge, made the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 12, 1853.

The Committee on so much of the Constitution as relates to the University at Cambridge, to whom was referred the order of May 19, concerning the comparative amounts of public grants and private donations to the several colleges in the Commonwealth, report the following communications received respectively from the treasurer of Harvard College, the treasurer of Williams College, and the treasurer of Amherst College.

For the Committee,

J. S. C. KNOWLTON, Chairman.

Communications from the Treasurers of Amherst, Williams, and Harvard Colleges.

[A.]

Amherst, June 25, 1853.

DEAR SIR:—In reply to your letter of the —th, enclosing a copy of an order adopted in the Constitutional Convention, on the 19th May last, inquiring into the sources of the benefactions to Harvard College, and asking me to furnish the Committee with the information in regard to Amherst College, required by the order in relation to Harvard.

I will say, that by a resolve of the legislature, approved on the 7th April, 1847, an annual allowance of \$5,000 for five years, \$25,000, was made to Amherst College, for the use of the college.

This is the only grant ever made by the State. All the residue of the donations or benefactions to the college, has been from private sources.

Yours respectfully,

EDWARD DICKINSON,
Treasurer Amherst College.

Hon. J. S. C. Knowlton, Chairman Com., &c.

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QUALIFICATIONS OF VOTERS, &c. — WALKER — GREENE.

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[B.]

Williams College, June 27, 1853.

Hon. J. S. C. Knowlton, Chairman, &c.

SIR:—In answer to the request of the Committee, I make the following statement:—

The grants made by the legislature in the first year of this institution, were used chiefly in the erection of college buildings; the principal building thus erected was destroyed by fire, and, after an unsuccessful effort with the legislature, benevolent individuals furnished the means of new accommodations for students. The grant made from the bank tax in the year —, was used to sustain the college through a series of years when the number of students was small, owing to the question of removal. The only "present property and available instrumentalities of education" which I can trace to "direct grants from the legislature," is \$7,500, one-fourth of the last grant made, the income of which is annually applied to the bills of indigent students; and about \$8,000, the avails of land in Maine. The residue of our small fund, \$35,000, has been given by individuals. The real estate, now worth say \$35,000, consisting of buildings and land for the use of students, and one dwelling-house for the president, I cannot trace to the legislature. The libraries and apparatus have been procured by the donations of the friends of the college, and charges upon students. The college has not had income sufficient to meet its expenses, for many of the years during which it has existed. For a few years past, the liberality of one man has furnished the means of living, but much more is needed to meet the demands of this progressive age.

Respectfully yours,

DANIEL N. DEWEY, *Treasurer.*

[C.]

July 7, 1853.

Hon. J. S. C. Knowlton.

DEAR SIR:—I should have replied sooner to your note, covering the order of the Convention in relation to Harvard College, but for my absence from town on account of my health.

I have now the honor to state, that "of the present property and available instrumentalities of education possessed by Harvard College," all that can "be traced to direct grants of the legislature," is the following items, viz.: A grant for the erection of Massachusetts Hall, in 1718–19, £2,850 sterling, equal to \$12,654. Several grants in 1762–3, for building Hollis Hall, £4,815, lawful, \$16,050. In 1794, a lottery was granted by the legislature to raise £8,000 for a new building, (Stoughton Hall); and in 1806 another was allowed, for the purpose of erecting another building, (Holworthy Hall). The amount realized from the sale of tickets was \$47,400.

In 1764–5–6, £4,112 18s. 7d. were granted to rebuild Harvard Hall, which was burnt while in the occupancy of the legislature, during a college vacation, but no compensation whatever was made for the loss of the library and philosophical instruments, which were also destroyed.

In 1814 a grant was made of ten-sixteenths of a bank tax, or \$10,000 per annum for ten years. Of this amount, \$2,500 a year was ordered by the legislature to be given to indigent students, equal to \$25,000. Another \$20,000 was appropriated by the legislature to the erection of the Medical College; and the remainder was spent by the corporation in erecting University Hall. Down to 1786, the legislature of the Colony, the Province, and the State, granted certain sums for the relief of the president and professors; and with an occasional grant of a piece of land, (of which possession was sometimes not obtained,) these constitute all the donations of the government to the institution to the present time. The whole amount received from the State from 1636 to the present time, is \$215,797 73 in money, and the annuities of Charles River and West Boston Bridges, £200, or \$666 66 per annum, each, of which the former was for many years discon-

tinued, and the latter has not been paid since June, 1846.

I believe these are all the grants of the legislature, of which any portion can be traced in the present property of the college, and they show that a little over a hundred thousand dollars value in the existing resources of the college, has been derived from the State, while the productive resources given by individuals, principally since the Revolution, amounts to about seven hundred and fifty thousand dollars, and the reversion of half as much more.

Very respectfully, your obedient servant,

SAMUEL A. ELIOT,
Treasurer of Harvard College.

The Report and the accompanying documents were laid upon the table.

Qualifications of Voters.

On motion of Mr. WALKER, of North Brookfield, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

To consider the Report of the Committee on the Qualifications of Voters, which recommends that no action be taken on the subject of the petition of Francis Jackson and others, that the word "male" be stricken from the Constitution and that women be allowed to vote on the amendment to that instrument.

The question being on agreeing to the report,

Mr. WALKER, of North Brookfield. The reasons are given in brief in the Report for the course taken by the Committee in relation to this matter. The Report was agreed to with considerable unanimity by the Committee, and I presume it will be agreed to by this Committee with the like unanimity, and therefore, I deem it unnecessary to make any remarks in relation thereto.

Mr. GREENE, of Brookfield. I maintain, first, that the people have a certain natural right, which, under special conditions of society, manifests itself in the form of a right to vote. I maintain, secondly, that the women of Massachusetts are people existing under those special conditions of society. I maintain, finally, and by necessary consequence, that the women of Massachusetts have a natural right to vote. I am but a recent convert to the doctrine of women's rights, never having meditated upon the matter before the famous question was propounded by our good friend from Salem, (Mr. Lord), "Who are the people?" I have been unable, therefore, to prepare myself with statistics. I know nothing of women's wrongs, and, with the permission of the Committee, will argue the question solely upon abstract and general grounds. I had the honor, when I spoke before, to define the people of Massachusetts as being that collective body, which includes within itself all rational creatures existing within the limits of the Commonwealth. My definition was criticized at the time, on the ground that idiots, madmen, and immature children, are people. Certain gentlemen proposed to bring in petitions from the children of this Commonwealth, praying that children also might be permitted to vote. I adhere to my original statement. The word "people" has a specific and political sense, for not all that are governed are people. Oxen and horses are certainly governed, but they are not people, and that for the reason that dumb creatures are incapable of giving consent to government. No living creature can be recognized as one of the people, if that living creature has

not rational faculties by which it can either consent or refuse to become the subject of government. The fundamental doctrine of our republic is this, that governments derive their just powers from the consent of the governed. Oxen and horses cannot give their consent to government, neither can madmen, idiots, or immature children, give their consent; and, therefore, it follows, on account of this natural incapacity, that none of these can be recognized as people. The people are they upon whom shines that intellectual light which enlighteneth every man that cometh into the world; and I maintain that women are capable of receiving that intellectual light, are rational creatures, human beings, enjoying all the faculties which belong to human beings. I would call the attention of the Committee, for a moment, before I endeavor to prove the propositions I enunciated at the beginning of my remarks, to certain principles which are generally acknowledged to be correct by the people of this Commonwealth; and in order that I may support no principles, except such as will meet the acceptance of the Committee, I will quote the express words of the Bill of Rights. In the preamble to the Constitution we read:—

"The end of the institution, maintenance and administration of government, is to secure the existence of the body politic; to protect it; and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights and the blessings of life; and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness."

I would have the Committee mark that the preamble to the Constitution does not say, that the legal voters shall have the right to "alter the government, and take measures necessary for their safety, prosperity and happiness," but that "the people" have this right. Now, if women are people, (and the Convention have already affirmed, by a solemn vote, that women are people,) they have a right to "alter the government, and take measures necessary for their safety, prosperity and happiness."

We read, in the same preamble, that "the body politic is formed by a voluntary association of individuals; is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good." I do not believe that any body politic was ever formed in this way. I suppose that the social compact is the ideal of human government, and not the origin, and that human government becomes perfect in the proportion that it attains to conformity to this perfect pattern. Acknowledging, however, the statement of the preamble to be the true theory of government—true, at least, in idea—I would ask you what you will do with those two thousand women who have petitioned for the right of voting upon the amendments to the Constitution? You say that the body politic is a social compact, by which you mean that it is the result of a social compact, and you say that "it is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people." But here are two thousand women who have demanded the right to vote upon the amendments to the Constitution—that is to say, have demanded to enter into this cove-

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nant—what do you propose to do with them? I suppose I shall be obliged to take the stump in favor of the measures that we approve in this Convention. I suppose I shall have to endeavor to defend the course of action upon which we may have entered. And now, Sir, permit me to ask what I shall do when Miss Lucy Stone, who lives about three miles from me, interrupts me in the middle of my speech, by reading from the preamble to the Constitution, that “the body politic is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good?” She will say that she wants to enter into that covenant; and how can any man vote to refuse the privilege to women of entering into this compact, and at the same time affirm that the social compact is formed by a voluntary association or agreement of the whole people? If any person present can tell me how I can answer that woman upon this point, without confusion of face, he will relieve my mind very much indeed.

We read that the people of this Commonwealth “have the exclusive right of governing themselves.” Can it be denied that women constitute one-half of the population of the State; nay, that they are a majority of the population? If we wish to be consistent, and express our real views in the Constitution, and not insert in it a democratic falsehood by which we cannot stand—I will not say a democratic falsehood, but a democratic truth, which we are to treat as though it were a falsehood—then we ought to say, if we are to deny the women’s rights, that the legal voters, or one-half of the men—one-quarter only of the whole people—have the sole exclusive right of governing themselves and the rest of the people. Our fathers spake otherwise; they said that the PEOPLE of the Commonwealth ought to have the sole exclusive right of governing themselves. What shall I say to Miss Lucy Stone upon this point?

Again: “No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public.” I should like any gentleman to state what peculiar and transcendent services have been rendered to the public by legal voters, and I should then like to state certain services which have been rendered by women.

“Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people, and not for the profit, honor or private interest of any one man, family or class of men; therefore, the people alone have an incontestable, unalienable, and indefeasible right to institute government, and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.”

The women of this Commonwealth are deprived of the right of voting, not only upon ordinary occasions, but of voting upon that occasion which is specially referred to in this article of the Bill of Rights. In the hands of women, as well as in the hands of men, rests the sacred right of revolution. For I maintain that a government that is totally changed, by an immediate, sovereign act of the people, is a government that is revolutionized; but if the people have a right to

revolutionize government, then women, as a part of the people, partake in that right:—I am talking of rights, not of mights. If the people have a right to revolutionize government, then they have a right to do it peaceably; for a right that must be exercised by force is no right at all. Whatever act a human being has a perfect right to accomplish, that same act he has a right to accomplish peaceably. I claim that the right of women to concur in the peaceable revolution of government shall be guaranteed to them. For if the people have the right to totally change their government, women, who are people, and whom the Convention have confessed, by an authentic vote, to be people, have a right, to the extent that their numbers would give them power in the government, “to alter the government, and to take measures necessary for their safety, prosperity and happiness.” If we do not give them the right to vote, they have no political power to guarantee their own welfare.

Before I go further, I must notice one statement which has been made upon this question. It was said by the gentleman from Boston, (Mr. Choate,) whom I do not see in his seat, but it was endorsed by the gentleman from Freetown, (Mr. Hathaway,) whom I do see in his seat, that the men, the legal voters, are the trustees of women; that the legal people are the trustees of the natural people. I should like to inquire who it was that appointed them to be trustees, and to whom they are responsible for the proper fulfillment of their trust. I would like to say, also, that the autocrat of Russia considers himself as a trustee, having the right to act for his people; for the Emperor Nicholas would argue precisely as the gentleman from Boston argued, except that the gentleman from Boston argued in favor of the legal people of Massachusetts, while the Emperor Nicholas would argue in his own favor, affirming himself to be the incarnation of everything that is Russian.

In the East, it is believed that this earth is an immense plain, and that the four corners are supported upon the backs of four elephants; that the four elephants stand upon the backs of four tortoises, and that these stand upon a great snake; but what the snake stands on, nobody knows. Now, Sir, on what ground of authority do the legal voters stand?

Mr. HATHAWAY, of Freetown. If the gentleman will permit me, I would like, before he proceeds any further, to say that I have not presented any such doctrine as the gentleman has stated, in its sequence; by no means. I undertook to combat, whether successfully or not, the doctrine that the people gave up certain rights which they had the right to exercise, and which they could not resume. My ground was, that we were shadowing forth the great American doctrine; not that the people yielded and gave up rights to their rulers, by any means, but that it was a mere delegation from the people, for a certain time, to those that exercised the power, merely as our agents, and which the people had a right to resume at any time; and that the first delegation of power by the people was to electors.

Mr. GREENE. May I ask the gentleman if he believes in the dogma of the social compact?

Mr. HATHAWAY. I do, Sir.

Mr. GREENE. I congratulate the women upon the accession of so distinguished an advocate to their cause. I suppose the gentleman will

go with us in endeavoring to secure to women the right of voting on the proposed amendments to the Constitution. He will perceive that we must now go back to the original fountain of political power. I grant, for the present, that the women gave up their power originally; for I desire not to meet the gentleman half-way, but go the whole way myself, since it is necessary that we should give him a generous welcome, now that he comes out on our side. I will grant that the women gave up their own political power, and put it into the hands of their husbands and fathers. But it is at this very moment of time that the people are going back to the origin of all things, politically—going back to that which underlies the snake on which the earth rests;—and I maintain that the women ought to be consulted in this crisis, to see if they will continue to delegate their political authority to their husbands, brothers and fathers. The Bill of Rights further says:—

“In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.”

Now, I maintain that a legal voter is “a public officer.” The gentleman from Freetown has shown us that the legal voter has been delegated by the women and non-voting men to exercise a power as a trustee for them; he shows us where the trust came from, from the non-voting people, the natural people. If this trust is committed to the legal voters, then they are public officers; and the people, that is, the women and the non-voting men, have a right, on certain occasions, to make these officers retire to private life, and exercise the trust no longer. Mark the word! “In order to prevent those who are vested with authority from becoming oppressors, the people have a right”; the “people,” not the *legal-voters*, mind you, but the “people.”

Again, Sir: “All elections ought to be free; and all the inhabitants of this Commonwealth” —now, Mr. Chairman, I would like to ask you, if, in your various travels through the Commonwealth, you were met ever by any of that obscure portion of “its inhabitants” called women. [Laughter.] “All the inhabitants”—I believe inhabitants are those who have a residence. “All the inhabitants of this Commonwealth having such qualifications as they shall establish”—they establish? Who establish?—the legal voters? No, Sir. “Having such qualifications as they (the inhabitants) shall establish by their frame of government.” Now, we are establishing a frame of government; and I ask you by what right you prevent the women from having a voice in the matter. I confess, that after a frame of government is established, and the men have been made the trustees of the women, it may be correct to have the men act for the women. But now we are establishing the foundation itself, upon which the whole superstructure must stand, and the question is, whether you will allow the women to exercise the right of choosing their trustees, or whether you will force trustees upon them in an arbitrary and tyrannical manner?

Sir, I know very well what course the Convention will take in this matter, and I know very well what answers I shall receive, if I receive any. Sir, I call for arguments, not *phrases*. I

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profess, Sir, to stand upon democratic ground, and I would like to know how any Democrat can rise up here and say, that he believes the doctrines set forth in the Massachusetts Bill of Rights, and at the same time say that he will deny to women the exercise of their right to vote.

The gentleman for Berlin, as I understand, proved, while I was absent, the other day, or attempted to prove, that the father of a family has the natural right to govern his wife and children. I think it likely I may misstate his words, as I did not hear them, but I believe the substance of his remarks was as I have said, that the father has a natural right to govern his family. Well, Sir, the autocrat of Russia uses the same argument, affirming that his domination is paternal in its character and principle. The gentleman for Berlin will think further upon this subject of women's rights, and will, I doubt not, reconsider his opinions. I maintain that the father has no right, as such, to exercise political dominion. When we regard the doctrines of government from the point of view of the family relation, we are thrown back upon the old mythus of Adam, and upon the subjugation of Eve to her husband. The sentence upon Eve, as recorded in the book of Genesis, is as follows:—

"In sorrow thou shalt bring forth children, and thy desire shall be to thy husband, and he shall rule over thee."

Sir, I submit, that if any invention of science can succeed in preventing the pain which attends the coming of a new human being into the world, no sin would be committed by the woman who should adopt that invention, and employ it for the relief of her own suffering. I know that in Scotland, the use of chloroform has been objected to as interfering with the original sentence denounced by the Almighty upon woman. Such objections are, of course, absurd. But if the use of chloroform by women in child-birth be just, innocent, and right, although it obviates one-half the curse of the original sentence, who shall dare to affirm that it is not just, innocent, and right that women should be put in a position to emancipate themselves from the other half of the curse? But, granting the correctness of the argument, that the father has a right to control his family, what shall we do with the women who are over twenty-one years of age, who earn their own living, and are free from their fathers? I take it that such women are entitled to vote, and that they are people.

Now, Sir, I will endeavor to prove, with the precision, though not with the conciseness, perhaps, of a mathematical demonstration, my position that the women of Massachusetts have a natural right to vote. I will trespass upon the patience of the Convention for a few moments, only, and hope I may secure its attention, as I shall be under the necessity of having recourse to an order of ideas not often brought before a body of this kind. I ask every gentleman to weigh, in his own mind, and answer me a few of the questions which I will suggest to him.

Is there not always before us an ideal, a mental picture, if you will, an image, of what we ought to be, and are not? Does not every one who endeavors to follow this ideal revealed to his inward vision, every one who endeavors to attain to conformity with it, find it enlarge itself, and remove from him? Does not he that follows it

improve his moral character, the ideal remaining ever above him, and before him, prompting him to new exertions? What is conscience but a comparison of ourselves as we are, mean, pitiful, weak, with ourselves as we ought to be, wise, powerful, holy? What is conscience but a comparison of our actual conduct with our ideal of human perfection? As we make new efforts in striving after the fulness of perfection revealed in our hearts, the ideal removes further and further from us, making higher and higher claims, until, at last, we lose ourselves in the contemplation of the Infinite Majesty; for, in this upward aspiration, there is revealed to us a knowledge of our spiritual existence, and a knowledge of the Most High God. Man is created in the image of God, and it is his duty to bring out into its full splendor that Divine Image which is latent at the bottom of his heart. When a man first recognizes this Divine Ideal, which is the shadow of God, it is to him like the dawning of a new day. As he looks steadfastly, the darkness of his understanding begins to disappear, and the day-star begins to rise in his heart. As he moves forward toward the mark of his desire, subordinating his will to the divine will, he enters into communion and fellowship with God the Father; and the Eternal Sun fills the whole firmament of his soul with its rays of threefold glory. But, if a man aspire toward God, he must aspire according to his threefold nature; he must aspire according to his body, his soul, and his spirit; he must obey the divine law in its threefold applications. Man must follow what he ought to be in the natural world, in the moral world, and in the world of thought.

Liberty is the right which every human being possesses of aspiring toward God, by the development of that threefold human nature—physical, intellectual, and moral—on which the image of God is stamped. Liberty is the form of the relation which exists, and necessarily exists, between man and his Maker. Now this liberty is the sum of human right; for, because man has a threefold existence—physical, moral, and spiritual—he must glorify God by aspiring toward him in accordance with his threefold nature; that is to say, man has a natural right and duty to develop all the faculties of his threefold being.

Shall repressive laws, shall priests and creeds, shall public opinion, separate between me and the Father of my spirit? Tyrants and priests know nothing of the revelation which God makes in the centre of my individual heart. I stand before God as an individual man; he communicates his will in the secret chambers of the centre of my individual heart. The revelation which God makes to me, is made to me, not to another. Individualism (which is the opposite to egotism) is, therefore, a holy doctrine. The individual man is a mysterious and holy force placed on the earth in accordance with the mysterious designs of a holy providence. Touch him not, therefore; seek not to guide him by indirect influence, for he is holy! Man is the temple of God, and his heart is the sanctuary from which the Almighty deigns to reveal his presence. He that contends against the rights of an individual man, contends against God; for it is the ever-attractive in-dwelling of God in the individual soul, that is the origin and foundation of all human rights.

An organization of society which renders a man dependent upon his neighbors, upon public opinion—which, in a word, renders him subser-

vient to his accidents, instead of being supreme over them—is destructive to individualism, and is, therefore, profoundly immoral.

Now, I maintain—and let me see the man stand up that claims to deny it—I maintain that woman has an intellectual and spiritual nature; I maintain that woman aspires towards God, that she stands in secret and direct relations with God; that the will of God is revealed to her, secretly, and in the centre of her individual heart. I maintain, therefore, that woman has natural, divine rights, and that these rights come from that relation which she sustains to her Maker, which, because it imposes duties upon her, imposes the correlative duty upon us of taking from her nothing that is necessary to enable her to perform her duties.

At the risk of being tedious, I will endeavor to show the identity of the fundamental dogma of Democracy (that of the supremacy of man over his accidents) with the fundamental principle of Christianity; for I recognize no Democracy that is contra-distinguished from Christianity, and no Christianity which teaches either the divine right of kings, or the divine right of any portion of the people to govern any other portion, without the consent of the governed. What is this upward aspiration of the soul toward God, if not that spiritual attraction or gravitation, of which St. Augustine speaks, and which he denominates charity or love? "Charity," he says, "is the weight of spiritual existences." What is Faith, if not the conviction which is awakened by the spiritual world, through the power of this supreme attraction in the soul, that is akin to itself. Is not Hope the confidence which is borne in this upward aspiration? From these fundamental principles of democracy, can we not thus deduce every one of the fundamental principles of Christian morality?

Moreover, the universe exists eternally to the mind of God *in idea*. A *Divine Ideal* of the universe is, therefore, eternally *with* God; and—because the Supreme is essentially intelligent—that same Ideal, in a certain sense, *is* God. Besides, the whole visible universe was created with reference to man, that is to say, with reference to beings enjoying distinct consciousness and will; such beings are, therefore, more or less perfect embodiments of the Divine Ideal. One *perfect* man, that is, one perfect incarnation of the Divine Ideal, has existed, &c. &c.

Are not these the fundamental postulates of Christianity as considered metaphysically? Was not our Lord the crown and completion of the creation? Was He not the incarnation of the ideal? What is that Word which is *with* God and *is* God,—that Word, in accordance with which all things are made that are made,—that Word which is the true intellectual light, enlightening every man that cometh into the world,—that Word which was incarnated in the Savior of the world,—if it be not the Divine Ideal? If it is evident that the moral doctrine of Christianity and progressive Democracy coincide, it is equally evident that Christianity and Democracy are identical in their metaphysical basis. Christianity and Democracy, in their germ, in their fundamental principles, are identical; and because Christianity recognizes no distinction of sex in the soul, affirming that "there is neither Jew nor Greek, bond nor free, male nor female, in the body of Christ, which is the Church,"

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Democracy ought, in like manner, to affirm that the State should take no cognizance of differences of sex and color. Are not the differences of sex and color "accidental," merely, in human existence?

I rejoice that I have had this opportunity to affirm the identity of the fundamental principles of Christianity and Democracy. I have demonstrated that woman is capable of the exercise of a religious sentiment, and that she, therefore, possesses natural rights; and, in demonstrating this, I have demonstrated that she has a right to vote. What is the right to vote? It is a right which the citizen has to protect himself against the encroachments of society. The right to vote is the right to protect other rights; and, if the rights to be protected are natural, then the right to protect those rights is also natural. It has been said by the gentleman from Boston, (Mr. Hillard,) that the right to vote is, or ought to be, consequent upon the possession of property. But if a man has not a dollar's worth of property in the world, has he not a right to acquire property? And if he has a right to acquire property, has he not a right to protect that right to acquire? Can he protect that right to acquire property, if he have no vote by which he can put a veto on the encroachments of property castes? And so it is with all other rights. If a woman has rights, she has also a right to protect these rights. I repeat, that if man has a natural right to protect himself, he has a natural right—in Massachusetts, at least—to vote, because a right to vote is necessary, under existing conditions of society, to enable him to protect his other rights. If women are human beings and people, then they, in like manner, have a natural right to vote, at least in those societies where the right of self-protection organizes itself spontaneously in the form of a right to vote. The women of Massachusetts have, therefore, a natural right to vote.

In order to enforce his remarks, the gentleman, (Mr. Hillard,) quoted Aristotle. Sir, it is lawful to quote Aristotle. The first phrase in Aristotle's book upon politics, and the one that in reality sums up his whole theory, affirms that the State, as such, is founded, not on right, but on interest—egotism. But self-interest, egotism, is, as Swedenborg, Boehme, and other spiritual writers affirm, the centre and essence of hell. The gentleman maintains that no progress has been made in the science of government from the days of Aristotle until now. He has altogether forgotten that the Savior of the world was born upon the earth since the time of Aristotle, and died on the cross, expressly for the purpose of destroying the spirit of egotism which Aristotle advocates, and of substituting the principle of fraternity in its stead. Modern democracy dates its origin from Judea, not from Greece and Rome. Modern democracy is based upon a divine principle, not upon egotism, which is an infernal principle. Who, then, can acknowledge the principles of democracy, as set forth in the Bill of Rights, and at the same time deny the right of women to vote? I would like to see some man rise up in his place, and give me an argument—I care not what it is—any argument that is worthy to be listened to by a man of sense and reflection, against the right of women to vote. No one rises: I should like to have it put into the record that no man rises.

I have now said almost all that is necessary to

be said, at the present time, taking the circumstances into consideration. If any arguments had been adduced on the other side, the case might have been different. Before I sit down, however, I want to make a single remark. Certain very wealthy gentlemen of Boston, recently deceased, have been alluded to several times upon this floor, and they have been defended against certain alleged calumnies. My friend for Northborough, (Mr. Burlingame,) made some statements in relation to wealthy men, to which I listened carefully, but I was not aware that he said anything against those three gentlemen of Boston. I did not hear anything uttered which could be tortured into an attack upon them. He drew a sharp line of distinction between men of mere property and men of genius. What he said about men of mere property was undoubtedly true; no man can deny it; and I think that what he said about men of genius is also true. But he made no particular allusion to those three Boston men. One of those gentlemen I did not know, but the other two were unquestionably men of genius, and the loss experienced by the community on account of their death was because they were men of genius. The vacancies left by those distinguished gentlemen cannot easily be filled. The gentleman for Northborough said nothing derogatory to either of them. Had anything been said in this hall injurious to their character or detracting from their merit, I am the man who would have risen suddenly to repel the unjust accusation; but I deem it right to say that no accusation has been made.

Mr. KEYES, for Abington. I had the good fortune to be honored, Mr. Chairman, by being made the medium through which some of the petitions on the subject now under consideration, were presented to the Convention. I hardly know how it happened, or why I came to be selected, out of this distinguished body of men, to be so honored above others. It was certainly not on account of any peculiar opinions which I have ever entertained or expressed, nor because I have ever distinctly favored the claim which is made in these petitions. I cannot account for it upon any other ground than that I may have given an intimation, at sometime or somewhere, of my disposition to have all petitions—come from whatever quarter they may, and relating to whatever subject they may—fairly entertained and considered. Now, Sir, I am very well aware, that unless this is a much more gallant and chivalric assembly than commonly meets in this hall, or in other places,—assemblies of men I mean,—there is a feeling that the time which is spent upon this subject is entirely wasted. Gentlemen may possibly feel that it is beneath their dignity, in a Convention like this, to treat with any degree of candor a petition on this subject, which everybody feels to result in nothing; but it is because I do not entertain any such opinion as that, that I am always willing to consider claims coming from this quarter.

I think, however much men may sneer at and ridicule petitions of this character, they are not quite so independent of woman's influence at home and elsewhere as they would be thought. They may safely laugh and deride at a distance, who will tremble and cringe in the presence of a woman. The power of woman is not to be sneered at. I take it as a matter which has been settled by the common consent of every-body, that

were it not for this power and influence men would not be able to preserve their civilization. Let that part of the human race be struck out of existence, and the very generation which now exists—and we could never have another generation—would go back to barbarism. What is the history of man? It is a record of crime, inhumanity, injustice, and blood. That is the idea of the human race as represented by history; and the foundation of all our politics, and the foundation of all our philosophy, is based upon the idea that men are vindictive, dishonest, cruel, and wicked. The great power that preserves them in the elevated condition in which we find them, is the influence of woman. This only has a tendency to keep them above the low level of brutality, vulgarity, and vice. I say then, that petitions coming from a quarter like that, deserve respectful treatment. Gentlemen know very well,—although in our day women are comparatively free,—that the history of the world is a history of the injustice of man towards woman; and man, such as he is represented to be, and such as he is described in the history of the world, is not entitled to assume such a vast superiority, as he does, either of character, integrity, or capacity, over woman. I had prepared, for another occasion, a few extracts, showing the character and dispositions of men, and how they are to be regarded; and if they contain a true representation, I want to know what right they have to set themselves above woman, either in capacity, character, or in common sense. Machiavel says:—

"Those who have written on civil governments lay it down as a first principle, that whoever would found a State, and make proper laws for the government of it, must presume that all men are bad by nature."

Montesquei says:—

"Constant experience shows that every man invested with power is apt to abuse it."

Swift says:—

"So endless and exorbitant are the desires of men that they will grasp at all, and can form no perfect scheme of happiness with less."

Junius says:—

"Laws are intended not to trust what men will do, but to guard against what they may do."

Dr. Price says:—

"Such are the principles that govern human nature; such the weakness and folly of men; such their love of domination, selfishness, and depravity, that none of them can be raised to an elevation above others without danger."

This is the character of men, as portrayed by the wisest of lawgivers; and, Sir, they have illustrated their characteristics in their treatment of women as well as in their treatment of one another. You know that the history of the world is a history of bloodshed, cruelty, violation of treaties, tyranny and inhumanity; and men have sometimes extended this same treatment to the weaker sex. One or two anecdotes from history will show how this matter stands. Virginus is considered to have been a very noble patriot, and his name is almost revered by those who read how he killed his daughter to keep her out of the hands of a tyrant; but when we come to reflect

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upon the matter a little, we very naturally ask, why did he not stab the guilty tyrant instead of his innocent child? Or, if his daughter must die, why did not he die with her? That is the fashion of women, when they have to make a sacrifice of this sort. Let us look at another case. When Scipio Africanus besieged the city of Numantia, and the inhabitants could no longer make resistance, they sent a flag of truce, and asked to make terms; and what did they do? Sir, the male inhabitants of that city went to work, during the time allowed for negotiation, and butchered all their wives and children, mothers and sisters; and what was the reason for this monstrous cruelty? It was because these sisters, and wives, and children, would count among the prisoners; and they did not wish their conqueror to have the glory of having a roll of prisoners swelled with the numbers of their sisters, wives, and children—so they butchered the innocent—those who had no share in causing the war, and lived on themselves. Over and again cases have occurred, during the history of the world, where women were sacrificed and men continued to live; but when the wife of Hamilcar saw fit to sacrifice her children in the flames, rather than permit them to fall into the hands of the enemy, she rushed in herself and shared their fate. But, Sir, the same spirit that was exhibited in these cases, has continued to exist and to operate in modern times.

I will refer to a practical illustration. A female medical society petitioned the legislature for aid, and it was denied. If there was any ground for that refusal, it was that women were not competent to discharge the duties of that profession; but how unjust is that pretence! Women, at one time, had almost the whole of an important part of the medical practice, in their own hands; but, men, through the instrumentality of the power which they hold over the educational institutions of the country, rendered them incapable of maintaining their position, and then assumed and monopolized their business. Men, having, by the tyrannical abuse of their authority, deprived women of the means of education in the higher departments of knowledge, turn round and taunt them with their ignorance and inability. How would men like it, if they were to be served in a similar manner, and to be excluded from the public colleges and scientific institutions? Suppose they were to be excluded from such institutions, and all other means of instruction now afforded to them and denied to woman, how would they stand in comparison? Would they be likely to achieve more than women have done under the same circumstances? Women are deprived of the chief of these privileges, which men regard as essential to fame and success; and yet the latter taunt them, because they are inferior in knowledge to themselves. I presume it is not generally true, that the equality of women is denied; it is only determined, that their condition is such, that they are not in a situation to enter into the same field with men, or fitted to discharge the same duties. Now, what I wish to say, is this. If women are going to come forward, and claim their share in the administration of the government, if they are to enter into that, which, by custom and usage, has devolved on men, they must, at the same time, submit to the same treatment, and have their petitions and claims treated in the same manner. The question then arises, would the privileges

which they ask at our hands, relieve them from the evils of which they complain? In the first place, are they, under the present state of things, exposed to injury in their persons, liberties and property? If it be so, would granting the privilege which they claim, relieve them from that oppression? I am not one of those who believe, that, although women are, in some instances, oppressed and denied their rights, that their condition is much worse than that of men; or, that the restrictions upon them, increase their unhappiness. I think, that to grant them these privileges, would do nothing whatever towards relieving them of any of the burdens of life which now rest upon them. Women have power which is as great as that of men, although it is of an entirely different nature. We consider that it takes a man and a woman to make a whole human being; and, therefore, the powers which men possess, are very different from those which women possess, and *vice versa*. If women are deprived, by law and custom, from participating in the privileges, and sharing in the powers which men enjoy, so are men deprived, by nature—a much higher law—from participating in the exclusive powers and privileges which she possesses. It is said, that a single female sigh can shake the whole universe. Now, if women are dissatisfied with their condition in life, and are disposed to interfere in those things, which, by custom and usage, are assigned to men, it follows that men have an equal right to enter their field, and partake of what they have heretofore enjoyed as a special monopoly of power and privilege. How would it appear, if men should claim the same right in regard to the privileges and powers heretofore, according to custom and usage, monopolized by women? Suppose that men should seek to imitate that delicacy, the rosy cheeks, the ruby lips, bewitching ringlets, sunny smiles, and all the paraphernalia of rouges, pomatums, pantalettes and parasols, by which women now sway the grand and universal empire of the heart? What if men, in order to rival the charms of the fairer portion of creation, and thereby increase their influence, should abandon the duties of the farm, the workshop and the sea, and shut themselves up in boudoirs and shady retreats, in order to become softer-fingered and more delicate? They have the same inalienable right to do it, that women have to transgress the boundaries which appear to have been set by nature, and which have been fixed by the customs of all civilized nations.

But there is another argument. As I have already said, if women wish to come into the arena with men, and take a share in the government, they must expect to receive the same kind of treatment, and to be met with the same kind of arguments which are meted out to men by each other. Therefore, we should ask these fair petitioners, where is your majority? If but a small number of men come to the Convention with a petition for some change in the government, we immediately ask, how many people demand it? What is the exigency, &c. &c. If only a few names are signed to the petition, we ask, where is your majority? I confess, Mr. Chairman, if a majority of the ladies of this Commonwealth should petition for this change, the condition of the question might, in some sense, be altered, although the question of right would not be affected thereby. Inasmuch, however, as in entering into

society, all persons are called upon to surrender a portion of their rights, in order to enjoy, with more security and comfort, the balance of them, the question of right, in many cases, resolves itself into a question of expediency, and demands to be treated as such, and this is one of them. It ought not to be forgotten, however, that woman possesses a power which is altogether different in its nature from that of man, and wholly independent of it; a power as great, if not greater, than any which man possesses. All history, as well as our own experience, shows us, that women influence the action and government of the world quite as much as men. At Aix-la-Chapelle, at the meeting of the allied sovereigns, the Princess Leven and Lady Castlereagh exercised as much power and influence as any of those high functionaries on whose diplomatic shoulders rested the authority of kingdoms and empires. Henry IV. was a just monarch, but he was controlled by a certain "Gabrielle," whose arms, and whose power encircled him. The way that women exercise power, it is true, is not exactly by voting; it is a power which is far more omnipotent than any which they could acquire at the ballot-box. Who does not know that the humble and philanthropic Miss Dix has controlled majorities in the legislatures of nearly all the States in the Union, and yet she never cast a vote. See how it was with the memorable Isabella of Spain. She proved greater than Ferdinand, for it was she, and not he, who provided the means for the discovery of this country. It was not because she possessed greater powers of statesmanship, or prophecy, or that she had a larger and more capacious understanding, as we interpret these words; but her greatness consisted in those traits and characteristics which are peculiar to woman, and which well up from her heart, as pure spring water from the sides of a mountain. The Hon. Edward Everett, in his late address before the New York Historical Society, describes precisely the nature of the power which she wielded. After Columbus had wandered a supplicant from court to court, appealing in vain for aid in behalf of his magnificent enterprise, when even the sagacious Henry VII. had turned a deaf ear to him, much to his subsequent regret, it was the "womanly compassion" of Isabella which overcame all scruples and doubts. It was that feminine characteristic which caused her to sell her jewels to fit out the immortal navigator, for that expedition which resulted in adding a new hemisphere to the geography of the world. I am well aware that that power is not called greatness, by the world; but it is greatness, nevertheless, inasmuch as it brings to pass those great results, the achievement of which constitutes greatness in the estimation of mankind. A man is said to be great in proportion to what he can accomplish—the fields he can win, or the nations he can conquer; but the "womanly compassion" of the other sex oftentimes exercises a power infinitely greater than that of conquerors. Edward could conquer cities; but Phillis could conquer hearts; and in conquering hearts she could more than conquer cities. Nobody believes that Queen Victoria is the greatest genius in the world, or the greatest in the art of statesmanship; but who does not believe that sitting on that throne of our mother country, she wields a power more potent in all that tends to promote internal and external peace and harmony, than

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could the mightiest of kings. It is in this form then that women possess a power which they are found to exercise, and which is more potent than that of men and ballots. The moment, however, they step over the line which seems to divide them from men, as by the fiat of nature, they lose that power, by losing those enchantments and charms which characterize them in their present position. As I had occasion to repeat, when speaking somewhere else upon this subject,

"While man possesses heart and eyes
Woman's bright empire never dies."

I have thought proper to say these few words, because, not only have I been made the medium of introducing some of the petitions which are the occasion of this debate, but, because a large number of my constituents—if I may presume to speak of the fair ladies of Abington by that title—are among the petitioners; and I wish to treat the matter with that deference which is ever due to the delicacy and sincerity of the sex. I do not know, indeed, but that women are sometimes denied their rights in other cases; but I do know that this Convention has, to all intents and purposes, over and over again, acknowledged their right to vote. I have not admitted this myself in so many words, but this Convention, in adopting a provision that all persons in the Commonwealth of Massachusetts are free and equal, and have a natural and unalienable right to vote as members of society, have acknowledged that women have a right to vote. What other construction can you put upon such language? I do not quite believe in the doctrine myself; but the Convention has decided, again and again, that such is the fact. What more can be done? How men can admit that doctrine, and then refuse to comply with the demands of the petitioners, I cannot conceive. I suppose they justify themselves upon the ground of expediency; because, when they say that all men are free and equal, and all have an equal right to vote, they do not mean it in an entirely unrestricted sense, for all men even have not the right to vote on all occasions. So it is in other respects. When we enter into society, we are obliged to surrender a portion of what are called our natural rights for the safety and security of the rest. For example, I believe that there is nothing in the ten commandments, or in the twelve tables, forbidding men from putting on women's apparel, or women from arraying themselves in our less graceful attire. According to these authorities, men and women can dress as they please; but until the days of the heroic and intrepid Emma Snodgrass, [laughter,] I believe that the authorities have interfered and decided that it was very improper, if not illegal, that women should put on men's apparel; and no doubt the rule is intended to apply both ways. It is, therefore, a settled fact, that the abstract, natural and inalienable rights of men and women are not rights that are at all times, and on all occasions, to be exercised. They are to be restricted and confined to particular occasions. If, therefore, it seems unjust that the woman who is taxed should not have the privilege of voting, under a system which declares that taxation and representation should go together, it must be regarded as one of those accidents and misfortunes which is irremediable directly, but which is amply compensated for in a thousand other ways. Men of every grade and condition of life are on

some occasions deprived of their inalienable and natural rights for the good of the rest of the community. It is, therefore, as a matter of expediency, and, in accordance with the belief which I entertain, that women are stronger and more powerful, and better protected in the position they now occupy than they would be if their prayer should be granted, that I have concluded not to give this proposition my vote. I am satisfied that the moment women should enter into conflict with men, in political and governmental affairs; the moment they enter into the same arena, and tread the same fields of employment, or ambition, they would have to become subject to the same rules, the same toils, the same hardships the same slanders and misrepresentations, to which men are subjected; and at that same moment, that softness and delicacy of character, and those bland enchantments which bind the world in silken chains, would be lost, and lost forever, and with that loss would follow the entire demolition of that fascinating and almost omnipotent power which they now possess, and which they so happily and delightfully exercise for the glory, happiness, and salvation of the race.

For these reasons, I shall vote, as I suppose every other member of the Convention will vote, that the Report of the Committee shall stand as it is, and that the power of woman over us shall still be clothed with smiles and beauty, rather than with "sealed envelopes."

Mr. CRESSY, of Hamilton, moved that the Committee do now rise, report progress, and ask leave to sit again.

Mr. WHITNEY, of Boylston. I have but a few words to say to the Convention on the subject of this Report.

The CHAIRMAN. The subject of the Report is not debatable on a motion that the Committee rise, and the question must be taken on that motion before further argument on the general Report can be heard.

Mr. KNOWLTON, of Worcester. I move to amend the motion of the gentleman from Hamilton, by striking out the words "ask leave to sit again," and inserting, "recommend the Convention to concur in the Report of the Committee."

** The CHAIRMAN. The motion is not amendable in that form.

Mr. CRESSY. I accept the suggestion of the gentleman from Worcester, and hope my motion may be considered as so modified.

The CHAIRMAN. Then the question is that the Committee do now rise and recommend the Convention to concur in the Report of the Committee. On that motion the member for Boylston, (Mr. Whitney,) has the floor.

Mr. WHITNEY. I am quite aware, Mr. Chairman, that it has been intimated that the time which has been spent on this discussion has been wasted, and as such seems to be the general impression of the Committee; I promise to occupy but a very few minutes in what I desire to say.

I once knew a man who sent to a minister of religion, for the purpose of having him come and argue his wife out of her religious belief, because that belief did not suit him. The minister replied to him, that his wife was never reasoned into her religious belief, and that, therefore, it was by no means probable that she could be reasoned out of it, and for that reason he declined to try. This Committee, I apprehend, is much in the same situation. They have come to a conclusion; and

it is not reasonable to suppose that any one—especially myself—can reason them out of that conclusion. I wish to say a few words, however, upon this subject. It seems to me, that the Committee have indicated the best reasons in the world why the prayer of the petitioners should be granted, and yet they have given them "leave to withdraw" their petitions. Sir, I contend, that he who denies the "divine right of kings" to govern men without their consent, will have very hard work to prove the divine right of men to govern women without their consent. I apprehend that there will be some difficulty attending it, and am of opinion that the greatest point has been granted in the case of women. We should, indeed, be but brutal beings, were we to forbid our wives from enjoying that religion which they believe to be the best—whether Baptist or Methodist, or Episcopalian, or even Catholic. I say, that if there is a difficulty and a division between men and women in this greatest of matters, and the man proposes to tyrannize over the woman, it cannot be so great an evil that there should be a difficulty and a division in regard to minor matters. If a woman has a right to exercise that faith for herself, which she believes, under God, is right—and I believe no man in this Convention, at this time of day, will be bold enough to deny that—certainly she may decide for herself in matters of less importance.

The Committee say that women have interests and rights which are not, and cannot, be regarded by a government in which they are not allowed any political privileges or influence. They say that this was considered by the Committee, and who can deny it. It has been asserted again and again by this Convention. They are not treated fairly. Your higher institutions of learning are closed against them—your colleges and your higher seminaries of learning of every description. But all equality in the land is not yet dead. Is it creditable to Massachusetts, that her daughters who desire to pursue a collegiate course of study, should be obliged to go into Ohio and New York for this purpose? Is it creditable to America that her gifted daughters, who are determined to pursue a thorough course of medical study in order to qualify themselves well for the practice of medicine, should be obliged to go to Paris for this purpose? The door of learning in some portions of America, as well as in some of the European States, is open to women, and they are determined to enter. The learned professions are within their reach, and they are entering, and will continue to enter them; and, I thank God, that it is not within the power of ministers, presbyters, or synods, to control the action of the churches in all respects. The churches are independent, and they will, if they choose, have female pastors. The case has already been tried; and a young lady who was refused an ordination by her own denomination, has accepted an invitation from a church to become its pastor. This is as it should be. So with the medical profession. A gifted woman, who took her reputation in her own keeping, proceeded to Paris to qualify herself in the very best manner for the practice of medicine, and is now, as I am informed by members of the faculty, fast advancing towards the head of the profession in the city of New York.

The reasons given by men why women should not enjoy with them a course of medical study, are that the subject is too indelicate for women.

Tuesday.]

QUALIFICATIONS OF VOTERS, &c. — WHITNEY — MARVIN — BOUTWELL.

[July 12th.]

I submit, Mr. Chairman, that this is not a proper reason for men to give who have decided for woman in all her arrangements in life; who have determined what was proper and what was improper for her to do, and have decided for themselves that it was proper for them to exercise the office of midwife. I hold, Sir, that in this branch of medical practice, at least, women are better qualified, by nature, for its just and proper, and delicate performance, than men. I hold further, that in this matter, as in all others pertaining to woman, she is better qualified to judge for herself and to determine the matter, than man is to judge and determine for her. Leave her to herself, and she will work out the problem in a way which will be creditable to herself as well as to man. This, at all events, is my judgment in the case.

Another point, Mr. Chairman. We lay down the principle continually, that taxation and representation should go hand in hand. I believe, Sir, that this is true as applied to women as well as to men; and if you refuse them a right to a voice in the government, you ought not to tax them. I say, Sir, that it is a shame that woman should be taxed upon her property—property acquired under the hard laws imposed upon her by man—to the full extent to which man is held, while by law and custom she is held under so many disabilities in acquiring and holding property; and I earnestly hope that the legislature of the State, at its very next session, after the adjournment of this Convention, will pass a law exempting the property of women from taxation. This is clearly their right, Sir, the very best reason which can be given why the prayer of the petitioners should be granted, is the statute book of our State, as it stands at this day with reference to the rights of women. It is clear, from the history of the past, that men are not prompt in doing justice to the claims and the rights of women.

The Committee gave, as another reason, why the prayer of the petitioners should not be granted, that only about two thousand, out of about two hundred thousand women in the State of Massachusetts had asked for, or demanded their rights. Sir, these two thousand women are nearly all of them legal voters by right—as many legal voters as are found at present in seven or eight, or ten, of our smallest towns.

And let me say one word further, Mr. Chairman, in regard to the number that desire these rights. I had not the honor of circulating this petition, myself, but I inquired of a friend who did circulate it, how many women he found who were unwilling to sign it? His reply was: “not one whose husband was willing to sign it.” Several of them replied—and I hope you will put this down to the credit of the women—that they would prefer to see their husbands’ name upon the paper before they undertook to put theirs upon it. I think, Sir, that women are as little inclined as anybody, to introduce discord into their families, and that they are fully enough inclined to ask their husbands in regard to this matter, as to any other, in regard to what is their duty; but I do hold that if men are ready and willing to grant the rights of the women, they are, on the other hand, ever ready and willing to exercise those rights.

Now, it is said in this Report that the women have always had the right of petitioning this

government, and that they never have before asked for those rights which are claimed by the petitioners. The Committee also make a comparison between the women and the slaves of this land, showing, or attempting to show, that as the slave has no right to petition for his liberty, there is no parallel between their situation and that of the women of Massachusetts. Now, Sir, those who defend the institution of slavery tell us that when the slaves are asked if they want their liberty, they almost invariably reply that they do not; that they are well enough off as they are; that they enjoy all the rights which they wish to enjoy. This is also asserted of the women of Massachusetts—that they do not desire to have any more rights than they at present enjoy. Sir, I believe that there are very few slaves in this land, or in the world, who, when they are assured that their masters are in earnest to give them their liberty, would not very readily accept it. When we find a case to the contrary, we say at once: “here is a man on whom slavery has done its worst work; it has blotted out from his nature that primary and fundamental principle so dear to all enlightened men—an appreciation of his own liberty.”

Sir, I hold that there is a good deal of human nature in woman as well as in man; and that when their husbands are ready to yield to them their clear and indisputable rights they will be ready to accept them. So much for the Report of the Committee.

A word or two now, with regard to other propositions which have been discussed before the Convention, in relation to this question of woman’s rights. It has been asserted here that the common sense of mankind forbids that woman should exercise political power. I have to say, Mr. Chairman, that the common sense of mankind does not agree as to what is the proper place for woman to occupy.

The common sense of the savage makes woman a beast of burden. The common sense of one class of men shuts her up in the seraglio, and the common sense of another class assigns her still another place. Now, Sir, in every stage of society, from that of the savage up to the present state of civilization, the condition of man has improved just in proportion as the rights of woman have been extended, and it is for those who deny to woman the right of the elective franchise to show that she now occupies just the place in human society which the Creator designed she should occupy. Can they show that? I doubt it. Another one declares that he objects to granting to women what they claim in this petition, from the fact that it will result in bringing them into political life, and that political life is so corrupt that they do not want women to meddle therewith. The mantle of politics is so defiled that they do not want it to rest on the shoulders of women. I say in reference to this matter, that men are probably no more chaste, no more refined, no more elevated, no more God-fearing, in their own homes than they are in their public assemblies. We must remember that women live with these men at home. They must endure them there, however brutal. And to continue the same figure, you will have to put your soiled tunic of politics into the woman’s washtub to be cleansed, before it will be fit for either men or women to wear. It has been intimated by the gentleman for Abington, (Mr. Keyes,) that the

queen of England controls England for good, and exercises her influence for peace in a greater degree than any man could; and I think it a pity that we have not had a woman for president of the United States for some years past, and thus been saved from several very expensive and very disgraceful wars.

However different may be the opinions of men in different degrees of civilization as to the place that women should occupy, they all agree in this one point, that it is for man to determine what place women should occupy. Now, I submit, that from the experience of the past, it is time that we should leave women to decide for themselves what place they shall occupy, and what position God designed them to fill. I do not believe that there exists that difference which some gentlemen have supposed between a pure-minded, manly man, and a pure-minded, womanly woman. What is offensive to the one is equally offensive to the other. As woman’s advancement has hitherto been beneficial to man at every step, so I believe it will continue to be till she stands by the side of her brother in rights, his acknowledged equal.

I offer the following amendment. Strike out all after the word “that,” and insert the following words: “The prayer of the petitioners ought to be granted.”

Mr. MARVIN, of Winchendon. I should like to say something upon this subject, but do not wish to do it at this time, as there is another subject which members desire to bring before the Convention at this time. I therefore move that the Committee rise, report progress and ask leave to sit again.

The question was put and there were, upon a division—ayes, 170; noes, not counted. So the motion was agreed to.

The Committee accordingly rose, and the chairman, Mr. Butler,

IN CONVENTION,

Reported that the Committee of the Whole had had under consideration the Report referred to them, had made some progress therein, and had instructed him to report the same to the Convention, and ask leave to sit again.

Leave was granted to sit again.

Death of the Hon. Francis R. Gourgas.

Mr. BOUTWELL, for Berlin, rose and addressed the Convention as follows:—

It is, Sir, my sad duty to announce the death of a member of this Convention. Mr. Francis R. Gourgas, delegate from the town of Concord, died at his home this morning, at fifteen minutes past twelve o’clock. Mr. Gourgas was about forty-two years of age. Of all the men who welcomed this Convention, or entered upon its labors, none had brighter prospects of life, or higher hopes of the future, than he who now, first of all, has fallen.

A considerable part of his manhood was spent in the public service. His townsmen often elected him to the chief of their municipal trusts, and he was successively a member of the House of Representatives, of the Senate, and of the Executive Council. This varied experience ripened a mind naturally sound, and gave to his counsels the value of maturest wisdom.

He was my friend, and I may say that those best appreciated his character who knew him best. Firm in his opinions and honest in his purposes,

Tuesday,]

DEATH OF MR. GOURGAS.—WILSON—SCHOULER—BURLINGAME—WALKER—HOBBS.

[July 12th.

he never sought success by improper means. His life, Sir, as we judge men, was a fortunate one. He was blessed in his domestic and social relations, honored by the uninterrupted confidence of his fellow-citizens, and ever conscious, as I believe, of the faithful discharge of his private and public duties.

Our friend and late associate has fallen early, but who, Sir, shall say he has fallen too soon. Life is not truly measured by the changes in the material world, but by the progress of the immaterial intellect of soul. Life and death, death and life, teach one lesson,—that in all that concerns this state of existence, we should live as though it was to have no end, and in all that concerns a future life, as though eternity had now begun.

I move, Sir, that a Committee be appointed to consider what appropriate notice this Convention shall take of this dispensation.

Mr. WILSON, of Natick. I rise, Mr. President, to second the motion which has been made by the delegate for Berlin. The death of a member of this Convention could not but be received with emotions of mournful sadness by all of us. But, Sir, he who has fallen was a friend of many years, and an associate of many of us, and his death cannot but excite in our bosoms painful emotions.

In 1842, eleven years ago, it was my privilege to meet him upon the floor of this House. Then I formed a personal acquaintance with him, an acquaintance which ripened into a personal friendship, which has been continued from that day to this. I have ever found him a man

"Of soul sincere,
In action faithful, and in honor clear."

During the last five years, it has been my peculiar fortune to meet him on many occasions connected with public affairs; and, Sir, I can truly say that among all my acquaintances and friends, I know of no one among the living who excelled him in ripe and sound judgment, in discretion and prudence. He was a man of inflexible purpose, of integrity undoubted. He entertained his own opinions with the tenacity of sincere conviction, and at the same time, in carrying out those opinions, he always exercised the greatest prudence, discretion, and wisdom. It was his fortune, years ago, to enter upon the duties of editor of a leading political journal, in the town of Concord. In the severe political conflicts of those times, he doubtless had many strong opponents, but in his own town of Concord he enjoyed the confidence, the respect, and the affection of men of all parties. His townsmen and neighbors loved and honored him, for they knew his worth.

Having a family of three children, an accomplished, intelligent, and faithful wife, he has, during the past few years, devoted himself, when not engaged in the duties of public life, to the welfare of his family, and to the cultivation of his beautiful garden. His library, for which he had recently fitted up an appropriate room, reflected the refinement of his taste, and the cultivation of his mind. He was surrounded by everything to make life agreeable and desirable. But, Sir, he has fallen—fallen in the vigor and maturity of his manhood—mourned by all his neighbors, and deeply regretted by all his associates and friends in political life. In him I have lost an associate and friend, whose name and memory I shall ever

cherish with affection until my heart shall cease to beat.

A comrade has fallen. We may pause for a moment and drop a tear of affection to his memory, but duty compels us to close up the ranks and hurry on in the performance of life's labors.

Mr. SCHOULER, of Boston. The quiet silence of this House upon the announcement made by the gentleman for Berlin, of the death of one of our number, shows how quickly we can bring our minds back to contemplate the mortality of man.

He whose death has been announced, as was said by the gentleman from Natick, (Mr. Wilson,) was long associated in, or connected with a profession of which I also was a member. We lived together in the same county, and took opposite sides in political matters; but, Sir, the personal respect which I always had for him, and which I believe he entertained for me, was never for a moment broken, however much we may have differed in respect to public affairs.

To all that has been said of the deceased, I can say, amen. And I could not allow this occasion to pass, standing as we do, and feeling as if we were passing through the dark valley of the shadow of death, without saying one word of humble tribute to the merit and worth of the deceased.

I rise, Sir, also to support the motion of the gentleman for Berlin, that a Committee be appointed to take into consideration what measures shall be adopted as a tribute of respect to our deceased brother.

Mr. BURLINGAME, for Northborough. Having known the deceased for some years past, and recently quite intimately, I cannot refrain from mingling my private sorrow with this public grief.

We heard some days since of the alarming illness of our friend; and then there came a rumor that his capricious disease had taken a favorable turn. But scarcely were we cheered by the report, when there came the sad intelligence of his death.

It seems but yesterday when we saw him here among us, full of life and full of hope; his fine face beaming with intelligence, and wearing a kind smile for every one—and now he is no more. He was modest and retiring in his manner—so much so, that the stranger would scarcely, from his appearance, take him to be the man he was. He revealed himself to us only by some practical manifestation in direct aid of our deliberations. He was not, as we can all bear witness, a forthputting man. He was the hero, rather, of the committee room. He suggested thoughts upon which other men built reputations. He was a man of a good deal of culture, of excellent character, and, as has been said, of sterling integrity.

It is true, as stated by the gentleman for Berlin, (Mr. Boutwell,) that he was "fearless" in the expression of his views, but he was, at the same time, tolerant of the views of others. In a word, he was a true friend, and a generous enemy.

In his public affairs, he was so clear in his office—he held it with such honesty and such dignity—that he received alike the commendations of his friends and his foes.

His private relations are sacred to us. A shadow rests upon his hearth-stone; let us not seek to penetrate it. There is a grief which our

public and our private sympathies cannot assuage. Time alone holds in its generous bosom the balm that can heal the wound we cannot heal.

Since our sittings commenced, death has come near, and taken away the friends of many of us. To some of them he came with appalling suddenness—to others, after lingering disease. We have felt his chill; his stillness has settled in the chambers of many a loving heart, and now he has trodden with his skeleton foot the floor of this Convention.

Let us, in view of this sad event, be admonished; let us, standing by the portals of the grave of our fallen brother, remember that we are responsible to a higher than any earthly power. Let us, as we remember this—as we remember "what shadows we are, and what shadows we pursue"—rise to the dignity of the consideration of the grand questions of how we should live and how we should die.

Our friend is no more; he has gone to that mysterious land where we can follow him alone with the eye of faith. Who will fall next? It is only a question of time for us all. Let us then be prepared—let us so conduct ourselves that when our time shall come, we can depart in peace, and leave behind us something that—

"Shall resist the empire of decay,
When time is o'er and worlds have passed away;
Cold in the dust, the perished heart may lie,
But that which warmed it once can never die."

Mr. WALKER, of North Brookfield. The deceased was my friend. I knew him in private life, and was associated with him in public duties. It even appeared to me, that he exemplified in a remarkable degree those peculiar traits of character for which that particular class of people from whom he sprung, have ever been distinguished. He was, Sir, a descendant of the Huguenots, whom the revocation of the Edict of Nantes sent into exile from all parts of France. Those men, so strong in their attachment to the principles of the Reformation, formed the moral elite of that unfortunate country, from which they were driven to the number, as history tells us, of more than 600,000. This large body of persons, of all ages, and both sexes, compelled to flee from the wrath of a persecuting priesthood, and a tyrannical government, amid untold hardships and suffering, made their escape into various parts of Europe, into Switzerland, Germany and England, and even into our own country. The ancestors of our friend, if I recollect aright the formal detail he once gave me, fled first to England, and subsequently to America. The numerous portraits of his ancestors with which the walls of his dwelling are adorned, show us that he well knew the fortunes and history of those who had gone before him; and the official costume in which many of them are presented to us, shows that they were persons of distinction, who held many high offices in civil and military life. Our deceased friend was a worthy descendant of such an ancestry. His life did honor to that love of human freedom, and that stern regard for moral principle, which has rendered them so illustrious.

Mr. HOBBS, of Weston. It may seem a little presumptuous in me to rise now, and for the first time during the session of this Convention, to express any thoughts upon this occasion. But, Sir, perhaps no individual upon this floor has had a longer acquaintance with the deceased than myself.

Tuesday.]

DEATH OF MR. GOURGAS.—BROWN—BIRD—DURGIN—CROSS—BRIGGS.

[July 12th.]

Other gentlemen who have preceded me here, have spoken of him in public life, but I have known him in private life. I knew him in early life—I have been associated with him in the walks of life, and I rise to bear testimony to the truth of the remarks which have fallen from my distinguished friends around me, who have spoken of his character, so clearly pointing out those striking characteristics, which marked his life.

I rise, Sir, as a mourner for him. He has been my warm friend—he has been my early associate, and I embrace this opportunity, to bear to his memory, before the gentlemen of this Convention, that tribute which is due to him.

Sir, may we here, on this solemn occasion, while the attention of the members of this Convention is called to this subject,—may we remember, and ask ourselves the question, who among us may next be called from the public duties of life to give up his final account? May we, each and all of us feel the solemnity of the occasion, and remember that all our public as well as private duties, are intimately connected with our interest in the world to come.

Mr. BROWN, of Medway. Having formed an acquaintance with the deceased at a period already referred to—1843, and improved it by ten years association, I am constrained to offer my feeble response to every sentiment of respect and affection which has been expressed by the Convention on this solemn occasion, for the memory of the deceased and of condolence and sympathy for his afflicted family.

Mr. BIRD, of Walpole. Disinclined, as I am, to break in upon that silence which is the best tribute of praise to our departed friend, I must still bear one word of testimony to the regard which I entertained for him.

My acquaintance with the deceased has been comparatively limited, dating back only to the beginning of the last year; but since that time, it has been of a very intimate character. During the whole of the last year, I was more intimately associated with him perhaps, than any other man in the Commonwealth, outside of the circle surrounding his own home. It was my privilege to sit by his side during the whole year in the council chamber, and it was in such a sphere as that, that his best qualities became known. He was a wise and safe counsellor; and I may be allowed to add, what I have often said during his life, that I never met a gentleman, whose judgment I was prepared to take, with so much confidence, as his. Without disparagement to others, I must say, that the man does not live whose opinions I would adopt—if I were to adopt the opinions of any man, without reasons—or whose steps I would follow with such entire convictions that I was following safely, as those of my friend whose decease we now mourn.

I respond, therefore, most heartily, to all the tributes of praise which have been rendered to the memory of the deceased. But I rose mainly for the purpose of saying that I would not have these testimonials pass as mere matters of form. Sir, all, and more than all, is true; but the crowning excellence of Mr. Gourgass's character is expressed in these words: *Entire fidelity to his convictions*. Careful in examining premises, cautious to the extreme in adopting conclusions; but when he had reached them, he stood by them with unalterable firmness. And the more firmly, because over all the conclusions of his judgment,

incorruptible integrity presided. He was an earnest politician; but no man who knew him ever dared to suggest personal advantage as a consideration to influence an official opinion or political act.

My friend for Berlin, (Mr. Boutwell,) has remarked, that we may hardly, perhaps, say that he has fallen too soon. I would not indulge a murmur at the dispensation of Providence, which has taken him from us; and yet, when, since we have had reason to fear that his sickness was unto death, I have tried to bring myself to a feeling of reconciliation to such a loss, I must confess that I have rarely found it so difficult to bring myself to that feeling. I would not say that I cannot come to the conviction that I must submit, but I have not brought myself to see and understand why such a man as he should be taken, and such as me, left. I have never before felt so strongly, with the single exception of the death of the lamented Rantoul, that it could not, must not be. This is the first shaft which has struck the ranks of those who formed the political organization with which the deceased acted. Alas! that, as too often is the case, it should have fallen upon the foremost rank. Never before, except when the cloud darkened my own fireside, never before has the prayer—"Show me wherefore thou contendest with me?"—so constantly risen to my lips. Never before has faith been so unwilling to take for an answer—"Be still, and know that I am God!"

Why was he taken, and why are we spared? It has come to me, personally, with startling warning. Why was he, with vigorous health, with temperate habits, with passions chastened, with appetites controlled, with calm and equable temperament; why was he cut down, and I, with shattered constitution and failing health, left? To my weak faith, shadows, clouds and darkness rest upon this event. May Heaven help me to learn, that righteousness and truth are the habitation of His throne.

Mr. DURGIN, of Wilmington. When the very solemn announcement was made, that the angel of death had entered these walls, and that a member of this Convention had fallen to rise no more, a deep solemnity pervaded this assembly which has not been witnessed before during all our deliberations. We have the fullest evidence that an honest man has fallen—a man of high social, moral and political integrity. And viewing it as a dispensation of the providence of God, it behooves us, with contrite and subdued hearts, to adopt the language of another, and say: "Help, Lord, for the godly man ceaseth, and the faithful faith from among the children of men."

Mr. CROSS, of West Boylston. Having never addressed this Convention upon any occasion, I trust I may be pardoned for saying a word at this time, and I speak now because God himself has spoken. I wish to make a remark of a general character. Much has been said, properly and justly said, in regard to the character of the deceased. It was not my happiness to be intimately acquainted with him, but God has spoken to us all; and it is with reference to the instruction conveyed to us by this providence, that I wish to say a word. It was the remark of the wisest of men, that "it is better to go to the house of mourning than the house of feasting, for that is the end of man, and the living will lay it to his heart." This house to-day has become the house

of mourning, and it is better for us to be here at this hour than anywhere else upon the earth, if we will lay to heart the lesson of practical wisdom conveyed to us by this solemn providence. I have been forcibly reminded to-day of the great truth, that God's providence illustrates, confirms and enforces the truth of his word. It is said, by the voice of inspiration, that every man, at his best estate, is altogether vanity. What an illustration of that truth we have before us to-day, and how important it is, in faithfully and conscientiously discharging the duties of this world, that we should not neglect the higher duties of that world towards which we are rapidly hastening.

Mr. BRIGGS, of Pittsfield. I did not know the deceased, only by reputation, and what little I have seen of him since the commencement of this session. The testimonials of personal friends, of political associates, and of his friends in early life, all confirm what that reputation told me before, he was. I noticed him in the early part of this Convention for his modest and gentlemanly propriety of demeanor, and for the promptness and fidelity with which he discharged the duties that devolved upon him by your appointment, Mr. President. I do not know why, but it so happened that in that respect my attention was particularly directed to him upon more than one occasion. It seems that that was only a trait of his character through life. While here he performed diligently what his hand found to do, and he worked while the day lasted. Now, to him, that night wherein no man can work has come; and it has gathered its dark and impenetrable cloud around him, and his work is done. A friend of his, this morning, said, in my hearing, that when he reached that period of his disease, when the mind became wandering, as it most always does in a disease of this nature, he seemed to be entirely taken up with the proceedings of this Convention, and evinced a great deal of solicitude for the results. This shows how deeply his heart entered into the matters which engage our deliberations. We should improve this dispensation of Providence to our moral benefit, and work diligently while here. The dying moments of our late associate, though under the influence of a mind deranged, show how intently he was devoted to the great duties which we are all of us called upon to perform as members of this body. Would it not be wise for each one of us in our intercourse with one another, in our discussions, in our thoughts, and in all our actions, to have reference to the death of the deceased. As has been said, no one knows where the next blow may fall; and how important, then, that we act here, as well as everywhere else, as though we expected immediately to be called to our final account. Our deliberations would be improved, and the result of all our actions would be more wise. Let us then heed this voice, which comes to us from above, this dispensation of Providence which has taken from our midst one of our companions, who but a few days ago was in the enjoyment of vigorous health and robust manhood, younger than many of us here. This dispensation of Providence "comes to us not out of the ground." This blow that has crushed the heart of a wife, and left little children fatherless, was wisely directed. I may say that we have great cause of gratitude to an Omniscent Being who created and preserved us all, that out of a body of more than four hundred men, and in four months since their election, that this is the

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first instance of mortality among us. Let us then proceed to pay the proper respect to the memory of a worthy associate, cherish his virtues, imitate his example where it is worthy of imitation, and faithfully perform the residue of our duties here.

Mr. HOPKINSON, of Boston. Impressed as I am, in common with every other member of this Convention, by the event which has been announced this morning, I would not attempt, by any eloquence of mine, to deepen the impression which it is calculated to make. Death is always eloquent, and its lessons, although repeated for six thousand years, are always new and always impressive. Upon an occasion like this, where we have been assembled and associated for a common purpose, it is well to pause and remember the virtues and character of the deceased. I rise to pay my tribute to the deceased, because it happened to me to be associated with him in an episode of his life, of which no one hitherto has spoken. We first met together as classmates in college. He entered college very young in my class; remained but a single year, I think, and then he parted from us. It is a source of pleasure to me to remember that during that short time I had considerable intercourse with him. I remember most vividly many peculiar traits of his youth. At that time he had quick and lively sympathies; social among those with whom he came in contact, but never went abroad to seek for society. His friendships were warm and generous, and his indignation at wrong quick and susceptible. He loved his books, and the statement made here that he had gathered about him a library containing the wisdom of those men with whom his spirit sought intercourse, reminds me that even then he had collected his books in a small closet, which he was pleased to show as his little library, and he took great pleasure in gathering his books carefully together. He was then a young man of eminent truth in all his feelings. I did not see enough of him then to learn how well adapted his talents might be for grasping strong subjects. His tastes rather led him in the direction of literary pursuits. He was a youth to be loved and cherished by the hearts that had access to his thoughts and inmost feelings, and he was one to be remembered long, and whose memory will come back fresh to us upon an event like this. We parted, and he entered upon the active duties of life. Those feelings which are so readily cherished, and which gather about us in college life, because we have there not only objects of common interest, but also common hopes, took deep hold with all who shared his acquaintance. I was therefore pleased, after a series of years, to hear that he was settled in the same county where I had resided, and was taking an honored part in active life. My acquaintance with him was not renewed at that time to any great extent, although upon my own part I always desired an opportunity of renewing an acquaintance commenced so early in life. I was always delighted to hear of his success politically, although we were of opposite parties, and the character I heard of him by those who knew him better than myself, drew me towards him. Now, when I have heard his friends who knew him best, testify to his life and character such as it was, I am peculiarly impressed with the fact, that that life was just such an one as might have been anticipated from his youth. It is, therefore, with a sad heart that I add my tribute of respect for

the memory of the dead to those that have preceded me, and join in the expression as to the propriety of our taking time to pause and consider what tribute of respect and regard we should pay to the memory of an honored member of this Convention and of the community in which he resided.

The motion of the gentleman for Berlin, (Mr. Boutwell,) was unanimously adopted, and the following gentlemen were appointed the Committee:—

Messrs. Boutwell, for Berlin,
Briggs, of Pittsfield,
Wilson, of Natick,
Schouler, of Boston,
Alley, of Lynn, and
Bliss, of Longmeadow.

The Committee, after a brief interval, reported the following resolutions:—

Resolved, That the Convention has heard with regret of the death of Mr. FRANCIS R. GOURGAS, a delegate from the town of Concord.

Resolved, That we deeply sympathize with those relatives and friends upon whom this great calamity has fallen.

Resolved, That as a token of our respect for the deceased, a Committee of twenty members be appointed to attend his funeral to-morrow, at Concord.

Resolved, That a copy of these resolves be forwarded to the family of the deceased.

Resolved, That these resolves be entered upon the Journal of the Convention, and that, in sorrow for our loss, this Convention now adjourn until nine o'clock to-morrow morning.

The resolutions were unanimously adopted, and the Convention adjourned.

WEDNESDAY, July 13, 1853.

The Convention assembled pursuant to adjournment.

Prayer by the Chaplain.

** The Journal of yesterday was read.

Termination of Debate.

Mr. WALKER, of North Brookfield, moved that debate in Committee of the Whole, on the Report of the Committee on the petition of Francis Jackson and others, cease in thirty minutes after the Convention shall again go into Committee on that subject.

The motion was agreed to.

Committee to attend the funeral of Hon. F. R. Gourgas.

The PRESIDENT announced the following gentlemen to compose the Committee, under the resolution adopted yesterday to attend the funeral of Hon. F. R. Gourgas:—

Messrs. Boutwell, for Berlin,
Briggs, of Pittsfield,
Wilson, of Natick,
Schouler, of Boston,
Bell, of Somerville,
Weston, of Duxbury,
Morton, of Andover,
Upham, of Salem,
Earle, of Worcester,

Gilbert, of Plainfield,
Whitney, of Conway,
Stevens, of Clinton,
Bliss, of Longmeadow,
Ward, of Newton,
Bird, of Walpole,
Thompson, of Charlestown,
Hobbs, of Weston,
Ide, of Attleboro',
Phinney, for Chatham,
Norton, of Tisbury,
Meador, of Nantucket.

Communication.

The PRESIDENT laid before the Convention the following communication, which was read by the Secretary:—

OFFICE OF THE FITCHBURG R. R. Co. }
BOSTON, July 12th, 1853. }
HON. N. P. BANKS, President of the Convention, State House, Boston.

Dear Sir:—I notice, by the newspapers this afternoon, that a Committee of the Convention are to be appointed to-morrow morning, to attend the funeral of the late Hon. F. R. Gourgas, at Concord. I enclose a free pass over the Fitchburg Railroad, to Concord and back, for said Committee, and such other members of the Convention as may wish to attend.

Very respectfully,

JACOB FORSTER,
President of the Fitchburg Railroad Co.

Mr. THOMPSON, of Charlestown, moved, that the thanks of the Convention be tendered to the President and Directors of the Fitchburg Railroad Company, for the invitation extended to its members, in the communication just read, and that the Secretary be requested to communicate the same.

The motion was unanimously agreed to.

Hour of Meeting.

Mr. HOBBS, of Weston, moved, that when the Convention adjourns to-day, it be to meet to-morrow, at nine o'clock, A. M. I make this motion, said Mr. Hobbs, on the supposition that there may be many gentlemen in the Convention, who desire to attend the funeral this afternoon. Many gentlemen have also expressed a wish, that the Convention should adjourn, it being repugnant to their feelings to remain in session here while one of their number is being borne to the tomb. I do not know whether it is the wish of a majority of the Convention, that we should adjourn over, and I make this motion to ascertain whether such is the case.

The question was taken, and there were, upon a division—ayes, 53; noes, 70.

So the motion did not prevail.

Petition presented.

Mr. DUNHAM, of Savoy, presented the petition of James Cain, and one hundred and sixteen others, inhabitants of Savoy, for the preservation of the system of Town Representation.

The petition was laid upon the table.

Qualifications of Voters.

On motion of Mr. MORTON, of Andover, the Convention resolved itself into

COMMITTEE OF THE WHOLE,
Mr. Butler, of Lowell, in the chair, on the unfinished business of yesterday, being the Report

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of the Committee on the petition of Francis Jackson and others, that it is inexpedient to act upon the subject of the Qualifications of Voters, as prayed for by the petitioners, the question being on the amendment offered by the gentleman from Boylston, (Mr. Whitney,) viz.: "that the prayer of the petitioners be granted."

Mr. MARVIN, of Winchendon. Mr. Chairman; I have an amendment to offer before I sit down, which will be stated at the proper time. In the meantime, I desire to submit some remarks on the subject now before the Committee, although it is with extreme reluctance that I venture to solicit your attention. It is a matter of regret, also, that I am obliged to speak under restraint, since the vote just passed confines the whole discussion within very narrow limits,—limits so restricted, that it will be impossible for me to say all that has a direct bearing on the subject before us. But I shall endeavor to condense my remarks, and get through as soon as possible.

I suppose there is some impatience in respect to the discussion on this question, though it may fairly be inferred from the course of the Convention yesterday, that there is a willingness to hear something farther. It strikes me, Sir, that this is a subject well worthy of discussion. It is my belief that many of the fundamental principles of free government are intimately and indissolubly connected with the subject brought before us by the Report of the Committee which we are now considering. The question as to whom the right of suffrage belongs, cannot be settled without searching into the very foundations of a democratic or a republican government; and I have no doubt, that if the Convention should spend as many days on this question as they did in the consideration of the Berlin case, they would arrive at conclusions which would be useful—results which would amply repay us for such an employment of our time. I would not take up a moment in speaking upon this Report, if I did not consider it a matter of great importance. Not that I suppose the prayer of the petitioners will be granted; not that I can say anything to increase the vote in favor of the Report of the Committee, because I suppose the minds of gentlemen are made up, and that nine-tenths, at least, of this Convention, intend to vote in favor of that Report, or something equivalent to it.

But, Sir, the question has been asked, with an air of confidence, as if it could not be answered, why should not women exercise the right of suffrage? Why should not women vote in all our national, state, county, district, and town elections? And here I will freely grant, that if the commonly received notions about the *social compact* are true and well founded, no good reason can be given why women should not vote in all elections, as well as men. If the so-called social compact is a fundamental principle of government; if it lies at the base of free institutions, then there is no answer to be made to the ingenious argument which was presented yesterday by the gentleman from Brookfield, (Mr. Greene). For the idea of the social compact implies, not that a certain class—not that any number less than the whole—have united themselves under the government of their choice, but that every individual has given in his adhesion to it. You have a government founded on individuals, every one of whom is supposed to have assented to it, if he

did not have a hand in its formation. But if this were the fact, it would be found that the right of suffrage must be extended not to women alone, but also to children. Indeed, no limit to the right to vote could be found, till you come down to children too young to make an intelligible sign in answer to a question. Now it seems to me that an argument that is run into the ground by this simple *reductio ad absurdum* is not well founded. It lacks reasonableness, and will never gain anything like general assent. But of this, more in another place.

Here let me say, Mr. Chairman, that I sympathize with the petitioners in all that can really promote the interests and the true elevation of the female sex. They shall have my hearty coöperation in every rational endeavor to promote the welfare of woman. Not one word shall escape my lips in ridicule of the most extravagant claims and pretensions, as I would not wound the feelings of any earnest heart. Whatever a company of respectable women ask for should be treated with respect, and I am sure that no gentleman can feel disposed to treat the prayer of the petitioners in any but the most courteous manner. There is no question that women are afflicted with many evils, and exposed to many privations, and it is gratifying to know that her sufferings and wrongs are receiving increasing attention. But it is likewise true, that all classes of mankind are subject to evils, wrongs, and sufferings. Misfortunes and disabilities are not confined to a class, and our sympathies should not be confined to that class. The philanthropic spirit which is abroad embraces all the sons and daughters of affliction, and therefore it receives my sympathy. The whole race—men, women, and children—must be elevated by intellectual and moral culture, and then the object we have in view, as friends of humanity, will be secured. I rejoice, therefore, that so much interest is manifested for that class of the community whose claims are now before us, and for all classes—the rich and the poor, the bond and the free, the native born and those who had their birth in foreign lands. The great effort is to civilize and Christianize mankind, and thus to establish freedom and secure the administration of justice. But I must be allowed to say, that however much woman may be oppressed, it is my sincere belief, that in all lands where the Christian religion has much influence, she is happier than man, inasmuch as she is more virtuous and lives nearer to her God. And this leads to the remark, that the way suggested by the petitioners is not the best and most practical method for promoting the elevation and securing the rights of woman. In connection with all reformatory movements, it will always be found that somebody will bring forward unwise and impracticable measures, which seem only to impede the efforts of its true friends, and throw an air of ridicule over the whole subject. I fear that this grand design of elevating the condition of woman, and in connection with it, the condition of all classes, has not escaped the general fate.

To come nearer to the main subject, I propose to consider it under three divisions, in their order. The question is this: shall the right of suffrage be conferred on woman? Or, shall woman exercise the right to vote?

In adhering to the negative side of this question, I take the ground, in the first place, that wo-

men—and here I include the whole female sex—have no right to vote in any elections provided for by the laws of the State. Her rights in corporations, in churches, and in all voluntary societies, are not now in question. I take this ground, because, if they have a right to vote, I am not the man to give my vote against them here. If their case can be made out, and it can be shown that they have a natural right to vote, then all I have to say is let them exercise it, without delay, and to the fullest extent. I have heard gentlemen say that they should vote against granting the prayer of the petitioners, while they had no reasons to give in justification of such action. Such a course does not seem fair and reasonable to my mind, and I intend to follow my convictions. If these convictions led me to the conclusion that the right of suffrage belongs to woman, my vote on this subject would be freely given in accordance with such convictions.

The true doctrine is this, that in a democratic government, or a republican government, which is really under popular control, all the people are represented. And under the term "the people," I place all the inhabitants, men, women and children, without exception. The right of representation is not confined to the male sex, nor to legal voters; but every person, even the infant in his mother's arms, and the idiot boy who does not know his rights, has a natural right to be represented in the meetings, legislatures and conventions, where the laws are enacted. In saying this, I do not mean to intimate that every person has a natural right to vote, or to be a representative; but simply that he has the right to be represented by one who is under the most solemn pledges to take care of his interests and rights. The government which really secures this right of representation to every individual, and thus makes the constituency as broad and as numerous as the whole body of the people, is really founded upon families, and not on individuals. The only free government of ancient times; the only government which came anywhere near securing the freedom and equality of all the inhabitants, was that of the Jews. In that state the men, the women, and the children, were in the enjoyment of the essential rights of man. Under that government there were no slaves, to any appreciable extent. Those captured in war and those who sold themselves into bondage,—in a word, all who in any mode became slaves,—were speedily set free. They had a provision that every person who was so unfortunate as to be in bondage should be at liberty in seven years, except a certain class; and these, by simply becoming Jews, were entitled to the same privilege. And it should be remembered that the motives to induce foreign born residents in Judea to become Jews, or citizens of the Jewish state, were stronger than those which operate upon the minds of aliens among us to induce them to become American citizens. Moreover, among them, the servant, when harshly treated, had as full a right to run away from his master as has an unintended apprentice in Massachusetts. This right was solemnly guaranteed to him, and all persons were prohibited from sending him back to service. Thus personal freedom was secured in the Jewish state and that state was founded upon families. The state was an aggregate of families, and not of individuals, except as members of families. The rights of the family were represented in the state

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by the father in every way in which representation existed under the Jewish polity, and thus the welfare of all was provided for. In fact, among the Hebrews, all families were represented in the church as well as in the state, as units, since the church and the state were inseparably united, which is not the case with us. Every free church, at least among us, is founded on individuals, who come into it voluntarily. No persons are members, in full, in any church, I believe, except as they are received on profession of their faith, or by the rite of confirmation, in accordance with their own consent. But it was not thus under the Hebrew polity, since the church and the state were laid on the same basis and were aggregates of families, although each dealt, in many cases, with individuals.

It is unfortunate for the cause of republican government, that our public men draw so many of their ideas of government and of human rights, from the ancient republics instead of studying the Hebrew polity. We cannot safely argue from Greece and Rome, where a large portion of the inhabitants were slaves. In Athens, there were several slaves to every freeman, and there was no provision for changing slaves into freemen, which had a tendency to put an end to slavery. In Sparta, when the slaves became too numerous for safety, they were not manumitted, but put to death. Slavery grew to such a height in Rome, that the empire fell to pieces by internal decay. It therefore is of very little consequence to us, as republicans, or democrats, or philanthropists, to know on what basis those governments were founded, except for the warning they may give us. They were nothing but oligarchies, under which slavery flourished in its most horrible, and terrific, and debasing forms. Nor can we derive much aid from such authors as Fletcher of Saltoun, and other Scotch and English republican writers of his school; for though they were fierce republicans they maintained that the great mass of the population ought to be held as slaves, or at least, as serfs. And this is the same doctrine that is now prevalent in South Carolina, and other slaveholding States, where this strange plea is put in to justify holding human beings in bondage, that freemen will be able to appreciate more highly their privileges, while surrounded by those enduring the degradation of slavery. We are not to resort to such States, or to such authors, to learn the origin, the basis, or the principles of a free government.

It will be found that in the constitutional government of Great Britain there is an approach to this idea; where if the government is not founded on families, the family is recognized as an important element in the state. In the time of Alfred, families, as units, were gathered into small groups which also were units in relation to larger groups, and to the state. In later times, those who have exercised the right of suffrage, have been, for the most part, heads of families. A few years since, the right to vote was extended to many thousands who were generally the heads and representatives of families; and as the principles of freedom shall make progress in Great Britain, the right of suffrage will, by degrees, be extended farther and farther. The present ministry is pledged to increase the number voters on a large scale; and the time is hastening when universal suffrage will prevail there as it does in our own preeminently free and happy land. The idea is simply

this,—and it might be illustrated and fortified by referring to all countries which have any title to be called free,—that as fast as a government becomes democratic, it will be found that it is a collection of families banded together, each family of which is represented in the local municipal assemblies, and in the national councils. We have arrived to that result in all the free States, and to this conclusion must every real republican or democratic nation come at last. This is the universal tendency in all countries where the principles of free government are gaining ground, because it is the only basis on which a government that secures the equal rights of all the inhabitants can rest.

The family is a unit, and it has a unity of interests. It matters not whether the family consists of two persons, or of twenty, if it is, in the proper sense of the term, a family, its interests as a family are one. Identity of interests enters into the essential idea of a family, and any man who should argue for a diversity of interests in the family, or who should create such a diversity, would be warring against the welfare of families, and sowing discord and confusion, so wide-spread and destructive, that no national government, however strong and wise, could apply a remedy. As a matter of fact, there is in some cases, diversity of interests in a family, and recent legislation, though well intended, has a tendency to aggravate that evil; but it is nevertheless true, that the correct ideal of a family excludes all diversity of this nature. The husband, and the wife, and the children, are not only one household, but their interests are one and inseparable.

Such is a family. What now is its connection with the state? It is a unit, though composed of several persons, and it has a vital connection with that great aggregate of families which constitute the state. In order to secure the rights of these families—these units, including all the individuals in them, however young, or weak, or imbecile—each family must be represented; must have a voice and a vote in those representative bodies where the laws are made. But it does not follow that each individual in the family has a right to be a representative, or to vote for one. In some States, representation is founded wholly on towns; and these States are but aggregates of towns, as Connecticut and Vermont, not to mention others.

Take the former State for example. A few hundred emigrants went from the neighborhood of Boston, and after a journey of a fortnight through the pathless forest, reached the fertile banks of the beautiful Connecticut, and there, in locations which proved their good taste and judgment, founded the towns of Windsor, Hartford and Wethersfield. Under the cultivation of these settlers and their descendants, that section of country assumed such an amenity and beauty as to call forth the admiration of the passing traveller. Midway between the time of their settlement, and our own day, John Adams rode through these towns, and at night wrote in his journal: "I have been in Paradise to-day." But, turning from this pleasant course into which I have unconsciously strayed, I proceed to say, that these three towns, a short time after their settlement, sent representatives to Hartford, and thus the government of the State of Connecticut originated. In process of time, other towns were found, and were united with the rest, on an equal footing, and the State grew up in that way. The

same fact holds good, to a considerable extent, as to the early history of Massachusetts; but it does not follow that every man in a town has a natural and inalienable right to represent the town in which he resides. If that was so, then every man in a town might claim a seat in the legislature, at every session. The town has a right to send its delegate or delegates to the general court, or legislature, and every man has a right to be represented; but no man has a right to be the delegate, unless he is elected for that purpose. The town as a unit, must be heard in the general council or assembly, by its chosen representatives. In this way the rights of all the men in the Commonwealth are secured; and in securing the rights of the men, you likewise secure the rights of families, including all the members. In like manner, to give a somewhat similar illustration, this State is a unit, and it bears a certain relation to the Union. It goes into the United States Senate as a unit, and as an equal. We, as a State, have two senators in that Senate—and it happens at present, that they are two very accomplished gentlemen—and we are all represented by them in that body; but it does not follow that every man in Massachusetts has a natural right to be the representative of this State in the Senate of the United States. He has a right to be a candidate for that high office, but he has no right or title to the office until he has been chosen to fill it. And now, to apply these illustrations, what I say is, that the family is a little government, which is a unit, and which has its representative, as a general thing, in our local bodies, and in our State and national governments. Take this position, and everything is clear and intelligible. It fully comes up to the idea of a free government, under which all are protected, represented and treated as equals.

It is possible that some gentleman will admit the soundness of the above position, who will raise the question why the mother shall not represent the family as well as the father? Let me say, in the first place, that it makes no difference so far as the rights of the family, or which is the same thing, of the individuals who compose the family, are concerned, who is the representative of the family, whether the father, or the mother, the eldest son, or the youngest daughter, provided the interests of that family are well looked after by its representative. The great thing, so far as its rights is concerned, is, that it shall have a delegate who is competent to defend and secure its interests and welfare. The only rational and practical question to be settled is this: who is best qualified in every respect, to represent the family in the general council or legislature? But, if gentlemen insist that it is the natural right of all persons to represent the family, it will be seen that their right will not be secured, by merely extending this right to women. Sons and daughters will come forward with their demand to be allowed to exercise their rights in this regard. On this ground there is no stopping place; there is no point where you can say the right of suffrage, and the right to be a candidate, which two rights always go together among us, shall end. There are many sons and many daughters, not sixteen years old, who, by their talents, information, and sobriety of mind, are far better qualified to vote, than many who exercise the right of suffrage. Many of them are better qualified to be representatives, than some who at times contrive to get into halls of legisla-

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tion. But, farther, on the ground of natural right, as it is sometimes held, and as it has been advocated in this hall, the youngest child has a natural right to vote, as good and as inalienable as that of his father. For, if government is founded on individuals, and if all the inhabitants, in their individual capacity, have entered into a social compact, infants have the same rights as their fathers. Recoiling from a doctrine which leads to a conclusion so absurd, we are led to inquire into the real ground of distinction which gives one person a right to vote, and to be eligible as the representative of voters, while that right is denied to others. Why, then, should man exercise this right, while women and children are debarred from its exercise? So far as children are concerned, it is enough to say, that their interests and welfare are perfectly safe in the hands of their father. He votes for them and represents them all, unless they have interests incompatible with those of the family, in which case, the happiness of all parties would require them to be divided into two or more families.

To the question, why the wife should not represent the family, by her votes, and other ways, in connection with the body politic, as well as the husband, let nature and reason answer. Bear in mind that their interests and ours are the same, which is the case in every marriage from which happiness, or even comfort, can arise; and that whichever happens to be the representative of the other, will take care of the rights of both. This being understood, which of the two does nature and reason say shall exercise the right of suffrage? We find that in all civilized society, there is a division of labor, and that this goes on almost to infinity. The advancement of society requires this division. And even in the least civilized parts of the world, there is a division, to some extent, for everywhere there are certain duties assigned to one class of society, and certain other duties laid upon another class. There is in all nations a broad line of demarcation between labor in the house at home, and labor out of doors; between influences exercised within the family, and without the family; between taking care of the family within the house, and providing for it, and taking care of its interests, by thought, labor, and other exertions, in the field, the shop, the store, and the assembly. God has made a distinction in duties; the Author of nature has informed us to whom these respective duties shall be assigned, by the distinction of sex. This distinction of duties, and of rights also, will exist as long as the human race shall retain their present nature. It can never be altered or repealed; it cannot be ignored or tampered with, without causing great confusion and mischief. On this ground, therefore, I hold that women have no natural right to vote, or to represent the family in the body politic. The family has a right to be represented in the state, and nature teaches which class this representative shall come from. And as there is a perfect unity of interests in the family, there should be, and there is, no want of a representation of the interests of the women and the children belonging to the family. Whenever and wherever you have a free government, and Christian morality pervades society to a considerable extent—and you cannot have a free government anywhere else—there the rights of woman will be guarded and secured, by securing and guarding the rights of the family. And there is no use in talking

about the rights of woman or of man, unless there is morality and religious principle enough to secure the permanency of such a government.

One or two objections come up at this point, which it may be well to dispose of, before taking up another division of the general subject. The first objection is, that there are voters who are not heads of families, and who do not, in fact, represent families. This is granted, but in the best state of society, marriage generally takes place in early life. It was so in early times; such was the fact among the Hebrews, where the tone and condition of morals was higher than among the surrounding nations; and with the early settlers of our country, early marriages were encouraged. The same thing prevails now in all our new settlements, and it was almost universal here until very recently. Indeed, it is still true, that the vast majority are married in a few years after attaining to their majority. I believe this comes to pass in accordance with a beneficent law of our nature, which should not be resisted or evaded, whatever may be the demands of fashion, or of family pride. Whatever may be the sympathies or antipathies of nature in regard to other things, I must say, with all proper respect for my bachelor friends, that nature does abhor celibacy. It is proper that men and women should be married; and, as a general rule, whenever considerations of a mercenary or fashionable nature do not interpose a barrier, they marry in early life. In consequence, men become heads of families while they are still young, so that the objection cannot affect the general rule, except to confirm it. Besides, it is very well for young men still under the parental roof, who are soon to become heads of families, to have an opportunity to commence the exercise of the right of suffrage, and thus become familiar with some of the most important duties of life.

Again, it will be objected that there are widows and maiden ladies, who have no fathers or brothers to represent them. But cases of that kind are very rare, in comparison with the whole number of females in the State. Nearly all have fathers, brothers, or sons, who may and do represent them, if they have no husbands; and the few who have no near relations are so united with all others of their sex, that when the rights of womankind in general are secured, their rights are guarded also.

Thus, it appears, that by basing the state on families, and by securing the equal representation of these families as units, the rights, privileges, and immunities of all, even the humblest and weakest, are placed under the most sacred and vigilant guardianship. And we see, also, that as the beneficent Author of nature has laid the foundation of human government in human nature, so, likewise, has he laid the basis of free government, in the family institution, and thus indicated not only his design, but his determination also, that free governments shall finally be established among all peoples.

Though fearing that this point has not been so stated and explained as to be fully understood, I hasten to the second part of my subject, which is this, that women, not only have no natural right to vote, and to represent the family in the state, but that it would be of no use to them if they should have it, and should attempt to put it in exercise. Where men are not willing to recognize a right of this kind, supposing such a right to

exist, it is vain for women to attempt the exercise of it; it is useless to claim it, for it cannot be used. Even in this Commonwealth, where you cannot deed away certain kinds of property without a wife's consent, there are men who would urge and tease, threaten and cajole, perhaps deceive, and descend to unworthy arts, in order to coerce her into signing a deed. And I have heard of a man, a very respectable man too, who after hearing of a lady who declined to sign a deed, said in a menacing and threatening tone: "I would like to see my wife refuse to sign a deed under such circumstances." It is to be hoped, however, that cases of this kind are rare, in our community, since they are so cruel, mean and disgraceful, to whoever may be guilty of them. But where civilization and Christian morality has not prevailed to any considerable degree; where mankind are still under the sway of the appetites and passions, what success could woman hope for in claiming rights which man might not be disposed to yield? In all cases where there might be a clashing between the claims of women and of men, the latter, being superior in physical force, would prevail, and it would be dangerous for women to attempt serious opposition. The attempt to assert and use such a right—one so essential to government—would lead uncivilized man to exert his brute power, to put woman in a state of subjection. In such a state of society it would be preposterous to think of securing the right of suffrage to the weaker sex. But on the other hand, just so soon as society advances so far that men are willing to accord to women all their just rights, there is no use in granting them the right to vote; there is no use in their having the right of suffrage; because in that case, by the supposition, the stronger sex would be ready to make all laws necessary for the protection, safety, and honor of the less strong. Thus it stands then; where man is not willing that woman should vote, the exercise of that right, if she should dare to exercise it, would lead to confusion, strife, and violence in families; and as soon as he should be willing to accord to her that right, provided it was her natural right, then woman's rights, pretensions, and desires, would all be consulted and cared for, in town meetings, and in the assembly of the great and general court, as well as in such a convention of the people as this. Now, Sir, it is my belief, that the men of this Commonwealth are entirely willing and ready to accord to the women in it—their mothers, sisters, wives and daughters—all their natural rights, and to protect them in the use, and exercise of these rights, by their own right arms, and by all the force of the State. This being the case, they are just as ready and willing to pass all good and wholesome laws, for the sake of protecting the property, the persons, the honor and the lives of those who are dear to them as their own lives. In either case, therefore, the right of suffrage, if she possessed it, would be useless to woman.

Time forbids my pursuing this argument farther, therefore, merely throwing it out, I pass to the third point, which is, that women do not need the right of suffrage. It is not necessary for them to vote in order to secure their rights, protection, reputation, and influence. The way is open for them to exert power enough at present; and avenues to employment, usefulness and honor, are spreading before them on every side. It may be that they are passing into some departments of

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business, where they will be subject to influences of injurious tendency. I am free to confess, that I am not particularly anxious that young girls should become clerks in our stores, unless they are to inaugurate a different kind of trade and of morality from that which prevails in some quarters. If they are to be initiated into all the tricks of trade, and become familiar with all that petty rascality, which is sure to cheat all buyers except those who are adepts in the art of cheapening goods, then it is very questionable policy, to bring them into this line of business. If, on the contrary, they can introduce a new order of things, and put an end to the chaffering and the deception which is too common; if they can establish such an order of things, that a person ignorant of the value of articles, a child, or a blind man, will be able to make as good a trade as one who is acquainted with the quality and the market price of goods, then the practice of employing them in stores should be hailed with lively hope.

But passing this, there are openings on every hand, into which they may enter with the prospect of success. Omitting housework, and the various uses of the needle, some are already betaking themselves to the fine arts. It has been found that they are accomplished engravers on wood, and other substances, and thus a noble field of exertion is before them. There is an increasing demand for their skill in the use of the brush and the pencil. A wide field in the great domain of authorship is theirs by a peculiar right, because they can cultivate it with the greatest success. It is a fair field, adorned with flowers of delicate hue and delicious fragrance, and bearing precious fruits. The number of female authors in our country, who can secure intelligent readers, is rapidly increasing; many of them are prized wherever the English language is spoken, and one of them has recently acquired a universal reputation. Besides, the important and almost sacred employment of teaching, is fast passing into the hands of young ladies. The tendency is that way, and the obvious propriety of the thing is such, that this tendency will be permanent. Thousands will thus find a business as honorable as that of the lawyer or the legislator. But I must refer to another employment in which they may engage, and that is designing. Of all the designs of this designing age, I regard the School of Design as among the best, and most worthy of encouragement. I heard of its formation with delight, and it is my earnest desire that the young women of New England, and throughout the country, may engage in the business, and cultivate the art of designing, not only that they may thus obtain the means of independence, but may also aid in diffusing, among all classes, the idea of beauty, and the love for it, which dwells in their minds, as a general thing, far more fully than in the minds of men. I want the time to come when the figures on our carpets, and on the walls of our rooms, and on the beautifully flowing garments of our ladies, shall have a design, and convey an idea. Why should not this art be cultivated until all the rooms of our dwellings should become picture galleries—cheap, indeed, but beautiful? Look at the figures which now cover the greater part of our carpeting, papering, and apparel, and you will find that they are not only an unmeaning, endless maze, but will consider yourself fortun-

nate if your eyes are not forced with pain to turn away from the crooks and turns, the cycles and epicycles, the orbs on orbs, having no beginning, ending nowhere, and conveying no meaning.

But passing all this, the great sphere of woman, after all, is at home, with her family—with her husband, and among her children. And if she wishes to increase and strengthen her influence in the community, and over society, there is a sure and direct road to that result, as it is entirely within her power to form and control those who are to be the makers, the interpreters, and the administrators of our laws. It is quite as honorable, also, to attend assiduously to the great task of making a household comfortable and happy, as it is to vote in town meeting, be a representative to the legislature, or contend at the bar; it is quite as elevated an employment, intrinsically considered, to bring up a family of children so that they shall be good citizens, as it is to represent a district in congress. Let us get rid of this false standard of honor, Sir, by which certain pursuits and positions are called honorable, *par excellence*, while they are no more exalted in their nature, and require no more virtues and abilities in those who follow and occupy them, than many others. As much taste, as much judgment, as much goodness, may be shown in the varied affairs of the household, as in polishing a song or a sonnet, delivering an eloquent speech, or preaching a good sermon. Nor is there any reason why women should complain that their influence is too limited, and I am glad to know that but a small portion of them join in such complaints. Why, Sir, I venture to say that every member of this Convention, from the eldest to the youngest, is pretty much such a man as his mother made him. His mind received its tone and bias from her, so that all his power, all his acquisitions, are now, in the maturity of his faculties, under the control of influences which she set in motion. In illustration of this, take the remark of Napoleon, that France needed mothers. He did not mean, as some have supposed, that France needed mothers merely to raise up soldiers, to replenish the endless drain made by his wars; that was not his idea. He felt that France needed mothers to train up children to be intelligent and virtuous citizens. It is probable that he was essentially a republican in his ideas, but he soon found out, what all the world have learned since his day, that it was impossible to establish a free government in France. He knew that self-government was impossible in that country, until it was filled with reasonable, moral, and religious women. When that comes to pass, France will be a free country, and republican institutions will take root on her soil. It has been lamented here, that France is without local institutions, like our towns, where the people might learn, in the management of their local affairs, the art of self-government. I wish they had such municipalities, but if I supposed that liberty was not to be enjoyed in France until she could possess these local governments, I should be forced to believe that the time of her deliverance would not come until a period beyond which the farthest ken of the most far-seeing prophet never reached. Liberty, if it comes at all to France, must come through the spread of truth, and by the instrumentality of free, independent religious societies, and of virtuous families. In the family, which is the germ of the state and the church, must the

seed of liberty and virtue be sown; in the family must the basis of free government be laid, by the education of intelligent and virtuous children. You might as well attempt to place the granite shaft which rears its lofty summit from Bunker Hill, on the heaving billows of the Atlantic, as to build up republicanism in France, without the aid of such mothers as I have spoken of. To such mothers, to women of this stamp, who have never sought the notoriety of public life, and never panted for the "high places of the field," we are greatly indebted for the liberties we enjoy; and so long as their daughters follow in their footsteps, we shall have freedom and justice, liberty and law. Good mothers never nursed the tools of tyrants, and they never will.

I have thus, Sir, just touched upon a subject which requires a treatise for its elucidation. I have dealt with it seriously, both because it is a matter of importance, and because those who have brought it to our notice should be treated with respect. When women come before us with complaints, they do not wish to be turned off with compliments; when they make a demand for what they consider their rights, they will not feel satisfied with flatteries; when they come with words of remonstrance, it will not suit their purpose to be answered with honied words. On this account I have endeavored, in as brief a space as possible, to show that they are suffering under no wrongs, disabilities, or restraints, which we, as a Convention, can remedy.

In conclusion, I only ask a moment of time for the sake of recapitulation, and then I will relieve the patience of the Committee, with thanks for the attention with which my remarks have been heard. I maintain, then, in the first place, that while women have a perfect right to be represented in the body politic, they have no natural right to vote, or to be eligible to office as representatives, since all their rights are secured by securing the rights of the family; of which family, the father and husband is the natural representative, in its connection with the state. In the second place, that the right to vote, if possessed, would be of no use to women, since, in a bad state of society, they would not dare to exercise it; while in a country where justice and courtesy prevailed, their fathers, brothers, husbands, and sons, would make such laws as would promote their highest welfare. And lastly, that they do not need any such right, since their Creator has given them a sphere to fill which will task all their powers, enable them to exert a commanding influence not only in social life, but on the policy of the nation, and satisfy the cravings of the most pure and exalted ambition.

Mr. KINGMAN, of West Bridgewater. I suppose, Sir, that it is the intention of this Committee and of the Convention, to dispose of this subject rather summarily. I wish to say a word or two upon the subject, and I will not detain the Committee more than ten minutes—perhaps not half of it. I wish simply to bear my testimony to the principle which is involved in the amendment to the Report. I am in favor of granting the prayer of the petitioners, and therefore I am opposed to the Report of the Committee as it was originally made. The honorable gentleman for Berlin, in alluding to this subject in the discussion of another, remarked that women were precluded from voting by the arrangement of nature; and to illustrate that idea he

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went on—I will not pretend to use his language, but I will endeavor not to do violence to his ideas—he went on to illustrate it by saying that Providence had arranged the human race into families, and that government was necessarily put over the family. Every family must have a head; and that head must be controlled by one will, and that will is the true representative of the family. I submit to this Committee, that if the ruling will is the true representative of the family, there should in many cases be a considerable number of female electors. I believe, Sir, for one,—and I appeal to the observation of the honorable gentleman for Berlin, and other gentlemen present, if in quite a large number of instances the ruling will of the family is not the female will. [Laughter.] Therefore, according to that idea, woman should be the true representative of the family; she should be the elector and the voter. Now I dissent entirely from that conclusion. Another very distinguished gentleman, from Pittsfield, in alluding to this subject in the early part of our session, said that females were now governors. I submit, then, that if they are governors, where is the right of denying them the privilege of being electors? The gentleman who has, addressed the Committee this morning, carried out the same idea with the gentleman for Berlin, that the head, or ruling will, is the representative of the family. The gentleman did not go into details very much; but he carried the idea to my mind that a young man who has arrived at the age of twenty-one years, and who has no family, has no right to vote, because he is a member of his father's family, and the father is the representative of the whole family. But let me suppose a case, of a widow, who may have a large family of children, and may own a considerable amount of property; and let me ask, if the right of representation lies in the family, who is to represent that family? But, it may be said that they have rights to be protected, and that they will be protected in the same manner that other people's rights are protected. Now if the ground is to be taken that rights may be protected without representation, let me ask what necessity there is that clergymen should vote. (I understand the gentleman who argued the other side, to be a clergyman.) Would not their rights be as well protected as the rights of women are, without their having anything to do with it? They might, perhaps, be well excluded from participation in political affairs, because they have another work to perform—to sustain and support another and a higher kingdom.

The CHAIRMAN. The Chair will inform the gentleman that the time has arrived which was appointed for taking the question.

Mr. KINGMAN. If it will be in order, I will move that the question be taken by yeas and nays.

The CHAIRMAN. The Chair is of the opinion that the yeas and nays cannot be called in Committee of the Whole. The Chair will further remark that the motion of the gentleman from Winchendon is not now in order, it being merely a motion to strike out, while the motion of the gentleman from Boylston is a motion to strike out and insert, which, therefore takes precedence. After the question shall have been taken on the motion of the gentleman from Boylston, the motion of the gentleman from Winchendon will be in order.

The question was then taken on the motion of Mr. Whitney, of Boylston, being to strike out all of the Report of the Committee after the word "that," and to insert the words "the prayer of the petitioners ought to be granted;" and it was not agreed to.

Mr. MARVIN then moved to strike out all of the Report of the Committee between the word "that" in the first line, and the word "and" in the last line but one, so that the Report as amended would read as follows: "that it is inexpedient for this Convention to take any action in relation thereto."

The question being taken, upon a division, there were—ayes, 108; noes, 44—so the motion was agreed to.

Mr. BATES, of Plymouth, moved that the Committee now rise, and report to the Convention that the Report of the Committee, as amended, ought to be adopted.

The motion was agreed to. The Committee accordingly rose, and the President having resumed the Chair of

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The chairman, Mr. Butler, of Lowell, reported accordingly.

Mr. WALKER, of North Brookfield, Mr. President: I hope that the amendment which has been reported by the Committee of the Whole will not be adopted by the Convention, but that we shall agree to accept the whole Report as it is. It was adopted by the Committee with very great unanimity; I do not know that there was any objection to it, except from one member, who proposed that the prayer of the petitioners should be granted. With that exception, the Committee were unanimous, and I certainly hope that there will be a like unanimity in the Convention. It was the feeling of the Committee that these petitioners ought to be treated with respect, and as they asked for something that had never been proposed before, it was thought proper that reasons should be given why their request should not be granted. We have, therefore, given reasons such as are set forth in this Report, viz.: that we did not consider ourselves called upon to act in the case,—the circumstances in which we were placed did not demand of us any decision with regard to the several positions which the petitioners took when they appeared before the Committee.

These positions were:—

1. That women are human beings, and therefore have human rights, one of which, is, that of having a voice in the government under which they live, and in the enactment of laws they are bound to obey.

2. That women have interests and rights, which are not, in fact, and never will be, sufficiently guarded by governments in which they are not allowed any political influence.

3. That they are taxed, and therefore, since taxation and the right of representation are admitted to be inseparable, they have a right to be represented.

4. That so far as education and general intelligence are concerned, they are as well qualified to exercise the elective franchise, as many who now enjoy that right.

5. That in mental capacity and moral endowments, they are not inferior to many who now participate in the affairs of government.

6. That there is nothing in their peculiar position, or appropriate duties, which prevents them from taking a part in political affairs.

The Committee did not attempt to decide upon the truth or fallacy of these positions. It was enough for them to know that only some two thousand out of two hundred thousand of the women of Massachusetts asked for enfranchisement, and they believed, that under such circumstances, it was sufficient for this Convention to say, that the petitioners were so small a portion of the whole number of their sex, as not to impose on this body the necessity of acting in the premises. There the Committee have left the matter, and there I trust the Convention will leave it.

It does not seem incumbent on us to anticipate the wants of the future, or to determine whether or not any share of political power may be allowed to women. If we turn to the history of any people, and make observation upon the past, we cannot fail to perceive that the position and influence of the female sex has been constantly increasing with the advancing civilization of every people. There has been a constant improvement and progress. Another important fact is, that the influence of woman is, and has been always in inverse ratio to the amount of brute force employed in the government under which they live. I suppose this to be a fixed law of nature, as much as any other law. If we compare the history of different countries it will appear that under those governments that are founded wholly on brute force, we find woman the most degraded, while under those governments into which the moral element is infused, as for example, the government of England, we find her enjoying a more exalted position, and exerting a wider influence. In this country, I suppose, that woman enjoys a higher position and greater social influence, than in any other country whatever, and this results from the fact that we have the least amount of brute force employed in the organization and administration of our government.

Now, if all this be true, are we prepared to say that the time may never come, or that it ought never to come when woman shall have any more political influence, in some form or other, than she now does? Are we certain that the female mind has arrived at its highest point, so far as its influence is concerned, and is never destined to go beyond what it is at present? I think not. I think that we should leave that question for the future to determine; and that it will eventually become a serious question, I have no manner of doubt. We are educating our females too well, if we do not intend that they should rise in social position and influence. The females of Massachusetts under the age of eighteen years, I have no hesitation in saying, as a whole, are educated better than the males. They are quite as apt to learn, and parents are quite as ambitious to educate their daughters as their sons.

Now, Sir, it is said that if women are to enter the arena of politics, it would destroy their influence in other respects, particularly in the domestic circle. I am not at this time disposed to argue that point; but I do say that I suppose a time may come, and a state of things may exist, in which they might enjoy political rights, and perform political duties, without in any respect

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compromising either their dignity or their delicacy; and I am led to believe this from the peculiar characteristics of the sex, as developed in the Society of Friends. It is well known that this society allows their females to speak in public, and have a concurrent voice in all their affairs; and let me ask whether any one can say that the exercise of such right or privilege—call it either as you choose—has any unfavorable influence upon the female character among that very respectable portion of the community? On the other hand, do we anywhere find a finer intellectual, moral and social development of character, than among the females of that society? So far as my knowledge extends, I must say that I have never found a more exalted development of character, than amongst the females of that denomination of Christians. I do not think that we have the slightest evidence at all that the position the females of that society are allowed to occupy is derogatory to their influence or delicacy, or has the least tendency to lessen or impair that dignity and propriety of conduct and manners which, to all of us, is so much an object of admiration.

But, Sir, I have no wish to occupy the time of the Convention on this subject; and as the decision of the Convention on the matter is doubtless a forgone conclusion, I will only say that in my own mind, I fully concur in the Report of the Committee, and think it is proper that it should be adopted as it is by this Convention.

Mr. HOOPER, of Fall River. I would ask the chairman of the Committee that made this Report, whether the reason assigned for not granting the prayer of the petitioners is not simply the fact that a majority of the women of the State have not petitioned, and whether the inference from that, which I think is fairly deducible, is not that if the majority of the women of the State had so petitioned, their prayer would have been granted. It seems to me that such will be the inference which will inevitably go out from the adoption of the Report as it now is.

Mr. WALKER. I understand that the Convention, by the adoption of this Report, merely decide that when a majority of the women undertake to petition, their petition should be duly taken into consideration, and its prayer answered or denied, as the circumstances of the times, and the nature of the case, may suggest.

Mr. GREENE, of Brookfield. I did not expect again to say a single word to the Convention on this subject; but if the Convention will indulge me, I will not occupy more than ten or fifteen minutes, at most.

I think that if we adopt the motion of the gentleman from Winchendon, (Mr. Marvin,) to strike out the whole of this Report, except the words indicated, we shall neither be treating the petitioners themselves, nor the Committee that made the Report, with the courtesy which, to my mind, appears to be due to both.

There are two things which I desire to say. In the first place, I have heard it denied that the Convention has the right to submit the proposed amendments of the Constitution to the whole people, including women. I will only undertake, upon this head, to read a short extract from the act of the people themselves, decreeing that this Convention should be called. In the third section of the Act, I read as follows:—

"They (the Convention) may take into consideration the propriety and expediency of revising the present constitution of government of this Commonwealth, or the propriety and expediency of making any, and, if any, what alterations or amendments in the present constitution of government of this Commonwealth. And such alterations and amendments, when made and adopted by the said Convention, shall be submitted to the people for their ratification and adoption, *in such manner as the said Convention may direct*; and if ratified by the people in the manner directed by the said Convention, the Constitution shall be deemed and taken to be altered or amended accordingly."

The alterations and amendments are to be submitted to whom? To the legal voters? No, but to the "people." And how are they to be submitted? "In such manner as the Convention may direct." Evidently, the Convention has this whole matter under its own control; and it must be borne in mind, that the Convention has once for all determined, by a solemn vote, that women are "people."

Mark you! I repeat that the Act does not say, "shall be submitted to the legal voters," but "shall be submitted to the people." If it be said that the word "people" is used in the sense implied by the present state of things, I have to remark that such an idea is altogether erroneous, for the reason that in other parts of the Act there is an essential distinction made between the people and those who are qualified to vote. I adduce the following words in confirmation of my statement:—

"The inhabitants of the several cities, towns, districts and places, within this Commonwealth, *qualified to vote for senators or representatives in the general court*, shall, on the second Monday of November next, at the meetings to be then held in the several cities and towns in the Commonwealth, for the choice of governor, lieutenant-governor, senators, and representatives in the general court," &c.

The Act calling this Convention was enacted by whom? By the whole people? No, but by the legal voters—by that portion only of the people who are qualified to vote for senators and representatives. The Act does not pretend to bear the *direct* sanction of the whole people; and because a strong qualification exists in this passage, the distinction exists which I am endeavoring to point out. For there is a wide difference between the act of the people and the act of their representatives, the legal voters.

Secondly, I would have the Convention bear in mind that we are now acting on first principles; and I take it that the question which is here raised as to the right of the Convention to submit this matter to the people, is the same which was so thoroughly discussed when the Berlin question was under consideration; and I take it also that, on that memorable occasion, the backbone of Absolutism in this Commonwealth was snapped asunder, right in the hollow, never again to be knit together, so long as the world stands.

The gentleman from Winchendon tells us that the government of the Commonwealth is founded, not on the individual, but on the family. He says that if the doctrine contained in the Bill of Rights be true, and worthy of the consideration of this Convention, then no argument can be maintained in opposition to the arguments of those who advocate the rights of women. I grant

that he is correct in that; but he says that it is the family which is the foundation of the government, and that the doctrine in the Bill of Rights is all false; and the gentleman for Berlin, if I correctly understand him, maintains the same ground. Now, if the doctrine of the Bill of Rights is a humbug and an imposition upon the people; if that is so—and gentlemen would seem very strongly to imply it—then change your Bill of Rights, and come out like men. Face the music, gentlemen! and say: "We have all been wrong; it is all nonsense to stand upon the democratic doctrine of the Bill of Rights." I do not understand this new dogma, that there is a divine right in the family; but I know that it is not the old, authentic tradition of democracy. Let it be explained, therefore, so that we may take up our work from the beginning, and make a Constitution that is based on some principle. Let us be consistent.

Excuse me, Mr. Chairman, for the remark, but I must say, that there is nothing I like so much as to see things done clean. Let democracy have her perfect work, and if the Bill of Rights is a humbug and an imposition, let us say so, that we may know where we all stand. If, on the other hand, it shall appear that the declared principles of democracy are no humbug, but the contrary, then say that, and stand by your affirmation. Sir, the declarations contained in the Bill of Rights smite on the ear of the people like the blast of an awakening trumpet. Let the man say it that dares, that the natural, inalienable and indefeasible rights do not inhere in the individual, which the Bill of Rights attributes to the individual; let the man who will say that, face the people! For my part, I will never confess that man has no natural, inalienable and indefeasible political rights, if he be not at the head of a family. I stand by the old democratic dogma, and by all the consequences that flow from it.

Mr. MARVIN, of Winchendon. I desire to say a few words upon this matter, and—

Mr. DENTON, of Chelsea. I rise to a question of order. Was there not a special order assigned for this day at ten o'clock?

The PRESIDENT. There was—the Report from the Committee on the Judiciary.

Mr. DENTON. Then as it is now after ten o'clock, I call for the special assignment.

Mr. MORTON, of Taunton. This question will be settled in a very few minutes, and I think it had better be proceeded with until disposed of, so as to save further time in debating it.

Mr. DENTON. If there is a probability of this matter coming to a speedy termination, I will not persist in the demand for the special assignment, but I do think it is time we should proceed to the substantial business for which we are met. I withdraw the call for the special assignment, hoping this business will be disposed of in a few minutes.

Mr. MARVIN. The gentleman from North Brookfield, (Mr. Walker,) a few moments ago, said that it was discourteous to the petitioners as well as to the Committee, to strike out so much of this Report as was stricken out upon a motion made by myself. In reply to that remark, I think it is hardly necessary for me to assure either that gentleman particularly or the Convention generally, that I disclaim any intention of discourtesy towards either of the parties named, in the motion which I made. I am not very

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well acquainted with the rules of proceeding in such bodies as this, but I certainly had no idea of anything of the kind. I need not say that for womanhood I have the highest possible respect. I do not know any of the petitioners, but I will say this, that I never treated a woman with disrespect in my life, and trust that I never shall.

In regard to the Report itself, I think it is a very ingenious one; the idea of it, as far as I can understand it is, that while we are not disposed to give the petitioners any relief, there are very good reasons why we ought to take the prayer of their petition into consideration. I suppose that this is just exactly what these women desire—all that at this time they had expected or hoped for, viz.: that the Convention should say that they had no reason to give why their demands should not be acceded to. If the Convention wishes this Report to be thus understood, as it unquestionably will be, so be it; but I trust the Convention will not so stultify itself. I said that the Report was ingenious, and so it is. It conveys the idea I have just intimated, and the gentleman from North Brookfield, (Mr. Walker,) has given plausible reasons why the prayer of the petitioners should be granted; and his remarks, taken in conjunction with the Report itself, seem to me to concede everything that is asked for. The case, then, stands thus. If we restore the Report as it was, we shall commit the folly of denying the prayer of the petitioners, while virtually confessing that the argument is in their favor.

A word now in reference to the remarks of the gentleman from Brookfield, (Mr. Greene.) He seemed to entertain the idea that from the remarks I had made, I had given up the old democratic doctrine of the sovereignty of the people. I have done no such thing. I say that the doctrine maintained by that gentleman is founded upon the position that leads to this result—universal suffrage, without restriction as to age or sex; that if you give to women the right to vote on the ground that government is founded on individuals who have entered into compact, you must give the same right to children. They are a part of the people. But if you take the doctrine that the family is the basis of the State, and that the State is an aggregate of families, each having the right of representation, then the doctrine of our Bill of Rights is substantially true, because the family, as a unit, is represented by the man; and when you get down to families you get down to the foundation of society, the "hard pan" on which it securely rests; the primary, granitic stratum of free government; and you cannot in this Convention ever get below that. This appears to me to be the key which unlocks all the wards of this difficult question.

Mr. WHITNEY, of Conway. I think sufficient has been said upon this subject, and I therefore move the previous question.

The motion for the previous question was sustained, and the main question was ordered.

The question was first taken on agreeing to the amendment of the Report made in Committee of the Whole as reported to the Convention, and the amendment was concurred in.

The question then recurred on the acceptance of the Report as amended, and the Report was accepted.

Special Assignment.

On motion of Mr. HOOPER, of Fall River,

the Convention proceeded to the consideration of the special assignment, being the resolves of the Committee on the Judiciary, in relation to the

Election of Judges.

An amendment having been made to the resolves in Committee of the Whole, the pending question was upon concurring in the amendment.

Mr. HOOPER. I desire to modify the amendment which I offered in Committee of the Whole and which was agreed to. I propose to strike out all after the word "court," in the third line, and insert the following words:—

Whenever a vacancy shall occur upon that bench, shall be elected by the qualified voters of the Commonwealth for the term of years, so arranged that two shall not be elected at the same time for the same term of years.

The resolve, if thus amended, will then read as follows:—

Resolved, That it is proper and expedient so to amend the Constitution as to provide that the justices of the supreme judicial court, whenever a vacancy shall occur upon that bench, shall be elected by the qualified voters of the Commonwealth for the term of years, so arranged that two shall not be elected at the same time for the same term of years.

Mr. DANA, for Manchester. Mr. President. I suppose the Convention will agree with me, without argument, that the subject which we are now upon, is one of more enduring interest, and more universal concernment, than any that has been before us. It often happens, I may say it usually happens, that those subjects which are followed by the most serious consequences, are not those which attract at the moment the greatest attention. They come often, like the Kingdom of Heaven itself, without observation. So it would be if we should make this great fundamental change in our Constitution without full consideration.

Why, Mr. President, we propose to change one of the great organic departments of the government. The government of Massachusetts is divided into three departments, the legislative, the executive, and the judicial. The feature which most characterizes the judicial department, is the manner in which it obtains and holds its power, and that we propose to change essentially. A system which has existed in England from the birth of liberty to the present time; a system which has existed in Massachusetts from the origin of the State to this hour; a system which has existed in our national government from the beginning; a system which exists in nearly all New England, and in almost all of the States of the Union; a system under which our judiciary has grown up, and under which every man in the United States of America has grown into manhood—for those changes which have been made have not yet reared a generation—that system you threaten to subvert. And why? I ask, why?

It was said here when we came together, and it met the approbation of the Convention, and it has since been repeated frequently by judicious men, that we should make no change unless there was some abuse. Is it not a fundamental maxim of America, that no change should be made until you find an existing evil to be remedied? After achieving our independence, though smarting under the tyranny of England, almost hating the

very name and sight of an Englishman, we yet adopted a Constitution very like that of England, more like it than any other that ever existed. Why? Because it was formed out of institutions which stood here. I take the liberty to say that the American system is this: a system which recognizes existing institutions; a system of adaptation; a system of reforming abuses. The American system is not to speculate, not to theorize, not to make experiments in government, but to take things as we find them, and adapt ourselves to them; to recognize the state of society and then make reforms where there are evils to be reformed. Now I ask how, this being our philosophy, do you propose to treat the judicial department? In the first place, is there any abuse existing? Has any man heard of an abuse? I have not heard of it. Has it been said in this Commonwealth that the judicial department has encroached upon the executive? I have never heard it. Has it been said that the judiciary has encroached upon the legislative department? Has it been said that the judicial department is oppressing the people? Nobody has ever whispered it. Has there been a petition to the legislature to change the Constitution in that particular? Petitions on other subjects have been presented; but I do not know of a single instance where a petition has been presented to either branch of the legislature, asking them to change the judiciary department. Is there a gentleman in this Convention who knows of an instance? Is there any indication of a popular wish that this should be done? You may read articles in the newspapers written by one man; but have we any indication that the public wishes any change here? I have looked in vain for any indication of the kind.

In the first place, I find a document emanating from a distinguished committee in 1852, of which the gentleman for Erving, (Mr. Griswold,) was chairman, on the subject of this proposed Convention. It takes up all the subjects which it is proposed to present to the people, on which it is supposed that the people desire a change. The first is the subject of the Senate, the second, the House of Representatives, the third, to provide for the election directly by the people of all officers now appointed by the governor and the council, "except those of a judicial character;" I see my friend from Northborough, (Mr. Burlingame,) has forgotten the character of the report to which his name stands second;—the fourth relates to the plurality system.

Then comes the report, and it takes up each one of these topics, and finally comes to the subject of the judiciary, and says:—

"The expediency of making other, and more important judicial offices elective, has received the careful consideration of the committee. On the one hand, the same argument which operates in favor of the election of other officers by the people, applies, to some extent, to our judges; besides, it is difficult to understand why the people are not as competent to select proper men for judicial offices, as they are to select the executive, who himself appoints all judicial officers. We have also the example of some of the principal States in the Union, where this practice has been adopted, and, so far as we can learn, is now in safe and successful operation. On the other hand, we have had, in the past history of our own Commonwealth, under the present system, a pure, upright, and learned judiciary, who have commanded the confidence and respect of all

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classes of the community, and whose decisions are quoted as high authority, in every State in the Union. And, deeming it unwise, in a matter touching the organic laws of the State, to tread upon doubtful ground; and, being unwilling to take a step, which, by any possibility, may tend to sully the purity, injure the character, or lessen the dignity of that department of the government, in the pure and learned administration of which, are involved the great interests of property, reputation, liberty, and life, whatever may be the private opinions of the committee, we do not now feel justified in recommending this important change. Should a Convention be called, we doubt not it would number among its members, many of the most distinguished men in the Commonwealth, men selected from the bench, the bar, as well as from the more common, but not less useful avocations of life. Men, who, by their age and practical learning, experience and observation, would be much better qualified to settle this important question than we can claim to be.

"It has been suggested, that judicial officers might be elected by the legislature, and their term of office be limited to a definite number of years, but our present judiciary system has worked so well, we feel unwilling at this time, to recommend even this change, preferring to leave this as well as the former branch of the same subject, to the wisdom of the Convention itself; it being our object to point out only those parts of the Constitution, where palpable defects exist, and where the remedy is not of a doubtful character. Every change is in itself an evil, and unless the ills we now suffer are greater than the evils inseparable from the change itself, it is not the part of wisdom to attempt to change our condition."

Then, Sir,—for I am not going to confine myself to documents,—I come to the political parties of the State. It is not, perhaps, necessary to say, that the Whig party, in its address, indicated no intention to make the judiciary elective. The Democratic party, in its address, after discussing the right of calling a Convention, says:—

"The objects we seek, through the agency of the Convention, are these:—" [Then follow seven subjects, numerically arranged.]

1. Election by the people, of Executive officers.
2. Single Senatorial Districts.
3. Restoration of Town Representation.
4. Districting the Cities.
5. Limitation of the sessions of the Legislature.
6. Establishment of the right of the people to alter the Constitution.
7. The Secret Ballot.

Nowhere is there an allusion to a change in the system of the judiciary.

Then, I have in my hand the address of another political party, not so large, nor always considered so healthy, as the other two. [Laughter.] It is dated January 29th, 1853, and sets forth as the purposes of this Convention:—

1. Reform in the Constitution of the House of Representatives.
2. Single Senatorial Districts.
3. Election of Councillors by the people.
4. Election, by the people, of Secretary of State, Treasurer, Auditor, Adjutant-General, Attorney-General, Sheriffs, and other officers where it is practicable, so as to "*diminish the power and patronage of the Executive.*"
5. Limitation of the sessions of the Legislature.

6. Change in the mode of organizing the government, each year.

7. Change in the day of the annual election.

8. Assertion of the right of the people to revise the Constitution.

9. The Secret Ballot.

There is no indication here, of a change of the judicial system, no indication of an intention to increase the power of the executive, by giving him the right of appointing the judges every ten years, but, on the contrary, an indication of an intent to *diminish that power and patronage*. This address bears the signature of the gentleman from Natick, (Mr. Wilson,) the gentleman from New Bedford, (Mr. French,) the gentleman from Duxbury, (Mr. Weston,) the gentleman from Abington, (Mr. Keyes,) the gentleman from Lynn, (Mr. Alley,) the gentleman from Lowell, (Mr. Graves,) the gentleman from Fitchburg, (Mr. Wood,) the gentleman for Montague, (Mr. Alvord,) and the gentleman from Plymouth, (Mr. Davis).

As regards offices, two things were proposed to be done: to elect certain officers, not being judges, and to diminish and not increase the power and patronage of the executive. We have, then, the voice of a majority of the legislature in 1852, and the voice of two of the great parties in 1853, in favor of this Convention; and I look in vain for the slightest indication of any intention to change the tenure of the judicial department. I do not wonder, therefore, that my friend from Natick, (Mr. Wilson,) said yesterday, that he could not vote for an elective judiciary without an appearance of something like bad faith. He told this Convention, and he told them truly, that by his addresses and speeches, and by the one hundred and fifty letters—I sympathize with him—which he had written to all parts of the Commonwealth on the subject of this Convention, he was so committed against an elective judiciary that he could not sustain it here. But he does not stand alone. If there is any gentleman of prominence enough to be noticed, who has gone into one town of Massachusetts, and presented the case of this Convention, and included in the issue an elective judiciary, I should like to know who and where he is. Every gentleman to whom I have spoken, has told me that he has done no such thing, but quite the contrary,—that he has studiously avoided raising that issue.

Let us recollect the history of this Convention. In 1851 the proposition for a Convention was rejected by a majority of some four thousand, and it was very doubtful whether it would be adopted in 1852. It was therefore necessary to conciliate all persons. I do not wish to state it upon my own knowledge, but I put it to the honor of every man, whether this question of a Convention was not put to the people last November upon an understanding that the judiciary should not be changed; whether there were not thousands of votes obtained throughout the State for this Convention, which would not have been given if it had been understood that an attack was to be made upon the judiciary system? I confess that is not precisely the appearance with which I should wish to see so great a change auspicated.

But I do not confine myself to the subject of an elective judiciary, for there are two propositions, the one is to make it elective, and the other is to limit the tenure of office.

Mr. KEYES, (interrupting). There has been some reference, not only to-day, but heretofore, to names and signatures appended to certain papers, and I would not weaken any argument the gentleman proposes to found upon it, but I trust he has a great many better ones behind, for if he has not he will surely fail in his efforts. I trust that this Convention is not going to take these papers as the charter upon which they are to act. Now my name, in favor of calling this Convention, appears upon one of those documents, and thus I appear to assent to some things to which I am opposed; for instance, the principle of electing by plurality, to which I always was, and now am, opposed. But, Sir, I did not consider that in voting for that we were making a charter for this Convention. That we were to strictly carry out the provisions recommended in that address,—that we were neither to endorse anything that was not contained in that address, nor to refuse to pass anything that was contained in it.

Now, Sir, it is well known to the gentleman for Manchester, as it is to every-body else, that political parties are always cowardly. As he said, the Convention failed at the first trial, and we had to be very careful what we proposed to the people in order to get their endorsement upon the second trial. We knew that this question of an elective judiciary would be made a bugbear of then, as I am afraid it is going to be now. We knew that the Whig party would go unitedly against any such measure, and that if we put this forward as a prominent feature of reform we could not get the proposition for calling a Convention endorsed by the people.

But, Sir, I do not think it necessarily follows that we are to take that address as our charter. I do not think that is to be the *procrustean* bed upon which we are to be stretched; if it is, I am afraid my friend for Manchester would find that his limbs, though not very long, would be cut off. [Laughter.]

I do not wish to interfere at all with the gentleman's line of argument; but so far as I am concerned, I wish to say to the Convention that I do not consider myself at all bound by what is contained in that address.

Mr. DANA. If the gentleman had considered the line of my argument, he would see that I was speaking of the absence of a public call for this change; and that I proved it by showing the manner in which the issues had been brought before the people by leading public men. I said that in view of the manner in which this Convention was called, and the inducements held out to the people to vote for it, this proposition to change our judicial system did not come up under auspices the most desirable. I do not expect to hold gentlemen strictly to their signatures.

The twenty-ninth article of the Bill of Rights says:—

"It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well."

Now, I say, the amendment of the gentleman

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from Natick, (Mr. Wilson,) is fundamental in its character; because it changes a provision which has existed since 1780, and which, since 1780, we have declared to be essential to the security of the rights of the people and of every citizen. He proposes to place the judicial department more or less under the control and patronage of the executive.

Now, Sir, did it ever happen that such fundamental changes were made by the representatives without some notice of a desire upon the part of the people that they should be made? Do such changes come from the people with no note of preparation, no petition, no resolution, no speech, no public meeting, no signature, no address, with no man daring to open his mouth in a public meeting and speak for them? Was there so great a public demand for the change, such a rush of public sentiment, calling for the change, and yet five months ago the boldest dare not advocate it before the people?

Now, Sir, I am not particularly incredulous. My temperament rather inclines me to superstition than to skepticism, but it would require greater credulity than mine to believe that there is such a demand. If there be, the secrecy of it is the greatest miracle of the nineteenth century. It is very difficult to believe, that if such is the fact, even my friend from Natick, who feels the popular pulse better than most of us, should not have felt a single throb last November, nor a single throb last February, and yet that the public is now, with a fevered excitement, calling for this great change. I cannot believe it.

Why, Mr. President, what is the nature of the amendment proposed? I have said it was fundamental in its character, and to be sure it is. The judicial department, as it exists here, is a peculiarity of republican institutions. They have a judiciary in England, but they have it under very different circumstances from ours in the United States. The judiciary of England has no control over the acts of parliament. They have no right to pass upon any act of parliament and compare it with the constitution. They have no constitution there except as an idea,—they have no written or legal constitution. But in this country, the judiciary passes upon the validity of the acts of the legislature. It is a coördinate as well as independent department of the government. Yet, even in England, where they have not the same motive for making it independent, they have guarded it in every possible way.

You know, Mr. President, that up to the time of the Revolution, in 1688, the judges were dependent upon the crown for their appointment and for their tenure. The crown removed a judge whenever it pleased, and, therefore, the judges being dependent upon the crown, the people could not have as fair and impartial a tribunal as the lot of humanity would admit. After the Revolution, a clause was introduced into the Bill of Rights that the judges should hold their offices so long as they behaved themselves well—not a life tenure, for it is not the same thing, but so long as they behaved themselves well. They were liable to be removed by impeachment for misconduct official, or by the address of parliament for misconduct unofficial, or for any other cause. They were made responsible in an eminent degree, but they were made independent. They, however, went out upon what is technically called the "demise of the crown;" that is

when the king died. This is very much such a rule as the gentleman from Natick proposes, that upon the demise of the executive, which is once a year, one or more judges shall be placed at the mercy of the crown. He provides that six judges shall go out in ten years, which, allowing for deaths, resignations, &c., would make about one a year, so that one judge of your supreme court, every year, will be at the mercy of the crown. Now in England they thought that was wrong. It left still a high degree of independence to the judiciary. As long as the king lived, the judges were absolutely independent of him. The judge had his salary, he had his office, and he held them entirely independent of the will of the king. But, then, each judge would feel that it might be that the king would die during his term of office, in which case, for one moment his office would be at the mercy of the crown. It might not be, and again it might be, that the king would die during his term of office. To prevent this chance affecting his impartiality, when George III. ascended the throne, at his majesty's own suggestion, a law passed providing that the judge's commission should survive the demise of the crown, so that in no case could the commission of the judge be placed at the mercy of the crown.

Mr. BUTLER, of Lowell, (interrupting). I desire to ask the gentleman a single question. Was not the reason for the adoption of the law in England, to which he has just alluded, because upon the death of the king some time would elapse in the coronation of his successor, and in starting him in his government, in which, unless some such provision was made, there might be a failure in the administration of justice?

Mr. DANA. No, Sir; that was not the reason. The reason given by the king, was in these words, because "the independence of the judges is essential to the impartial administration of justice, best for the security of the liberties and rights of my subjects, and most conducive to the honor of the crown."

Now, I want the people of Massachusetts to-day, to be as magnanimous as that. We have the power—the people of Massachusetts have the power—to elect their judges every month or every year, if they choose, but I want them to come forward and show no less magnanimity than was shown by George III. I want them to recognize and act upon the principle that the "independence of the judiciary is essential to the impartial administration of justice, best for the security of the liberties and rights of the citizens, and most conducive to the honor of the state." Therefore let us surrender, as a people, that prerogative. Let us put upon us this SELF-RESTRAINT. There is no greater virtue in a free people than the willingness to exercise self-restraint.

When gentlemen tell me they are not afraid to trust the people,—and that is the favorite cry here; trust the people! trust the people!—I must say to them, that is not the issue. The question is, will not the people who have got the power, impose upon themselves some self-restraint? Is not that essential to republican government. Cicero once said that the Athenian Republic could no more exist without the Areopagus, than the world could exist without the providence of God. Now, Sir, a constitutional government can no more exist without a power to assert the supremacy of the Constitu-

tion, than the world can exist without the providence of God.

Sir, what is a Constitution? Why are we here, in a Convention, to revise one? Why are we taking the time and money of the Commonwealth, and our own, to make a Constitution? Is it not enough to have judges, legislatures and governors? The legislature is elected by the people, and why not trust the people? Why have a Constitution at all? Why not trust the people? I put it to those gentlemen, who ask me why I will not trust the people to elect your judges, to tell me why they do not trust the people to make our laws? You do not do it. The most radical man in this Convention would not trust the people to make the laws; but by our own will we impose upon ourselves a restraint. In the exercise of judgment, prompted by humanity and a sense of justice, we say we will make no laws except within the range and limit of that Constitution. And, further than that, we not only take care to say that we do not intend to do it, but we take care to provide against any possibility of our doing it. We provide a tribunal and give it the power of deciding, when we have passed a law, whether that law is in accordance with the Constitution or not. That is what the people do in making a Constitution, and when it is made, when our labors go out to the people and are ratified by them, the people take care that that Constitution shall not be changed except through a laborious, complex, and difficult process.

The legislature comes together every year, elected by the people, and makes laws. The government executes those laws. But notwithstanding all that, the poorest man in the Commonwealth—one man alone against the whole people of Massachusetts—can set those laws at defiance if they are not made in pursuance of the Constitution. The poorest woman, the alien, the infant in its cradle, is protected against the will of the majority of the people of Massachusetts. The foreigner, whoever he may be, barbarian, Scythian, bond or free, may assert and maintain a constitutional right against the will of the majority of the people of Massachusetts.

Now I ask if it is not the feature that distinguishes our republican government, that an individual has some rights against the powers that be—that the minority have some rights against the majority—that one man has rights which he may assert against the people? That is the great and honored distinction, and how are you to preserve it? It is not enough to say that it shall be preserved. There must be a power to preserve. That power is the judiciary. Every act passed by the legislature must undergo the scrutiny of that tribunal, and if it is not in pursuance of that higher law of the Constitution, it must be set aside. And for that reason, chiefly, I wish to have that judiciary made independent. Does not the essential theory of our government require it? It must be independent of the executive, otherwise, he will execute the laws as he pleases. It must be independent of the legislature, otherwise they will make such laws as they please. I have a right to demand that the governor shall not execute such laws as he pleases, but only such as the Constitution allows. I have a right to say that the majority of the people, upon sudden popular impulse, shall not do just what they choose to do, but only what the Constitution allows. If the majority of the people

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of Massachusetts, by any sudden caprice or passion, should insist upon taking my life, or liberty, or my property, without due process of law, I wish to be protected against it.

Mr. President: I can protect myself against one man, alone. The majority can always protect itself, but a single man needs to be protected against the multitude. The minority needs protection against the majority. And how can that be had, unless you establish a tribunal above the mere will of the majority? If you constitute the supreme court as that tribunal, how can it accomplish that purpose unless you make it independent, not only of the executive but of the legislature, and of the temporary will of the majority of the people.

I have heard it said, and I think it has been said by some one upon this floor, that our ancestors, John Adams, John Hancock, and those who made the Constitution of 1780, blindly followed the English precedent, and adopted an independent judiciary as they found it in England, where it was made independent to prevent the encroachments of the crown, and that they had sought to make it independent here where the same reason does not exist. Now, Sir, I undertake to say, not upon my own judgment alone, but upon the judgment of the soundest men in this republic, who ever have written or spoken upon this subject, that an independent judiciary is more important in a republic than it is in a monarchy. Sir, I repeat, without fear of intelligent contradiction, that an independent judiciary is more important in a republic than in a monarchy. And why? In a monarchy, you may always appeal from the sovereign to the people. In a monarchy, the power is lodged with the sovereign, and you may always appeal from him to the people, even if the judiciary is false. But I ask you, in this country, where the people are sovereign, to whom is a man to appeal from the people? Where does an appeal lie, this side of Heaven, from the majority of the people? Suppose a popular majority carry through the legislature a law which infringes upon the rights of an individual, I ask any gentleman to tell me where that man's appeal lies against the will of the popular majority? Sir, it lies nowhere unless we can have a judiciary independent of the changes of a popular majority. We can have no protection for the Constitution unless we make independent our guardian, the judiciary, which is to say whether a law is constitutional or not, and say whether the executive executes that law constitutionally or not. If we go from hence, not leaving behind us as independent judiciary, our labor in this Convention is in vain.

Having spoken of the history of this institution in England, I wish to call the attention of the Convention, one moment, to the history of the institution in America. In 1780, our ancestors adopted their State Constitution, in which they declared it was essential that the judges should hold their offices as long as they behaved themselves well. I wish to know if John Adams, and James Bowdoin, and John Hancock, who made the Constitution of 1780, with halters about their necks, followed blindly the English precedent? I wish to know if they did not feel, as keenly as we do to-day, that they were exempt from English precedents? They did understand that matter fully. They knew that in a republic, there was no appeal from the sudden action of the sovereign

people, unless to a judiciary; whereas, in a monarchy, there is an appeal from the sovereign to the people. They knew that we had a Constitution which the judiciary must pass upon; whereas, in a monarchy, they have no constitution for any judiciary to pass upon. For these two reasons, they saw that it was even more important to have an independent judiciary in a republic than in a monarchy. Such is the language of Chief Justice Marshall, of Story, Kent, Hamilton, Jay and Madison.

When the Constitution of the United States was formed, the resolution giving the judges a tenure during good behavior passed by an unanimous vote. As much as they differed in all other subjects, when they came to the question of an independent judiciary and the good behavior tenure, there was an unanimous vote of the Convention in its favor. That system has continued from that time to the present day. Such, too, is the Constitution of New Hampshire, of Connecticut, and of many other States of the Union. In Rhode Island, it is substantially the same. I grant you that the experiment of an elective judiciary, for short terms, is in the course of trial in several States. It has not yet been tried, for you cannot try an experiment of this sort until a whole generation has grown up under it. That has not been done. We have grown up under an independent judiciary. Our noble institutions—the security of life, liberty and property here—have been acquired under an independent judiciary. The experiment of a dependent judiciary has not been tried through one generation, or anything like it. It has been tried to some extent in New York and Maryland. I think the gentleman from Natick, (Mr. Wilson,) was quite right in saying that judicious persons from New York had advised us not to try the experiment of an elective judiciary in Massachusetts. I hold in my hands a letter from an eminent lawyer, in which he says:—

"It is short of the truth to say that their united influence (election and short terms) has brought our judiciary into decline and decay."

I have another letter, from one of the most distinguished men of the United States, resident in Maryland, who says:—

"It is generally admitted, in this State, I believe, that the change in our system has altogether disappointed the promises of its authors, and that if it could now come before the voters of the State, as an isolated question, it would be rejected by an immense majority."

There are gentlemen in this Convention who have been in Maryland within the year past, and who can bear testimony, I know, to the correctness of this statement. I saw an article in the New York Evening Post, the other day, in favor of an elective judiciary, which spoke volumes of warning to us. The writer was in favor of the elective judiciary as a matter of theory, but at the close of the article he advised the people of Massachusetts to be careful not to allow the election of judges to come at the same time with the election of the other officers, saying that what had been a fatal mistake in New York, and that the consequence had been that the judiciary had fallen into the political cauldron. That admission is inestimable. The result is admitted. The judiciary is in the political cauldron. The reasons assigned, I doubt. I do not believe that the

judiciary has fallen into the political cauldron because it happens to be chosen on a particular day of the year. I believe it is the inevitable tendency of things, certainly in a State like New York, and will be the tendency of things almost everywhere. You recollect that, in New York, when the elective judiciary first went into operation the system worked very well. The first election was made irrespective of parties, and all parties came forward and nominated a mixed ticket. Nearly all the old judges were reelected, and every-body was delighted. The next year it was not quite so well managed; the next year less so; and now the system has fallen helplessly into the political mill—and the well is deep and there is nothing to draw with. The reason assigned is not sufficient, because, for the first two years, although elected on the same day with other officers, the judges were kept clear of all political connection. The march of political parties is irresistible, and office after office has fallen before that march. Although I am yet young, I can remember the time when the removal of postmasters by General Jackson was considered an enormity. I can remember when the removal of custom-house officers was considered an enormity. But the work of removals from office has gone on increasing, until, at last, every executive officer falls before the march of political parties. The spoils belong to the victors. The thirst for blood has come on, and is not to be slaked. The leviathan is not so tamed. Human nature is not to be thwarted by changing the day of the year upon which you are to elect your officers. All offices that parties can control, fall before them. How were the trustees of Harvard College to be chosen by the legislature? The first year they were chosen irrespective of parties; but the very next year the dominant party met in caucus, nominated an entire ticket, and carried it through. In New York, the Evening Post says, that judges have fallen into the political mill. They beg in New York that we shall not elect our judges on the 7th day of November, for fear the same thing will happen here. I say, make it surer than that. Let us not choose them at all, and so we must be safe.

It may be said by some persons, why should not it fall into the political mill? I think sound reasons can be given why it should not. The law must be independent of the changes of the popular will, because this same venerable Constitution, some of which, I trust, will remain, with or without its rust, says: "In the government of this Commonwealth the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them, *to the end it may be a government of laws and not of men.*"

I have heard arguments made on this floor upon the assumption that this is a government of men, and not of laws. But our Constitution says it is a government of laws, and not of men. I have heard gentlemen speak here, under these sacred auspices, as though whatever a majority chose to do at any time, was the law of the land. If so, we do not want any Constitution. The Constitution is designed for the protection of individuals and minorities against majorities, and therefore it is that the judiciary must not be made

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dependent upon the popular will. One party and another comes up, and then comes the third party, that sweeps the board. But these changes must not affect the organic law. One reason why they would affect the organic law I think to be this—that you would inevitably elect party judges. That has been done, and it will be done again. There is another danger I apprehend far more than this, and which has not been often adverted to. Take, for instance, the case of the “Maine Law,” as it is familiarly called. Suppose the judges of the supreme court were equally divided as to the constitutionality of that law. One of the three goes out of office at the end of this year, and the people of Massachusetts are to pass upon his reelection. If he is reelected that law perishes, but if another man, of a different opinion, is elected, that law survives. Earnest men will say, at the polls: “We admit that Judge Doe is a very good man, a very capable, and a very honest man, but you know that he believes that law unconstitutional. You know the terrible consequences of intemperance, and how it is spreading over this country. You know that it burns up human habitations faster than accident or crime burn up the habitations that the mechanic rears. We can give you a judge just as honest, just as capable, just as learned, whose opinions upon that subject we know to be correct. Now every vote for Judge Doe is a vote for ruin, though he is a good man; and every vote for Judge Roe is a vote for temperance, and happiness, and salvation.” How is that argument to be resisted? It will not be resisted. In times of great popular excitement, for a moral cause, or any other cause, it will not be resisted. Take the Fugitive Slave Law. Suppose the court equally divided upon that subject. A new judge is to be elected. Fugitive slave cases will come up before that court for a hearing. I wish to know if the people will not wish to ascertain something about the antecedents of their judges upon that subject. I wish to know whether they will vote in the dark. I tell you nay. The votes will be given for principle, and not for men. Yes, says my friend opposite, (Mr. Burlingame,) as I see by the nod of his head, he is ready for it now. That is young America. [Laughter.] “Principles, and not men,” will be the cry. Furthermore, the choice of the people will be considered as an expression of the law. If a majority of the people should vote for that judge, then it would be said that the people had spoken, and that they had instructed the court, and that the court must follow the voice of the people. I do not know but that the argument which I consider to be conclusive against the change, will operate on some minds in its favor; but let me beg every gentleman, before he allows himself to be influenced in that direction, to consider that he is not put here by his Maker to carry out his will upon the earth. The people of Massachusetts were not put here to carry out their will upon the earth. We were put here to do justice, to protect the weak, to resist the mighty, and to secure to each his right. The democratic doctrine that I know anything about, and that I respect, though I have not enrolled myself under that name, is not that which says that the people may do what they can and will, but that which declares every man equal before the law, and that he should have his right. I ask professed Democrats here, which of these two is the democratic doctrine: that every man may do

his will, and that the majority may do whatever they can and will, or that every man, even the humblest, has his rights, and that under the Constitution all men, without distinction of caste, condition, property, or education, are equal, and that they all shall have their due before the law. We can now protect the rights of every man by saying to him, you have a tribunal, and if the multitude pursues you, you can flee to the horns of the altar and lay hold thereon. Although the avenger of blood may pursue you, and the multitude follow hard after you, lay hold for your life on the horns of the altar. We will give you a tribunal which shall protect you until the danger be overpast. That I understand to be the genius of our Constitution, and therefore it is, I say, that the judicial office should not be blown about by every wind of doctrine. Therefore it is that the people, by a transient vote of the majority, should not settle the law. They may make their law through the legislature, but, with the Constitution in my hand, I can say to the poorest and humblest man—the poor trembling African, to the foreigner, who has first landed on our shores, and who does not know his way through the streets of the city, and does not know the elements of our constitutional law—I can say to him: “You have come to a country where no man can oppress you, where the government, where the legislature, and where the people itself cannot oppress you. If a sudden movement of popular opinion should turn against you, and you should become odious, or stand in the way of their will or their interests, you may come to my humble office, and with a piece of paper no bigger than a man’s hand, I can set at defiance a majority of thousands of the people of Massachusetts. I can point to the Constitution. I can go to the tribunal and assert your rights.” “Aye,” says my client, “you may, but how do I know that that tribunal will assert it?” My answer is: “I admit, a tribunal would be of no use, unless it has power. It has the arm of the executive, it has the whole arm of the State to enforce its decrees.” “But,” says my poor client, “that is not enough. How do I know they will sustain that Constitution against a popular majority? How do I know they will sustain it against the legislature? Your legislature has passed a law abridging my liberty and taking away my property, and the people are bent upon executing it, and at once. How do I know, that your tribunal will stand against it?” I can give but one answer. I can say: “the men who formed this Constitution—wise, noble men—said it was essential to the preservation of the life and liberty of each man, that he should be tried by a tribunal as impartial and independent, as the lot of humanity will permit. Therefore they say, ‘the judges should hold the offices, so long as they behave themselves well.’” I say to him, that I admit it is said, that a man who controls the subsistence of a man may control his will; and we have provided, that the salaries of these judges cannot be touched while they are in office. I admit, that whoever can turn a man out of his office, may control his will,—not must control it, but may. Now, I say to the poor trembling suitor: “these men whom you see before you, hold their offices so long as they behave themselves well; they cannot be removed, nor can they in any way be affected in their persons, property, hopes or fears, for their decision in your case.”

But, if I had to say to him, here are these five judges, I hope they will do you justice, I believe they will, and I pray that they may; but I know, that two of them are candidates for reelection to-morrow, and party excitement runs high, and the feeling is very strong in the community; or if I had to say, that the Convention which had lately been in session, had provided that these judges should depend for their reappointment upon the executive, and he should ask me, how is the governor disposed? I must tell him, that the governor agrees in his views, with the people. The bill has been passed by the legislature and the governor has signed it, and he is to appoint one judge to-morrow, and the next day he is to recommit another or not, just as he may see fit. Now, I could not say to that man that he had as independent a tribunal as the lot of humanity would permit. I want to say to him that all the law can do to make the tribunal independent and impartial, has been done. I do not say that it will then be impartial. Our judges now, may not be impartial. They may be governed by social feelings, and to some extent they are. They may be governed by the influence of a clique to which they belong. That may be true; and so it will be under any system. That is human nature. Our Constitution has not said that every man shall be tried by an angelic tribunal; nor that every man shall be tried by a superhuman tribunal; but by a human tribunal, as impartial as the lot of humanity will permit. I cannot warrant judges against personal, social, and party feelings; but for that very reason, I do not want to add another and a certain operation of a power over his subsistence or his office.

And when this man has stood before our tribunal without fear, as far as a man can be without fear before his fellow men, and when he has gone away with justice done to him against the popular will; when that tribunal, standing higher than anything this side heaven, making the most noble exhibition that humanity can make—protecting the right of a single man against power—when that has been done, I turn to my grateful client and say: “now, I wish you to acknowledge that the old Commonwealth of Massachusetts deserves some gratitude for a self-imposed restraint. When the people of Massachusetts might have made a law which would have walked right over you; when the people of Massachusetts might have provided that there should be no tribunal and no Constitution, and nothing but the action of the public will; when they might have mocked you with a tribunal dependent upon the will of that very majority against which you are to be protected; when they might have mocked you with a tribunal dependent upon that very executive against whose enforcement you are to be protected, they have restrained themselves, and said,—in order that justice may be done to the weakest—in order that in any moment of excitement, in any hour of frenzy or mistake, we may not touch the hair of the head of the humblest man, we will give him a tribunal which shall be independent of the fluctuations of our opinions or passions.

Having shown gentlemen why we should have an independent judiciary, let them point to me one single reason why we should make the change. There is no popular demand for it, and there has been not one single case of complaint. We have the power of impeachment. How many

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judges have been impeached in this State? Not one, in my day. Has a judge been removed by the legislature? But one, and none in my day. What does that indicate? It indicates that it has not been found necessary. And what does that indication prove? It proves that we have had a tribunal as impartial as the lot of humanity will permit. Our judges, let gentlemen bear in mind, are not irresponsible. They may be impeached; they may be removed by a vote of the legislature. Do gentlemen recollect that, at this moment, it requires no more power to remove a judge of the supreme court, than it does to change a man's name; that, on a vote of the two branches of the legislature, the governor can remove a judge of the supreme court; that a conviction in one tribunal, after impeachment by another, may remove him from all office forever? What more responsibility do gentlemen want? It is not a question of responsibility. It is a question of dependence. Now I admit, freely, that all these gentlemen who hold that there ought to be no Constitution practically; that there ought to be no tribunal independent of the changes of the popular will,—they ought to support an elective judiciary, and the sooner the better, and make them not elective once in ten years, but every year. They cannot stop short of that.

Tyranny is simple. It is as simple as the rule of three. But these complex governments in which liberty exists are not to be made or changed easily. They grow. Institutions, as was said by the gentleman for Marshfield, (Mr. Sumner,) grow out of men, and are not imposed upon men. Now, this institution has been hundreds of years in growing. We have lived under it to this day and without any complaint. I must take the liberty to say that if this Convention were to destroy this system with no complaint made against it, and should rush out upon the road of experiment, possessed by a mere theory, when there is no abuse to be remedied, it will be the rashest act that a sober community ever committed.

In New York the change was excusable; for they had suffered under their judicial system. They had suffered till the cup ran over. Although the abuses had no connection with the life tenure, yet I should not have thought it a very strange thing if they had thrown the entire judiciary overboard and done everything in town meeting. So it was in some other States where they have abolished the independent judiciary. But we have not suffered. No man, or woman, or child, can say that the judiciary has tyrannized over them, or encroached upon any other branch of the government. It has not been pretended.

I wish to say to this Convention that the judiciary is the feeblest department of the government, and needs protection. It is the feeblest department of the government. So say Hamilton, and Jay, and Madison; so says Marshall, so says Story, so say Kent and Rawle and all the writers on the Constitution. And is not that perfectly plain? What is the judiciary? It passes upon private questions between man and man. It interprets the laws. The powerful department of the government is that which makes the laws. The legislature holds the purse; the legislature creates offices; the legislature establishes the compensation; and in the legislature, distinction, conspicuity and political power are to be acquired. But the judiciary creates no offices; the judiciary

fixes no compensation; the judiciary makes no laws. It has merely a voice and a head; it has no arm; it has no purse; it has no will. The legislature has a will, and the executive has an arm; but the judiciary has neither power nor will; it can only pronounce. When it has pronounced, it can only throw itself upon the executive to execute its decrees.

The judiciary is not the popular branch. It does its business in quiet and stillness, and with but little conspicuity. The legislature is the place where all men go who are bound on a course of popular preferment, and who wish to stand high in the popular affections. The judiciary has no strength except in the public confidence and in its own integrity.

Many persons have been prejudiced against the present system of the judiciary because of events which have occurred in our own State, within the last three years. Many have sat uneasily under the existing system, for they have thought that the judgments of the court have been construed against what they considered—and I agree with them—the true interpretation of the Constitution on the subject of fugitive slaves.

Now, I take it upon myself to say that I suffered as much in my feelings as any man under those decisions of the supreme court of Massachusetts, and of the circuit court of the United States. I thought them then, and I think them now, wrong. I say this with diffidence, after decisions in such places. But I can truly say that in my greatest distress there was one drop of comfort left me. I knew that those decisions came from men who were not making them for their judicial lives. I knew that they came from men who were not making them because their offices or salaries depended upon their making them.

I felt that we had a tribunal, not entirely impartial—I cannot say that, because it was a human tribunal—but a tribunal for which the law had done all it could do to make it impartial. I knew, and I wonder other gentlemen do not remember that had those judges been elected, we should have stood no better chance than we did then; for the popular majority was against us. Had these judges known they would be obliged to go through a popular election the next week, I wish to know if we should have argued our causes with any more confidence on that account. No, Sir; the confidence felt in going before these judges was this; and it was of unspeakable comfort to me, that I had a tribunal as independent as the law could make it. When this alarm, this fear—and fear is always cruel and always unjust—was spreading over the country; when political parties and great leaders thought it necessary to take a certain position; when men thought that the Union and the shoe trade, [laughter,] and I do not know how many other things, were in peril, and certain things must be done, I felt, Mr. President, the comfort of knowing that these judges held their offices and their salary, utterly irrespective of these popular determinations. Gentlemen are fond of talking as if the people were always in the right. Now I have not lived long, but it has been my misfortune not always to have thought them in the right; and I submit to gentlemen who have sustained the democratic doctrine in this State through these long years of defeat, up to this day, whether they have always thought the people right. I ask the Whig party, who have gallantly maintained their posi-

tion before the nation—beaten three times out of four—whether they have thought the people always right. I submit to my own associates whether they have thought the people of the nation, or of this State, always right on the great question of resistance to the spread of slavery and the slave power. No, Sir; this always has been, and always will be the case, that among all the changes of the government, and changes of popular opinion, the public is sometimes unjust. No man has considered his own nature well, without feeling that he has something within him to satisfy him that he ought not to be trusted with arbitrary power.

Is there one man here who in a moment of resentment, in a moment of passion, in a moment of supposed insult, has not thanked God that he was not possessed of arbitrary power? I suppose every man feels the necessity of self-restraint; and if he cannot restrain himself, he thanks God for putting somebody over him who can restrain him. So it is with the good people of Massachusetts. They know that they cannot trust themselves with arbitrary power, and, therefore, they make a Constitution which will restrain them. They know that they can neither trust the legislature nor the executive with arbitrary power, and therefore they make a tribunal, to decide whether they have acted in accordance with their general will, and done nothing which it was not their general will should be done. So it is with an individual. He may have a general will to serve God, and a special, temporary will to do wrong when a temptation presents itself; but his desire is that his special and temporary will shall be overruled and restrained, so that his conduct may conform to his general will. Now the general will of the whole people is expressed in the Constitution; but there may be some act of the legislature, some sudden freak of the executive, contrary to that general will. We, therefore, wish to get such a faithful witness to this our general will, as shall protect every man against the consequences of what we or our servants may have done, in a moment of rashness.

I have trespassed very much on the patience of this Convention, and I will now merely say a few words in relation to this matter of reappointment. I have said all that I propose to say now, upon the subject of an elective judiciary, for I do not conceive that on that point we are in any very serious peril in this Convention. Gentlemen may be disposed to say, if we cannot make judges elective, we will make them, in some manner, dependent upon the executive for their term. I wish to ask those gentlemen who are in favor of an elective judiciary, what they have to say to this proposition of the gentleman from Natick. What kind of a proposition is it? In how many States of the Union has the experiment been tried, of having their judges hold office for ten or for seven years, and then be reappointable by the executive? There may be some such, but I do not know of any myself. Upon what principle does it rest? I can very well understand upon what principle an elective judiciary rests, but I cannot so easily understand upon what principle you base the doctrine that the judges are to be made dependent upon the executive. Why, Sir, I thought that gentlemen were afraid that the executive had too much power and patronage; and we have, therefore, been stripping the executive of the power of appointment of numerous minor offices. Yet we

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are now asked to clothe him with the power, every year, to appoint a judge of the supreme court, and to reappoint him at his pleasure. I do not understand how this is carrying out the principle, that "because the power of the executive has increased, and is increasing, it ought, therefore, to be diminished." I ask those gentlemen who stood by the Report and Address of the Free Soil Committee, only nine months ago—nay, not so much, not nine—less than five months ago, which declares that the power and patronage of the executive must be diminished, with what face they can come here and advocate the clothing of the executive with this transcendent power, which I do not know that a State in the Union has clothed him with. The executive designates and nominates the judge now, but after he is so nominated and appointed, he is entirely out of his control. I say it is of little consequence who appoints, if the appointment is made by an intelligent body, provided the judges hold by an independent tenure. I cannot see any fatal objection to the judges being elected by the people in the first instance, if they are to be independent of the changes in the public will, and responsible only for misbehavior, although I think a judge is the better for not having been through a political campaign, and not being connected with its issues. I assure every gentleman here, that I will go to the fullest extent to make a judge responsible to the people, if any charge of misconduct can be brought against him. I will consent to anything that is judicious, if your power of impeachment and address does not make them sufficiently responsible. It is the fact of a judge's looking to a reappointment, that makes the danger. I do not see that the danger is very much affected by the question whether they look to the executive who sits in that chamber, or whether they look to, a party caucus that meets somewhere in School or State Street, for their reappointment. Whether, as the fatal day approaches, his friends besiege the doors of the ante-room, for a week or a month beforehand, while he is expected to sit all unconscious, on his bench, "as impartial as the lot of humanity admits," or whether they take by the button-hole the members of the State Central Committees. I cannot see that there is much to choose between them. Gentlemen who suppose that our judges would stand just as they have stood, are mistaken, in my judgment; for the chance of reappointment, or the chance of reelection will depend very much on their decisions.

The people and the political parties will be governed in that matter by these considerations. The executive will be elected by a party. That party has principles—I do not mean the low purposes of party, but the great principles of party—and those men who have got principles are the dangerous men of whom I am afraid; I am not afraid of the rogues. I am not afraid of the camp-followers, who hang about parties, but it is the party that has great principles to carry out, that gets excited and loses its balance, and when the moment of election comes, and the whole community is stirred up, then I am afraid that the calm and quiet retreat of the judiciary will be invaded.

I see that my friend from Fall River, (Dr. Hooper,) is making out a recipe against me; [laughter,] but I want him to understand that I am only afraid of party principle because it will

operate in giving direction to the laws of the land, whereas the laws of the land should stand far above all such influences as those of party principle. The law should rest upon fundamental principles, should be given out wholly irrespective of the divisions of party. The law is a science. The judges are professors of a science. Their own will must not intervene. The will of popular majorities, unless in the form of laws constitutionally made, should not intervene.

I do beseech gentlemen not to be deluded by these arguments, that if you cannot get an elective judiciary, you must take all that you can get; because, in this case, you have got to take a very different sort of thing from what you wish. What gain is it to popular power, or the popular principle, that the judge holds for ten years, with a transaction at the end of that time between himself and the governor, instead of holding independently during good behavior, averaging thirteen years? You increase the executive power, and create a feeling of dependence and a risk of partiality, for no adequate compensation. The tables show us, that the judges tenures average only thirteen years, allowing for deaths or resignations. The governor would have, in doubtful cases, the control of a majority of the supreme court every year. He will appoint a judge every year, and that may turn the majority in close cases. So you will have a supreme court with the majority, in the balanced cases, in the hands of the governor. If there is a new judge to be made, he must find him; if there is a judge to be reappointed, he has to reappoint him or not, at his option. In ordinary cases, I doubt not that judges would be appointed according to their behavior; but, in the highest tribunals, judges would be appointed, eventually, according to their opinions. They must have their platforms, and they will have their platforms, and we shall have the mortifying exhibition, of our judges, or their friends, at the door of that executive chamber, petitioning for reappointments. Now, Sir, I do not want to make them dependent upon the changes of popular elections, either upon one man or a dozen men, I do not think it makes a great deal of difference which. This principle—I call it a principle, out of respect to my friend from Natick—this experiment, which, I believe, he is almost the first, if not the very first to embark in, is putting the judicial department substantially under the control of the executive department.

Mr. WILSON. I will inform the gentleman that he will find the same thing in Maine and in several other States of this Union.

Mr. DANA. "Several States." That is rather indefinite. There are thirty-one States in the Union, and three makes several! and I am told there are but three out of thirty-one. It is founded upon a violation of principle. Our Constitution says that the departments shall be distinct—no one department "shall exercise the power of another." Our ancestors never even dreamed that we would give the head of one department power over another. They never supposed that in the course of affairs it would ever happen that one department would be bound, hand and foot, and delivered over to another. They thought it quite enough to provide that one department should not exercise the powers of any other. "The executive shall never exercise legislative or judicial powers, or either of them."

But they can do it indirectly, if your judges are to be dependent upon the executive for reappointment. I maintain, therefore, that if you adopt the experiment of the gentleman from Natick, you will violate the great substantial principle of this government, in relation to these three departments. If you make the judges dependent for their reappointment upon the executive, how can you tell where that dependence begins or where it will end? Gentlemen may say that they will not be influenced; but you cannot tell how far they will be influenced, and the great difficulty is, that the judges themselves cannot always tell whether they are influenced or not. I have no doubt that in such circumstances most judges will pronounce decisions which they believe to be impartial, but they do not know themselves. It is tempting Providence. This self-deception is one of the most subtle and most easily besetting sins incident to humanity. If you make the judges dependent, you will not discover, and they will not discover what an influence this has upon their inmost thoughts and feelings. If the office is not a desirable one the judge would not have accepted it. Will not this feeling increase and strengthen with the time in which he should hold the office. I submit to every gentleman upon this floor, if, after a man has held an office for ten years, a reappointment is not eminently desirable. Suppose a man takes an appointment at the age of fifty, and holds it until the age of sixty, and then goes back to his profession. You put the salaries so low that a man cannot lay up anything. He goes back to his profession, and he finds himself incapacitated, as it were. His hand is out. Competitors, younger and more energetic, have entered the field and have gathered the business into their garms. His old clients are gone. Imagine such a man going back into his profession, his head whitened by the snows of three-score winters, competing at the bar with the young and middle aged, with the advantage of ten years' daily practice on their side. This judicial office is a peculiar one. You cannot get a man to take it as he would an executive or legislative office. The judge must study a long time to qualify himself for its duties; and if he is thrown out, he must begin the world anew on a little chamber practice, for he cannot ordinarily resume the active duties of the profession. Thus, Sir, his office is a desirable one, and he knows it, and his family know it, and his friends know it. Suppose he looks to the governor for reappointment. As the day approaches, his mind naturally looks forward to that time and dwells upon it. As it comes nearer and nearer it enlarges until it fills the whole horizon. This idea is something which cannot be set at naught. It will have more influence upon some than upon others, but you are bound to remove all such temptations from their path. There is nothing else in the whole range of subjects which we have discussed, whether the plurality system or the majority system, the executive council, the town system of representation or the district system, upon which you may not experiment more safely than upon this. Do not experiment upon the impartiality of your judges. Do not experiment to see how much temptation they can withstand, with their office and salary on the one hand and conscience on the other!

I ask if anybody has petitioned us that this experiment might be tried? Has anybody com-

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plained of anything wrong? Oh! save your judges from this humiliation—save them from temptation! Save from distressing doubts and suspicions the men who go to them for justice! I cannot conceive of a distress more cruel than that of a client whose life and all is at stake, with a doubt resting upon his mind as to the impartiality of the tribunal. That doubt of the impartiality of the final tribunal will be a doubt that will try all the institutions of this country. Save the client from that doubt! Banish from his mind the constant impression, as he looks over the faces of those five judges: "You, Sir, next year, are to be reappointed by such a party," and "you, Sir, this year, must be reappointed by such a party," and "I am standing upon the very platform which that party has denounced—I hold the opinions which that party is sworn to overthrow!" The first thing that I should wish is, that all the citizens should feel perfectly secure from that doubt; and in the day of our great extremity, if it should ever come, let us be able to thank the old Commonwealth that she has saved us from that distress. You have only to stand where you are, and you secure it. Why not do it? Why venture on this experiment? Who has required it at your hands?

Stand where you all stood in October, 1852, or where the people thought you stood. Stand where you stood in February, 1853, and where the people believed you stood, when they went to the polls, and sent you here. Stand where all three of the political parties stood on the day when the people sent us here. Do not exhibit the spectacle of making this fundamental change, with no call from the people to have it made; with no notice to the people that it was to be attempted, and with no chance for the people to elect men with reference to its being attempted. Stand by it because we have had an independent and honorable judiciary under it. Stand by it, because no experiment has ever been tried under the other; for no generation has grown up under an elective judiciary. And I say to the gentleman from Natick, (Mr. Wilson,) and to the gentleman from Fall River, (Mr. Hooper,) by all means, let it stand until they have agreed what they will substitute in the place of it. I say, make no reform until your institutions need reform, and until you have agreed what reform you will make. Do not exhibit to the world a spectacle, as we shall in Massachusetts, of a Convention called to make changes which the popular voice had indicated, taking in hand to make substantial changes of which the people had given no intimation; making change for the sake of change; without any admitted evil to be remedied, and upon a theory about which themselves cannot agree. Sir, the gentleman from Fall River will see the force of the illustration, when I tell him it is bad enough to see two surgeons sitting by the side of a sick man, quarreling between themselves what they will do with him; but to have them seize hold of a man in health, and bind him hand and foot, to try experiments upon him, and not to be able to agree what they shall do to him! that is cruelty as well as folly. And yet, Sir, that is precisely the state of things here.

A VOICE. That's a fact.

Let gentlemen lay this to heart. They are not in a position to try this experiment here. Nobody has discussed this project; yet without dis-

cussion, gentlemen would force it upon the people. Gentlemen are uneasy. We are coming towards the close of the session, and gentlemen say that we must not delay an hour. But I say to the friends of the Convention, if they wish to save time, do not save it by rash and rapid work. Save it by letting alone what you have not time to do well. If the people want the change, it can be afterwards made through the legislature. But my word for it, Sir, the people do not want it. I so judge by the symptoms. If there be no symptoms of a desire, I judge that there is no desire. Sir, we hold our seats here under an implied obligation not to touch the judiciary; not merely, as the gentleman from Natick says, not to make it elective; but not to change the tenure at all. Therefore, I say again, stand by the Constitution until you see a difficulty to remedy, and seeing the difficulty, stand by the Constitution still, until you can agree as to what that remedy should be. Stand by it until the people have called for the change; and when they have called for it, and the evil is apparent, and the remedy agreed upon, I promise to give you my humble aid, but not till then.

Mr. KEYES. I have risen at this time, not for the purpose of making an elaborate reply to the remarks of the gentleman who has just taken his seat, because I am not fitted to do so; and supposing that if there is to be any reply, those who are to make it would not like to get up and make it at this time, and as all the speeches which I make are made upon the spur of the moment, and without much consideration, I will say a word or two now, and others who are more able than I am can follow me. Now the argument, so far as I have heard it, in favor of the Report of the Committee, is founded mainly on what I would call an assumption—it is founded on what I would call a questionable position.

In the first place, it is assumed that there can be no such thing as an independent judiciary, unless the judicial officers are appointed to hold their places for life. Now I deny that position altogether. In one sense, Sir, there is a kind of an independence in men holding that station; but, Sir, the question is, whether that independence ought to be carried to the great extreme which has been assumed by the gentleman for Manchester. If we are to carry out the doctrine which that gentleman has laid down here to-day, I want to know what is the use of having a republican government at all? What is to become of our republican doctrine of responsibility to the people, if any officer, for all time to come, is to be placed beyond their control? If a man who is appointed to perform any duty cannot do it unless he is to do it for the term of his natural life, I want to know if our whole system of republican government is not rotten at the core. Every-body knows that there is not a public officer of the United States so influenced by partizanship, or who may promote his reelection by the patronage of his office, or who is so anxious to retain the power which the people have placed in his hands, as the president of the United States. Sir, take any man—no matter who—take any block of wood and place it in that high station, and the population of the United States will bow down in the dust before it at any time, and at all times, and on all occasions. And, Sir, with such a power, and especially if that power were granted for life, how could it be expected that any man would

administer a government impartially? If this doctrine of independence is so important in order to make a man do his duty, then of course, the people of the United States ought to ordain that instead of the president being elected every four years, he should be elected for life. Whatever might be the effect in regard to the election of judges, every-body knows that the power exercised by them, is not one millionth part of the power exercised by the president of the United States. And if judges of our courts are to be elected for life, in order to render them independent, why not, for the same reason, elect the president of the United States for the same period, seeing that the entire welfare of the country is, in many respects, committed to his charge? Why, Sir, I had always supposed, that the doctrine of republicanism is not only that there is no danger in these short terms of office, but that on the contrary the danger is in having too much independence. The idea that there is a power held over them, which power is lodged in the hands of the people, is the very beauty of our institutions—the very thing which keeps all our public officers properly in the path of duty.

Now, Sir, after all that has been said in regard to the tenure of the judiciary, we have seen that although the term has hitherto been for life, our judges have rarely held the appointment over thirteen years. We propose to fix the term of office at ten years; and yet it is contended that we cannot elect a man for that period without taking away his independence! When we elect a man to an office, we do not seek so to elect him as to make him totally irresponsible. We do not want to place him above all power. We do not want to place him beyond the control of the power which appointed or elected him. This is the very thing that we desire to avoid—the very thing that we seek to remedy in every other office which the people have to bestow. And, if so in regard to all other offices, why not so in regard to the office of judge. The argument of the gentleman for Manchester would go to place such functionary entirely beyond our control, so that no power on earth could reach him. Gentlemen may talk about impeachment; but I take it that that is altogether a farce, for there will always be character enough either in the executive or the people, not to place men who are known to be open scoundrels and villains in such positions; and unless that should be done you will never hear of such a proceeding as that of impeachment. The gentleman for Manchester has stated that no cases of this kind have ever happened, and hence went on to infer that our judges had at all times been immaculate and infallible, when every-body knows to the contrary. Sir, it is not in common and ordinary cases that judges are reprobated and rebuked in the community; nor do the people expect infallibility; but the idea that any set of men cannot be trusted under a republican form of government unless they are to be entirely removed from all reach of the people, seems to me to be a new idea in this age, or rather the resuscitation of an old one, which is totally hostile to republican freedom. So much for that part of the argument. For myself, I am willing to trust our judges, whether they are elected or appointed, for seven or for ten years. This tenure will make them feel a sufficient degree of dependence to remind them of the power which appointed or elected them. They will thus

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know that they are in the hands of the people, and knowing that, and feeling that their business is to administer the law to the people, they will be more likely to discharge their duties with fidelity. This, instead of having an evil and dangerous tendency, I cannot but regard as one of the best safeguards we can have, under all circumstances.

The gentleman commenced his speech by stating that we were going to change the nature of this branch of our government. Is that so? I deny it. There is no change whatever, except in the mode of appointment, and the length of the tenure of the office. The judiciary department, in all its functions, rests precisely where it is, with all its present powers and organizations, and without any change except in the two points which I have named. As I have already stated, the office under the present system, is not held, on an average, for a longer period than thirteen years. Here are only three years cut off from the period, and yet the gentleman says that we are going to bring about a revolution in the judiciary department. Sir, the powers and duties of the judges are to be the same, unless this Convention see fit to alter them.

But I must not forget to remark that the gentleman at least five or six times returned to the matter of the calling of the Convention, and stated that the people had never considered this question, and did not desire any change. If the gentleman had read on a little further in the report from which he quoted, I think he would perhaps have come to a different conclusion, and he would see also, that the question was not settled by the committee to whom he referred, but that it was referred to this Convention to determine, as all other questions are to be determined. I will begin to read exactly where the gentleman left off. This report goes on to say:—

“Should a Convention be called, we doubt not it would number among its members many of the most distinguished men in the Commonwealth; men selected from the bench, the bar, as well as from the more common, but not less useful avocations of life; men who by their age and practical learning, experience and observation, would be much better qualified to settle this important question than we can claim to be.

“It has been suggested that judicial officers might be elected by the legislature and their term of office limited to a definite number of years, but our present judiciary system has worked so well, we feel unwilling, at this time, to recommend even this change, preferring to leave this, as well as the former branch of the same subject, to the wisdom of the Convention itself.”

The circumstances under which the Convention was called; the powers of opposition which were brought to bear against it; the first defeat of the proposition to hold the Convention itself, and that natural Yankee fear which quakes before the public at all times, and which is sometimes necessary, and sometimes unnecessary; from all this you can see at once the object of the committee in deferring a direct decision on the question. If there were other reasons why the Convention should be called without that, then it might well have been called for these reasons, without embarrassing it with more delicate or doubtful ones.

The gentleman referred to what he was pleased to call the mixing up of different branches of the government, as if he thought it would be unwise

and impolitic on the part of this Convention to make this change on that account. But if I recollect rightly, the gentleman was for mixing up the legislative and executive departments of the government by doing away with the council, and providing that the senate should exercise a check upon the governor in regard to appointments to be made. He contended that we should take things as we find them, unless there was a positive demand for a change. He argued that we should not change the system of government as it was established by our fathers; that he would make such emendations as appeared to be absolutely necessary, but in most respects would prefer to have things as they are. Yes, Sir, the plan of the “majority” he found in the Constitution, but he was willing to alter that. This system, under which we have lived for two hundred years, the system under which we have grown up, and which has been the glory of our good old Commonwealth, he would abandon and destroy at one fell blow.

He seemed to think—and I will allude to only one or two other matters contained in his speech—that a judiciary appointed for life is more necessary in this country than in England, but I could not see the reasons for that opinion. Now that was very wise, when the appointment of the judges was in the hands of the king—a king not only there for life, but one receiving the crown from his ancestors and bequeathing it to his posterity, when not only the blood of one man was to govern that generation, but the same blood, from the conqueror down perhaps to Queen Victoria—which almost amounts to a perpetuity of the same individual—that was well enough, I say, when the appointment was in the hand of such a man as that, to be used under all circumstances, and as a part of the great power of the crown itself to make the tenure of the judges for life. Supposing that the king of England was to be elected annually, the appointment of the judges might be left safely in his hands, because if he made villainous appointments; if he appointed such butchers as Jeffreys and Scroggs to furnish victims for the gallows and stake all over the land, they could turn him out and elect another king, and therefore the power might be, under those circumstances, comparatively safe in his hands. But because the king is not elective, and without control, and the power of appointing and reappointing judges might be used for the purpose of carrying out, if he chose, his murderous purposes—as was the case with many kings who have filled the throne—it was of the highest importance to the safety of the people of the realm, that the power should be taken out of his hands, and lodged somewhere else, and as the people of England had not the opportunity of election as we have, they could only secure their independence of the king by a life tenure. That was the only way in which they could find security. If our governor should appoint villains or incompetent men, or men unfit by their natures and dispositions to discharge properly their duties, the people stand behind him and right the matter at the next election.

It has been asked here, why the people do not make the laws themselves? I answer: “they would make the laws if they could.” It was, originally, the system in this country for the people to assemble together, as did the democracy of Athens, and make the laws themselves; and

when they did that they had no need of a Constitution. Why do they not make the laws? It is because they cannot now assemble together, on account of their numbers, and therefore they delegate their power to a legislature, and put a Constitution upon them. But the people do not want a Constitution in that sense. They can trample the Constitution under foot any day they please. The Constitution, in their hands, is like laws in the hands of the legislature—subject to their constant control and revision. The people would make the laws themselves were it practicable, but as it is not, they delegate this power to the legislature, and place them under the restraints of a Constitution. The people hold the Constitution as a piece of parchment, and can repudiate it whenever they please. For that reason the judges should be made amenable to the people. They should be elected by the people and be held responsible to them. However independent they might be of political partizanship, I would never have them actually independent of the control of the people.

Now the gentleman left out of his case one idea which I would have ever kept in mind, that is, these officers are not elected, they obey no authority on earth, looking upon the power of impeachment, as well they may, with perfect contempt. They have no other restraint than their own consciences and the law of God above—and that, according to a doctrine which I read of yesterday, is not always to be trusted.

Now, Sir, the judges, as I said before, are to be influenced. They are men, and they are influenced by the communities, the societies and the classes in which they live, and the question now is, not whether they shall be influenced at all, or not, but from what quarter that influence shall come. Now I do not believe there is a judge upon the bench of Massachusetts, either in the circuit court, or in the supreme court, who, if the skeleton of the fugitive slave law had been offered to their decision two years before it was enacted, would not have pronounced it unconstitutional, infamous and absurd. If they would not have done that, they would not have been regarded by the people as fit to be judges. I have no doubt that every man of them, a year before, would have agreed with me, in the infamy and unconstitutionality of that law, although they now, under some influence or other, hold a different opinion. When that power which does influence judges was brought to bear upon them, they bowed in abject submission to it, and took pains and went out of the way to tell the people that a halter was around their neck, and the iron heel upon their throat, and that they must yield subjection and submission to a law which no other nation upon earth is abject enough to submit to in silence.

I allude to this to show that there is an influence, coming from some source, which is brought to bear upon the judges, as well as upon other men, and the question is, shall that influence come from the atmosphere in which they move, or shall it come from the people, whom this Convention supposes to represent the conservatism, the virtue and the wisdom of the land.

The idea of electing judges every year is absurd, because they would hardly get in their seats before their terms would expire. But to say that because once in ten years they shall go back to the appointing power, they will be so dependent,

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so cowardly, so mean that they cannot transact and discharge their duties properly, for fear that their bread will be taken out of their mouths, and their children will be turned starving into the streets, is an argument against republicanism altogether. I do not believe that the effect of it will be anything like that. I believe that the argument made this morning, if heard in foreign lands where the people are mistrusted, and where the ruling power is placed in the hands of a small minority, would be held up, in the face of the institutions of the old world, as an evidence that here in the new world, we, living under the light of a republican government, are dissatisfied with it, and do not believe that the people are capable of governing themselves. They tell us that the people cannot be trusted with the powers necessary for their own safety and their own salvation, and we shall virtually acknowledge it if we refuse to adopt the amendment. I believe, if there are any officers whose election can be safely intrusted to the people, they are the judges. I regard it to be so on the ground that the office of judge is one in which all the people are interested, and the integrity and respectability of those who are to occupy that office, is near and dear to the hearts of all the people. Because the people are liable, in some degree, to feel their power, and to be affected by their decisions, they will exercise a criticism and judgment in their selection, that are not exercised in regard to any other class of public men.

Now, gentlemen have received and read some letters from other States. We know how easy it is to get letters. If voluntarily given, they are of little authority. If given in reply to letters sent, those letters would be most likely directed to right quarters to get such replies as are wanted. How many in Massachusetts might say the same things as are contained in those letters. I believe the majority of the people in this Commonwealth would utter similar sentiments, as they have not tried this new experiment, and they have been frightened by bugbears held up before their eyes.

Reference has been made to the great men of 1780. I like such references as those, and I wish we could follow the doctrines they inculcated. But, instead of following them we have gone back, and have lost that moral courage which we should have derived from their example. If we could stand up in opposition to the oppressing power of this nation, as they did against the oppressive power of England, we should show some specimens of bravery and courage worthy of commemoration. But the wonder is that they went so far as they did at that long distant period. They had had no experience in our kind of republican governments, though they had had some freedom under the colonial and provincial governments, yet not entirely independent of the ruling authority at home. That that they should on that occasion have gone to such extremes—as it would have been called in this day—is remarkable.

But, Sir, there were many things which that Convention adopted, and there were many sentiments which were orthodox in that day, which are entirely repudiated in our day. The Convention, even of 1820, composed of men who inherited the spirit of their fathers to a greater degree than we have, adopted things which the people rejected, and which we shall repudiate, as one man, upon this occasion. Seeing how essential it was under the British form of government to have a judiciary independent of the crown, they

adopted a similar provision, because they felt that that was the great palladium of their liberties. They were thinking of kings, and forgot that they were to be thereafter independent of kingly influences.

Now the gentleman says that the judicial is a very weak power. That struck me as a remarkable saying, though I am aware that he knows much more about it than I do. It appears to me that the judiciary is strong. It has seldom to give any reason for its action, and it is supported and upheld by all the veneration and reverence of the people, the influence of which they can scarcely overcome. The power, too, in their hands, is unquestionable, except by the process of impeachment. They may give reasons for their actions, or not, just as they choose, and when their fiat is announced there is the end of it. It strikes me that a body composed like that is a strong body in this country; strong in its own intrinsic weight, and incapable of being interfered with by the people.

Now the gentleman says that a man who is appointed judge at the age of fifty, will dislike to yield his office at sixty, and that will be an objection to his accepting of it in the first instance. I have already alluded to the fact, that by a law higher than this Convention, only the term of thirteen years is the average time the judges have held their offices under the present system of life tenure. But let the tenure be what it may, if the people exercise the same faculties, and have the same disposition as they have exhibited heretofore, there would not be one case in a thousand, where a judge had properly discharged his duties upon the bench for a term of years, and remained in the full enjoyment of all his faculties, in which he would not be continued in the same position. I leave it to the experience of gentlemen, and to the history of this Commonwealth, to decide if such will not be the almost certain result. That dependence on the people, which we propose, will keep him in such a condition that he will be prepared to receive their "well done, good and faithful servant," when his time shall have expired.

These are the impressions, hurriedly and briefly expressed, made upon my mind in consequence of the speech which has just been made upon this subject. I know the power of that gentleman directly to impress and influence the minds of others. There are men whose arguments and whose statistics seem logical and forcible, yet never produce any impression upon the mind. That is not the case with the gentleman who last addressed us. Not only his argument, but his eloquence and persuasive voice force themselves right into the hearts and minds of men. But in this case, I ask you to reflect upon the arguments which he has brought forward, and see whether they are not more beautiful than strong; whether there is anything really alarming in what he would make us believe would amount to the destruction of this department of the government, which has stood so long and is so necessary to our liberties, and the enjoyment of our just rights. I believe not, Sir. I confess I came to this Convention, opposed,—if my mind inclined either way,—to the election of judges by the people. But I was situated like most other people of Massachusetts, having been influenced, upon this subject, by the bugbear representations of the newspapers, and alarm cries issuing from the mouths of lawyers

who live in the courts and are subject to a kind of opinion and influence peculiar to themselves. But the more I reflect upon the subject, the more I am satisfied that of all the officers in Massachusetts to be elected by the people, the judges are the most proper ones to be intrusted to their wisdom and discretion.

Mr. FRENCH, of Berkley. I am sorry to differ with the gentleman for Manchester, (Mr. Dana,) upon this subject. I agree with him generally, and I believe he is sincere in whatever he may offer to this Convention, but in this one instance, I think he is in an error.

The main ground, and, indeed, the only ground upon which I can understand he places his objection to the election of the judges is, that he fears they will not be as independent. Now, Sir, I do not believe the judges are more independent than any other class of people, or more than any of the officers of the government. Why should they be so? They are mortal men. They have feelings like other men, and they are influenced by the atmosphere with which they are surrounded, like other people. And how should their appointment by the governor make them less so? I confess I am unable to see it.

But, Sir, I have been told that an officer appointed by the governor, who had considerable duty to perform in this Commonwealth, made quite a distinction between the different classes of the community. In other words, between those who held different political opinions. I understood that when a certain class of people were fined for violating the laws of the State, this agent would see a necessity why their fines should be remitted, why they should be released from paying them; while another class of persons, guilty of only the same crime, were made to pay their fines to the last farthing. This, Mr. President, was an officer appointed by your governor—an independent officer, according to the doctrine of the gentleman for Manchester.

Now, Sir, I do not believe in this mode of making these officers independent. I know we have always been taught to revere the judiciary as a sacred set of people, who are always to be feared and their designs never thwarted. But, Sir, in my opinion, they are like other people, many of them good and honest—I hope they all are—but they are liable to these influences the same as others.

But, Sir, all I have to say upon this subject is, to show to this Convention, if I can, and to the people of this Commonwealth, that the idea so much talked of, that these officers are to be made independent by being appointed by the governor and his council, is, in my humble opinion, entirely an error. Why should we continue to keep this last vestige of aristocracy which we have inherited from our mother country, and call it one means of preserving republican principles? Why should we continue to hold on to that anti-democratic doctrine? Some gentlemen tell us that the people will not accept this reform if we adopt it. Well, Sir, why should we not at least give them a chance to try it? If we pass it and they will not accept it, we shall have done our duty. The people may do as they please. I am not afraid to trust them, as some gentlemen are, and I believe very honestly afraid, too. I hope, therefore, that the amendment of the gentleman from Fall River will be sustained, and that this reform may be furnished to the people for their

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consideration. I have no doubt as to the result, but all I ask is to give them a chance, and not say in advance that they will not accept it.

Mr. HALLETT, for Wilbraham. Before the question is taken upon this subject, I was in hopes some gentleman would at least have referred to an argument which was adduced by the gentleman for Abington, (Mr. Keyes). If I rightly understood the argument of that gentleman, the effect of it was to show that it was desirable to give the election of the judges to the people because, if we had judges upon the bench who flinched in violating their oaths, in particular cases, the people could remove them and elect men who were not such cowards, and who would not hesitate in particular cases to violate their oaths.

Now, Sir, that is rather a remarkable position for a member of this Convention to occupy, and one which I think should not pass without observation by the Convention; because the application of that argument was to a case in which the judges of the supreme court in this Commonwealth were sworn to regard the laws of the United States as the supreme law of the Commonwealth—and they did so regard that law. Yet they are charged with cowardice, in acting simply in conformity with their oaths. Sir, even if he entertains different opinions upon the subject upon which he is called upon to act; if the judge upon the bench entertains doubts as to the propriety of the law, yet, as a State judge, when called upon to decide, he is bound to decide in conformity to the laws as they have been construed by the supreme court of the United States. I know of no other system of judicial power by which we can preserve the Union—first, in its general organization, as embracing laws which are to govern the whole Union; and second, the local laws as construed by local tribunals which are to govern the communities within their jurisdiction. Therefore, I do not believe the gentleman for Abington, or any gentleman, upon reflection, will regard it as at all complimentary to the people, to suppose that they would reflect to office, or that they would take care to elect to office, men who would not hesitate to violate a solemn oath, because they, as individuals, do not like a particular law, or because they supposed the majority of the people did not like it.

Mr. KEYES. If I had not heard the gentleman name the place which I represent, I should not have supposed that he was referring to anything I said, for I do not recognize in his remarks anything I have said. My object was to show that judges, like other men, might be influenced. Then I said that it was my belief, that if, before the passage of the Fugitive Slave Law, a skeleton of that law had been placed before them, I did not believe one of the judges of the supreme court would have declared it constitutional; but after it was adopted by congress, I do not express any opinion as to what their duty was. I only expressed the opinion that judges, like other men, were influenced from some quarter. I did not say that they did not perform their duty, or that I would have them violate their oaths.

Mr. HALLETT. I am glad the gentleman for Abington has modified his suggestion.

Mr. KEYES. I did not intend to modify my suggestion at all, I only stated what I said when I was up before.

Mr. HALLETT. Then the gentleman still

adheres to his position that if a judge entertains a private opinion one way in relation to what may possibly become a law, and it is afterwards enacted into a law, he is not bound by his oaths of office to sustain that law, but, on the contrary, it is a mark of cowardice—it is bowing down to some power behind him, if he does not declare that law to be unconstitutional, even in violation of his oath, and in violation of the construction given by the highest tribunal in the land.

Mr. KEYES. I beg pardon of the gentleman, I said nothing of that kind.

Mr. HALLETT. The gentleman's suggestion is either that, or it is nothing. If it is nothing, then, of course, it should have no weight in the Convention. If it is to have that construction, I am sure it will have still less weight.

But I was going to say, that if the judges were made elective, and they were found to yield to their private political opinions, and carry out their judgments and decisions against their duty, and in violation of their oaths to support the Constitution and laws of the United States and of the Commonwealth, I believe those judges would be hurled from their seats by the people more readily than if they had been guilty of a higher degree of corruption in any other direction; because, I believe the quality which the people most require in a judge is independence. So that I should be willing, if I deemed it expedient, to trust the people with the election of their judges, for the reason that they would be more likely to respect a man, and would be more likely to select one who had shown himself independent, even of themselves—independent of the popular will—who would carry out the laws of the United States and of the Commonwealth in conformity to the construction which he was bound to observe.

Now, Sir, having said all I desired to say—and I thought it due the Convention to say this much, because I did not wish to have a false impression prevail upon this subject—I merely wish to add, that I am not in favor of an election of the judges directly by the people, but I am in favor of their election in the same form that we elect the president of the United States—by electors chosen to elect him. We elect the governor and council by the people, and I am in favor of thus choosing the judges. And I should like to know where there is any more departure from the popular principle by electing the judges in that form, than there is in the form we exercise every four years in choosing electors to elect our president. It is true that these electors are instructed to elect a particular man to the office, but so are your governor and council instructed every year, and we know that they will carry out the will of the people. That is an election by the people indirectly, and I prefer it to direct election in the present state of our judiciary.

On motion of Mr. SCHOULER, of Boston, the Convention adjourned until three o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

Reconsideration.

Mr. KINGMAN, of West Bridgewater, moved a reconsideration of the vote by which the Report on the petition of Francis Jackson and others was adopted by the Convention.

The PRESIDENT. The motion will be placed upon the Orders of the Day for to-morrow.

Mr. HOOD, of Lynn, moved that the rules be suspended, in order that the motion to reconsider the vote referred to be considered at this time.

The motion was agreed to.

The question being on the motion of the gentleman from West Bridgewater, (Mr. Kingman,) to reconsider the vote by which the Convention adopted the Report of the Committee on the petition of Francis Jackson and others, respecting the qualifications of voters.

Mr. KINGMAN. I wish to assign some reasons, why I have made this motion to reconsider. I have not the vanity to suppose that any thing that I can say, will change the purpose of this Convention in the least. But, Sir, I consider that I have rights, as a member of this Convention, and that those rights were cut down, this morning, by the action of this body. I do not charge any one with the intentional design of depriving me of the right of speaking upon this subject, but that was the effect of the adoption of the previous question.

I did not have the pleasure of hearing the discussion upon this Report, which, I understand took place in Committee of the Whole yesterday. When I came into the Convention this morning, the subject was under discussion in Committee. I obtained the floor and asked leave to speak some five or ten minutes, not knowing then that the time for closing the discussion had been fixed by the Convention. I had spoken but three or four minutes before the hammer fell. I tried then to get the floor in Convention, but could not. Yet it was obtained by others who had spoken their full half hour in Committee of the Whole.

For this reason, under these circumstances, I feel that I have the right to be heard upon this subject, and to obtain that right, I have made the motion to reconsider. I do not wish to occupy the time of the Convention, and I promise not to take more than ten minutes, but I felt that I was rather crowded by the action of the Convention, and therefore I made the motion which I have.

When the hammer fell I was alluding to some remarks made by the gentleman who preceded me. He had said, that the rights of the widow who was the head of a family, and those of maiden ladies, etc., were provided for—that they were protected, although they had no voice in the administration of the government. I know they are provided for to a certain extent, and so are hundreds of persons belonging to other classes of our citizens.

It was also said that women had enough to do, without voting. Well, Sir, clergymen have enough to do without engaging in politics, yet I should be the last man to deprive them of the privilege of taking part in the affairs of government. All I have to say is, that I have no doubt that their rights would be just as well protected, without their voting as with it; but that is no reason for depriving them of the right to vote. Yet, Mr. President, there are more widows and maiden ladies in the Commonwealth than there are clergymen; and I am not able to see why one class of persons should be deprived of the privilege of going to the ballot-box to cast their vote, and the others allowed it. Sir, I undertake to say, that no gentleman in this Convention can maintain this distinction upon principle.

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An illustration was brought up this morning, by a gentleman who spoke upon this subject, of a man, and a very respectable man, who said he should like to see his wife refuse to sign a deed. Why, Sir, if a man would deny to his wife the privilege of signing the deed or not, as she pleased, what stronger argument do we want of the necessity there is that women should go into the government, and protect themselves? It is their privilege to refuse to sign a deed, if they should think it for their interest to do so.

In a discussion upon another subject, the distinguished gentleman for Wilbraham, (Mr. Hallett,) in alluding to this subject, said it was an absurd doctrine. Now, Sir, to some of us there are doctrines as absurd as this. The doctrine that the Constitution of the United States tolerates slavery, directly in the face of that clause in the Declaration of Independence, that all men are created free and equal, is, to some of us, a doctrine as absurd as this, and more so.

It is a doctrine which is received by common consent, that twenty-one years of age shall be considered as the period when men arrive at maturity, or their majority. Well, Sir, I have no disposition to quarrel with that; you may fix the period at twenty-one years, or at any other time; but, have not women at that age as much intelligence? Are they not as well educated as men, take the classes together? I undertake to say, that the female portion of our population, from the age of fifteen to twenty-five, are, as a general thing, better educated than the male portion, and the reasons are obvious. They have better opportunities for school. They have more leisure for reading and obtaining general information.

Now, Sir, I do not believe a majority of our females desire the privilege of voting; but I see no reason why those who do desire it should be deprived of the privilege. But, as I remarked in the outset, I have no idea that anything that may be said upon this subject will change the purpose of the Convention; but I do believe, that the more the subject is discussed, the more it is brought before the public, the greater will be the number of those who will go for the franchise of the female portion of our population.

Having now accomplished my purpose in moving a reconsideration of this vote, I will not detain the Convention any longer.

The question was taken, and the motion to reconsider was not agreed to.

The Judiciary.

On motion of Mr. Bates, of Plymouth, the Convention resumed the consideration of the unfinished business, being the resolves on the subject of the judiciary. The pending question being on the amendment moved by the gentleman from Fall River,

MR. HOOPER. As the attendance this afternoon is thin, and as this is a matter of considerable consequence, I now move that the further consideration of this subject be postponed until to-morrow at half-past nine o'clock.

MR. GRISWOLD, for Erving, opposed the postponement, and, the question being put, it was, upon a division—by ayes, 62; noes 79—decided in the negative.

The question recurred on the amendment proposed by the gentleman from Fall River.

MR. HOOPER, of Fall River. I supposed, that there might be some other members of the

Convention who were prepared to speak upon this question, and if there is any one now who desires to speak, I am ready to give way in order that he may have an opportunity. I wish to look for a moment, at the argument which has been adduced here in favor of an independent judiciary. Every government is divided into three great branches—the executive, legislative, and judicial departments. We have thus far based the first two upon truly American principles. We usually call the executive the first branch, the legislative the second, and the judiciary the third. The executive the highest, the legislature lower in the scale, and the judicial the lowest, intrusted with the mere interpretation of the laws. We have had no hesitancy in committing the first branch, and the highest, to the popular voice—an election by the people. That is admitted, on all hands, to be safe, and no one questions the necessity for so doing. The selection of the second branch, that of the law-making power, is freely and unanimously submitted to an election by the people, and there is no danger apprehended upon that score. The two most important branches have been decided to be perfectly safe in the hands of the people at a popular election; but gentlemen say that the people cannot be intrusted with the election of the third branch, the least in importance of them all, because that is an independent branch. How is it independent? Let us look at it. The officers nominated by the governor, are paid by the second branch, for without the action of your legislature they could not get a dollar from the treasury, and yet it is contended that this branch must be perfectly independent of every body. Is it so, in fact? Can it be, when this is the situation of affairs? Would it not be fully as independent, if that branch, like the other, was brought at once to the sovereign power, the people, and they should appoint them directly. It strikes me, that they would be fully as independent, if not more so, under such appointment. The gentleman for Wilbraham, (Mr. Hallett,) thinks it is better to have an intermediate step, and he has likened this election of the third branch, to that of the president, through the agency of electors; but it strikes me that there is no analogy in the cases, and, therefore, that there is no force in the argument. When the president is so chosen, the people, by some mode or other, designate the candidates for electors, and then they designate the individuals for whom these electors are to vote, who have no discretionary power in practice, although the theory was different. It was supposed that the electors were to have some discretionary power, but under the practice which has grown up, they have ceased to have any, and my opinion is, that this machinery ought to be abolished altogether.

The first branch of the government is not elected with a direct view to the appointment of certain men upon the bench, though, I am free to say, it is one of the objections to the present system, that the election of governor is made to carry out certain views in relation to appointments. That is one of the strongest objections to the present system. We do not elect the governor with a view to the appointment of certain judges upon the bench. We elect him for other purposes specified in the Constitution. The appointment of judges is one of the incidental powers conferred upon him, and one which, I think, had better be taken away from him, and leave the matter

entirely in the hands of the people. In this view of the matter, I do not see how you, at present, render this branch so very independent, as judges are appointed by the governor, and are paid by the second branch—the legislature. Not only so, but it has already been admitted that they must be removed by these two branches. It is an easy matter to remodel your courts of law, and so legislate your judges out of office, a thing that has been done time and time again, and, therefore, they are not independent. They depend, after all, for their continuance in office, upon the good will of the second branch of the government—the legislature. These different departments are coördinate, and there is a certain dependence between them, one upon another, and this is not at all inconsistent with the functions which they were created to carry out. It seems to me that our judiciary system is the last and almost the only remnant of the monarchical system which adheres to our Constitution. It is one of the last pieces of rust, which ought to be rubbed off, and I believe the people are ready to rub it off as soon as they get an opportunity to do so. Can it be believed that men, rendered entirely independent of public opinion, will behave any better in office, will make any more correct decisions, than men amenable to the public voice at certain times? I do not believe that there is any man who has reputation enough to elevate him to that office, who will ever be influenced by political considerations in his decisions. I do not believe that such has ever been the case in this State to any considerable extent, with, perhaps, one or two exceptions. I do not believe that we have anything to fear upon that score. I believe that men who would attain to that position, will be so elevated in character, and will have so much at stake, that they will be above all such influences. If they are above such influences, that very fact will take this question out of the category of party politics, will elevate it above all party considerations. As we have seen, in many of the States where these officers are elected by the legislature, party considerations are kept entirely out of sight. This has been the case in Vermont, where they have elected a judge twenty years in succession. This is the case in Rhode Island, where judges are elected every year, and the same judges have been elected, year after year, while the legislature often differed from them in political sentiments.

As to the question whether the people expect that we are to act upon this question here, perhaps that has been sufficiently replied to by the gentleman for Abington, (Mr. Keyes). The gentleman might have read from the same document from which the gentleman for Manchester, (Mr. Dana,) read, the order which was introduced into the legislature, dated the 27th of February, I think, in which the same subject was brought up, discussed, and then referred to a committee who made a report. I think we approach this subject precisely as we approach all others. It is a subject which has been left to the discretion of the Convention, and it is a subject upon which the people expect that we shall exercise our best discretion. For this reason I think we might approach it fearlessly and without apprehension, and we shall disappoint public expectation if we do not present this question for their consideration. Why should we not present it? Why should we not give them a chance to adopt it if

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they see fit to make a change. If we send it out to them and they are perfectly satisfied with the existing state of things, they have only to reject it and the thing remains. If they see fit to accept it, then it becomes a part of the Constitution. Why not give them an opportunity to vote upon this matter? Are we afraid to trust them to pass upon this as well as other questions which we have already submitted to them? Who is to be harmed by it? It certainly signifies great distrust in the people to say that we shall not submit it, if, in our judgment, it is a reform which it is expedient should be made. I have heard many gentlemen say, individually, that they were not in favor of it because they thought the people were not ready for it. How are they to know? I am inclined to think that the people are ready for it. Here is a difference of opinion, upon this question, and the quickest and most correct mode of solving it is to submit this question to the people and allow them to decide it for themselves; and when they shall have so decided it we shall all be satisfied. The gentleman for Manchester, (Mr. Dana,) is very much afraid of this question being drawn into questions of party politics, but, unfortunately, I think, he cited the cases of New York and Maryland, where he admitted that the people had suffered, beyond all endurance, the viciousness of their previous system, and it so happens that that system was one of appointment, precisely the system which the gentleman is contending for here. But it seems that his greatest fear is that it will be acted upon by parties who will be governed by conscience and principle. It is the first time I ever heard that men were to be distrusted because they possessed conscience and principle. I had supposed that these qualities, when we found that men possessed them, formed a ground-work for the reliance and confidence which we could place in them. I knew that Cromwell's soldiers were very much feared by their enemies, because they were praying soldiers, and they had good reason to fear them, but I never knew before that civilians feared citizens because they possessed conscience and principle. These qualities are the very fundamental principles of all right action, and they are the very substratum upon which everything rests, and without which how can the majority be expected to reflect truth and justice. If they do reflect justice and truth; if they are more liable to be right than individuals, then the people are to be trusted rather than individuals. I hope that we shall not be frightened out of our propriety by the idea that we are touching something too sacred to be dealt with as we deal with other provisions in the Constitution. I cannot see that there is anything more sacred in this than in other provisions of the Constitution, and I do not see why we cannot approach it in the same way. It strikes me that there is no part of the Constitution which retains so much of the old monarchical principle as this system, and for that very reason it is time for us to make a change in this respect.

Mr. GREENLEAF, of Cambridge. As I had the honor of serving on the Committee upon the Judiciary, whose Report it is proposed to amend and essentially change, perhaps I should hardly be thought to have done my duty, if I did not suggest to the Convention some of the reasons which induced me to concur in that Report. I am very unwilling to take up the time of the Committee,

with any remarks of my own, but I deem the question one of very great importance, and one upon which, above all others, we should not act hastily and unadvisedly. Upon this subject, I wish only to suggest, in a very brief and plain manner, a few things that occur to me, addressing myself to the calm good sense of the Committee. I am extremely unwilling to believe, that in respect to the judiciary, there is any foregone conclusion. I prefer to believe, as I think I may, that the minds of the majority are not yet settled upon any course which is finally to be pursued; but that all are still open to conviction. It is a very grave question which is now pending. It is not a question, as the gentleman who has just taken his seat intimated, if I rightly understood him, concerning the least important branch of the government. I do not understand that there is any first, second or third department, except merely numerically, or in the order in which they stand upon the page of the Constitution. If there were any one department of government more important than an other—an idea which is inadmissible—I should think it vitally essential that the judiciary should be cherished with the most careful regard. I need not give reasons for that opinion, as they are no doubt already apparent to the mind of every gentleman present. The question is not what scheme of government, theoretically speaking, would be the best for the people. The business of this Committee is not to theorize upon forms of government; not to review the plan of John Locke, or any Utopian statesman, but simply to revise an existing system, and by revising, I mean merely to pass in review. The Convention is called upon to overhaul the machinery under which this Commonwealth has been administered for a period longer than the years of the oldest member present—a system under which this Commonwealth has attained its present height of prosperity, happiness and renown. Each integral part of this system is to be brought in review, and as each is examined the inquiry is to be made—how has it worked, well or ill. Is there any defect in this particular part of the machinery. Is there any part in which it is productive of mischief to the community. Has it done its office? If it has, we are to let it remain. Such I conceive to be our duty. We ought to let it pass, go on to the next, and so on through the Constitution. This important function of the judiciary is now before the Committee for that sort of review, and the question is, whether there is any need of a change? Has the judiciary system, which has stood so long, worked for good to this people? If it has, I hold it to be a duty of the Convention to abstain from touching it. We are bound to let well enough alone. We are bound, as intelligent statesmen, to apply to practice the maxim which was said to have been a favorite one with the elder Adams, "when we stand well, to stand still." Do we stand well under the judiciary system? If we do, let us continue to stand well. If not, let the gentleman who is able to point out the place in which it is defective, or the instance in which it has not operated well, rise in his place and declare it. I take that to be the actual posture of the question. The burden of proof rests with those who object to the present system, not theoretically, but upon the ground of some actual mischief that it has done. The burden of proof is not with those who would let it remain—those who prefer to go by the light of experience rather

than by the jack-o'-lantern of theoretical speculation. In truth, the question is, whether we shall be guided by that light at all. If we take that as our guide, it teaches us that we have the most perfect system which we can have, and which, if we were to start anew, it would be possible to invent. If we take the light of experience, we shall continue to enjoy the blessings we have enjoyed so long, and the security under which we have so long reposed. If we utterly quench that light, if we turn our backs upon history, slighting the wisdom of our fathers and all those who have gone before us, and choosing to rush forward with the recklessness of children, dazzled by the vision of untried futurity, we shall enter upon a work for which the Convention was not called together, and which the people of this Commonwealth will not thank us for entering upon, and which, I honestly think, will be visited upon the heads of members with the full measure of public rebuke. If we can find no error in the system, let it stand; and the question is, is there any? Judges are appointed by the executive, and it is idle to say, that all appointments and all power, do not emanate from the people. It is idle to pretend that there is any antagonism between the government and the people. Where is the foundation of sovereignty? Who are our sovereigns but ourselves? All power emanates from the people, and is exercised in such a manner as the people themselves designate. Some of their work they do with their own hands, some they do by the hands of one agent, some by the hands of multiplied agencies, the authority and power still emanating from the people themselves. In this view, it is a matter of indifference, whether the people exercise the power of appointing the judges, or rather of electing them by a direct popular ballot, or whether they are appointed by the governor. They are as much elected by the people in the one instance as in the other; it is merely a question of expediency, whether the people will choose to exercise this power, by their own immediate action, or whether they will appoint agents to do it, under the peril of their own responsibility to the people.

More than seventy years ago the fathers of this State declared—after expressing their deliberate and solemn conviction of the importance of a judiciary as independent as was possible, consistent with human infirmity, of all external influences, and all temptations to swerve from the duty of acting imperatively between man and man—that in their opinion there was no manner in which this could be achieved so successfully as by placing this appointment in the hands of the executive with a tenure of office during good behavior. That was a system already tested, both in the mother country and this. From generation to generation, the benefits of it have been enjoyed by fathers and children through a long period of years. It was a system with which our fathers were perfectly satisfied, and which they declared to be the best which they could devise. Are we wiser than they? Were they men who had no character for statesmanship? were they unpractised jurists? were they unread in history? had they no memory? had they no skill to select those parts of the Constitution under which they had lived, which were beneficial, and to reject those which were not? None of us will say that. No man here will so villify his father and the fathers of his country as to charge them with

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fatuity and ignorance. Are we better read in history, are we more experienced, are we wiser men, are we any better versed in the theory of republican government? Where have we acquired our wisdom except under the very institutions which they, in their wisdom, formed? Why, then, should we undertake—I call gentlemen distinctly to tell me—why should we depart from that which has done well, as well as we could possibly imagine any human system to work, and venture upon something we have never tried? I make this call, Sir, not for mere rhetorical purposes; this is far from me; but I make it sincerely and seriously. I put the question to any gentleman present; will he tell me of any evil which has been experienced under the present system?

We ought not to be content with answers in general, answers upon mere speculation, fancy, or imagination, or to say that another system would be more in harmony with other parts of the Constitution, which is only saying that it would look a great deal better on paper. What if it would? We do not want a paper system, or a mere model machine; but we want the machine itself which has stood the test. We want the old Ironside Constitution whose ribs are yet unbroken, which has stood the batteries of seventy years and is still entire and in all its vigor.

Will any gentleman say that a mistake has been made in the executive appointment of any judge of the supreme court of this State since the Constitution was adopted? I know of none; I never have heard of one. Has the executive failed to do his duty? Has he been unenlightened? Has he preferred a man of his own political complexion to the exclusion of a man better fitted, who was of the opposite party? Has he not in every instance taken the fittest man that any person would be likely to select? I ask these questions directly and fearlessly. All sorts of appointments have been brought to the fiery ordeal of the public press, but I have never yet heard any complaint of the appointment of a judge of the supreme court.

What is the character which that branch has acquired under this system? It is a character which was beautifully and correctly delineated by my friend, the member for Manchester, this morning. The bench of Massachusetts has been constituted of men who have raised its character to a pitch of eminence and consideration, of which any State in the Union or in the world might be proud. Repeatedly, in the course of my professional life, of now more than half a century, it has been my pleasure as well as good fortune to hear the bench of Massachusetts, spoken of as one that would have adorned Westminster Hall in the proudest days of its judicial history; and the judges of Massachusetts, individually, I have occasionally heard spoken of as gentlemen who would have held a high position in England, along with the Mansfields, the Kenyons, and the Ellenboroughs of the King's Bench. The decisions of the court of Massachusetts have been regarded as highly as those of any State in the Union; it does not become me to say more so, but I fear not to say that they have been regarded as highly as those of any other. They have been mentioned in foreign tribunals, in terms that might well make a Massachusetts man proud of the bench of his State. How has this reputation been gained? It has grown up with the system

under which we have lived so long. Has any one complained that the judges of Massachusetts have been swerved by party considerations? They have passed through seasons of fiery trial and great political excitement, but to their honor be it spoken, amid all the abuse which has been heaped upon public men of both the great parties into which the country is divided, no charge has been made against them. The press has been free, even to licentiousness, but I know of no instance in which the judges of Massachusetts have been charged with acting from political affinities or influences. This is a good deal to say in regard to any judge. Would it have been so if Massachusetts had been visited with the scourge of anti-rentism, and her judges had been dependent upon popular voices for a reelection? I need not wait for a response.

Mr. Chairman, I will not detain the Convention by the statement of other facts of this kind, which will readily occur to the mind of every gentleman present. But I repeat the question, what evil has been done? Not what evil have the judges done, for they have worn the ermine without a stain; but what inconvenience has resulted from the system? This is a matter in which we all have a personal interest, and especially the younger portion of the community. I speak for the survivors rather than for myself; and I call upon gentlemen to pause before they lay their hands upon so essential a department of the government, one so vital to the well being of every family; a department whose influence is felt at the fireside more directly, more immediately, and more painfully, if painfully at all, than the action of any other department or function in the State.

I am aware that the example of other States has been urged upon us. But to that argument I reply, that we ought, in this matter, to be governed by our own experience, and not by the experience of other States; for unless we can place ourselves precisely in their situation, their example may greatly mislead us. I know that in many States their judges are elected by the people. Some of them have so constructed their Constitutions originally; which is the case with several of the new States. Others, in a few instances, have changed the old tenure for a new one, as in the cases of New York, Maine, Ohio, and one or two others. A very few of the old States have made the change; but there are still seven States whose judges are appointed by the executive. In eleven States, they are elected by the legislature. In some, they are elected by the people in districts, and in others, by the people at large. But a majority of the States in which the judicial tenure is limited by years, are new States; not only so, compared with the old thirteen, but new in the constitutional history of the country. The argument, therefore, from the example of the new States, has no application here. Their population consists of all sorts of men,—samples of all nations on the face of the earth,—Jews and Greeks, Parthians and Elamites, and dwellers in Mesopotamia; many of them on the wing, making up the great tide of emigration which is following the star of empire, from the East to the West, to be brought up among the feculence upon the shores of the Pacific Ocean. There is, then, a good reason why those States should elect their judges by a popular vote, and elect them frequently; for while all these races are mingling

at the polls, and no one knows which race is to predominate there, whether German, Norwegian, or other Slavonian; or whether the Anglo-Saxon will prevail, it is well, so long as all their institutions are passing through a stage of experiment, and every breath is, as it were, a breath of experiment—it is well that they should fix a short term for the judicial tenure. They distrust the material out of which they have to make the selection, and I readily grant that they act wisely. But what may be wise in them may be folly in us.

We have one speech. We are not men, one-half of whom have the speech of the Jews, and the other half, the speech of Ashdod. We understand one another. We are men of the soil of Massachusetts, men of New England, men acquainted with each other's habits. We were raised on this soil; we know every plant which the soil has produced; and no prominent man can be named whose fitness for the bench cannot readily be ascertained. The executive occupies a position where he can always draw on the sources of public information! I do not say that the people at the polls would be able to judge in such cases, for our farmers have their own interests to attend to, and no cause to inquire who is the best lawyer, for it is not often that they have occasion to be reminded that there is such a profession in existence. And it is well for them that it is so. But the executive is, from the nature of his position, made acquainted with the public men in the community, and, being surrounded by a council to aid and advise him, can obtain all the information that he needs to enable him to make a suitable appointment.

Before I leave this topic of the example of other States, let me say, that, although there is one State where the selection of judges is made annually, which is Vermont, and that also a New England State, it is no example for us, and for this very good reason: the practice was commenced in that State before the great division of the people into political parties. The people were then of one mind; and the habit of calmly and dispassionately selecting their judges, which then commenced, has acquired the power of organic law. The people of Vermont may safely continue the practice of annually electing their judges, while it would be dangerous for us now to depart from our present tenure; what is safe for them might be death to us. Only one State has a judicial tenure of five years; but several have extended the limitation to six years; and among these is California. There is not one of us who would not have gone for six years, or less than that, had we been citizens of that State. For one, Sir, I should have been unwilling to have given the judges so long a term as that. I think I should have been in favor of one year; for if they were chosen by universal suffrage, perhaps the first one who came forward to take the oath of office would have signed his name in characters cabalistic to Americans, and would have appeared in a short silk jacket, with a queue as long as the tail of an alligator. In such a state of society as that I should prefer to elect them for one year, at first, although perhaps afterwards the term might safely be lengthened to five, six, or seven years. I would prolong it as rapidly as possible, and put it during good behavior, whenever suitable men could be found, with anything like New England or other Anglo-Saxon blood flowing in their

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veins. Besides California, Wisconsin, Iowa, Indiana, Georgia and Texas, have also the six years' tenure. Ohio has five; but the two Carolinas have adhered to the old and sound tenure of good behavior; so has Delaware; and so has Connecticut, but with a limitation to seventy years of age. Massachusetts still ranks in this class of wise States; so does New Hampshire; and so did Maine, but she has changed.

I have taken pains to inquire of men whose opinions were worth asking for, how this system worked in those States which have abandoned the tenure of good behavior and adopted the limitation of a term of years. Sir, they have answered me with one voice, that they repelled it. The project seems generally to have originated with political partizans, who talked much of *the people*, and of giving the election to the people, beguiling them with the idea that they had not the power of election because they did not see its exercise in their own hands, but made it through the agency of their servant, the governor. It was in some cases proposed evidently for the purpose of raising political capital. In others, perhaps by some aspirant who could not wait for the demise of a judge, still sound in every department of his own organism, or perhaps by some one who sought a seat on the bench merely to aid him to some higher position. Having once put the question to the people, few would venture to vote against it, certain, in that case, to be marked and ostracized as enemies of the people; and therefore it passed, as it were, by default. The bench, in those States, has generally deteriorated, as was naturally to be expected, from such a change, where men, following this *ignis fatuus*, have destroyed the independence of their judges.

Mr. Chairman, change is not progress. I go as strongly for progress as any gentleman in this Convention. I would favor nothing merely because it is new; and I would respect nothing merely because it is covered with the moss of ages. I would adhere to that which is found by experience to be good, and would abandon and cut off, as a diseased limb, whatever is a source of evil, pain or mischief, to the community. But let us wait and know whether it is so, before we proceed to make so momentous an experiment. It has been said here, Sir, that the people do not demand this change; and the reason why they do not demand it, is, because they have nothing to say against the present system. No complaint was made previous to the calling of this Convention, that I know of; and none is now pretended. If we ask the people, they have nothing to say; but they did say, at least so it was reported by the committee of one branch of the legislature, that it was not worth while, at present, to disturb the judiciary, and that this subject should be left to the wisdom of the Convention. Are we to understand by that, that the duty is imposed upon the Convention, to make the change at all events? By no means; it is left to the Convention, in their wisdom, to pass upon the subject when it shall come before them. If they are able to find any fault with it, they may suggest such a change in the system as may seem expedient; but that is all that I understand the people to have said by calling the Convention.

Sir, I would ask, what we are to expect, if the proposed change should be made? I have nothing to say with regard to elections by the people; I leave that matter for others to discuss; but I

address myself mainly to the question of tenure. I do not believe that the people of Massachusetts will ever take the election of judges into their own hands. I think they are too wise to assume the labor and hazard of electing them. But it appears to me, that the change of tenure which is now proposed to be made, is a change fraught with great probable evil; and, although I might content myself with asking gentlemen to give a reason why a change of any kind should be made, I am willing to go further than that, and say, that the advocates of this system propose a change which is mischievous in the essential elements of its character. The proposition is in substance, a tenure of ten years. I believe an amendment has either been proposed or suggested, as intended to be offered, which would reduce that tenure; but I will assume it at ten years. Under the present system, which places the judge as much out of the reach of the undue influences of polarization, as it does of the grosser temptations to depart from his duty—under this system, which is as perfect as the wit of our fathers has been able to devise, and which has stood the test of experience for so many generations, still, under this system, it is not always in the power of the State to command the first talent. We do know, Sir, that sometimes the governor has been obliged to approach one individual after another, either directly or through the medium of friends, before a competent person could be found, who was willing to be a judge of the supreme court, with a salary of three thousand or three thousand five hundred dollars. We know that instances have not been wanting, it is not for me to say how frequently, in which such invitations have been declined. Now why has the office been rejected? The reasons may have been various. But at all events, it has not always been in the power of the executive to command, in the first instance, the highest class of talent, and to procure the services of the gifted men. I do not mean to say, and I hope I shall not be understood as implying, that the incumbents of the bench do not, every individual of them, belong to that class; but I say that the governor has sometimes asked some of that class, and asked in vain, and, therefore, he has been obliged to ask others. Now, the argument which I draw from this fact, is, that if, under the present system, when the tenure of office is permanent, depending only on good behavior and the capacity to discharge the duties of the office, there is not such an inducement to accept it as enables the governor always to command the best of talent, what will be the case when you remove from the office the most powerful inducement which can be presented to the mind of any gentleman—I mean the permanent tenure? No individual will be found, who, after having served for ten years on the bench, can go back and recover his professional standing. He will not be able to find his old clients, nor to compete with his rivals, who are fresh in the practice of the bar. Sir, you might as well attempt to raise from the depths of the sea, a corpse over which the blue wave has rolled, and infuse life into its limbs, as to reinstate such a judge at the bar. It is ordinarily impossible. He is no longer an advocate. Some few individuals, who are attached to him from personal considerations, may return, but he cannot regain his former position. This is the experience of every lawyer who leaves the bar,

even for another department of his profession.

Is it, then, to be supposed that you can induce one to accept a seat upon the bench, when that office is to continue but for ten years? Sir, it is hardly possible; while he sees, at the end of ten years, he must seek, perhaps in vain, the treasuryship of some cotton factory, or the presidency of a railroad. And how can you remedy this evil, unless by appointing for judges none but men of the age of sixty years? But our selections for office are made from a much younger class of men. The early age at which we, in this country, assume the responsibilities of manhood, has already attracted the attention of the old world. Our young men have hardly gone over a brief course in our colleges and institutions of learning before they are called, of necessity, to enter upon the business of men; and we are obliged to restrain them by statute, from practising at the bar until they are twenty-one years of age; lest, during minority, they should assume the responsibility of conducting cases involving thousands of dollars. It is not their fault; it is the misfortune of the country.

From all quarters there is a wailing cry for men. The West is vociferously demanding men—men immediately; the demand is pressing, and necessity compels us to hurry our young men into manhood. Now, Sir, it is manifest—I speak of facts, and would commend the subject to the serious consideration of gentlemen present—it is manifest that it is from the class of young or middle aged men that we must select our judges. And can you induce men of competent learning, and high professional aspirations, to take a judicial office for only ten years, when they must know and feel that the termination of that period will be the termination of their professional life? No lawyer is willing to limit his professional career to ten years; and yet every lawyer knows that it would be so; and that when the ten years are expired he must lay some other foundation for the means of living. Fortunes are seldom made in this profession. It is a proverbial saying, that lawyers work hard, live well, and die poor. Such seems to be their "manifest destiny." There is, therefore, but one mode in which you may obtain a choice of the best talent for the bench, and that is by paying for it. It has sometimes been said, in other States, that judges in Massachusetts have large salaries; but it is not thought so in our own. No, Sir; the salaries of the judges of the State of Massachusetts are not equal to the demands which custom and the present state of society make upon them. I venture to say, that no judge on the bench of the supreme court of this Commonwealth, who has lived as the community expected him to live, has been able to lay up a single dollar.

I put it to the gentlemen who advocate the ten years' tenure, whether, in order to procure the services of men of the first rank in the profession on the bench of the supreme court, they are willing to raise the salaries of the judges? Will you vote for increasing their salaries, so that, with the strictest economy, they may have an opportunity of retiring with enough to sustain them for perhaps a year or so, until they can do something else for their growing families, and the education of their sons? Unless gentlemen are willing to do this, I hold it to be utterly impossible to secure the services of men of the character I speak of.

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Enough, Sir, has been said of the danger of a judge, whose period of official life is about to expire, being influenced by political considerations, of which, perhaps, he himself is not fully aware. Enough has been said to show that he may still cherish the hope of reappointment, and of the danger that, when a question highly exciting to the popular mind is brought before him, he may not be able to preserve his impartiality and independence. The presence within his court of a large portion of the body politic, in cases of popular excitement, will be apt to produce a degree of perturbation in his orbit and drive him from his equanimity. It cannot otherwise be, because we know that it has so happened. If I am well informed in regard to what has taken place in other States, where the judicial tenure was, at first, during good behavior, but was subsequently altered to a short term of years with reeligibility, I can state upon such information that this evil has already been experienced. Judges, previously distinguished for impartiality, seeing, when their term was near expiration, and by the foreshadowing of coming events, which party would soon be predominant, have been evidently too complacent to those members of the bar, and those suitors who were known to belong to that political party. Few men are conscious of the existence of such motives; but diplomatists and politicians well know, that if an individual is placed in any given position, they can calculate with tolerable certainty how he will act. No man, it is true, will undertake to offer a bribe to a judge. No man will say to him, if you will do this or that you can receive so much money; but it is easy, through other influences, of which he himself is unconscious, to draw him aside from his duty.

Mr. Chairman, I have occupied more time than I originally intended, and perhaps ought to ask pardon for trespassing thus long upon the time of the Committee. But, in conclusion, let me again seriously ask—has the system under which we now live worked well? If anything is to be done now, it seems to me that your duty is to review the system, and not absolutely to change it. If it has worked well, your duty is to let it alone. The people expect that of you. If it has not worked well, let it be changed, judiciously, and carefully, and wisely, by the light of experience; but unless it can be shown that it has been productive of some disadvantage to the community, it would be the height of folly to lay aside experience and the lessons of history and enter upon an untried experiment, which, however well it may have operated in other States, where the population and circumstances of the case are widely different from ours, would be dangerous to the good old State of Massachusetts.

Mr. FRENCH, of Bew Bedford. After the eloquent speeches we have just listened to, I will only detain the Convention a few moments, for appearances indicate that the Convention is already wearied with this discussion. I simply desire to say that I am in favor of the amendment of the gentleman from Fall River, (Mr. Hooper,) providing for an elective judiciary. I think it is right; I think it is proper; I think it is safe, and that no harm can possibly arise from it. As has been said already, it is not denied that the people are perfectly well qualified to elect their governor and other officers of State; and if that be so, I am unable to see why they are not equally as well qualified to elect their judges as they are to elect

a man who is to select and appoint them. It has been said here that there has been no demand on the part of the people for this change. I differ entirely with the gentlemen who put forth this sentiment. In that portion of the Commonwealth which I in part represent, I know that there has been such a demand—that the subject was discussed, to some extent, before the people, while the question of calling a Convention was under consideration; and I believe also that a large portion of the citizens of the Commonwealth desire that change. They have not come with petitions to the legislature or the Convention asking for such a change; but, Sir, we all know that other subjects have been discussed and acted upon here in regard to which the people have not petitioned.

Again, Sir, it is said that the judiciary should be independent. I like to have independent and upright men in all public stations, but I do not like the idea of having any public officers entirely independent of the people. I think they should be so dependent at least, as to have an eye to the power they serve. It is true that so much has not been said among the people in regard to this change as has been said in regard to some other changes which have been proposed and acted upon; nor do I know that there has been any serious complaints among the people in regard to our judiciary; at least, I know of none. But, Sir, what is the reason why men having claims upon each other, are so slow to put them in process of law? I knew a man who had a claim against another upon a note of hand for about \$100, and one of the best lawyers in the neighborhood told him his claim was perfectly good and recoverable, and that the party was good for it and advised him to prosecute. But he refused to do so, alleging that the party owing it could make it cost him a hundred and fifty dollars before he could get judgment for the one hundred.

There is then, evidently, a lack of justice somewhere—a screw loose in the machinery; I do not know that there is any shorter way of getting justice in the Commonwealth; but if there is not, it is a matter of very little moment to me whether our judges are elected by the people or appointed by the governor. I believe that if a man has a claim of a hundred dollars against another, there should be an easier way of recovering it than by having to pay a hundred and fifty; and without casting any blame on the judiciary,—for I believe it is composed of honorable men,—I am inclined to think that if we elected our judges, we would, with that and a few other alterations in our judiciary system, obtain a shorter way to justice.

Sir, I quite agree with those gentlemen who have preceded me in this debate, that this is an important question. It is said that every citizen should be protected in his rights; and we have been told that every citizen, however humble, may come before our courts, and spread out his case, and demand his rights. All that may be very well, Mr. President, but the most important question then comes up, can our citizens obtain their rights when they ask for them. Sir, we ought to be able, by our executive and judiciary, to protect every citizen breathing the air or treading the soil of Massachusetts. We have been asked whether the present system has not worked well, and whether there has been any complaint about it? In answer to that, I have to say, that I stand here and tell you, that a free citizen of Massachu-

setts—as free, Mr. President, as either you or I—has failed to be protected by the judiciary. A free citizen has been taken from the soil of Massachusetts, and carried down south into slavery, and if not now dead, is probably writhing under the lash. I will not say that the judiciary failed to do its duty intentionally, but I do stand here to say that I heard the claim for a writ of *habeas corpus*, in the case of Thomas Sims, argued before the supreme judges of the Commonwealth,—I heard that unanswerable argument of the lamented Rantoul, that has never been, and never can be excelled, showing that the general government was stretching its long arm into the State of Massachusetts, and was pouncing upon its free citizens, in violation of the Constitution of the United States,—I say that I heard that argument, and that it failed to induce the supreme judges to issue the writ, and thus secure to that citizen his inalienable rights.

The writ of *habeas corpus* has not been available to save a citizen from the grasp of the strong arm of the slave power, which came here without constitutional authority. The fugitive slave law, has been alluded to—the law under which a slaveholder and the officers of the general government undertook to take this citizen, Thomas Sims; but they did not take him by the authority of that law. No, Sir, they could not come to Boston and pick up a Massachusetts citizen under the fugitive slave law. How did they take Sims? They got the police of the city of Boston to take him and bind him for them, and then they carried him off into slavery.

Now, Sir, the officers of that government, who aimed to take away a free citizen of Massachusetts, had not the power to do it. We had proof of it, before a committee of the legislature of the Commonwealth, at that time. One man, Marshal Tukey, testified, that the officers of the United States government could not catch him, in the first place, and then if they could catch him, they could not keep him. Shadrach, you know, slipped through their fingers, and is now in Canada. I hope the general government may never have the power of stretching out that long arm, and taking away from Massachusetts, any of her free citizens. That so-called fugitive slave law, as it has been characterized here and elsewhere, is no law. The Constitution of the United States, nowhere gives congress the least authority, to enact any such law, and the members of congress when they passed it, knew, or ought to have known, that fact full well. No man, in my judgment, has undertaken to execute that law who does not know enough to know that it is unconstitutional—no law, and ought not to be enforced.

Now, Sir, I would like to have judges elected by the people that they may not be so independent of them, so that if another case upon the writ of *habeas corpus* similar to the one to which I have referred should come up before them, they will be dependent enough to listen favorably to argument, and be able to give equal protection to all, or better reasons for refusing it than were rendered in the case of Sims.

Sir, it has been said that the fugitive slave law applies to all of us. It does. The gentleman from Manchester, (Mr. Dana,) to-day is liable to be taken and carried south under that law, if they (his friends,) have the power to execute it at all. Some of my constituents feel a deep interest in this matter. I should like to read to the Con-

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vention a short letter, received by one of them some time since. It is dated Norfolk, Va., 18th December, 1851, and is as follows:—

"To my slave Joe Benton:—

"You wrote me some months ago from Halifax, Nova Scotia, but I knew that you were not there, and only did this to lead me off your track,—but from sickness and a pressing engagement which prevented me, I would have pursued you last fall to New Bedford and by this time you would have been in Virginia. In your letter you asked me how much I would ask to send you free papers. I wrote you then but have not heard from you since on this subject. I write now by Captain Kelly who promised me to deliver this letter to yourself. I will send you free papers if you will forward to me, through any channel, that I can get it, six hundred dollars. You can then live where you please. I will wait a short time for your answer and if you do not make this arrangement to pay for yourself, I WILL FORTHWITH TAKE STEPS TO HAVE YOU ARRESTED AND BROUGHT BACK TO VIRGINIA IF YOU CAN BE FOUND WITHIN THE UNITED STATES. YOU WILL BE IN THE MARSHAL'S HANDS BEFORE YOU ARE AWARE OF IT. You can write to me by mail on the subject. You are not now safe five minutes.

Your Master,

JAMES H. BEHAN."

Well, they have probably been to New Bedford to look after Joe and others, but they could not find them.

As I said before, I have not a word to say against the present judges, but I feel that if they should be directly elected by the people they would be nearer the people. It was said, Sir, by the gentleman for Manchester, (Mr. Dana,) that this system of an elective judiciary does not work well in the State of New York. I have some little acquaintance with gentlemen in that State and I must say, notwithstanding the gentleman has read a couple of letters from a couple of lawyers in that State to the contrary, that those persons with whom I have conversed in that State, tell me an entirely different story, and I believe that were you to consult the mass of the people upon that subject they would tell you that the system works well, and that they like it. I am well aware of the fears expressed in Massachusetts about the time the people of New York were contemplating changing their form of government and were talking about electing their judges by the people, and I am aware that those fears were rife in the State of New York; but since the change has been made, and the judges have been elected, the people are satisfied with the arrangement. The people there are well satisfied with the workings of the system. I will not detain the Convention longer for I am satisfied that all are weary of this discussion. I hope the motion of the gentleman from Fall River, (Mr. Hooper,) will prevail, and that we shall elect our judges by the people.

Mr. BUTLER, of Lowell. If I agreed, Sir, with the gentleman from New Bedford who has just taken his seat, in the belief that the Convention is tired of this discussion, I should not trouble them. I had supposed that this question would have been debated more at length—not that I am anxious that time should be taken up at all, but because this is a question which needs full discussion here, in order that the people on the one side and the other, may be satisfied with our action. And, Sir, I have waited for some member of the Committee to speak upon this question, and I am not prepared to speak with that accuracy

which, perhaps, any gentleman should use who attempts to speak to the Convention upon this subject. But, Sir, I have a few words, in which, in the short time that I shall trouble the Convention, I think I can express my ideas upon the question of an elective judiciary. And for one, as one who for the last fifteen years has watched, and not as an idle spectator, the workings of the judicial system of Massachusetts, and at the risk, too, of some sickly conservative calling me a "hyena" for attacking it, I propose to give what I believe to be the call of the people upon this question, to some considerable degree. Whether or not the people are ready for the question, whether it has been sufficiently discussed, whether it was not an oversight in our friends, who have laid out the subjects for our attention, in leaving this matter of an elective judiciary out, I am not now ready to canvass. But I do believe, that within the last year a great change has been going on in the public mind, the reasons of which are, many of them, obvious. I say I am not quite certain in my own mind, whether the people are ready to act in this matter, and whether it has been sufficiently discussed I am led to doubt, and therefore I wish to say a word or two upon the vote I shall give upon this subject. While I am not quite certain that I should be willing to peril that which I look upon as the great reform movement of the age, the amendment of our Constitution, which we propose, upon the question of an elective judiciary, and stake the whole of our action as a Convention upon it—as may be done—I can say for one, that were I to vote for such a plan as best accords with my judgment, without any fear of any other reform suffering from my action, and without any other belief than that I was doing that which is best for myself, for my children, and the State, I would vote for an elective judiciary.

The whole argument which was put by my friend for Manchester, (Mr. Dana,) appeared to me to proceed upon an entirely wrong basis—upon a distrust of the people. And that was the case with the ingenious argument of the gentleman from Cambridge, (Mr. Greenleaf,) who, with the tact of an old lawyer, and the artistic finish of the profession, says: "Why, why, do you wish to make the judges elective. The people elect them now. They elect the governor and the governor elects the judges, and what more would you do."

I say I think both the gentlemen have proceeded upon a wrong assumption. One fairly puts the argument that he distrusts the people, that he distrusts popular influence, an argument which seems to proceed upon the ground that every bad influence comes from the people, and every good influence from conservatism; it seems to put the argument upon the ground that the judges are only to be influenced by corporate wealth and power. If they can be rendered independent of the people, they say, it is well enough; but if you bring them within the influence of the people, they will be wrong. Put them where the people cannot get at them, surround them with the \$400,000,000 of incorporated wealth of the State, put around them a set of partizans, much greater, much more numerous, much more hungry, much more greedy and voracious than are even the partizans of the general government in this State—and that is saying quite enough—and then say to them, behave well upon the bench and your politi-

cal reticacy shall be the presidency of a railroad, or a manufacturing corporation, or some other salaried office! and it is all well enough. Such influences do not touch them, is the argument on the other side. But if you say to them, you have nothing to do but to be an upright judge, to deal out justice fairly, to sell it to none, to deny it to none, and the people will stand by you, as has been found to be the case by the experience of other States of the Union, and at once my friend for Manchester, (Mr. Dana,) distrusts the independence of the judiciary.

But the gentleman from Cambridge, (Mr. Greenleaf,) says that the judges are virtually elected by the people. Sir, are we blind? If the gentleman had not disarmed me by saying that he never read the newspapers, and therefore did not know what was going on in this world around him, I would like to ask him if he has never heard of a judge who held on to his office after he wished to resign to wait for a change of political parties, or of a governor who disappointed his friends in his appointment of a judge of the supreme court for fear of the action of a convention of the people upon the subject of a judiciary.

I do not think that we should shut our eyes and then say all goes well. I ask gentlemen who come here and say that all wisdom was centered in our ancestors seventy-five years ago, and that all wisdom is derived from that period,—and I admit that they saw much, though they saw not all things,—whether the world has made no progress in the last seventy-five years? I do not profess to be wiser than our generation, by no manner of means, but I am of opinion that the science of government has progressed, as well as other sciences, during that time. Seventy-five years ago, it took almost three weeks to go from Boston to Washington, and it required the same time to transmit intelligence between the two places. Now we can go in twenty-four hours.

Mr. DANA, (interrupting). And come back again.

Mr. BUTLER. Yes, as my friend for Manchester says, go and come back again, and we can learn something too, while we are gone, [laughter.] We can now send intelligence in three minutes. You might as well tell me that because my grandfather did not know of any better means of conveyance than the old fashioned stage coach, at three miles the hour, and the postboy with the mail on his back, pacing along to convey news at the rate of twenty miles a day, that I should not use the rail car, or the telegraph, at this day, because as in their wisdom they saw them not. Have we progressed in nothing but mechanics? Why tell me that the science of government has not progressed? Why, Sir, the science of government is progressive, like every other science.

But, Sir, we are told that there has been no complaint of the judiciary in this Commonwealth. It is not for me to make an attack, if there has been. It is not for the bar to do that. The judges sit there beyond our reach, and woe to the individual upon whom their hands shall fall. The lawyer may not do that. I will say one or two things, however, which I think I have the right to say, because I am not especially afraid. I do not now speak of the men. I pray to be understood, and not misunderstood. I do not now speak of the men, but I speak of the system. Now what has happened?

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Well, Sir, in 1838, for instance, the legislature of this Commonwealth passed a law, which stands unrepealed upon the statute book, saying that every case which was decided by our supreme court each year, should be reported and published each year before the first day of September. That stands as the law of the land, binding upon the supreme court, and upon every-body else. Now, Sir, what is the fact to-day? The fact is, and I challenge any lawyer in this Convention, from A to Izzard, from beginning to end, to contradict it, the fact is, that we do not judicially know of any decision in this Commonwealth since the year 1850. And yet that law stands upon your statute book, and we have an independent judiciary! Perfectly independent of that law. Every year we have had murmurs, not loud but deep, from the profession, and every year we have had murmurs deep and loud in the legislature; but yet there is no redress. Now, Sir, I speak not of men, I might not dare to speak of men, but I speak of this fact, and I ask any gentleman in this Convention to tell me if it is not so? And I ask them, further, to tell me what redress we have? Who are to indict them? Will my friend the attorney-general, (Mr. Choate,) thunder against them the indictment he threatened against Berlin? If he does, where will he find a court to try it? He may tell me there is a remedy in impeachment. Sir, not meaning to carry the comparison too far, I may at least say that this impeachment is a very cumbersome kind of machinery. I can only say, as I said to a client of mine who was a justice of the peace, and who came to me, and said they wanted to impeach him. "Impeach you for what?" said I. "Why, for something connected with my office." "Poh!" said I, "the idea of using a sledge hammer to kill a mosquito." [Laughter.] Sir, whenever you undertake to impeach a judge, you have got to set going a machinery so complicated, so vast and so unsatisfactory in its results, that nothing but the most pressing necessity will ever put it in motion. If I remember correctly, it is a species of machinery which has never been successfully put in motion but once in the history of this Commonwealth, as against a high judicial officer. So you have no practical remedy there.

Now, Sir, is this delay of the reports which are required by law, a matter of necessity? Why, lying upon my table in my office, I have the reports of the Queen's Bench up to when? I have those reports up to the last day of May. We can get the law of England up to last May, but we cannot get the law of Massachusetts only up to the year 1850—three years this coming fall. And what is the trouble? Is it for want of the laws upon your statute books? In order that there may be no mistake in this matter, I will read the law upon this subject, and let gentlemen see if there is any judicial exposition that can alter it.

In the 100th chapter—acts of 1838, you will find the following:—

"The reports of the decisions of the supreme judicial court on all questions of law argued and determined before the first day of September, in each year, shall be published on or before that day.

"April 12, 1838."

Now, there is not a lawyer in this assembly who does not know that there are a hundred cases which have been argued and determined

before that supreme judicial court, which have not been reported; and what is the reason? What is the trouble? Not in the men, for the judges of our courts are good men and true, but in the system. They know that they are independent in this respect. They are responsible to nobody. They are like a rich man who will not work, because he has no necessity for working. Gentlemen cannot tell me that it is the fault of the law reporter, because every-body knows that the custom has grown up, and been continued until it has become law, that each judge shall write out his own decisions, and the reporter cannot get them until they are written out for him. Well, Sir, I have only to say that there is a grievous fault which lies somewhere. It lies in the system, and I think the system should be reformed.

Now, Sir, another reason. The member for Manchester, (Mr. Dana,) challenged me boldly. He challenged every man in the Convention, if he knew of any dissatisfaction to exist with the courts, as they are now organized, to tell him of it. Now, Sir, I could have wished that other voices than mine, had responded to that call. But I speak in the presence of those who know if I speak unadvisedly.

For one, I can say, that while in the legislature last year, I was more than once importuned, to use what little power I might have in bringing the matter before the legislature, to procure the abolition of one of the courts of this Commonwealth, and for what purpose? To get rid of the judges upon that bench who were appointed for life, and could not be removed in any other way. Sir, how many men in this hall, know like facts? How many have at least heard of it? Yet this fact is to be hoodwinked out of sight, and we, like young partridges, are to put our heads under a leaf and suppose that we are out of sight.

And there is another trouble in this system of judiciary. Because while these facts are well known, yet we must not say a word about them—I beg your pardon, Sir, I am very apt to speak out in meeting. [Laughter.] I propose to tell the truth and will not hold my peace. Now I put it to the lawyers of the Convention and I ask them to answer me, not by whitewashing process, but upon your honors, gentlemen; do you not know that the fact I have named is true? If you do, then why seek to conceal it?

Now, Sir, these are the reasons why I ask that the term of office of your judges may be limited, or rather a part of the reasons. If you have a good man for a judge, you will reelect him, but if we get a bad man, I want some means provided by which he can be put out of office. A good man will be independent, but if your judge is a bad man, he ought not to be independent and irremovable.

Now, let us see how this system of making the judges elective for limited terms, works in other States? In the State of Vermont they have elected, year by year, the same men for thirty years in succession. It was said that in Vermont this system began very early, when there was very little political excitement in Vermont. Well, Sir, that may be true but it has passed through times of as high political excitement as we have had anywhere. It has been in the hands of as hot headed partisans as can be found in any other State. During the anti-masonic excitement, which raged more terribly there than

perhaps in any other State, although it changed the whole political aspect of the legislature, it produced no change in the judiciary. The same men were elected judges year by year.

How is it in Rhode Island, where the judges continue in office as long as the legislature choose to allow them? There has been no difficulty in Rhode Island in making the judges independent.

How is it anywhere else in relation to this matter? The gentleman from Cambridge told us of a judge who was turned out of office by his own party. Well, Sir, what that gentleman told us in relation to that judge, simply showed what was in here, [pointing to his breast,] and it is the best argument that could have been adduced for our side of the question. He showed that this judge was a man who ought not to be upon the bench, and the people did right in turning him out. But, Sir, if we had got him there in Massachusetts, we should have been obliged to have kept him there as long as he lived, and he would have lived longer than anybody else. [Laughter.] That is the distinction precisely which I wish to draw; that is exactly the reason why I want to change our system.

'Sir, I believe in the capacity of the people to elect their own judges, and to elect those who are proper men for the office. I stand impregnable upon that ground. And I ask gentlemen to point me to one State which has changed from an elective judiciary to an appointive one. I can refer them to twenty States out of the thirty-one States which now elect their judges, or some portion of them. I can point to thirteen States which have gone from appointing during good behavior, to an elective judiciary for a term of years. I can point to thirteen States that have made that change, and now will some gentleman have the kindness to point out one to me that has gone from an elective system back to an appointive one? because, if he can, that will be an argument in favor of retaining the present system in Massachusetts.

Sir, I was amazed and amused, both at once, at the ingenuity with which the keen lawyer from Cambridge (Mr. Greenleaf) dwelt, in his artistic manner, upon the fact of so many States having adopted an elective judiciary. He said that in those new States, where the people did not know one another, it was well enough for them to elect their judiciary. "But," said he, "here in old Massachusetts, where every man knows every other man who is fit to be a judge, and where, of course, the people know exactly who have the proper qualifications to be a judge, they ought not to be elected." Why, Sir, that seemed to me a very strange idea. If it had come from some other source I should have thought my ears deceived me; but they could not deceive me. In a State where the people do not know each other, and do not know who they are selecting, it is very proper to elect their judges; but in a State where they do know each other, and where they do know the men they select, they are not fit to select their judges! Oh, no; it would be disastrous and ruinous to their interests. Will that do? Can it be possible that the gentleman from Cambridge will say that men whom the people do not know at all are fit to be elected, while if the people do know them, they are not fit to elect them? That was the effect of his argument. Sir, it will not do. I cannot

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hold to any such argument. It may be a good one, but it does not strike me favorably.

Then there was another argument. The gentleman from Cambridge put the question, triumphantly, as I thought, if you appoint your judges for a term of ten years—and I shall go for a term of at least three years less than that—will you vote to increase their salaries? If they are inadequate, certainly I will. Show me that the present salaries are inadequate to obtain the very best legal talent in the Commonwealth, and I am content. I shall think it good economy to vote for an amount that will obtain that talent. I hold that the office of judge should not be sent begging. And I hold, also, that it should not be kept in the hands of a governor for the purpose of trying the temper of a Convention. I hold that an important office in the Commonwealth should not be kept unfilled, when the reason is not because there is nothing for the officer to do, but when your courts are overburdened with cases undisposed of, but because it may be thought best to keep a vacancy until the Convention get through. Sir, I repeat, if the salary is not large enough, I am ready at any time to vote to increase it.

But the fallacy of the gentleman's argument, it seemed to me, was that, *per force*, a good judge would have to go out at the end of ten years. Now, I cannot agree with the gentleman there, by any manner of means. I insist—and I will point the gentlemen to examples in other States—that he will be reelected or reappointed. But the gentleman from Cambridge says he will not be reelected, that he will go out at the end of ten years, and that he will not be able again to recover his clients. Can that be true? I ask gentlemen to try it in their own minds. Here is a man who has been on the bench for ten years; he has proved himself to be an honest man and a good lawyer; he has proved himself to be conversant with the law; and I ask gentlemen whether they would not employ such a man a good deal quicker than they would one of the young birds, which the gentleman was afraid would pick out his eyes. You take a man away from the bench, and the people will go to him at once for advice, and pass by the younger men of the profession. We shall be allowed to do all the work in preparing cases and bringing them before them, while they will give the advice and take the fees.

But the gentleman from Cambridge brought another argument, which I was surprised to see him bring, under any circumstances, and especially in the presence of the persons before whom he brought it. He said that when a man went to congress, he lost not only all his clients, but all his tact. Sir, I could have pointed to at least one example that would have given a negative of a most extensive character to that. I could have told him of at least one gentleman who went to congress, and who, when he returned, seemed not only not to have lost his tact, but seemed to have acquired new and additional tact in his absence; and instead of lessening the number of his clients, increased them to such an extent as to excite the envy of the rest of us—if such a feeling as envy could ever be supposed to get into a lawyer's breast. [Great laughter.]

Sir, I cannot agree with the argument of the gentleman from Cambridge. In the first place, he betrayed a want of confidence in the people.

Now, Sir, I believe the people know what they are about. I believe they know what they want, and that they will have it, too. You are to make a Constitution that is fitted to their wants. Our people are educated in a knowledge of their rights, and they will have good judges upon the bench if they get the power of that selection into their own hands. But suppose they are appointed for a term of years, and are not elected by the people. It is said that a governor would not reappoint a good judge. Try it; try it and see. What governor is there—I speak to those who have had experience upon this point, I put it to the learned chairman of the Committee, (Mr. Morton,)—what governor is there, who, seeing a good judge upon the bench, whose term of office had expired, would not reappoint him? Tell me the man? I know of no man who would not do it.

And if the people elect the judges, will gentlemen tell me that the South Shore would not reelect a man because he was from Franklin, and Franklin would not reelect a man from South Shore. Sir, do you believe that? I ask any gentleman in the Convention if he believes his political friends would refuse to keep a good judge upon the bench because of his politics?

One word in relation to another view of this matter and I have done. I think we are laboring under a great mistake, if we have yielded quietly to what has been said upon this question, and acknowledge it to be true. We have been told that the judiciary is not in any degree a political power, and that it has nothing to do with politics. In my judgment the great central political power of this Commonwealth for the last twenty years, has been the supreme judicial court. I do not mean that the judges upon the bench have given decisions upon political questions either the right or wrong way. I do not mean that they have been corrupt men; but every lawyer of a given party who desires a seat upon the bench which is the *ultima thule* and the very acme of the hopes of the bar, has a prospect before him, where, by well doing and a little boring, he may be able to get a seat upon the bench sooner or later. All over the Commonwealth, in every county, we have been pointed to the character and standing of the men who fill seats upon the bench. I grant the ability which they possess, and I am not here to quarrel with their integrity; but from the partisans of a single party in every county of the Commonwealth, we have heard the declaration, "see what men we possess upon the bench; you cannot point to any such, and, until lately, we have had no such political aspirations." I am sorry that the learned chairman of this Committee has gone out, because I presume he would subscribe to what I say. I grant that we have had a Democrat upon the bench, but if you will look through the reports you will find all the use made of him was, whenever there was a knotty question which had to be decided, giving the opinion was usually put upon him. [Laughter.] I mean a knotty point which was not exactly popular. I am afraid that I may here interfere with somebody's good nature; but I will try and not do so. Look at the decisions upon the militia question, upon the parish questions, and you will find, that by a great misfortune, or good fortune, they were always given, when of an unpopular character, by a particular judge of judges. It has been said, that the main portion of the judges were all one way in political questions. This may have been mere

accident. I am bound to suppose it was, if I was one of those who shut my eyes and think that by so doing nobody can see me. I will tell you what we cannot do, if we elect them by the people. We cannot more than elect them all one way. We cannot do worse than that in any event. It is for these reasons, and in the belief that in the progress of reform the time has come, when the people, governing themselves, have a right to hold their agents directly accountable to them, and believing in the truth as a living and actual truth, that it is a necessity in a republican government, that the people should hold all their agents accountable to them by a frequent recurrence of the appointing power, I am decidedly in favor of changing the tenure of office of judges and making them elective. One word more and then I will take my seat. I shall have at least defined my position, if I may have made myself misunderstood in the reasons given for assuming it. I will not speak of the necessities which seem to have given to our courts a facility of decision in one direction, and upon a given class of cases. I leave this matter for those who I know are more able than myself to discuss that subject; but I say in closing, as I commenced, that were it left to me to-day to settle this question, and to say what sort of a judiciary I would have, I would vote for an elective judiciary; but living in a Commonwealth that has been accustomed to a different system, and when men have been educated under a different system, I must yield in that respect to the judgment of those who know better than myself, whether the people are ready for a popular election of these officers, and whether, in the language of the gentleman from Cambridge, (Mr. Greenleaf,) which came out inadvertently, whether the people are ready to take "the reins into their own hands." That expression seemed to slip out of the gentleman's lips quite inadvertently, but that is exactly the question. Are the people ready to take the reins into their own hands, or are they to submit to a driver as at present, a few years longer? Are we still to place these judges above us and exalt them as angels and worship them as the Egyptian worshipped his idol, not for any beauty or comeliness of figure or form, but for some supposed hidden intelligence contained within it? Are we to do that, or are we to make this class of rulers precisely like every other class, amenable to the people at short periods, and selected from among themselves? For one, as I said, I should vote for selecting them by the people. I am not yet prepared to say, that the people are ready for that change, or I should strenuously insist upon an elective judiciary at the present moment.

Mr. PARKER, of Cambridge. I have listened to this debate with considerable interest, for the purpose of learning what objections there are at present, in connection with the tenure of office as it now exists, and what the evils are which are to be remedied by the proposed change. It was only, until the two last speakers placed their sentiments before the Convention, that I was able to find anything alleged, by reason of what had already occurred, why a change should be made. There have been some suggestions made by the gentleman from New Bedford, (Mr. French,) and the gentleman from Lowell, (Mr. Butler,) to which I should like to reply; but as the hour is so late, I hardly feel inclined to trespass upon the patience of the Convention at this time. I move,

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therefore, that the further consideration of the subject be postponed until nine o'clock to-morrow morning.

The question was then taken upon Mr. Parker's motion, and it was agreed to.

On motion of Mr. GREENE, of Brookfield, the Convention adjourned until nine o'clock to-morrow morning.

THURSDAY, July 14, 1853.

The Convention assembled, pursuant to adjournment, and was called to order by the President at nine o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read.

Vacancy in the Representation of Concord.

On motion of Mr. WILSON, of Natick, it was

Ordered, That the selectmen of Concord be notified that a vacancy exists in the representation of that town, occasioned by the death of the Hon. F. R. Gougas.

Assignment of time for taking a Vote.

Mr. BOUTWELL, of Berlin, moved that the question on the resolves concerning the judiciary be taken this afternoon at four o'clock.

Mr. BRIGGS, of Pittsfield. I hope, Sir, that the question will not be taken upon this motion until we have a fuller house. The subject of the judiciary is a very important one, and I understand that several gentlemen desire to address the Convention upon it. If the question upon this motion be taken when we have a full house, and the proposition to close debate be agreed to, nobody will have a right to complain, and I certainly hope the gentleman will consent that it be postponed for the present.

Mr. BOUTWELL. The difficulty about postponing the question upon my proposition is, that if we wait for a full house, we cannot ascertain what time the Convention will fix for taking the question upon the subject of the judiciary until the afternoon, and thus either due notice will not be had of the time for taking the vote, or another day must be consumed, as it seems to me unnecessarily. It appears to me, that the proper time, and indeed the only time for taking such a question as this, is when the Orders of the Day are not under consideration.

Mr. THOMPSON, of Charlestown. I wish my friend for Berlin would consent to modify his motion so as to make the time for taking the vote some hour to-morrow morning. I am desirous of recording my "No" against the amendment that has been reported from the Committee of the Whole, but if the question be taken this afternoon I shall not be able to do so, and I am very reluctant to appear to dodge any question. At ten o'clock to-morrow we shall probably have a fuller House than we shall have this afternoon; and it is highly desirable, that when a question of this magnitude is to be taken, the House should be full. The vote upon this question relating to the judiciary should be taken only when the House is full, and it occurs to me, that if it be deferred, there will be no loss of time, for other subjects may be taken up and discussed in the interim.

Mr. BUTLER, of Lowell. No one who knows

my honorable friend from Charlestown, would ever accuse him of dodging any question. But I hope the motion may prevail, and that the question will be taken at four o'clock this afternoon. That will give the better part of three days, which I think is quite sufficient. If it goes over until to-morrow, it will doubtless occupy the greater part of the day, and, Sir, for one, I feel the necessity for expediting our business, and finishing up our work.

Mr. BATES, of Plymouth. If the taking of the question should be postponed until to-morrow to accommodate the gentleman from Charlestown, there are other gentlemen, no doubt, who would be incommoded by the arrangement. There are several gentlemen, I know, who must necessarily be absent to-morrow. It will be found difficult, I apprehend, to suit every-body.

Mr. GRISWOLD, of Erving. I hope, Sir, that this motion will prevail. I am in favor of giving a reasonable range to debate upon important questions like this, but we have been here so long that I think it is about time for us to begin to think of bringing our labors to a close, and if we intend to do that it will not do to let our discussions run on indefinitely. If the question should be taken at four o'clock this afternoon it will give time for quite a number of speeches, so that the subject will have been pretty well discussed, if not exhausted. Besides, Sir, the Report has been before the Convention for some time, and I will venture to say that the minds of the members of the Convention are made up even now. We must place a limit upon this discussion; it must terminate somewhere; and I hope the motion of the gentleman for Berlin will prevail. I think it allows as much time as we can reasonably allow under the circumstances of the case.

Mr. BRIGGS, of Pittsfield. I am sorry, Sir, that I cannot say the opposite of what my friend for Erving says, that I hope this motion will not prevail; for I suppose, from the indications that I see, it is a settled matter that it shall prevail; but I certainly wish it may not prevail. This is a question of the greatest possible interest that can come before the Convention; and gentlemen talk about bringing the debate to a close. Sir, I believe this question has had about the same chance for debate that the question of woman's rights had in this Convention. I certainly could wish, that upon a subject of this magnitude there would be an opportunity for more than three speeches in addition to the few that have been made; but if this motion prevail the discussion is ended at the expiration of three or four hours from the time of resuming the discussion. I really feel as though I ought to say, that it seems to me it is unreasonable,—that a question which goes to the foundation of one of the great branches of this government should not be disposed of in this summary manner.

The question was taken on the motion of the gentleman for Berlin, and—by ayes, 102; nays, 43—it was decided in the affirmative.

Limitation of Speeches.

Mr. CUSHMAN, from Bernardston, submitted the following order:—

Ordered, That on and after to-morrow, no member of the Convention shall speak, either in Convention or in Committee of the Whole, more than half an hour on any one subject.

The order lies over for consideration to-morrow.

Orders of the Day.

On motion of Mr. STEVENS, of Rehoboth, the Convention proceeded to consider the Orders of the Day, being the resolves on the subject of the judiciary, the pending question being on the amendment proposed by the gentleman from Fall River to the amendment reported from Committee of the Whole.

Mr. PARKER, of Cambridge. Before proceeding to discuss the questions directly involved in the amendment proposed to the resolution of the Committee, I desire to make a remark or two, in reference to some portion of the reply of the gentleman from Lowell, (Mr. Butler,) to the speech of my learned colleague, (Mr. Greenleaf,) yesterday afternoon. So far as that gentleman met the positions taken by my colleague, I am perfectly content to let the matter rest as it is, but if I did not mistake the course of the argument, the gentleman from Lowell did not meet and fairly represent some of the arguments, to which he proposed to reply. In two particulars, he attempted to involve them in contradiction, and I must presume that he misunderstood them, for his position as a member of this Convention, forbids the supposition, that he intended any misrepresentation. Two subjects were under consideration; the election of judges, and the limitation of the term of service.

My colleague said in relation to the last, that in the new States, there was a reason why the people should be in favor of limited terms, because, coming from different portions of the world, and being strangers to each other, they could not so well know the fitness of any particular candidate, but that this reason did not apply to the people of Massachusetts, who knew each other much better.

The gentleman from Lowell, (Mr. Butler,) in replying to this argument, spoke of it as if it had reference to an election by the people, and by this misapplication, endeavored to involve it in absurdity and contradiction. Again, my colleague spoke of the difficulty which a member of the bar, who has left his profession and gone into the halls of congress or elsewhere, encounters, in returning again and regaining his standing as a professional man. The gentleman from Lowell undertook to controvert this, by referring to a particular exception, a well known case, not within the position taken by my colleague, if I understood him rightly, to refer to those cases, where gentlemen advanced in life, leave their profession, and when they come back again, can not find the places they left because they are filled by younger men.

Sir, I will not detain the Convention by following this course of argument farther. I wish to say, in relation to the question more immediately before the Convention, that I have had occasion to know somewhat of the reputation of the judiciary of Massachusetts, judging of it, not as an inhabitant of the State, with the partialities of an inhabitant, not from State pride, not from any considerations, I think, calculated to influence my mind to an undue admiration of it; but from a position without, where there was no reason, whatever, why I should have given to it more credit than it was fairly entitled to from its labors and from its decisions. Sir, I think that there is but one voice, and can be but one opinion, on this subject. The judiciary of Massachusetts, for

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a long series of years, has stood, I venture to say, second to that of no other State in the Union. Without going back to the time of Parsons,—for a quarter of a century, more or less, and I may say more and not less, it has stood, not only second to no other in the United States, but for a long period of years, second not to that of the Union itself. The Reports of Massachusetts have been cited all over the country as some of the very best authorities upon the questions which have been discussed, and come under revision. This may have been partly, perhaps, because Massachusetts is a great State; because she is a commercial State, because, of course, there are cases and opinions upon commercial subjects, involving principles of general use throughout the country. But, Sir, this is not all. This would not give to the Reports of Massachusetts the credit which they have attained throughout the country, if there was not something more; and that something more has been, that she has had a learned, able, and independent Bench, the incumbents of which could commend their labors to the consideration of those in other States capable of appreciating them, and who have appreciated them.

Sir, this speaks something, I think, for the system under which this judiciary has been appointed, and has acted. I admit, Sir, that the reputation of the judiciary abroad, will not determine the question whether there have not been evils endured at home, which may be corrected by legislation or constitutional enactment. But it does serve somewhat to settle any question of competency, for an incompetent court could not have obtained such a reputation. If there have been objections to the court, which do not appear in the Reports,—objections which are not heard out of the limits of the State, what are they? As I said last evening, I have listened with a good deal of attention for the purpose of ascertaining what they were, and without any success, until I heard the remarks of the gentleman from New Bedford, (Mr. French,) and of the gentleman from Lowell. They made some specifications. Are the evils which they specified those which are likely to be removed by a change of the tenure of the judicial office? The gentleman from New Bedford particularizes, as his first specification against the administration of the judges here, that somebody had a note of \$100, and he was advised not to sue it, because of the cost if it should be contested. I take that as the substance of the allegation.

Suppose you make the judiciary elective, will that cure that evil? Suppose you have judges appointed for a term of years; would it be any better in that particular? If it be true that it would not be profitable to pursue such a claim if contested, I suppose it may be for the reason that the judicial force of the State is not great enough to keep its dockets clear; because you have not judges enough to try all the causes which the people bring before them, and clear the dockets term after term and year after year, and thus there is an accumulation of business causing delay. It is a very common fact, not only in Massachusetts but throughout the country, that at times, the press of business before the courts is so great that they cannot accomplish all that is desirable. Sir, you will not remove that evil by altering the tenure; every change will rather increase it by putting in men who are not accustomed to the business, and thus it will rather

aggravate than remedy the evil. And it will tend greatly to increase the uncertainty of the law by the introduction of new notions and opinions, and the overruling of decisions. If, as suggested by a friend, the attorney's fees are the principal item of expense in ordinary cases, you will not remedy that evil by a change of the judicial tenure. The members of the profession charge according to their notions of the value of their services, as they have a right to do. And if the judicial force is not sufficient, and if cases are continued from term to term, expense must be expected.

Another objection which the gentleman from New Bedford made, was founded upon a decision of the supreme court in regard to a fugitive slave. I suppose there are different opinions on that subject. The gentleman from New Bedford entertains the opinion that the party was entitled to his freedom, while others are as conscientious in the opinion that he did not possess the character of a freeman, and that, under the Constitution and laws of the United States it was the duty of the constituted authorities of Massachusetts not to interfere for his liberation.

Will the proposed change remedy that matter? In what way will an elective judiciary be more effectual in guarding the rights and interests of the persons who stand in that position, than one appointed under the present constitutional provision. Is there any complaint that the judiciary of Massachusetts on that occasion gave any other or different construction to the Constitution and laws of the United States than that given by the judiciary of the United States? I do not understand the gentleman from New Bedford to make any such suggestion. He well knows that for the purpose of construing the Constitution and the laws of the United States, the judiciary of the United States are supreme, that their authority is paramount. What relief do we get, then, by elections, or by short terms of years? Nothing, unless we expect to place incumbents on the bench who will put themselves in conflict with the Constitution and laws of the United States, by giving a different construction to them from that which is given by the tribunals authorized to pronounce authoritatively and decide upon that subject. Is it the desire of the gentleman from New Bedford to bring the judiciary of Massachusetts and that of the Union—the State of Massachusetts and the United States into conflict upon that subject? Is that the thing to be accomplished? If it be so, I put it to gentlemen of this Convention whether they are prepared to follow that lead, and make the change for that purpose. I put it to the people of the Commonwealth whether they are ready to place themselves by this or any other mode in such an antagonistical position to the government of the United States?

Sir, I have no particular affection for the fugitive slave law. I wish some other law were on the statute book instead of it. But so long as it stands there as a constitutional law, so declared by authorities competent and authorized to pronounce the final decision upon that subject,—an authoritative decision, of course,—so long, I trust, the people of Massachusetts will not place themselves in conflict with the authorities of the Union upon that question.

Mr. KEYES, for Abington. Will the gentleman allow me to make an inquiry? I infer from

the last remark of the gentleman that that law has been pronounced constitutional by the supreme court of the United States. I wish to inquire if that is the fact.

Mr. PARKER. I think I did not so state; I did not say that it had been pronounced so by the supreme court, but by authorities competent to pronounce a decision, and that I hoped Massachusetts would not come in conflict with the authorities of the Union.

Mr. KEYES. But I inferred from what he said, that the opinion of the court had been given, and I thought that others might have that impression.

Mr. PARKER. I did not say so, nor mean to convey that impression; but I do mean to say that the decisions of the judiciary of the United States, and the opinions which have been expressed by judges of the supreme court of the United States, in relation to that law, lead to the conclusion that whenever the question is put before the highest tribunal of the Union, it will be declared constitutional.

Mr. KEYES. Will the gentleman allow me to make one other inquiry? I wish to know whether the people and the judges have not a right to entertain their own opinions until the decision has been made by the supreme court, which we have a right to expect, I suppose, will be in accordance with the view expressed by the gentleman, inasmuch as we know that the court is constituted for such a purpose.

Mr. PARKER. I do not know what the gentleman refers to when he speaks of the court's being constituted for that purpose.

Mr. KEYES. I referred to the manner in which that court is constituted, the other day, that a majority of the judges were from the slave States. And I take it, according to my reading of the case of *Prigg*, as it is called, pronounced by Judge Story, that they left the law, and that they did not pretend to decide that case according to law, but according to history; they took the history and the opinions of the South rather than the law. I understood the gentleman from Boston to confess that.

Mr. PARKER. It does not follow, from all that, if admitted, that the judiciary of the United States has been constituted for any such purpose as that of which the gentleman speaks. But I have not time, under the rule which limits the debate, to discuss the merits of the decisions of the supreme court of the United States. The question for us to consider, is not whether there is an erroneous opinion entertained respecting the fugitive slave law; but if there is, whether it is probable that we can remedy that error by an elective judiciary, and whether you will put upon the bench men who will hold this law unconstitutional, and thus place themselves in conflict with the opinions of judges of that court which has the paramount authority to decide upon the subject. I trust I do not fail in sympathy for those who are affected by that law. But I shall not attempt to show my sympathy by a disregard of my constitutional obligations. In any way that is according to law, I am ready to exhibit it. Are the people of Massachusetts to place themselves in an antagonistical position to the supreme court of the United States, by electing or appointing judges who entertain opinions upon this subject hostile to the decisions of that court? That is the question. As has been stated

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by the gentleman for Abington, the opinion in Prigg's case was promulgated by a most distinguished son of Massachusetts, who certainly was not put on the bench by the slave power; he was not trained in any school of that character, and if he came to the conclusion which was confidently expressed in that case, it was not because of any sympathy which he had for the institution of slavery, but because his legal convictions carried him to the result which he thus announced.

These, I think, were all the specifications of the gentleman from New Bedford against the judiciary of Massachusetts, as at present constituted. The gentleman from Lowell adds another: that there has been a delay in publishing the Reports of the decisions of the courts. He refers to the law of 1838, which provides that the court shall cause all the decisions of the court made prior to the 1st of September, in each year, to be published on or before that day. I put it to the gentleman from Lowell to say whether he believes that this is a practicable thing. Does he believe that there is any power in the Court, constituted as it is at present, or constituted as it will be by any change in the tenure, to comply with that law? In the view which I take of it, it would be entirely impossible, otherwise the law would not have remained from 1838 to the present time without compliance. Why has it not been made the ground of an address for the removal of the judges, that they have not complied with that law? Why, Sir, it is palpable that it is an impracticable thing, and, therefore, nothing has been done about it. Whether there has not been more delay than was necessary—whether something more might not have been accomplished, I cannot say. Sir, it is altogether impossible that the decisions of the court of Massachusetts, constituted as that court is, with the provision for reporting which is made here in Massachusetts, should be published with the same rapidity and promptness that Reports are published in England. Let the reporting be on private account, so that the judges will not have the labor of drawing up their opinions and fashioning and shaping them into the best form for use by the profession and the public at large—let the Reports be made by rival reporters and private competition, and you will have the decisions of your court as early as you get those of the English courts, and even more so. But this cannot be done, because here there is no demand for the Reports which will justify an expenditure of that kind; and if it might be I am not sure that it would be very desirable. The people of this country want something more than a mere statement that the case is decided so and so; they want something of the reasoning on which that decision is founded. There is something of this in the Reports of the English courts; but it is not carried out to the same extent that is to be found here. There is not the same labor expended in making the Reports. The practice is quite different there.

Let it be understood that these are all the objections that are urged against the administration of justice in this State.

The only other objection which I have heard against the court as constituted at present is, that the judges live too long. It seems, from the remarks of the gentleman from Lowell, that they live longer than other people.

Mr. BUTLER. The gentleman must have

misunderstood me. I said that a bad judge, if appointed for life, would live too long. I said nothing about our courts at all.

Mr. PARKER. I supposed from the tenor of the gentleman's argument, that he alluded to the judges of Massachusetts.

Mr. BUTLER. Oh, no! Ours are all good.

Mr. PARKER. The idea suggested was, that judges lived longer than other people, and I supposed the gentleman meant to have us understand that they lived too long. They do not make way for other aspirants—they are not quietly inurned at Mount Auburn in proper season, so that others may take their places. Upon this objection, the proposition now before the Convention will accomplish something; for if you do not terminate their natural lives in season, you may their official existence, so that vacancies will be created. It will give a better chance for the aspirants for office; and, I have no doubt, but that it will operate a little better than it would seem, perhaps, at first blush, from the statement which has been made here. It is said that the average term, at present, is about thirteen years, and the proposition before the Convention is to limit it to ten years. This would not seem of a very great improvement of itself, if the judges were to hold the full term, but this would make an average quite too large. The gentleman from Natick, in making the comparison, did not make the allowance for deaths and resignations, under the new system. It is probable that there will be about as many deaths, in proportion, under the new tenure as there have been under the old, so that this comparison between ten and thirteen, ought to be a comparison between the term of ten years, reduced, as that will be, by the deaths and resignations which may occur in it, and a term of thirteen years. When that is made, it will probably verify the calculations of my friend for Manchester. There will be about one vacancy a year. Will this give you better judges, or a better administration of the law?

Sir, the question whether men who are best qualified can probably be induced to accept the office, for a term, has been already discussed. There is a difference, which is to be noted here, between the judicial office, and political offices; and that is this. In order to secure a proper administration of the judicial office, there must be a previous training. No man can go upon the bench, prepared to administer justice according to the rules of law, who has not had a previous training for that purpose. When he goes there, he must leave behind him the profession in which that training has been had, and through which he has been fitted for the office. It is not so in relation to political offices. A man who is elected governor, senator, or even member of congress, is able to devote some time to the pursuit of the avocations in which he was engaged before his election, whether it be merchandise, farming, or anything else; because he can leave these affairs in the hands of people who are well qualified to superintend them, guided by his own direction and supervision. But it does not follow that you can find persons qualified to administer justice according to the rules of the law, who are ready to abandon their profession for a short time. They are not able to put a superintendent over their business, and continue it, and return to their profession again, in full practice, when their term of office shall have expired.

I was about to turn to the Bill of Rights, to show what is expected of the incumbents of the bench; but I will not take up the time for that reference—every gentleman can make it for himself. Will the requirements therein specified be better secured by the new tenure than the old? No change can make a perfect system; that is out of the question. The men who will administer it must have a share of human frailty; and you cannot make a perfect system by any legislation which can be adopted. Then comes the question, which system will be the most likely to accomplish the great ends for which the judiciary is instituted? Which will be the most likely to secure a learned, able, and impartial bench? Something, of course, depends on the views of the party who accepts the office. If he takes it as a stepping stone to the halls of congress, or to some other political preferment, there is no tenure, so long as he keeps that object in view, which will make him a good judge. I speak of the general rule; I do not say that there may not be exceptions, but if there are any, they are rare. What is desired in order to secure the administration of justice with the greatest impartiality, is that the incumbent on the bench shall devote himself to the duty of administering justice for the rest of his laborious life. Where that is the case, I care very little what his antecedents may have been, provided he has the requisite qualifications. He may have been of one or of another political party; but when he goes upon the bench, the legal influences by which he is surrounded, if he be a competent man, will make him what he ought to be, without regard to political parties or opinions. He will not be there for the purpose of making his political opinions available for some other end, and they cannot be made available for the accomplishment of the ends for which he was placed there. Under which system will the incumbent be most likely to make the duty of administering justice the end and aim for which he goes upon the bench—the one which secures him some permanency there, or the one which will place him, at the end of a short term, at the mercy of whoever may be at that time in political power? Under which system will the bench be most in danger of becoming a political horse-block?

Sir, there may be two kinds of influences operating on the mind of a judge; one is the influence of duty, the other is that of personal considerations. Now which system would be most likely to surround the incumbent on the bench with the best influences, and those which should operate upon and actuate him? The very purpose of this change is to bring a new influence to operate upon him. If that is not its purpose its advocates have mistaken it. The judge is to be made "responsible to the people," or to the appointing power. I admit the propriety of responsibility; but the question is, what responsibility? You have responsibility already—responsibility through impeachment, if the judge does not behave well. It is said that this will not be resorted to. I ask, why not? If it will not be resorted to, for the purpose of extinguishing the judicial life of the "mosquito" client of the gentleman from Lowell, it may be when you have somebody of more consequence to bring to judgment. There is also responsibility through removal, upon address of both Houses of the legislature. Will not this secure the due administration of justice

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by the incumbent? It is said not, and there is another responsibility proposed, and that is through a limitation of the term and a loss of office, if he do not satisfy the appointing power.

What is this responsibility? To whom is it, and what is it to effect? Why, Sir, upon a man who does not desire a reelection or reappointment its effect is nothing at all. How can you impose upon him an additional inducement to the performance of his duties by shortening the tenure of his office when he has no desire to hold that office for a longer period than the term prescribed. And how is it with a perfectly independent man? Will you make him do his duty better by holding over him the rod of a term, beyond which he cannot remain except by reappointment or reelection? Sir, he will spurn and despise, and trample upon any such responsibility. If he is a man of high and independent character, such as should sit there, you gain nothing whatever on the score of responsibility by that. If it operates at all, therefore, it must be upon him who desires to be in office a little longer. I admit, Sir, that there may be honest and upright men upon whom it is possible it may thus operate—men of limited means, with families dependent upon their exertions, and whose age forbids them again to mingle in the contests of the forum. Such men may feel, that without a reappointment, they must be under the necessity of seeking other means of subsistence under unfavorable circumstances. But, Sir, how is this to operate upon such a man, and still more upon the man of a different character from any of these—who comes upon the bench unqualified for the duty, and desires to retain the office because it is the best place he can get? Why, Sir, it will make him careful so to trim his sails, so to shape his demeanor and decisions that he may not offend the creator of official existence—of judicial power. It is only to make him subservient and careful how he incurs the displeasure of that power. Sir, that is a similar responsibility to that which produced Scroggs and Jeffreys, and others less infamous in England. It was responsibility to the crown, to the appointing power—danger of the loss of office, if the appointing power was not satisfied. And what is the result now the system has been changed there, and the judges made independent? Why, Sir, the bench of England is the admiration of the world. Sir, if you have a good judge upon your bench, the tenure which you propose is too short; if you have a bad one it is too long.

But let me ask again to whom is the responsibility? It is said that it is to the people. Sir, this is an "unreal mockery." I pray God that it may not prove to be a "horrible shadow" hereafter, if this system should be adopted. Responsibility to the people! Sir, the responsibility will be to the party—it will be to the individual who has most influence with the party, and who can do most to procure a reelection or a reappointment. He is the person who is to hold the judge accountable to act as he pleases. It is to the man who holds the leading wires of the caucus. Let me turn the attention of the Convention to the description given by the modus operandi for Manchester, the other day, of the *modus operandi* of these caucuses. It must be fresh in the recollection of every gentleman who heard it. Somebody comes there with everything "cut and dried" in his pocket, and among the rest of the nominations he has the

nomination of a judge, and this will be well understood. The responsibility will be to the managers of the caucus; or the managers about the council-chamber. It will be to the powerful against the weak; to the political friend against the political opponent; or if it should come to the case of two litigants of the same party, then it will be to the political leader against his weaker brother. That is the responsibility through which your judges are to be amenable. Had I time, I would give some illustrations of its operation. That is the power which is to regulate their course upon the bench.

Sir, if, so far as the judiciary is concerned, it was your desire to inflict upon the people the greatest possible curse, I do not know that you could devise a better or more effectual method than this same kind of responsibility of which I have been speaking. I submit to the Convention if that is not the responsibility to which this term of years tends; and if it should not be effectual to produce the results I have stated, the only reason will be, that your men are better than your system; that they are too high minded to regard such responsibility.

Mr. CHOATE, of Boston. It is not my purpose to enter at large, on the discussion of this important subject. That discussion is exhausted; and, if it is not, your patience is; and if not quite so, you have arrived, I apprehend, each to his own conclusion. But, as I had the honor to serve on the Committee to whom the department of the judiciary was referred, I desire to be indulged in the statement of my opinions, abstaining from any attempt elaborately to enforce them.

I feel no apprehension that this body is about to recommend an election of judges by the people. All appearances; the votes taken; the views disclosed in debate; the demonstrations of important men here, indicate the contrary. I do not mean to say that such a proposition has not been strenuously pressed, and in good faith; yet, for reasons which I will not consume my prescribed hour in detailing, there is no danger of it. Whether members are ready for such a thing or not, they avow, themselves, that they do not think the people are ready.

What I most fear is, that the deliberation may end in limiting the tenure of judicial office to a term of years, seven or ten; that in the result we shall hear it urged, "as we are good enough not to stand out for an election by the people, you ought to be capable of an equal magnanimity, and not stand out for the present term of good behavior"—and thus we shall be forced into a compromise in favor of periodical and frequent appointment—which shall please every-body a little.

I have the honor to submit to the Convention that neither change is needed. Both of them, if experience may in the least degree be relied on, are fraught with evils unnumbered. To hazard either, would be, not to realize the boast that we found the capitol, in this behalf, brick, and left it marble; but contrarywise, to change its marble to brick.

Sir, in this inquiry—what mode of judicial appointment, and what tenure of judicial office, you will recommend to the people, I think that there is but one safe or sensible mode of proceeding, and that is to ascertain what mode of appointment, and what length and condition of tenure, will be most certain, in the long run, guiding

ourselves by the lights of all the experience and all the observation to which we can resort, to bring and keep the best judge upon the bench—the best judge for the ends of his great office? There is no other test. That an election by the people, once a year, or an appointment by the governor, once a year, or once in five, or seven, or ten years, will operate to give to an ambitious young lawyer (I refer to no one in this body) a better chance to be made a judge—as the wheel turns round—is no recommendation, and is nothing to the purpose. That this consideration has changed, or framed the Constitutions of some of the States whose example has been pressed on us, I have no doubt. Let it have no weight here. We, at least, hold that offices, and most of all the judicial office, are not made for incumbents or candidates, but for the people; to establish justice; to guarantee security among them. Let us constitute the office in reference to its ends.

I go for that system, if I can find it or help find it, which gives me the highest degree of assurance, taking man as he is, at his strongest and at his weakest, and in the average of the lot of humanity, that there shall be the best judge on every bench of justice in the Commonwealth, through its successive generations. That we may safely adopt such a system; that is to say that we may do so, and yet not abridge or impair, or endanger our popular polity in the least particular; that we may secure the best possible judge, and yet retain—aye, help to perpetuate and keep in health, the utmost affluence of liberty with which civil life can be maintained, I will attempt to show hereafter. For the present, I ask, how shall we get and keep the best judge for the work of the judge?

Well, Sir, before I can go to that inquiry, I must pause at the outset, and, inverting a little what has been the order of investigation here, ask first, who and what is such a judge; who is that best judge? what is he? how shall we know him? And on this point it is impossible that there should be the slightest difference of opinion among us. On some things we differ. Some of you are dissatisfied with this decision or with that. Some of you take exception to this judge or to that. Some of you, more loftily, hold that one way of appointing to the office, or one way of limiting the tenure, is a little more or less monarchical, or a little more or less democratic than another—and so we differ; but I do not believe there is a single member of the Convention who will not agree with me in the description I am about to give of the good judge; who will not agree with me that the system which is surest to put and to keep him on the bench, is the true system for Massachusetts.

In the first place, he should be profoundly learned in all the learning of the law, and he must know how to use that learning. Will any one stand up here to deny this? In this day, boastful, glorious for its advancing popular, professional, scientific, and all education, will any one disgrace himself by doubting the necessity of deep and continued studies, and various and thorough attainments, to the bench? He is to know, not merely the law which you make, and the legislature makes, not constitutional and statute law alone, but that other, ampler, that boundless jurisprudence, the common law, which the successive generations of the State have

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silently built up; that old code of freedom which we brought with us in the Mayflower and Arabella, but which in the progress of centuries we have ameliorated and enriched, and adapted wisely to the necessities of a busy, prosperous and wealthy community,—that he must know. And where to find it? In volumes which you must count by hundreds, by thousands; filling libraries; exacting long labors; the labors of a lifetime, abstracted from business, from politics; but assisted by taking part in an active judicial administration; such labors as produced the wisdom and won the fame of Parsons, and Marshall, and Kent, and Story, and Holt, and Mansfield. If your system of appointment and tenure does not present a motive, a help for such labors and such learning; if it discourages, if it disparages them, in so far it is a failure.

In the next place, he must be a man, not merely upright; not merely honest and well-intentioned—this of course—but a man who will not respect persons in judgment. And does not every one here agree to this also? Dismissing, for a moment, all theories about the mode of appointing him, or the time for which he shall hold office, sure I am, we all demand, that as far as human virtue, assisted by the best contrivances of human wisdom, can attain to it, he shall not respect persons in judgment. He shall know nothing about the parties; everything about the case. He shall do everything for justice; nothing for himself; nothing for his friend; nothing for his patron; nothing for his sovereign. If, on one side, is the executive power, and the legislature, and the people—the sources of his honors, the givers of his daily bread—and on the other an individual nameless and odious, his eye is to see neither, great nor small; attending only to the “trepidations of the balance.” If a law is passed by a unanimous legislature, clamored for by the general voice of the public, and a cause is before him on it, in which the whole community is on one side and an individual nameless or odious on the other, and he believes it to be against the Constitution, he must so declare it—or there is no judge. If Athens comes there to demand that the cup of hemlock be put to the lips of the wisest of men; and he believes that he has not corrupted the youth, nor omitted to worship the gods of the city, nor introduced new divinities of his own, he must deliver him, although the thunder light on the unterrified brow.

This, Sir, expresses, by very general illustration, what I mean when I say I would have him no respecter of persons in judgment. How we are to find, and to keep, such an one; by what motives; by what helps; whether by popular and frequent election, or by executive designation, and permanence dependent on good conduct in office alone—we are hereafter to inquire; but that we must have him—that his price is above rubies—that he is necessary, if justice, if security, if right are necessary for man—all of you, from the east or west, are, I am sure, unanimous.

And finally, he must possess the perfect confidence of the community, that he bear not the sword in vain. To be honest, to be no respecter of persons, is not yet enough. He must be believed such. I should be glad so far to indulge an old fashioned and cherished professional sentiment as to say, that I would have something of venerable and illustrious attach to his character and function, in the judgment and feelings of the

Commonwealth. But if this should be thought a little above or behind the time, I do not fear that I subject myself to the ridicule of any one, when I claim that he be a man towards whom the love and trust and affectionate admiration of the people should flow; not a man perching for a winter and summer in our court-houses, and then gone forever; but one to whose benevolent face, and bland and dignified manners, and firm administration of the whole learning of the law, we become accustomed; whom our eyes anxiously, not in vain, explore when we enter the temple of justice; towards whom our attachment and trust grow even with the growth of his own eminent reputation. I would have him one who might look back from the venerable last years of Mansfield, or Marshall, and recall such testimonies as these to the great and good judge:—

“The young men saw me, and hid themselves; and the aged arose and stood up.

“The princes refrained talking, and laid their hand upon their mouth.

“When the ear heard me, then it blessed me, and when the eye saw me, it gave witness to me.

“Because I delivered the poor that cried, and the fatherless, and him that had none to help him.

“The blessing of him that was ready to perish came upon me, and I caused the widow’s heart to sing for joy.

“I put on righteousness, and it clothed me. My judgment was as a robe and a diadem. I was eyes to the blind, and feet was I to the lame.

“I was a father to the poor, and the cause which I knew not, I searched out.

“And I brake the jaws of the wicked, and plucked the spoil out of his teeth.”

Give to the community such a judge, and I care little who makes the rest of the Constitution, or what party administers it. It will be a free government, I know. Let us repose, secure, under the shade of a learned, impartial and trusted magistracy, and we need no more.

And now what system of promotion to office, and what tenure of office, is surest to produce such a judge? Is it executive appointment during good behavior; with liability, however, to be impeached for good cause, and to be removed by address of the legislature—or is it election by the people, or appointment by the executive for a limited term of years?

To every system there are objections. To every system there are sound, or there are specious objections; objections of theory; objections of fact. Any man’s ability is equal to finding and exaggerating them. What is demanded of us is to compare the good and evil of the different systems, and select the best. Compare them by the test which I have proposed. See which will most certainly give you the judge you need, and adopt that. It may be cavilled at; even as freedom, as religion, as wholesome restraint; as liberty of speech, as the institution and the rights of property may be cavilled at; but in its fruits, in its product, judged by a long succession of seasons, is its justification and its glory.

Applying then, Sir, this test, I think the existing system is, out of all comparison, the best one. At the hazard of repeating and weakening the views presented yesterday in the impressive and admirable address of my friend for Manchester, (Mr. Dana,) and in the instructive and able arguments of the two gentlemen (Mr. Greenleaf and Mr. Parker) whose established professional

reputations give to them such just weight with you, I beg to submit, briefly, why I think so.

In the first place, then, it seems to me most clear that the weight of sound general opinion and of the evidence of a trustworthy experience vastly preponderates in favor of it. How the system of popular elections, or of short terms is actually working now in any one of the States which have recently introduced it; how, still more, it is likely to work there after the influences of the earlier system, the judges which it bred, the habits which it formed, the bars which it trained, have passed away, there is no proof before this Convention deserving one moment’s notice. We do not know what is the predominant conviction on this subject, to-day, of those fittest to judge in any one State. We do know that they cannot yet possibly pronounce on the matter, however close or sagacious their observation. What they have not yet seen, they cannot yet tell. Certainly the result of all that I have been able to gather, is a general and strong opinion against the new system, and in favor of a return, if to return were possible, to that which we are yet proud and privileged to call our own. But the evidence is too loose for the slightest consideration. My friend for Manchester read letters yesterday, from persons of high character, as he assured us, in New York, deploring the working of her new system; and I have no doubt that the witnesses are respectable, and the opinions perfectly sound. But other gentlemen guess that very different letters might be obtained, by applying to the right quarters; and the gentleman from New Bedford (Mr. French) is quite confident that the people of that great State—the two or three millions—are in favor of the change, because one, if not two, or even three individuals, have personally told him so. And, therefore, I say, we have not here now so much evidence of the practical working of their recent systems anywhere, even as far as it has gone, that any honest lawyer would advise his client to risk a hundred dollars on it. But, on the other hand, are there not most weighty opinions; is there not the testimony of the widest, and longest, and most satisfactory experience, that executive appointment for good behavior yields the best judge?

What is British opinion and British experience to the point? On the question what tenure of office promises the best judge, that opinion and that experience may well be adverted to. Whether a particular mode, or a particular tenure, is consonant to the republican polity of government, we must settle for ourselves. That is another question. Monarchical and aristocratical principles we will not go for to England, or elsewhere, nor buy even learning, impartiality, and titles to trust, at the cost of an anti-republican system. But to know how it practically operates to have the judge dependent on the power that appoints him; dependent for his continuance in office; dependent for his restoration to it; dependent on anything, or on anybody but his own official good behavior, and that general responsibility to the legislature and public opinion, “that spirit of observation and censure which modifies and controls the whole government,” we may very well consult British or any other experience. The establishment of the tenure of good behavior was a triumph of liberty. It was a triumph of popular liberty against the crown. Before the Rev-

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olution of 1688, or certainly during the worst years of the Stuart dynasty, the judge held office at the pleasure of the king who appointed him. What was the consequence? He was the tool of the hand that made and unmade him. Scroggs and Jeffreys were but representatives and exemplifications of a system. A whole bench sometimes was packed for the enforcement of some new and more flagrant royal usurpation. Outraged, and in mourning, by judicial subservency and judicial murder, England discerned, at the Revolution, that her liberty was incompletely recovered and imperfectly guarded, unless she had judges by whom the boast that an Englishman's house is his castle, should be elevated from a phrase to a fact; from an abstract right to a secure enjoyment; so that although that house were "a cottage with a thatched roof which all the winds might enter, the king could not." To that end the Act of Settlement made the tenure of good behavior a part of the British Constitution; and a later amendment kept the judicial commission alive, as my friend for Manchester yesterday reminded us, notwithstanding the demise of the sovereign, and perfected the system. Sir, the origin of the tenure of good behavior,—marking thus an epoch in the progress of liberty; a victory, so to say, of individuality, of private right, of the household hearth of the cottager, of the "swink'd hedger," over the crown,—and still more, its practical workings in the judicial character and function, may well entitle it to thoughtful treatment. Compare the series of British judges since 1688, with that before, and draw your own conclusions. Not that all this improvement, in impartiality, in character, in titles to confidence and affection, is due to the change of tenure; but the soundest historians of that Constitution recognize that that is one element of transcendent importance. With its introduction she began to have a government of laws, and not of men.

I come to other testimony, other opinions—the lights of a different experience. There is a certain transaction and document, called the Federal Constitution. Consult that. In 1787, that Convention,—assisted by the thoughts and discussions of the five years of peace preceding it, upon the subject of national government, to be constructed on the republican form of polity,—into which were gathered all, or almost all, of our great men, in our age of greatness; men of deep studies, ripe wisdom, illustrious reputation, a high spirit of liberty; that Convention—upon a careful survey of the institutions of the States of America, and of those of other countries, and times past and present; upon, I think we cannot doubt, a profound appreciation of the true functions of a judicial department; of the qualities of a good judge; of the best system of appointment and tenure to obtain them; of the true nature of republican government, and how far, consistently with all its characteristic principles and aims, the people may well determine to appoint to office indirectly, rather than directly, and for good behavior, rather than for a limited term, when the great ends of the stability of justice, and the security of private right prescribe it—incorporated into the great organic law of the Union, the principle that judges shall be appointed by the executive power, to hold their office during good behavior.

The gentleman from Lowell, (Mr. Butler,) last evening observed, referring, I believe, to the time

when our Constitution was adopted, that it was long before the age of the steamboat and railroad, and magnetic telegraph. It is true; but do we know better than they knew, the nature of man; the nature of the judicial man; what he ought to be to discharge his specific functions aright; how motives, motives of ambition, of fear, of true fame, of high principle, affect him; whether dependence on another power is favorable to independence of the wishes and the will of that other power? Do we know more of republican government and true liberty, and the reconciliations of personal security under due course of law with the loftiest spirit of freedom, than they? Has the advancement of this kind of knowledge quite kept pace with that of the science of the material world?

I wish, Sir, the time of the Convention would allow me to read entire that paper of the Federalist, the seventy-eighth, I believe, in which the principle of the independence of the judiciary is vindicated, and executive appointment, during good behavior, as the means of attaining such independence, is vindicated also. But read it for yourselves. Hear Hamilton, and Madison, and Jay; for we know from all sources that on this subject that paper expressed the opinions of all—on the independence of the judiciary, and the means of securing it—a vast subject adequately illustrated by the highest human intelligence, and learning, and purity of principle, and of public life.

Sir, it is quite a striking reminiscence, that this very paper of the Federalist, which thus maintains the independence of the judiciary, is among the earliest, perhaps the earliest, enunciation and vindication, in this country, of that great truth, that in the American politics, the written Constitution—which is the record of the popular will—is above the law, which is the will of the legislature, merely; that if the two are in conflict the law must yield, and the Constitution must rule; and that to determine whether such a conflict exists, and if so, to pronounce the law invalid, is, from the nature of the judicial office, the plain duty of the judge. In that paper this fundamental proposition of our system was first presented, or first elaborately presented to the American mind; its solidity, and its value were established by unanswerable reasoning; and the conclusion, that a bench, which was charged with a trust so vast, and so delicate, should be as independent as the lot of humanity would admit,—of the legislature, of the executive, of the temporary popular majority, whose will it might be required thus to subject to the higher will of the Constitution,—was deduced by a moral demonstration. Beware, Sir, lest truths so indissolubly connected—presented together, at first; adopted together—should die together. Consider whether, when the judge ceases to be independent, the Constitution will not cease to be supreme. If the Constitution does not maintain the judge against the legislature and the executive, will the judge maintain the Constitution against the legislature and the executive?

What the working of this principle in the national government has been, practically, there is no need to remind you. Recall the series of names, the dead and living, who have illustrated that bench; advert to the prolonged terms of service of which the country has had the enjoyment; trace the growth of the national jurispru-

dence; compare it with any other production of American mind or liberty; then trace the progress and tendencies of political opinions, and say if it has not given us stability and security, and yet left our liberties unabridged.

I find a third argument for the principle of executive appointment during good behavior, in this: that it is the existing system of Massachusetts, and it has operated with admirable success. It is not that it exists; it is that it works well. Does it not? Sir, is it for me, or any man, any member of the profession of the law, most of all, to rise here, and now, and because our feelings may have sometimes been ruffled or wounded by a passage with the bench; because we have been dissatisfied by a ruling or a verdict; because our own over-wrought brain may have caused us, in some moment, to become forgetful of ourselves; or because a judge may have misunderstood us, and done us an unintentional injury; is it for us to disclaim the praise, so grateful, so just, which the two eminent gentlemen, one of them formerly of New Hampshire, (Mr. Parker,) one of them formerly of Maine, (Mr. Greenleaf,) speaking without the partiality of native sons, and from observations made by them from a point of view outside of us, and distant from us, have bestowed on our bench and our law? Theirs are lips from which even flattery were sweet; but when they concur in reminding you with what respect the decisions of this court are consulted by other courts of learning and character; how far their reputation has extended; how familiar is the profession of law with the great names of our judicial history; how important a contribution to American jurisprudence, and even to the general products of American thought, our local code composes—do we not believe that they utter their personal convictions, and that the high compliment is as deserved as it is pleasing?

If it has worked well, it is good. Do men gather grapes of thorns, or figs of thistles? If it has continued to us a long succession of men, deeply learned, wholly impartial, deserving, and clothed with the trust, love and affectionate admiration of all parties of the community, does it not afford a reasonable ground of inference that there is something in such a mode of appointment, and in such a tenure, *intrinsically, philosophically* adapted to insure such a result?

Some criticism has been made on the practical administration of our law, which deserves a passing notice. It requires the less because it has already been replied to.

The gentleman from New Bedford, (Mr. French,) told a story of some one, as I understood him, who was about to lose, or had lost, or dared not sue a note of a hundred dollars, because it would cost him one hundred and fifty dollars to collect it. A very sensible explanation was suggested by the gentleman from Cambridge, (Mr. Parker,) just now; and I will venture to advise the gentleman from New Bedford, in addition, the very first time he sees his friend, to recommend to him to change his lawyer as quick as he possibly can. As a reason for a change of the Constitution and the tenure of the judicial office, it seems to me not particularly cogent.

The same gentleman remembers that your supreme court decided that the fugitive slave law is constitutional; and what makes it the more provoking is, he knows the decision was wrong. Well, Sir, so said the gentleman for Manchester,

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(Mr. Dana). His sentiments concerning that law and its kindred topics do not differ, I suppose, greatly from those of the member from New Bedford; but what did he add? "I thank God," he said, "that I have the consolation of knowing the decision was made by men as impartial as the lot of humanity would admit; and that if judges were elected by the people of Massachusetts it would hold out no hope of a different decision." He sees in this, therefore, no cause for altering our judicial system on any view of the decision; and I believe—though I have never heard him say or suggest such a thing—that my friend's learning and self-distrust; that "that learned and modest ignorance" which Gibbon recognizes as the last and ripest result of the profound knowledge of a large mind, will lead him to agree with me, that it is *barely possible*, considering how strongly that law excites the feelings, and thus tends to disturb the judgment; considering the vast weight of judicial opinion, and of the opinions of public persons in its favor; recalling the first law on that subject, and the decision in *Prigg* and *Pennsylvania*—and who gave the opinion of that court in that case—that it is *just barely possible* that the gentleman from New Bedford does not certainly know that the decision was wrong. That he thinks it so, and would lay his life down upon it, the energy and the sentiments of his speech sufficiently indicate. My difficulty, like my friend's for Manchester, is to gather out of all this indignation the least particle of cause for a change of the judicial tenure.

The gentleman from Lowell, (Mr. Butler,) animadverted somewhat, last evening, on the delays attending the publication of the reports of decisions. I had made some inquiry concerning the facts; but have been completely anticipated in all I would have said by the gentleman from Cambridge, (Mr. Parker). To me his explanation seems perfectly satisfactory; and in no view of such a question would the good sense of the gentleman from Lowell, I think, deem it a reason for so vast an innovation as this on the existing and ancient system.

To another portion of that learned gentleman's speech, I have a word to say, in all frankness and all candor. Placing his hand on his heart, he appealed, with great emphasis of manner, to the honor of the bar, as represented in this Convention, whether we had not heard complaints of particular acts of some of our judges? Sir, that appeal is entitled to a frank and honorable response. I have known and loved many; many men; many women—of the living and the dead—of the purest and noblest of earth or skies, but I never knew one—I never heard of one—if conspicuous enough to attract a considerable observation, whom the breath of calumny, or of sarcasm, always wholly spared. Did the learned gentleman ever know one? "Be thou as chaste as ice, as pure as snow, thou shalt not escape calumny."

And does he expect that, in a profession like ours; overtasked; disappointed in the results of causes; eager for victory; mortified by unexpected defeat; misunderstanding or failing to appreciate the evidence; the court sometimes itself jaded and mistaken—that we shall not often hear, and often say, hasty and harsh things of a judge? I have heard such of every judge I ever saw—however revered in his general character. Did Mansfield escape? Did Marshall? Did Parsons?

Did Story? What does it come to as an argument against the particular judge; still more as an argument against a judicial system? Are we to go on altering the mode of appointment, and the tenure, till you get a *corps* of judges, against no one of which, no one ever hears anybody say anything?

But, Sir, I am to answer the learned gentleman's appeal a little farther, and I say upon my honor, that I believe it the general opinion of the bar to-day; its general opinion ever since I entered the profession, that our system of appointment and tenure, has operated perfectly well; that the benches and courts have been, and are, learned; impartial; entitled to trust; and that there is not one member of either—who, taking his judicial character and life as a whole—is not eminently, or adequately, qualified for his place.

Turn, now, from the existing system to the substitute which is offered; and see, if you can, how that will work.

It is not enough to take little objections to that system—in its general working, so satisfactory. He who would change it is bound to show that what he proposes in place of it will do better. To this, I say, it is all a sheer conjectural speculation, yet we see and know enough to warrant the most gloomy apprehensions.

Consider first, for a moment, the motion immediately pending; which proposes the election of judges by the people. I said in the outset, I have no fear of your sustaining it; but for the development of a full view of the general subject, it will justify some attention.

Gentlemen begin by asking if we are afraid to trust the people. Well, Sir, that is a very cunning question; very cunning indeed. Answer it as you will, they think they have you. If you answer yes—that you are afraid to trust the people—then they cry out he blasphemeth. If you answer no—that you are not afraid to trust them—then they reply, why not permit them to choose their judges?

Sir, this dilemma creates no difficulty. I might evade it by saying, that however ready and however habituated to trust the people, it does not follow that we should desert a system which has succeeded eminently, to see if another will not succeed as well. If the indirect appointment by the people, appointment through the governor whom they chose, has supplied a succession of excellent judges, why should I trouble them with the direct appointment—however well they might conduct it—which they have not solicited; which they have not expected; about which you dared not open your mouths during the discussion concerning the call of a Convention; in regard to which you gave them—it is more correct to say—every reason to believe you should make no change whatever? Get a Convention by a pledge to the people not to make judges elective—and then tell us we shall make them elective, on pain of being denounced afraid to trust the people! Will such flattery be accepted in atonement for such deception?

But I prefer meeting this dilemma in another way. It is a question certainly of some nicety to determine what offices the public good prescribe should be filled by a direct election of the people; and what should be filled by the appointment of others, as the governor and council, chosen by the people. On the best reflection I have been able to give it, this seems to me a safe general propo-

sition. If the nature of the office be such, the qualifications which it demands, and the stage on which they are to be displayed be such, that the people can judge of those qualifications as well as their agents; and if, still farther, the nature of the office be such that the tremendous ordeal of a severely contested popular election will not in any degree do it injury; will not deter learned men, if the office needs learning, from aspiring to it; will not tend to make the successful candidate a respecter of persons, if the office requires that he should not be; will not tend to weaken the confidence and trust, and affectionate admiration of the community towards him, if the office requires that such be the sentiments with which he should be regarded—then the people should choose by direct election. If, on the other hand, from the kind of qualifications demanded, and the place where their display is to be made, an agent of the people, chosen by them for that purpose, can judge of the qualifications better than they can; or if from its nature it demands learning, and the terrors of a party canvass drive learning from the field; or if it demands impartiality and general confidence, and the successful candidate of a party is less likely to possess either—then the indirect appointment by the people, that is, appointment by their agent, is wisest.

Let me illustrate this test by reference to some proceedings of the Convention. You have already made certain officers elective, which heretofore were filled by executive appointment—such as those of sheriffs, the attorney-general, district-attorneys, and others.

Now, within the test just indicated, I do not know why these offices may not be filled by election, if anybody has a fancy for it. Take the case of the sheriff, for instance. He requires energy, courtesy, promptness,—qualities pertaining to character, rather, and manner—displayed, so to speak, in the open air; palpable, capable of easy and public appreciation. Besides, his is an office which the freedom and violence of popular elections do not greatly harm. There are certain specific duties to do for a compensation, and if these are well done, it does not much signify what a minority or what anybody thinks of him.

Totally unlike this in all things is the case of the judge. In the first place, the qualities which fit him for the office are quite peculiar; less palpable, less salient, so to speak, less easily and accurately appreciated by cursory and general notice. They are an uncommon, recondite, and difficult learning, and they are a certain power and turn of mind and cast of character, which, until they come actually, and for a considerable length of time, and in many varieties of circumstances, to be displayed upon the bench itself, may be almost unremarked but by near and professional observers. What the public chiefly see is the effective advocate; him their first thought would be perhaps to make their candidate for judge; yet experience has proved that the best advocate is not necessarily the best judge,—that the two functions exact diverse qualifications, and that brilliant success in one holds out no certain promise of success in the other. A popular election would have been very likely to raise Erskine or Curran to the bench, if they had selected the situation; but it seems quite certain that one failed as Lord Chancellor, and the other as Master of the Rolls, and pretty remarkably, too, considering their extraordinary abilities in the conduct

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of causes of fact at the bar. I have supposed that Lord Abinger, who, as Mr. Scarlett, won more verdicts than any man in England, did not conspicuously succeed in the Exchequer; and that, on the other hand, Lord Tenterden, to name no more, raised to the bench from no practice at all, or none of which the public had seen anything, became, by the fortunate possession of the specific judicial nature, among the most eminent who have presided on it. The truth is, the selection of a judge is a little like that of a professor of the higher mathematics or of intellectual philosophy. Intimate knowledge of the candidate will detect the presence or the absence of the *speciality* demanded; the kind of knowledge of him which the community may be expected to gain will not. On this point I submit to the honor and candor of the bar in this body an illustration which is worth considering. It often happens that our clients propose, or that we propose, to associate other counsel with us to aid in presenting the cause to the jury. In such cases we expect and desire them to select their man, and almost always we think the selection a good one. But it sometimes happens, too, that it is decided to submit the cause to a lawyer as a referee. And then do we expect or wish our client to select the referee? Certainly never. That we know we can do better than he, because better than he we appreciate the legal aspects of the case, and the kind of mind which is required to meet them; and we should betray the client, sacrifice the cause, and shamefully neglect a clear duty, if we did not insist on his permitting us, for the protection of his interests intrusted to our care, to appoint his judge. Always he also desires us for his sake to do it. And now, that which we would not advise the single client to do for himself, shall we advise the whole body of our clients to do for themselves?

But this is, by no means, the principal objection to making this kind of office elective. Consider, beyond all this, how the office itself is to be affected; its dignity; its just weight; the kind of men who will fill it; their learning; their firmness; their hold on the general confidence—how will these be affected? Who will make the judge? At present he is appointed by a governor, his council concurring, in whom a majority of the whole people have expressed their trust by electing him, and to whom the minority have no objection but his politics; acting under a direct personal responsibility to public opinion; possessing the best conceivable means to ascertain, if he does not know, by inquiry at the right sources, who does, and who does not possess the character of mind, and qualities demanded. By such a governor he is appointed; and then afterward he is perfectly independent of him. And how well the appointing power, in all hands, has done its work, let our judicial annals tell. But, under an elective system, who will make the judge? The young lawyer leaders in the caucus of the prevailing party, will make him. Will they not? Each party is to nominate for the office, if the people are to vote for it, is it not? You know it must be so. How will they nominate? In the great State caucus of course, as they nominate for governor. On whom will the judicial nominations be devolved? On the professional members of the caucus of course. Who will they be? Young, ambitious lawyers, very able, possibly, and very deserving; but not selected by a majority

of the whole people, nor by a majority, perhaps, of their own towns, to do anything so important and responsible as to make a judge—these will nominate him. The party, unless the case is very scandalous indeed, will sustain its regular nominations, and thus practically a handful of caucus leaders, under this system, will appoint the judges of Massachusetts. This is bad enough, because we ought to know who it is that elevates men to an office so important; we ought to have some control over the nominating power—and of these caucus leaders we know nothing—and because, also, they will have motives to nominate altogether irrespective of the fitness of the nominee for the place, on which no governor of this Commonwealth, of any party, has ever acted. This is bad enough. But it is not all, nor the worst. Trace it onwards. So nominated, the candidate is put through a violent election; abused by the press; abused on the stump; charged ten thousand times over with being very little of a lawyer, and a good deal of a knave or boor; and after being tossed on this kind of blanket for some uneasy months, is chosen by a majority of ten votes out of a hundred thousand, and comes into court, breathless, terrified, with perspiration in drops on his brow, wondering how he ever got there, to take his seat on the bench. And in the very first cause he tries, he sets on one side the counsel who procured his nomination in caucus and has defended him by pen and tongue before the people; and on the other, the most prominent of his assailants; one who has been denying his talents; denying his learning; denying his integrity; denying him every judicial quality, and every quality that may define a good man, before half the counties in the State. Is not this about as infallible a recipe as you could wish to make a judge a respecter of persons? Will it not inevitably load him with the suspicion of partiality, whether he deserves it or not? Is it happily calculated altogether to fix on him the love, trust, and affectionate admiration of the general community with which you agree he ought to be clothed as with a robe, or he fills his great office in vain? Who does not shrink from such temptation to be partial? Who does not shrink from the suspicion of being thought so? What studious, and learned man, of a true self-respect, fitted the most preëminently for the magistracy by these very qualities and tastes, would subject himself to an ordeal so coarse, and so inappropriate, for the chance of getting to a position where no human purity, or ability, could assure him a trial by his merits?

But you will not make judges elective. What is to be feared is, that instead of attempting a larger mischief, in which you must fail, you will attempt a smaller, in which you may succeed. You will not change the system which has worked so well very much, you say; but you will change it some; and, therefore, you will continue to appoint by the governor; but, instead, of appointing during good behavior, subject to impeachment, and subject to removal by the legislature, you will appoint him for a term of years—five years, seven years, ten years.

Well, Sir, without repeating that no reason for any change is shown, and that no manner of evidence has been produced to prove that this project of executive appointment, for limited terms, has ever succeeded anywhere—pretty important considerations for thoughtful persons—likely to weigh

much with the people—there are two objections to this system, which ought, in my judgment, to put it out of every head. And in the first place, it will assuredly operate to keep the ablest men from the bench. You all agree that you would have there the ablest man whom three thousand dollars, or twenty-one hundred dollars per annum will command. The problem is—one part of the problem is, how shall we get the best judge for that money?

And now, if my opinion is worth anything, I desire to express it with all possible confidence, that this change of tenure will infallibly reduce the rate of men whom you will have on the bench. Not every one, in all respects equal to it, can afford it now. It has been said, and is notorious, that it is offered and rejected. The consideration of its permanence is the decisive one in its favor, whoever accepts it. The salary is inadequate, but if it is certain, certain as good judicial behavior—it ought not to be more so—it may be thought enough. Deprive it of that moral make-weight, and it is nothing. Why should a lawyer, accumulating, or living, by his practice, look at a judgeship of ten years? What does he see and fear? At the end of that time he is to descend from the bench—a man forty-five or fifty, or sixty years of age—without a dollar, or certainly requiring some means of increasing his income. Every old client is lost by this time, and he is to begin life as he began it twenty or thirty years before. Not quite so even. Then he was young, energetic and sanguine. He is older now, and is less disposed to the contentious efforts of the law. More than that, he is less equal to them for another reason than the want of youth. If he has, during the full term of ten years, been good for anything; if he has been “a judge, altogether a judge, and nothing but a judge,” then his whole intellectual character and habits will have undergone a change, itself incapable of change. He will have grown out of the lawyer into the magistrate. He will have put off the gown of the bar, and have assumed the more graceful and reverend ermine of the bench. The mental habits, the mental faults of the advocate, the faults ascribed by satire to the advocate, the faults or habits of his character, the zeal, the constant energy bestowed on all causes alike; the tendencies, and the power to aggravate and intensify one side of a thesis, and forget, or allow inadequate importance to the other—these, if he has been a good judge, or tried his best to be a good judge, for ten years—he has lost, he has conquered—and has acquired in their place that calmer, and that fairer capacity to see the thing, fact, or law, just as it is. Thus changed, it will be painful to attempt to recover the advocate again; it will be impracticable, if it is attempted. To regain business, he must find new clients; to find or keep them, he must make himself over again. Accordingly, how rare are the cases where any man, above the age of forty, after having served ten years on the bench, seeking to cultivate judicial habits, and win a true judicial fame, has returned to a full business at the bar. I never heard of one. Such a retired judge may act as a referee. He may engage somewhat in chamber practice, as it is called, though the result of all my observation has been, that unless he *can attend his opinions through court*; can there explain and defend them; unless he *can keep his hand so much in that he feels and knows at all*

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times which way the judicial mind is tending on the open questions of the law—his chamber practice holds out a pretty slender promise for the decline of a life unprovided for. He who would be a lawyer, must unite the study of the books and the daily practice of the courts, or his very learning will lead him astray.

I have been amused at the excellent reasons given to show why an able man, at the head of the bar, in full practice, forty years of age, a growing family and no property, should just as soon accept a judgeship for ten years, as during good behavior. Some say a judge never lives but ten years on the bench—or thirteen, at the outside—any how. They show statistics for it. They propose, therefore, to go to such a man and tender him the situation. He will inconsiderately answer that he should like the bench; thinks he could do something for the law; should rejoice to give his life to it; but that the prospect of coming off at fifty, and going back to begin battling it again with “these younger strengths,” is too dreary, and he must decline. “Bless you,” say the gentlemen, “don’t trouble yourself about that, if that is all. You can’t live but thirteen years, the best way you can fix it! Here is the secretary’s report—with a printed list as long as a Harvard College Catalogue—putting that out of all question!” Do you think this will persuade him? Does he expect to die in ten years? Who does so? Did the names on these statistics?

Others guess that the ten years’ judge will be reappointed, if he behaves well. But unless he is a very weak man indeed, will he rely on that? Who will assure it to him? Does he not know enough of life to know how easy it will be, after he has served the State, the law, his conscience, and his God, for the stipulated term; after the performance of his duty has made this ambitious young lawyer or that powerful client his enemy for life; after having thus stood in the way of a greedy competitor too long—how easy it will be to bring influences to bear on a new governor, just come in at the head of a flushed and eager party, to allow the old judge’s commission to expire, and appoint the right sort of a man in his place? Does he not know how easy it will be to say: “Yes, he is a good judge enough, but no better than a dozen others who have just put you in power; there are advantages in seating a man on the bench who is fresh from the bar; there is no injustice to the incumbent—didn’t he know that he ran this risk?” Too well he knows it, Sir, to be tickled by the chance of “finding the doom of man reversed for him,” and he will reject the offer.

Herein is a great and certain evil. How you can disregard it; how you can fail to appreciate what an obvious piece of good economy it is—economy worthy of statesmen, binding on your conscience—to so construct your system as to gain for the bench the best man whom three thousand dollars per annum can be made to command, passes all comprehension. Surely you will not reply that there “will be enough others to take it.” If the tendency of what you propose is appreciably to lessen the chances of obtaining the best, is it any excuse to say that fools will rush in where others will not tread?

But there is still another difficulty. He who does accept it, and performs as an hireling his day, will not only be an ordinary man comparatively, at the start, but he holds a place, and is

subjected to influences, under which it will be impossible to maintain impartiality, and the reputation of impartiality; impossible to earn and keep that trust, and confidence, and affectionate and respectful regard, which the judge must have, or he is but half a judge.

I have sometimes thought that the tenure of good behavior has one effect a little like that which is produced by making the marriage tie indissoluble. If the “contract which renovates the world” were at the pleasure of both parties, they would sometimes, often, quarrel and bring about a dissolution in a month. But they know they have embarked for life—for good and ill—for better and worse; and they bear with one another—they excuse one another—they help one another—they make each other to be that which their eyes and their hearts desire. A little so in the relation of the judge to the bar, and the community. You want to invest him with honor, love and confidence. If every time when he rules on a piece of evidence, or charges the jury, a young lawyer can say, half aloud in the bar, or his disappointed client can go to the next tavern to say: “my good fellow, we will have you down here in a year or two—you shall answer for this—make the most of your time”—and so forth; is it favorable to the culture of such sentiments? Does it tend to beget that state of mind towards him in the community which prompts “the ear to bless him, and the eye to give witness to him?” Does it tend in him to “ripen that dignity of disposition which grows with the growth of an illustrious reputation, and becomes a sort of pledge to the public for security?” Show to the bar, and to the people, a judge by whom justice is to be dispensed for a lifetime, and all become mutually coöperative, respectful, and attached.

And still farther. This ten years’ judge of yours is placed in a situation, where he is in extreme danger of feeling, and of being suspected of feeling, so anxious a desire to secure his reappointment, as to detract, justly or unjustly, somewhat from that confidence in him without which there is no judge. It is easy for the gentleman for Abington, (Mr. Keyes,) to feel and express, with his habitual energy, indignation at the craven spirit which could stoop to do anything to prolong his term of office. It is easy, but is it to the purpose? All systems of judicial appointment and tenure suppose the judge to be a mortal man, after all; and all of them that are wise, and well tried, aim to fortify, guard, and help that which his Maker has left fallible and infirm. To inveigh against the lot of humanity is idle. Our business is to make the best of it; to assist its weakness; make the most of its virtue; by no means, by no means to lead it into any manner of temptation. He censures God, I have heard, who quarrels with the imperfections of man. Do you not, however, tempt the judge, as his last years are coming, to cast about for reappointment; to favor a little more this important party, or this important counsel, by whom the patronage of the future is to be dispensed? He will desire to keep his place, will he not? You have disqualified him for the more active practice of his profession. He needs its remuneration. Those whom he loves depend on it. The man who can give it, or withhold it, is before him for what he calls justice; on the other side is a stranger without a name. Have you placed him in no peril? Have you so framed your system as to do all that human wisdom can

do to “secure a trial as impartial as the lot of humanity will admit?” If not, are we quite equal to the great work we have taken in hand?

There are two or three more general observations with which I leave the subject, which the pressure on your time, and my own state of health, unfit me for thoroughly discussing.

In constructing our judicial system, it seems to me not unwise so to do it, that it shall rather operate, if possible, to induce young lawyers to aspire to the honors of the bench, not by means of party politics, but by devoting themselves to the still and deep studies of this glorious science of the law. A republic, it is said, is one great scramble for office, from the highest to the lowest in the State. The tendencies certainly are to make every place a spoil for the victor, and to present to abilities and ambition *active service in the ranks of party, victory under the banner, and by the warfare of party*, as the quickest and easiest means of winning every one. How full of danger to justice and to security, and to liberty, are such tendencies, I cannot here and now pause to consider. These very changes of the judicial system, facilitating the chances of getting on the bench by party merits and party titles, will give strength incalculable to such tendencies. How much wiser to leave it as now, were it only to present motives to the better youth of the profession to withdraw from a too active and vehement political life; to conceive, in the solitude of their libraries, the idea of a great judicial fame and usefulness; and by profound study and the manly practice of the profession alone seek to realize it; to so prepare themselves, in mind, attainments, character, to become judges, by being lawyers only; that when the ermine should rest on them, it should find, as was said of Jay,—as might be said of more than one on the bench of both our courts, of one trained by our system for the bench of the supreme national court,—it should find “nothing that was not whiter than itself.”

I do not know how far it is needful to take notice of an objection by the gentleman from Fall River, (Mr. Hooper,) and less or more by others, to the existing system, on the ground that it is monarchical, or anti-republican, or somehow inconsistent with our general theories of liberty. He has dwelt a good deal on it; he says we might just as well appoint a governor or a representative for life, or good behavior, as a judge; that it is fatally incompatible with our frame of government, and the great principles on which it reposes. One word to this.

It seems to me, that such an argument forgets that our political system, while it is purely and intensely republican, within all theories, aims to accomplish a two-fold object, to wit: liberty and security. To accomplish this two-fold object, we have established a two-fold set of institutions and instrumentalities; some of them designed to develop and give utterance to one; some of them designed to provide permanently and constantly for the other; some of them designed to bring out the popular will in its utmost intensity of utterance; some of them designed to secure life, and liberty, and character, and happiness, and property, and equal and exact justice, against all will, and against all power. These institutions and instrumentalities, in their immediate mechanism and workings, are as distinct and diverse, one from the other, as they are in their offices, and in their ends. But each one is the more perfect for

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the separation; and the aggregate result is our own Massachusetts.

Thus, in the law-making department, and in the whole department of elections to office, of those who make and those who execute the law, you give the utmost assistance to the expression of liberty. You give the choice to the people. You make it an annual choice; you give it to the majority; you make, moreover, a free press; you privilege debate; you give freedom to worship God according only to the dictates of the individual conscience. These are the mansions of liberty; here are her arms and here her chariot. In these institutions we provide for her; we testify our devotion to her; we show forth how good, and how gracious she is—what energies she kindles; what happiness she scatters; what virtues, what talents wait on her—vivifying every atom, living in every nerve, beating in every pulsation.

But to the end that one man, that the majority may not deprive any of life, liberty, property, the opportunity of seeking happiness, there are institutions of security. There is a Constitution to control the government. There is a separation of departments of government. There is a judiciary to interpret and administer the laws, "that every man may find his security therein." And in constituting these provisions for security, you may have regard mainly to the specific and separate objects which they have in view. You may very fitly appoint few judges only. You may very fitly so appoint them as to secure learning, impartiality, the love and confidence of the State; because thus best they will accomplish the sole ends for which they are created at all. If to those ends, too, it has been found, in the long run, as human nature is, that it is better to give them a tenure of good behavior, you may do so without departing in the least degree from either of the two great objects of our political system. You promote one of them directly by doing so. You do it without outrage on the other. Your security is greater; your liberty is not less. You assign to liberty her place, her stage, her emotions, her ceremonies; you assign to law and justice theirs. The stage, the emotions, the visible presence of liberty—are in the mass meeting; the procession by torchlight; at the polls; in the halls of legislation; in the voices of the press; in the freedom of political speech; in the energy, intelligence, and hope which pervade the mass; in the silent, unreturning tide of progression. But there is another apartment, smaller, humbler, more quiet, down in the basement story of our capitol—appropriated to justice, to security, to reason, to restraint; where there is no respect of persons; where there is no high nor low, no strong nor weak; where will is nothing, and power is nothing, and numbers are nothing—and all are equal, and all secure, before the law. Is it a sound objection to your system, that in that apartment you do not find the symbols, the cap, the flag of freedom? Is it any objection to a court room that you cannot hold a mass meeting in it, while a trial is proceeding? Is liberty abridged, because the procession returning by torchlight, from celebrating anticipated or actual party victory, cannot pull down a half dozen houses of the opposition with impunity; and because its leaders awake from the intoxications of her *saturnalia* to find themselves in jail for a riot? Is it any objection that every object of the political system is not

equally provided for in every part of it? No, Sir. "Everything in its place, and a place for everything!" If the result is an aggregate of social and political perfection; absolute security, combined with as much liberty as you can live in—that is the State for you! Thank God for that; let the flag wave over it; die for it.

One word only, farther, and I leave this subject. It has been maintained, with great force of argument, by my friend for Manchester, that there is no call by the people for any change of the judicial system. Certainly there is no proof of such a call. The documentary history of the Convention utterly disproves it. But that topic is exhausted. I wished to add only, that my own observation, as far as it has gone, disproves it too. I have lost a good many causes, first and last; and I hope to try, and expect to lose, a good many more; but I never heard a client in my life, however dissatisfied with the verdict, or the charge, say a word about changing the tenure of the judicial office. I greatly doubt, if I have heard as many as three express themselves dissatisfied with the judge; though times without number, they have regretted that he found himself compelled to go against them. My own tenure I have often thought in danger; but I am yet to see the first client who expressed a thought of meddling with that of the court. What is true of those clients, is true of the whole people of Massachusetts. Sir, that people have two traits of character—just as our political system in which that character is shown forth, has two great ends. They love liberty; that is one trait. They love it, and they possess it to their heart's content. Free as storms to-day, do they not know it, and feel it, every one of them, from the sea to the Green Mountains? But there is another side to their character; and that is the old Anglo-Saxon instinct of property; the rational, and the creditable desire to be secure in life; in reputation; in the earnings of daily labor; in the little all which makes up the treasures, and the dear charities of the humblest home; the desire to feel certain when they come to die that the last will shall be kept; the smallest legacy of affection shall reach its object, although the giver is in his grave; this desire, and the sound sense to know that a learned, impartial, and honored judiciary is the only means of having it indulged. They have nothing timorous in them, as touching the largest liberty. They rather like the exhilaration of crowding sail on the noble old ship, and giving her to scud away before a fourteen knot breeze; but they know, too, that if the storm comes on to blow; and the masts go overboard; and the gun-deck is rolled under water; and the lee shore, edged with foam, thunders under her stern, that the sheet anchor, and best bower, then are everything! Give them good ground tackle, and they will carry her round the world, and back again, till there shall be no more sea.

Mr. WALKER, of North Brookfield. I cannot give the vote which I intend to give upon this subject, while seeming to vote in opposition to what are my feelings in relation to this question, without some explanation. I feel that I must vote against the amendment which is proposed, namely: to make the judiciary elective, and in favor of the amendment which proposes to limit the term of the office of the judges. And therefore, I wish to give the reasons why I do so. I discard entirely the idea, that the peo-

ple are not competent to elect their judges. I am satisfied that is an idea which we have brought with us from abroad, that there is nothing American in it, nothing in harmony with our institutions. But I feel persuaded, from what I know, that the people are not prepared to act on that principle. I am fully persuaded, that the people still have the impression that the judges must be appointed by the executive; and therefore, as a matter of prudence, those who wish well to the success of the new Constitution should go in favor of limiting the tenure, instead of making the office elective. I repeat, Sir, that the idea of "the independence of the judiciary" is something that does not apply to this country at all. There is something inconsistent and incongruous in it. "Independent" of what! Why, the old English idea was, I suppose, that the judiciary should be made independent of the crown, in order that it might stand between the government and the people, and guard the interests of the latter against the tyranny of the former. Now how can that apply to this country? Here, the people are the sovereign, and what do we want to come between them and the government? It strikes me that this has no relevancy, no propriety, here. Why then should we make the judges independent of the people, and thus create an irresponsible tribunal above and beyond them? The thing is absurd if the people are admitted to be capable of self-government; especially so in view of the fact that all other officers, from the chief magistrate downward, are elected by the people and responsible to them.

I did not rise to make a speech at this time, but simply to remark that I entirely repudiate, and wish to bear my testimony against the idea that the people are not competent to elect their judges, and that it would not be perfectly safe for them to do so.

Mr. HOOD, of Lynn. Mr. President: I have waited with the hope that some one would rise to present this subject to the Convention in the light in which I view it. It is due to the importance of this question, that both sides of the argument should be presented in the strongest light, and I regret exceedingly that it is not in my power, at this late hour in the session, to do it justice.

Mr. President, four of the ablest members of this Convention have presented, with great power and eloquence, the argument in favor of the present system of appointment of the judges by the governor and council. The Goliath of the past has been brought up before this Convention, and arrayed here, as in former years; but I remember that there is a smooth stone with which the people will smite this Goliath, as they have done heretofore. I believe that the principle of electing the judges by the people is right, and do not agree with the eloquent and able member from Boston, (Mr. Choate), who said this morning that the judges will not be elected by the people. He said: "there is no danger that the judges will be elected by the people." Mr. President, it may seem like presumption in me, to take issue with that gentleman on this question; but I stand here to say, that, in my judgment, it is only a question of time. This Convention may not adopt this amendment, but the principle is right; the progress of reform is onward; a majority of the States have set the example, and its adoption here, I repeat, is only a question of time.

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Mr. President, I do not believe that this Convention is ready to decide this question against the great principles upon which our government was founded. I am aware that it has been assumed here, from the commencement of this discussion, that the Convention would decide against the amendment of the member from Fall River. And upon what grounds?

I ask the indulgence of the Convention while I, as briefly as possible, state my views upon this subject. I agree with gentlemen around me that it is one of the most important questions which have been submitted to our consideration; that we should approach this subject with great reverence for the Constitution under which we have lived.

But, Sir, we are here to act for ourselves. We are not to reason from the past altogether, but with reference to the future; and, above all, we should look at the mission which it is the duty of this generation to carry out. We are the men of to-day; and, although we should be guided by the lessons of wisdom coming from the past, still we should not blindly follow the old paths, but think and act for ourselves. The great American idea is, that *we, the people*, are sovereign, and have the right to form a system of government for ourselves. That principle was promulgated on the fourth of July, 1776, when it was set forth in the Declaration of Independence. Our forefathers adopted that principle in the Constitution of Massachusetts. As the member for Berlin, (Mr. Boutwell,) remarked, they assembled in Convention to form a system of government "adapted to existing institutions." They found the judicial system, which they had looked upon with so much reverence, as it existed in England. That was in accordance with their previous experience, and they left it for the men who should come after them, to carry out such reforms as wisdom and experience might suggest.

I ask the Convention to allow me to refer to the experience of the past upon this subject. The member for Manchester, and the member from Boston, have referred to English history to find the origin of the doctrine of the independent judiciary. Brought to the test of principle, we find that this doctrine is inconsistent with the theory of our Constitution.

Macaulay says of the courts of England in 1638: "The tribunals afforded no protection to the subject against the civil and ecclesiastical tyranny of that period. The judges of the common law, holding their situations during the pleasure of the king, were *scandalously obsequious*. Foremost among these courts, in power and infamy, were the Star Chamber and the High Commission. . . . The government was able, through their instrumentality, to fine, imprison, pillory and mutilate, without restraint. . . . The whole nation was alarmed and incensed. . . . The opponents of the government began to despair of the destiny of their country, and many looked to the American wilderness as the only asylum where they could enjoy civil and spiritual freedom. There a few resolute Puritans built, amid the primeval forests, villages, which are now great and opulent cities, but which have, through every change, retained some tinge of the character derived from their founders."

Mr. President, one tinge which they retained was the doctrine of an independent judiciary. They incorporated into their fundamental law the

principle that all government was of the people, and that the people had a right to elect all officers, but they did not apply the principle to judicial officers. They laid down the principle, and left it to their descendants to carry it out and apply it. Macaulay farther says, in speaking of the beneficent results of the Revolution of 1688, that one of them was "the law which secured the independence of the judges." Now, Sir, the gentleman from Boston has remarked this morning, that in 1688 a law was adopted "which secured the independence of the judges;" but, Sir, it appears that it did not secure their independence in the colonies, for we find that one of the causes set forth in the Declaration of Independence by our forefathers for making that Declaration, was that the judges were not independent of the Crown. In the Declaration of Independence, nearly a century afterwards, they used the following language: "The history of the present king of Great Britain is a history of repeated injuries and usurpations;" and farther on it says: "he has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries." Now, Mr. President, when our fathers assembled in Convention to make a Constitution, they were imbued with this English idea of the importance of an independent judiciary. The government which they established was at that time an experiment. They adopted this plan of a judiciary appointed by the executive, to hold during good behavior or for life, following the English system.

Now, Sir, what were the fundamental principles laid down at that time in the Constitution which was to be the guide of future generations? "All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive or judicial, are their substitutes and agents, and are at all times accountable to them."

Now bring the doctrines which have been advanced here, to the test of this great principle. Our judges are independent of the people; our fundamental law asserts that they shall be made "at all times accountable to the people. I submit, Sir, that the time has come for us to carry out and apply this principle to our judicial system. But, there is another clause in our fundamental law to which I wish to refer. "All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected for public employments." There is no exception made here with regard to judicial officers. The framers of our Constitution adopted existing forms in accordance with the public opinion of the time, but they laid down correct principles in the declaration of rights and left it for their posterity to apply them.

Starting from this point, we come to the question before us: Is it expedient to incorporate this amendment into a fundamental law? It is said first that we should not do so because it was not put forth to the people as one of the reasons for calling this Convention: and they did not expect it! There was an implied, if not a direct promise, that it should not be put into the Constitution, and that this amendment should not be made. Who was authorized to make any such promise, either direct or implied? I know of no person.

I am aware that some members of this Convention have said that they took this ground on their own responsibility; but I deny that it was generally entertained by the people of the Commonwealth. On the contrary, Mr. President, I find in a public document a conclusive reason why we should consider this subject, and, if we deem it expedient, adopt this amendment. The member for Manchester read from the report made to the Senate, in favor of the Convention, in 1852, that portion referring to the election of judges, in which the committee give it, as their opinion, that it is not expedient to act upon the subject; but they close their remarks with the following sentence, which shows that the construction which has been put upon it, by some members of the Convention, is not correct. The report says: "Should a Convention be called, we doubt not it would number among its members many of the most distinguished men in the Commonwealth, men selected from the bench, the bar, as well as from the more common, but not less useful avocations of life. Men who by their age, and practical learning, experience and observation, would be much better qualified to settle this important question than we can claim to be." They have thus announced that we were to settle this important question; we were elected under the Act calling this Convention, to revise the Constitution, the whole of it, not a part of it. It was not to make a few specific amendments—it was to revise the whole Constitution, to consider and adopt such reforms as we judged to be necessary. I hold that we are to act according to the dictates of our own judgment. Although we cannot tell whether the people are prepared for any particular amendments, if we deem them important it is our duty to send them out to the people, and let them decide whether they ought to be incorporated into the fundamental law.

Now, Sir, my opinion in regard to this proposition is, that the time has come for its adoption. I believe that the people are prepared for it; that they are far in advance of the members of this Convention with regard to this reform. The remark was made yesterday, by a distinguished gentleman, that the members of this Convention were advanced in life, and that they were conservative. I have not seen much evidence as yet of the truth of that statement. There is a desire to make such a Constitution as shall be beneficial for the present and for future generations. Now, Sir, believing that a majority of the people are prepared to adopt this amendment, the question is, whether it is right—whether it will operate beneficially upon the interests of all the people of the Commonwealth.

In this connection, Mr. President, I will refer to the remark of the member from Boston, (Mr. Choate,) that we are to judge which form is best, "guided by the unerring light of the past." I ask him to look at the "unerring light of the past," with regard to the election of other officers by the people of the Commonwealth.

For seventy years we have elected other officers; and have the people been in the habit of electing incompetent men? Have the men who have been elected to the office of governor of this Commonwealth been incompetent men? Have they been men who were unfit to be intrusted with power, and have the officers in other departments of the Commonwealth, who have been elected by the people, proved unworthy? Have

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we had incompetent men in the legislature to make the laws which these judges are to expound? I submit, Sir, that if we are to be guided by the "unerring light of the past," we ought to take into view the elections of the past seventy years. We want no light coming across the water a century or two ago.

We are referred to the judges on the bench: and the question is asked, has there been any trouble or difficulty with regard to this matter? Is there any reason why a change should be made? We have, undoubtedly, had very good judges, as good as any Commonwealth, for the reason that our people are intelligent; for the reason that they have elected competent men for governors. If we have had good judges it has been owing to the good governor and the good councillors, who were elected by the people. Why not, therefore, be willing to trust the election of judges to the people? But, it is said, why should not the present system be continued, as it is acknowledged to work well? I answer, because reform is necessary, as I shall endeavor to show hereafter, and because it is our duty to carry out the fundamental principles of our government. The present form is an anomaly in our system, which ought to be reformed. We should set the example for the civilized nations of the earth. We should give the friends of liberty and free government everywhere, an opportunity to point to Massachusetts as an example in this respect. Whenever an individual comes here from Europe, and the subject is spoken of, this anomaly is pointed out as evidence that we are not willing to carry out this fundamental principle of our government, to elect all our officers by the people. This is pointed out as evidence that we do not believe in the doctrine which we profess. No sophistry can change it, not even the eloquence of the gentleman from Boston can wipe away that impression that we are afraid to trust the people to elect their judges; we are afraid that, in a time of popular excitement, they will be deceived, and will elect incompetent men. And it comes back directly to that point, that you are afraid to trust the people. I ask, then, if the members of this Convention are willing to place themselves upon that ground? Are they willing to place the argument in the mouths of the opponents of liberty and free governments, that a Convention has been called in one of the most enlightened States on the face of the earth, where the people are educated, and competent to judge respecting the men whom they elect to office; and that this Convention was called, fresh from the people, representing all classes of the people of the Commonwealth, and the question was brought before them, "Will you allow the people to elect their judges? Will you trust them to carry out the fundamental principles which were laid down in their Bill of Rights, that the people are the source of all power, and have the right to elect all their officers?" Will you answer "No! we will not trust the people!" Will you allow the despots of Europe to use the argument that this Convention was asked to do this, and refused, and therefore that even in America, this boasted land of liberty, the people themselves do not believe in this great principle?

Mr. President, I can come to no other conclusion than that distrust of the people is the true and only reason for opposing this reform. I know that it has been said—and the gentleman for

Manchester, (Mr. Dana,) repeated it yesterday—that no change should be made except where abuses exist. Sir, I hold that all human institutions are imperfect, and that there is great need of reform in our judicial system. According to the Bill of Rights, "Every subject of this Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property or character. He ought to obtain right and justice freely and without being obliged to purchase it; completely and without any denial; promptly and without delay, conformably to the laws."

Now, Sir, I have the testimony of one of the most able and intelligent lawyers of the county in which I reside, that the people cannot and do not obtain justice "promptly and without delay;" that there is a vast amount of what appears to be unnecessary delay in our courts. He told me that it was a universal complaint; that his clients were disposed to submit to and suffer injustice, rather than resort to our courts for redress, on account of the delay, which involved a large additional expense; and I appeal to the experience of every member of this Convention, whether this is not the case? Sir, during twenty-five years' experience in business, I have felt the inconvenience of this delay and expense, and I submit that every subject of this Commonwealth does not obtain justice "promptly and without delay," as it is declared in the Bill of Rights he should.

Sir, I contend that there is great need of reform here. I know that this is a bold position to take, but it is true, nevertheless. Sir, to talk of imperfection in regard to the administration of the law, I am well aware, is considered as heresy among the members of the bar.

While we hear so much of the excellence of the English system, would it not be well to imitate the example of another country in one respect. In the kingdom of Denmark, courts of conciliation were established some fifty years ago. The result of those courts, in securing the administration of justice "promptly and without delay," must be known to every lawyer who has read anything of their proceedings, for they reduced the number of causes commenced and determined within three years, to one-third of the number which were brought before the courts three years previous. It might, therefore, be well for us to look into that system, and see if something of the kind could not be established here. I am aware that this matter has not been brought under the consideration of the committee, and perhaps the reason was, that many gentlemen are yet too much wedded to the old system, which has descended to us through the mists of interminable precedents, to venture upon a new experiment. Thus it is, Sir, instead of founding our law and practice upon the basis of plain common sense, our lawyers have to go back for centuries to find precedents, and thus it takes nearly a lifetime to study law, and even then many of the profession seem to have but a very faint and indistinct idea of what the duties of a lawyer are, or of what the law itself consists. Sir, I submit if there is not much room for reform in this matter?

I have said that we suffer delay in the administration of justice, and have endeavored to point out some of its causes. Another cause is, that our judges are appointed for life. They are inde-

pendent, and not accountable to the people. Their salaries go on all the time, whether they are doing anything or not. Cases are put off from court to court, and from term to term. The lawyers seem to care but little what becomes of their clients, so that they get their fees; and the judges as little what becomes of "justice without delay," provided they get their salaries. And thus the whole burden of this expense and delay falls upon those whose circumstances or misfortunes render it necessary for them to avail themselves of the protection of the laws.

Sir, the example of our law courts, in the delay of business, has been followed by other public bodies, to the great injury of public and private interests. Go into your legislative halls, and you will find that business is procrastinated in a similar manner. In the State and in the National legislature the length of the sessions has been doubled, and the business has been postponed from month to month, from year to year, and unreasonably neglected. If any member has the boldness to introduce a proposition with the view of facilitating business, or of saving time, he is immediately put down, or treated with neglect, and his proposition voted out. We have seen the same tendency to delay in the proceedings of this body. Early in the session I introduced an order concerning the order of business, which was not received with much favor. One of my discreet friends advised me to let the subject alone; for he said it was "not popular" to attempt to shorten sessions, or to limit debates, or to undertake to bring the business within anything like a circle of orderly arrangement. But, Sir, I am yet to be convinced that I was wrong in this respect. I believe it is just as necessary to adopt system and arrangement in the business of legislation, as it is in any of the ordinary occupations of life, and it is as much so in our courts at law, if we would facilitate business, as it is anywhere else. This dilatory mode of attending to legislative and judicial business has for years been creeping into our system, and it appears to me to be time that some strenuous and effective method should be adopted whereby a radical change may be effected.

But it may, perhaps, be asked whether the proper remedy for this evil, so far as our law courts are concerned, is in making our judges elective by the people. I hold, Sir, that it will be one very important step towards accomplishing a reform; and if we cannot do everything at once, let us make some progress in this good work; if we cannot tear the evil up by the roots, let us at least cut it down and prevent it from spreading in the community. This step, in my estimation, will have a most salutary effect. Should it be adopted, the people will elect men to fill these judicial stations who will feel that it is their duty to work, who will sympathize with the desires and requirements of those who have placed them in office, and who will remember that the people elected them, not to pay them salaries that they might live in ease and idleness, but that they might feel the responsibility of their position and act accordingly.

The member from Boston, (Mr. Choate,) has told us this morning that we want judges who shall be independent. He painted the character of what he regarded as a proper judge, with a power and eloquence which I confess I never heard surpassed. Mr. President, I submit to this Convention whether the people would not be likely to

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elect just such a man as that learned gentleman so eloquently and forcibly described? Does any one doubt that the people usually select a competent man for their governor? And if the people are fully qualified to elect a man possessing all the qualifications requisite for a governor, are they more likely to fail in selecting men with suitable qualifications for judges? The gentleman from Boston thinks the cases are not parallel, and argues that a judge would be nominated in a political caucus, and that political partisans, or some young lawyers, would be there endeavoring to effect the nomination of some incompetent man, unfit for the station.

Why, Sir, carry out that argument to its legitimate extent and where will it lead you? Will it not apply with equal force to all elections whatever? Was not the same argument used by those who were in favor of British institutions, and opposed to all elections by the people. The gentleman from Boston, (Mr. Choate,) says that Alexander Hamilton was in favor of the appointment of judges for life. Sir, Alexander Hamilton declared that "the British Constitution, with all its faults, and all its corruptions, was the most admirable Constitution on the face of the globe;" and he was in favor of an executive and a Senate to be elected for life, so as to make them independent of the people; so that they should not be a reflex of the popular mind, but an entirely separate element in our political organization. And whence the origin of such a proposition? Sir, where, but in ambition on the one hand and a dread of popular accountability on the other. Sir, the man who stands upon this floor to express any distrust of the people has not a truly republican feeling in his nature. He has no sympathy with democracy. He has not the first instinctive idea of democratic principle in his soul. He knows nothing of those sublime and pure principles of democratic liberty, which are but the reflex of the great system of Christianity itself—of the great idea which was put forth nearly nineteen hundred years ago, and which has spread itself abroad, and worked its way among mankind against the corruptions of tyranny, selfishness, ambition, and lust for power, and finally embodied in the government which was established on this continent in 1776, which was based on a "higher law" than the divine right of kings—on the great heart of humanity. Sir, the safest depository of power—of all political power—is in the intelligence of the people. They are not so likely to abuse it as when it is lodged in the hands of an individual or in the grasp of a few; and however much the gentleman from Boston may talk about some man who imagines he has not enough liberty because he cannot knock down a judge who does not decide in his favor, or vilify a jury because they will not give him a verdict against evidence, it is but a poor answer to the argument to attempt to meet it with an implied sneer against the intelligence and good conduct of the body of the citizens of Massachusetts.

And, Sir, following out the argument of that gentleman in regard to caucuses and the probability of a judge being the mere nominee of some influential partisans, is not the same argument applicable to your governor? What does he do when a vacancy occurs? Does he act with a total disregard to party ties and party feelings, and influences? How many times, let me ask him,

has a governor of Massachusetts been known to appoint a judge who held political sentiments adverse to his own and those of his party who elected him? Sir, the instances are so rare it would be difficult to find them. Sir, I do not know but one instance, and that a recent one; and were it courteous to seek a motive for it perhaps one could be found in the fact of the call for this Convention. Look back for the last quarter of a century, and see if you can find more than one or two similar instances? Sir, I submit that the instances are exceedingly rare in which we have ever had judges whose appointments were not made on political grounds. I claim that we are not more likely to have political judges, if they are elected by the people, than if they are appointed by the executive. In either case, I suppose we shall have judges who are made judges in part on account of their political opinions, for I do not believe in this doctrine of "no party;" nor do I believe that there is any Democrat who looks to the theory of our government, and will follow it out, but will come to the same conclusion which I have in this respect, and that is, that "party" will make the government. It is by association only that we can accomplish any reform. And what are parties for? Simply to sustain the great principles of our government, without which nothing can be accomplished. The men who talk about "no party" strike a blow at the very foundations of free government. Parties are necessary to sustain an administration, and as a check on the abuses of power and patronage. Parties exist where freedom of opinion and of discussion prevail; their tendency is to the maintenance of popular rights, to gain the support of the people, and to keep alive the spirit of liberty. They can be repressed only under a despotic form of government.

Again, Sir, I hold that the election of the judges will have a salutary influence on the character of caucuses and conventions. Parties will be compelled to nominate their ablest and best men for judges, or they will be defeated before the people. Men of influence and of character will have an additional inducement to attend caucuses, to see that suitable candidates are nominated. The interest of the people in the elections will be increased, and they will be more vigilant in the exercise of their political duties.

Mr. President, I have already said that my reliance is on the intelligence of the people. I do not expect them to be free from political bias and political feelings, nor do I expect to find a judge upon the bench without similar emotions. We want men of character, and learning, and talent; men in whom the people will have confidence; and when they find them thus, I am quite sure they will sustain them. The people love an independent man. It cannot be otherwise, so long as they love independence themselves. They love men who will stand up in defence of great principles. They loved the immortal Jackson for his independence. Give us judges of the same bearing in that respect, and there is little doubt of the people sustaining them. That is the doctrine on which I stand, and I believe it to be in accordance with the views of the people of this Commonwealth.

Sir, the election of judges by the people will add strength and security to our institutions. If the judges are responsible to the people, they will regard their just decisions as an expression of

their will, and the tendency of public opinion will be to sustain and obey the laws.

It has been said that Adams, Jefferson, and other great men, were in favor of the appointment of judges for life. Sir, were they here to-day to frame a Constitution, with the "unerring light of the past" seventy years, would they be in favor of this anomaly in our system? No, Sir; they were progressive men, and they would rebuke those who are recreant to the great principles which they transmitted to their posterity. They acted up to the requirements of the age in which they lived, and we shall do well in this respect to profit by their example.

Letters have been read from some lawyers in New York, giving their opinions against the election of judges by the people. They were probably opposed to the reform, and it is difficult to convince men against their will. Stronger testimony might have been obtained in favor of the reform, if it had been deemed necessary. It would be well for those who doubt the success of the elective system in New York to look at the testimony of the press in that State. Those who belong to the same party as the *New York Tribune*, should examine its columns on this point. The progressive men in that State are few and far between who would propose to go back to the old system.

Mr. President, I think the time has come for the majority of this Convention to show to the people that they have confidence in them, and that they are ready to trust them upon this subject. I do not desire that the proposed amendments should be submitted to the people as a whole, and if gentlemen have doubts whether they will accept this reform, let this question go out to them separately. I have not a doubt that a large majority of the people will say that they believe it is the right system, and that they desire to elect their judges as well as their other officers.

There seems to be a fallacy existing in the minds of some individuals in regard to this matter of an independent judiciary. That has been the great point dwelt upon, in various forms, in this debate. The idea has been advanced that if you make the judiciary elective by the people, the judges will be partial; and the member for Manchester, (Mr. Dana,) remarked that "the judges would be elected on account of their decisions." I ask that gentleman, and others who agree with him, whether the same train of reasoning would not bring them to this result—that no officers should be elected by the people, and that it would be much safer to have all of them appointed for a long period, or for life, by some "men of eminent gravity"?

It is said that the judges must be "protected against the popular will"—that the people are liable to be led astray, which is the old doctrine of Alexander Hamilton—that "the people are turbulent, and they seldom judge or determine right;" and it will take a great while, perhaps, to get that idea out of the minds of some people.

Now, Sir, is it probable that the people will elect a judge whose decisions have been wrong? They have elected governors believed to be competent to appoint judges; and I submit whether there is not as much or more danger that the executive would be influenced by the popular will or by his party, to make wrong appointments, than that the judges would be to make wrong decisions. It is a maxim of our government that

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when men are placed in a position where they can exercise irresponsible power, in the hour of temptation they are liable to abuse it. That is the reason why frequent elections are necessary. We are taking power away from the executive, by abridging his appointments and providing for the election of many officers by the people. And why not carry out this reform? Why stop when you come to the judges? Will not the same reasons which have been urged with so much effect in regard to other officers apply with greater force to the judges?

There are various influences which might be brought to bear upon the executive, which have not been mentioned. I ask the members of this Convention, whether they cannot conceive of a case where the executive may have the names of several candidates before him, for a judgeship, which have been sent up to him by partisan committees from various parts of the Commonwealth, and one or more of which names, may have been presented by some active partisans, who have it in their power to defeat the election of the governor the next year. Will there not be a strong temptation for him to appoint some individual who is a rival candidate, whom he may wish to get out of his way, or some friend or favorite of his own, or of some active politician of his party, who will use all his influence against him at the next election, if he does not comply with his desires? Do gentlemen say that it has not been so heretofore? There is no proof of that, but on the contrary, I submit, that if they will look closely into the reasons which have influenced the executive, they may find there have been political caucus nominations here. The executive is more likely to be influenced in this way to make injudicious appointments, than the people. In a neighboring State, (New York,) the reasons given for taking the appointing power out of the hands of the executive and giving it to the people, were, that political and partisan influences had controlled the appointments.

Our executive is just as subject to such influences as that of any other State. I hold, that there is no danger that the people would be induced by partisan influences to elect incompetent judges. They are not in the habit of jeopardizing their rights and interests.

The member for Manchester, (Mr. Dana,) in his remarks yesterday, supposes a case in relation to the decision of the court upon the "Maine Law" and asks, Would not the people vote for or against the judges on that ground alone? Now, Sir, I ask if judges have not been appointed in this Commonwealth on precisely similar grounds? I ask if the executive has not appointed judges, who entertain particular views upon various subjects, in order to satisfy the different sections of his party? I do not undertake to say, that there is any evidence on this point, but there is certainly, more reason for supposing that the executive would be influenced by such considerations, and that he would decide according to the views of a political faction, than that the people would be thus influenced. Suppose there is a judge to be appointed. The governor may be elected with reference to that appointment; and being elected in consequence of his views on a particular question, would he dare to appoint a judge who would decide against his political friends?

The member for Manchester farther said, in reference to this point, "Where lies an appeal

against the popular majority?" Mr. President, what does our Bill of Rights say in reference to that matter? Is there any repository of power except the people? Is there any other tribunal to be set up in this country? Across the water there is an appeal from the will of the popular majority; but here the final appeal is to the people. Such is the theory on which our government is based. The point which lies upon his mind appears to be that there should be an aristocratic branch of the government, appointed for life, to operate as a check upon the popular will. Now, Sir, I do not want any such check upon this will. I want no better check to prevent mistakes, or to guard against undue excitement, than to have the judges elected for a term of years, and one of them elected every year. Then, if by accident one improper man should be elected, he would not be likely to do much harm. I think that the judges should be elected for from five to seven years, and that ten years is too long a period. If a bad judge should get into office, ten years is too long for him to remain there; and if a good judge is elected once, he would probably be re-elected.

The gentleman farther says, that in New York "the office has fallen into the political mill." It was in the political mill before, and it was so stated in the Convention which framed the present Constitution of that State. The abuse complained of was, that partisans were appointed by the executive. But is there any evidence that things are as bad now as they were before? Is there any evidence that incompetent men have been elected by the people? I have seen none.

[Here the hammer fell.]

Mr. BIRD, of Walpole. I am aware that in the present temper of this Convention, I shall be listened to impatiently. Yet I am anxious to say a few words, not perhaps with the expectation of influencing the decision of this question, but because I feel that this is but the beginning of a discussion which must go on until the elective judiciary becomes the established policy of the State. I think it therefore important, without entering into any labored argument, that the reasons, as briefly as may be, on one side and the other, should be placed upon the records of this Convention to be used hereafter. This is but the beginning of the end. It is only a question of time. Give the subject a fair discussion, and an elective judiciary in Massachusetts is just as inevitable and just as necessary as an elective governor and legislature have been in times past.

We are told that this subject was not before the people before the Convention came together. Well, we have done a great many things which were not discussed before the people, and we did not hesitate at all, on that account, to do them. There is a divinity which has shaped our ends in this matter. We are realizing the fulfilment of the promise—I quote it reverently—"Open thy mouth wide and I will fill it," so that now I am willing to vote for a measure, which, perhaps, a year ago I might not have thought it possible that I could vote for. I believe there never was a time in the history of any State in this Union, certainly never a time in the history of Massachusetts, when democratic ideas have gained so rapidly as within the last five months. Therefore I believe the people will sustain us in doing what we did not think of doing six or eight months ago.

It seems to me that all the evils, without an exception, of an elective judiciary, have been in the future. Evil results in abundance have been predicted, none have been proved, as flowing from the elective system anywhere. Gentlemen say it has not been long enough tried. That is, we must not try the experiment until the experiment has been tried, which requires a whole generation—worse than the advice of the anxious mother to her boy, that he must not go into the water until he had learned to swim.

The gentleman for Manchester read some extracts from letters from New York and Maryland. I wanted to ask him the names signed to them, for their authority would very much depend upon whose names they were. He told us that in those States the system was not working well, and yet almost in the same breath he told us that the people tried the appointed judiciary until they became so indignant at, and discontented with it, that they charged the system to an elective judiciary, and I submit, that the system has worked better in that community, than the other system had previously. Does any one pretend that the people are ready to go back to an appointed judiciary? If the system of electing the judiciary has worked well in the communities where it has been tried, the inference is that it will work better in any community than the appointing system will work in the same community. No man here has attempted to prove that it has not worked well wherever it has been tried. Go into New York, into Maryland, or into any State in which it has been tried, and you will find that it has worked better than any system which has been previously tried. It has been said that the election of judges will be made like the election of the other public officers, a mere political matter. Why, Sir, go to Vermont. That State has been nothing but Whig ever since the judges have been elected, yet at this very time, two out of the five judges are Democrats, and the late chief justice was a Free Soiler and for many years a Liberty Party man.

Every-body knows that in New York the elections have not been so much of a political character as were the appointments under the old system.

Look at the State of Missouri. The chief justice of that State, for the last fifteen or twenty years, has been a Whig, although every-body knows that State has been Democratic, and nothing else, from the beginning.

Now, we are told that we must show where the present system works badly. I say, no, the burden of proof rests entirely upon those who come here and claim that this system should be continued, to show that it works well. It rests with them to show why we should continue a system which takes out of the hands of the people a power that belongs to them. I start here: The sovereignty is with the people. The right to elect all their officers rests with the people—that the whole people are a wiser and safer depository of power than any portion of the people. I hold that you can safely trust them to elect any of their officers more safely than you can intrust any delegates they may elect, to appoint them. I say that you can more safely trust the whole people than any portion of them, because the whole, of course, includes that portion, and you not only have the benefit of their wisdom, but the wisdom of all the rest.

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Starting there, I say that the burden of proof rests with those who say this system shall be continued, just as much as in the beginning it rested upon them to show why this class of officers should be excepted from all the rest which it was the right of the people to elect.

I take it that if your Constitution did not exist, and you were to start to-day to frame one, with the democratic sentiments which we now entertain, and the question should come up, shall the people elect, or shall the executive appoint our public officers, the principle we should establish would be, that the people should elect them all; and if any one should think that the people were not the proper tribunal—the proper power to elect any portion of these officers—it would devolve upon him to prove that these officers which he wishes excepted cannot safely be elected by the people, and not upon the people to show that they could be safely trusted with that power.

Gentlemen talk about this being an experiment. They might just as well talk about the problem of self-government being an experiment. It is no more an experiment to elect the judges by the people than it is to elect senators or representatives or any other officers by the people. But if it be true that this election be an experiment, here in Massachusetts is the very best community in the world to try that experiment, and give it a fair trial. Sir, to those who have been watching the solution of this problem of self-government, I say that we have never given it a fair trial. We have allowed the people to choose a part of their officers—a part of their rulers, but we have restrained them in the selection of the most important portion of those officers. And when we are taunted, as we frequently are, by monarchists of the Old World, that the experiment of self-government in this country has proved a failure, I say to them that we never have had a trial of self-government here at all, and it never can have a fair trial until the people are recognized as the sovereign source of power, judicial as well as executive and legislative. The extracts and quotations read by the gentleman for Manchester seemed to me to be rather unfortunate for his side of the argument. He read from the Bill of Rights that the different departments of the government should not encroach upon each other, to the end that we might have a government of laws and not of men. Yet he and the gentlemen with him upon this subject, advocate the doctrine of placing the control of one whole department of the government in the hands of another department. If that is not an encroachment of the one department upon another—if it is not an encroachment of the executive upon the judicial, then I do not know what encroachment is.

I am reminded here, of a remark made by the gentleman for Manchester, of the generosity of George III., in relinquishing the power of appointing the judges—by suggesting himself that they should be appointed for life, instead of their term of office expiring with the demise of the crown. Now, without meaning any disrespect to the memory of that very respectable gentleman, it seemed to me that it was not any very great sacrifice after all, when he had already appointed the judges which by the then existing law were to continue in office during his own life. I could not help thinking that, after all, the character of that hopeful son of his, heir to his crown, had

some influence in inducing him to suggest the giving up of that power of removing the judges at the demise of the crown. I think it was because he did not wish to place it in the power of the Prince of Wales to appoint all the judges of the realm upon his death.

Now, Sir, I have no doubt if the question of making the judiciary elective, were to be decided upon the honest convictions of the members of this Convention, that a large majority of us, expressing our individual opinions, would go in favor of it. But I am afraid that considerations of policy will control that result. For one, I shall give my vote without hesitation, in favor of the amendment now before us, because I believe the principle is a sound one, and that the people would sustain us in making the judiciary elective. I never have yet heard of an instance, and I should like gentlemen to point me to an instance, where a Constitution has been brought before the people of any State in the Union and rejected, because it left too much power in the hands of the people. I have heard of Constitutions being rejected because they restrained the popular will. I have heard of their being rejected because they retained too much power in the hands of the executive, but I have never yet heard of any one being rejected because they gave too much power to the people.

But, Sir, I see that the hour of adjournment is near, and I will not detain the Convention longer.

On motion of Mr. MORTON, of Taunton, the Convention adjourned until three o'clock this afternoon.

AFTERNOON SESSION.

The Convention reassembled at 3 o'clock.

Orders of the Day.

On motion of MORTON, of Taunton, the Convention proceeded to the consideration of the Orders of the Day.

The PRESIDENT stated that the first subject in the Orders of the Day was the resolves upon the subject of the judiciary, reported by the Committee of the Whole, with an amendment, to which an amendment had been offered by the gentleman from Fall River, (Mr. Hooper).

Mr. MORTON. I propose to ask the attention of the Convention for a short time, to the subject now under consideration. I have two reasons operating upon my mind for asking that favor. One is, that being the chairman of the Committee which reported the original resolves, it seems to be expected, that in that capacity, I should say a few words in relation to the Report which we made. Another is, that I stand in a somewhat peculiar relation to this question. I have examined it with a good deal of care, and have come to a result not very satisfactory to my own mind, and I am inclined to think in the course I am about to take, I shall produce dissatisfaction to gentlemen upon both sides of the question; for while one side may approve of the views which I present, they will not be satisfied with the vote I shall give; the other side may dislike my views, and yet they will be very likely to be satisfied with my vote. In this situation, I think it is rather desirable, as politicians say, that I should "define my position."

To do this, I shall have to recur to principles,

and very likely to facts, which have been brought forward by other members of the Convention in the course of this debate.

I suppose, Mr. President, that by this time we all agree in the source of political power. We all agree that it is possessed by one body of persons, who have the whole power, the whole sovereignty. It is unlimited in their hands, they have no restraint but their own will and their own consciences, there are no checks and balances operating upon their action, there is no possibility nor need of dividing their power at different departments, and stipulating one shall not interfere with the other. The whole people, then, possess the whole power, without any limit or control, except their own will. Yet there is a most powerful restraint operating upon them, which may be relied upon to keep them within proper bounds, and always to induce them to seek and promote the welfare and happiness of the whole, and that is, their own interest. The whole people exercising the whole power, necessarily do it for their own benefit. If they make wise rules and regulations for themselves, they have the whole benefit of them. If they impose burdens, they are the persons who must bear the burdens. If they levy taxes, they must pay them. If they impose restraints and penalties, they are the individuals upon whom those restraints must operate, and upon whom those penalties must fall. They, therefore, have no inducement in the world to impose rules and regulations for their government, or restraints upon their action, which shall not operate for the benefit of the whole.

It is well known that in all modern communities, this body is so large that their power cannot be exercised by the whole body. In all modern times, we know that no community can exist so small that all the individuals composing it shall act together in a body. In ancient times, we are told, that some states or communities were so small that the whole mass of the people came together, and in that manner transacted their public business, and made, and construed, and executed, their laws. But, as I said, in modern governments such a thing is impossible, and the people must therefore act through agencies. That is the only way in which we can exercise the powers of self-government. We must act through such a medium, and the great question is, how these agencies are to be constituted, and how these agents are to be appointed.

But, when you come to the establishment of these agencies, and the appointment of these agents, there arises the expediency, the convenience, and even the necessity, of separating this power into different divisions, to prevent your agents from abusing the trust reposed in them. It is not desirable or safe that the whole authority should be delegated to one agent, or one set of agents, and hence we have that power divided, according to the functions which are to be exercised, and hence we have presented to us the different departments of government, which should forever be kept distinct and separate.

There are some principles in the constitution of these agencies, which in the outset it will be well enough to consider. In the first place, then, these agencies must be constituted, and these agents appointed, by the people, either directly by their own act, or indirectly by other agents which they shall appoint.

There are three or four classes of these agencies.

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But I consider it proper to remark in the outset, that I consider it a fundamental principle, that in all cases where practicable, the agents of the people should be chosen directly by the people themselves, in order that they may have a more direct control over them, and know better what they do, and how they execute their will.

Under these circumstances, with these general remarks, I proceed to make some application to the subject before us. I have already said, that in the appointment of these agencies, the constituents should keep them as much as possible under their control. I have already said that when we come to parcel out the power to be intrusted to the several agencies which we constitute, we must have some general divisions. In all modern governments there are three departments—the legislative, executive, and judicial.

Almost everywhere, we find, that in appointing legislative agents, the people reserve to themselves the power to act directly. They elect the legislature. There are but very few exceptions to this rule in this country. Indeed, I recollect but one single instance, and that occurs in the government of the United States. The members of the House of Representatives are elected directly by the people, but the members of the Senate of the United States are not elected by the people. They are the agents of the people, but in this case the people do not appoint their agents. They are appointed by the legislatures of the several States. This is, I think, the only exception that exists in this country, to the rule that legislative agents are appointed directly by the people. But, Sir, I have only referred to this as an illustration of the principle which I desire to apply to the subject before us. The senators of the United States in their capacity, whether executive or legislative, are only the agents of the agents of the people. In my opinion this is a defect in the Constitution of the United States. It would be much better, certainly more democratic, were they chosen directly by the people.

But, Sir, passing on in my general view of the subject, we next come to that class of agents who are appointed to execute the laws. I have briefly referred to the agents elected by the people to make the rules and regulations, or laws by which we are to be governed, and the next class of agents are those selected by the people to administer the government, or to carry those laws into execution. These are generally confined to a very few individuals. Generally, if not universally, the executive agents are chosen by the people. Your governor, lieutenant-governor, and some other executive officers, are generally chosen by the people. There are a few exceptions. In some of the States the governor is chosen by the legislature; but I regard those exceptions as exceedingly objectionable.

But, if we refer to the government of the United States, we shall find that all the executive officers there are appointed through agencies. Not one is elected directly by the people. The president and vice-president of the United States are elected by agents of the people, chosen for that purpose, and not by the people themselves. I think it would be much better if they were elected by the direct vote of the people. I regard this as a great defect in the United States Constitution, and one from which I fear dangerous consequences.

Go on a little farther, and you find that all the

subordinate officers of the government are removed even one degree farther from the people. I have said that the president is an agent of the agents of the people, and he appoints the subordinate officers, who are removed still one degree farther off from the people. I may be allowed, as I pass on, to remark, that I consider the patronage of the general government as the most dangerous feature connected with it. The distribution of the honors and the emoluments of the government tends to lessen the respect and shake the confidence which we entertain in the general government. It tends more to introduce impropriety, mismanagement, and corruption, in the administration of the government, than the exercise of all its other powers. It is for this reason that I think the officers of the general government should be made as directly responsible to the people as possible. Hence, I would have all officers elected by the people, in every case where it could possibly be done. There is much greater security in having them elected directly by the people, than in having them appointed by any officer, however wise and pure. The appointing officer must, in most cases, receive his knowledge from impure sources.

Instead of deriving information from persons who act upon responsibility, it must necessarily come from active politicians, from violent partisans, from demagogues, and from interested office-seekers—persons not reliable or worthy of confidence. Under these circumstances, it would be most extraordinary if the appointing power did not frequently, if not generally, get imposed upon in the selection of the agents whom it may appoint. I lay it down as a general principle, which I advocate here and everywhere else, that all officers in your general and state governments that can practically be elected by the people, ought to be so elected, and not left to the selection of an agent of the people, whoever he may be. So much in relation to executive officers. I would, however, make one more remark before I proceed, for I feel strongly upon this subject, in relation to the great difficulty under which the appointing power labors, and its extreme liability to imposition and deception. I wish merely to say that the usage of the country has become such, that individuals can always get testimonials or recommendations from almost any source they please. Individuals of respectability will give recommendations to applicants for appointment, for whom they would never think of voting. For these reasons, I advocate the democratic doctrine, that in all cases where it is practicable, all officers should be elected directly by the people.

Having made these general remarks, we come now to the question of the appointment of judicial officers. This is the question now under consideration, and I suppose, in the remarks which I have made thus far, I have differed pretty essentially from many with whom I shall probably vote upon the question before us. As to the selection of judicial officers, that stands somewhat upon different grounds. In the distribution of power to your agents, in fixing upon the mode in which the agents are to be created, we should always have reference to the duties which those agents are to perform. It is obvious to every one, that the duties to be performed by a judicial officer, are essentially different from the duties to be performed by legislative or executive officers, and I believe all individuals in in-

vestigating this subject, always make this distinction. If not so, I would inquire why you elect your governor for one year, and propose to elect your judges for ten years. It is because there is a difference in the duties of the different officers, which seem to require a different tenure of office. If there is a difference in their duties, requiring a difference in the tenure of office, it may be that that difference in the performance of duties, may require a difference in the mode of appointment. I propose, with as much fairness as I am capable of, briefly to look at this point. It is said that the people are competent to appoint their own officers, and that they are competent to transact all the other business which comes before them. In this I fully concur. I believe I go farther than most people, in my confidence in the capacity of the people to manage their own affairs. In a late debate, some gentlemen seemed to think that they are not competent to decide when the responsibility of the State shall be granted, when their own money and credit shall be used. In passing, I will merely say, that I think gentlemen altogether misunderstand the people upon that subject, and that it is quite as easy to know when the credit of the State shall be granted, as it is to know who is a fit person for your governor or lieutenant-governor; and they would examine this subject and bring their common sense to the investigation in such a way, as to be as sure of coming to a correct result as your legislative body.

It is no disrespect to an individual, be he who he may, to say to him if he has to get his wife's portrait painted, that he had better go to a painter and get it done, than to take the brush and try to do it himself. If an individual wants to build an edifice, it is a good deal better that he should go to an architect, than to draw the plan himself. It is no disrespect to the people at large, to suppose that there are some things which they cannot directly perform, and which can be better performed indirectly, by selecting some other individuals to do it. Even my friend before me, who appears to be paying so good attention to my remarks, if he wanted to bring a suit upon his hundred dollar note, had better go to a lawyer than undertake to make a writ and carry it through court in order to save the expense. I only make these remarks to show that there is ground for difference in reference to the selection of these officers, and because we have confidence in the people selecting other officers, it does not necessarily follow that it is wise for them to select their judges; and that there is good reason for the ground of my friends, who suppose that it will be very dangerous to the community to have the judges elected, rather than have them appointed by the executive of the Commonwealth. I leave this point without dwelling longer upon it, frankly and candidly declaring my opinion upon it. It is according to the principles and theory of our government, that all officers should be elected by the people, and I am not yet willing to acknowledge, notwithstanding the most elaborate, ingenious and eloquent arguments that we have heard, that the people are not competent to elect all their officers. If persons are not competent to judge who is the best man to carry on a lawsuit, they are pretty sure to get the information, and pretty generally go to the right source for it. I say if the people are not competent, in their various pursuits and oc-

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cupations, to determine who is the very best man to be the judge of their highest court, I am not willing to admit that they could not acquire the information, and that they would not be as likely to make a judicious selection as any individual whom they might put at the head of the government. In a very large State it might, and probably would be, impossible for the executive officer personally to know the individuals best qualified to fill the judicial offices, and therefore, in such case, it would be safer for the people to select them, than leave their appointment to the executive department. But in a State constituted like this, it is very obvious that any man who is prominent enough to be placed at the head of your government, must necessarily know the personal qualifications of every other man, who was sufficiently prominent to be a judge of either of your higher courts.

But to start fair in this investigation. I feel bound to say, following out the theory which I have always advocated, that if we were here to commence anew, if we had no precedent, no government before us, and I was called upon to make a Constitution, I should not hesitate to give to the people the power of selecting their judicial agents for a certain number of years. I feel bound to say that individuals all about me in this building and out, in whose opinion I have the most entire confidence, have a totally different view of this subject. Having defined this doctrine, having settled these principles with perfect frankness just as they exist in my own mind, I now wish to ask your attention a very short time, while I give you the reasons why, under these circumstances, I am opposed to touching the judiciary of the Commonwealth. I must in the outset allude briefly to the ground which has been travelled over. I do not believe that the people sent us here for the purpose of making any changes in the judiciary. This matter has been amply discussed, but still I must advert to it again. As far as I know, no report, no address, no speech, within my knowledge, was ever made drawing in question a necessity for amendments in the judiciary department. It has been stated by one or two gentlemen in the Convention, that this subject was somewhere agitated in the regions where they reside, and I am not at liberty to doubt that they stated it correctly; but my experience is entirely different. I believe there are many individuals here who addressed the community in different parts of the State, who, if they would speak, would say what I know in one or two instances was true, that before they entered the hall where they were to deliver their address, they were cautioned not to touch the judiciary, and, so far as I know, that subject was studiously avoided. I have no doubt that in our general authority to revise the Constitution, is included ample power to revise and amend that part which relates to the courts of the Commonwealth. But I am equally clear that it was not the expectation or wish of the people, that we should touch the judiciary. And whatever may be our legal power, it seems to be unwise and imprudent to act upon subjects which the community never anticipated or desired that we should take up; and which they never would have authorized us to take up, had they supposed that we would have exercised the authority. It has been said by a distinguished gentleman of this Convention, and I have no doubt of the truth of the remark,

that if this subject had been brought up before the people for investigation, and if it had been made one of the important points which was to be urged through the Convention, you would never have obtained a Convention at all. It has been said by another distinguished individual here, that the majority in favor of this Convention was obtained with very great labor. As it was, I believe less than one-third of the whole number of the voters of the Commonwealth, voted upon the subject, and I verily believe, that if this had been made one of the test questions, if it had been put forward prominently like the amendment in regard to the House of Representatives, or that changing the basis of the Senate, your small majority of some six thousand, would have been converted into a minority. I would therefore ask gentlemen, if this is a correct view of the subject, whatever may be their opinion as to the expediency of the measure, whether it would be wise and prudent for us to assume this power, and place before the people this most important amendment, alike uncalled for and undesired. Will not the whole tendency of it be to bring disfavor upon our proceedings, and shall we not, if we incorporate this into our amendments, incur the risk of losing all the important provisions which many of us wish to have incorporated into our Constitution? I fear so, Sir, and that in attempting to accomplish too much we shall lose the whole. I have no doubt that we shall submit the several propositions separately, that is, that all the important and distinct propositions shall go to the people, so that they may have an opportunity to vote upon each one by itself and separately from the others. I think they will claim it as due to their independence and as alike required by right and fairness. I fear if we submit the amendments together there will be so many individuals objecting to this and that measure, that when they are added to those who object to the whole, they will form a majority of the whole voters, and thus render nugatory all the labors of this Convention. Should the question of the judiciary be separated from all the other questions, it may still have an unfavorable influence upon them. For it is not to be disguised that every proposition which is received unfavorably, however separated from all the others, will have an unpropitious influence upon the opinions of individuals, in relation to the whole question which is presented to them; and I therefore respectfully urge gentlemen, who think it important to carry out the objects of this Convention and to secure the great number of improvements which they wish to make, to avoid entering upon subjects, which I trust I have satisfied you, we were not expected by the people to agitate when they elected us. This last suggestion has not, perhaps, quite so much weight with me as it seemed to have with some other individuals upon other subjects. I do not consider it decisive, and throw it out as an *argumentum ad hominem*, it being better adapted to the opinions of other people than our own. Those who think there is danger upon this subject, will consider and hesitate before they submit this proposition to the people, which I think will alarm the fears of many, and awaken the prejudices and preconceived opinions of the whole community.

Before proceeding farther, I beg leave to state distinctly, that there is one ground which I think of itself is fully sufficient to justify my vote

against not only the amendment of the gentleman from Fall River, (Mr. Hooper,) but against any interference with the judiciary as it is now constituted. I adhere to the old democratic doctrine of instruction. I believe a representative, if he knows or has reasonable evidence of the will and wishes of his constituents, in all questions of expediency, is bound to conform to them, and fully and faithfully to carry them out. As far as I am able to judge of the opinions of the inhabitants of the town which I in part represent, a large majority of them are against any change in the judiciary. Although they would probably care very little about the limitation of the age of the judges to seventy years, yet I think they would prefer to have this department of the government wholly untouched. The people of my own neighborhood of the Commonwealth, have been brought up to reverence and respect the judiciary everywhere, and they are well satisfied with its operation, and in my opinion, would be unwilling to try any experiment upon it.

Even if the proposed alterations would be an improvement upon the system of the judiciary as it now stands, the time to make them has not yet arrived. Gentlemen should hesitate and proceed with caution. The people are not yet prepared for so important a change. If gentlemen believe it would be beneficial and wish to accomplish it—and I do not mean to say it is not desirable and practicable, but, on the contrary, am inclined to think it will come some time or other—they should prepare their constituents in the first place for the change; they should let light into their minds on the subject, and take away the prejudices and prepossessions which exist. It may be wrong, but I believe that if you make these propositions to the people at large, a great majority will say, touch not the judiciary in any point.

Mr. President, there is one other view which I feel somewhat reluctant to advert to, because it has been presented before better than I can do it: I shall, however, say a few words in regard to it. We came here to remedy defects, we came here to cure existing evils, and not to try improved theories of government, and I do not believe it was expected of us to go beyond the evils from which the people had suffered. Has any evil been experienced from this cause? There is more than one reason why it would not become me to enter into the consideration of the character of the judiciary. That has been done in a way that cannot be surpassed in this Convention or elsewhere. It is enough for me to say that the character of the judiciary stands well, that the people have confidence in it, that so far as I can learn or know, no complaint is made by the people. I do not mean to say that a disappointed suitor has not now and then been dissatisfied with the court, and his advocate, because his case was not got forward so soon, or tried so successfully, as he wished; or that an unsuccessful advocate may not have scolded against the judge or jury, because the verdict in a cause, or the final decision of the case, has gone against him; but I do mean to say that there has not been, to any considerable extent, any complaint of the judiciary of the Commonwealth. Under these circumstances, I would beg leave to inquire why we should take this step—why we should assume a power which it was not intended we should exercise—why we should hazard the other important measures which we wish to have secured?

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This may be important, it is important, though I believe much less so than many other subjects. But if we have experienced no evil from the judiciary as it exists, is there any danger that we shall for the few years to come; if we have suffered no evil in time past, with the same officers which we propose still to retain—for I suppose gentlemen do not intend to touch the present incumbents—is there any danger that we shall suffer any great evil in the future? Is it unreasonable or improper to delay this matter, and let these debates go out before the people, and let them mature their judgment upon the subject? We may make a false step, possibly, if we now attempt to make a change; we are safe as we are, why run the risk? Why make an experiment?

But the last word brings me to another consideration, which I wish to present. In the history of our country, and in the history of the country from which we emigrated, the judiciary has been respected for ages. The same system, substantially, has been continued. It doubtless has some imperfections, but, perhaps it approaches as near perfection as can be expected in any human tribunal or any human work. Changes have been going on recently in the appointment of officers to execute this power; important changes have taken place in the public mind, in relation to this subject. Many States, in consequence of these changes, have made important alterations in the form of their governments. And not a few States have introduced the practice of electing their judges. We have the peculiar good fortune to be so placed that we can have the full benefit of these experiments in other States testing these principles, and without running any risk. Other States are trying the experiment, and whether the change will work well or ill in all cases, is a matter of considerable doubt. I have taken a good deal of pains to get information on the subject, and I find the information, all coming from sources highly respectable, as diverse as the antipodes. On the one side, men tell us it works well, perfectly well, that it is a good deal better than the old system. This is said by men whose statements and judgments you cannot well hesitate to receive. While, on the other hand, men equally respectable, and having an equal opportunity to judge, say that it is working evil, that it produces most pernicious results. Thus we have an opportunity, if we will avail ourselves of it, of determining for ourselves, without suffering from any actual experiment, how this matter does operate. If the result prove favorable, we shall have an opportunity, before long, to adopt it ourselves; because, in this changing age, in this age of progress and improvement, there is no doubt you will have Convention after Convention, to revise the Constitution. Indeed, I believe we have already adopted a rule to have a Convention held periodically for this purpose. If that be so, we can have an opportunity at an early period, and that without risk of suffering, to see this experiment tried, and if it works well, we can adopt it, and have the full benefit of it.

In relation to most of the States, the balance of my information is, that it works pretty well. In some States its operation is said to be pernicious, while in other States I have been informed from reliable sources, that it works remarkably well. I suppose it depends very much on the notions and habits of the people where it is adopted. After all, it depends almost as much on the

character and genius of the people, as upon any constitutional rule. For we have an example of the same principle applied to a good Yankee people. The State of Vermont elects its judges every year, and we all know they have a respectable court, and perhaps quite as good as that of any State of its size. But the information I have received from various sources, is entirely opposite in some cases. I confess, Sir, that although I have had information very strong of an opposite character, that what I have seen of the working of the judiciary in New York, has impressed my mind favorably. Two instances have occurred there recently, which I will mention with pride, whether it may operate in favor of my argument or against. Two instances have recently occurred, where you have seen the independence of the judiciary tested and sustained, as nobly as it ever was on the face of the earth. I have seen a court, elected by the people, set aside a deliberate act of the legislature of New York, as unconstitutional; a degree of independence which you do not often see in the judiciary anywhere. That is entitled to my highest respect, and gives me great confidence in that court. It certainly required firmness and independence to stand up against a majority in the State and a majority in the legislature, where cupidity itself was enlisted to sustain the act of the legislature, and to pronounce an act of the legislative department unconstitutional and void.

Another instance has more recently occurred, which has commanded my confidence and respect. I have seen the judges in the city of New York, just elected by the people, take a stand against the city government of the city of New York with a degree of firmness unsurpassed by any tribunal in the world. I have seen them enforce their decrees against the city government of New York, and taking some of the aldermen of that empire city, with its half million inhabitants, conduct them to jail because they had the hardihood to resist the decree of the court, and set at defiance the judicial power. Mr. President, I have one or two remarks more which I should be glad to make. We come here—I now speak of the majority—as reformers, all sincere and ardent in our desire to accomplish some good in the old Bay State, to make some improvement in our Constitution. We all desire to do that. The people have sent us here to do it. They have given us an overwhelming majority in this body. We must take care, my friends, that we do not abuse this trust which they have reposed in us. We have been some time from the people. We ourselves are a large body; we have generated to some extent a kind of public opinion, which prevails here; and I know no people more likely to be mistaken about the public opinion than a set of legislators or members of a Convention, who have been acting together for some time. We gradually grow warm; we are ardent and sincere; we want to do a great deal of good, and we can scarcely help feeling and believing, as we go along, that the whole world is going along with us. It behooves us to be cautious; it behooves all reformers to be wise and to be prudent, to take heed to their steps before it is too late. It is a great deal better to accomplish something surely and certainly, than to run a great risk to accomplish much more, and thereby endanger the whole. We now propose to try an experiment, to introduce a new mode of appointing our judges. There is

some risk in it; and we ought to see to it before we take that step, so important to every individual in the community, that we can try the experiment fairly and with a reasonable prospect of success. Now, the beauty and utility of a court depends, to a considerable extent, on the kind regard, and love, and confidence of the community. It is important not only that the court should do right, not only that it should make wise and righteous decisions, but, in order to produce the best effect on the community, it is necessary that it should have the confidence of that community. And even when individuals go away scolding from the court, they should still have the feeling which my friend for Manchester (Mr. Dana) had when he lost a most darling case, but notwithstanding that, had a confidence that the judge who sat upon the bench was independent and impartial.

Now, if we adopt this amendment, and the people ratify, shall we have a chance to try the experiment fairly? Sir, you must go to the people with nearly one-half, certainly more than one-third of the people and almost all the bar opposed to you, and who will be determined to throw all the obstacles they possibly can in the way of the reform which you propose, and although a majority may desire to sustain it, yet if the bar and the community, to any considerable extent, are predetermined to create all the embarrassments in their power, will the experiment have a fair trial? will there not be danger that the system will be exhibited in an unfavorable aspect? There will be other causes of dissatisfaction, operating upon some minds, and if we add this, which certainly will be disapproved by some, to the others, may we not produce a reaction which will cause a failure of the whole of our work?

Mr. President, I have now presented, as well as I am able, the views which I desired to present for your consideration. I have done it in sincerity and fairness, and stated to you the conclusions to which I have come, and the reasons which induced me to come to them. I now leave it, of course, for the decision of the Convention. I have no doubt that every member of it has investigated the subject with the same desire to do right that I have felt, and perhaps will come to a great deal more correct conclusion. But, Sir, let us remember that this is a question of considerable importance, although I do not attach so much to it as some of my friends do. Let us recollect that we have an opportunity to try this experiment in other hands, under the most favorable circumstances. Let us recollect that we are situated in a State where our executive, who has the appointment, can look over the whole of our little territory and see every man's head in it, and must be presumed to know personally every man fit to be a judge of either of our higher courts; and let us have the confidence to suppose that any individual who will be put into that place will make a judicious selection. The selection may be no better, perhaps not so good, as the people would make, but if it is as good, or nearly as good, will it not be safer to leave it there and try it until we can see whether our new system works well elsewhere? But, I declare, that when there is no existing evil or abuse which needs a remedy, when there is no necessity to make an experiment, under existing circumstances, I choose to wait and see how the system works in other places, and rely upon the

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wisdom of the court, and upon that of the executive, who is in a position to gain all the information he may need to enable him to fill up such vacancies as may occur. For these reasons, I feel constrained to vote against every proposition which is about to touch the judiciary of the Commonwealth.

Mr. HALLETT. There are seven minutes left before the question must be taken, and I desire to occupy them for the simple purpose of giving my testimony, as a member of the bar, against what I regard as an anomaly in our institutions,—a life tenure of office to any subject of the Commonwealth. While, at the same time, I have expressed myself here, and continue to express myself, in favor of leaving the present mode of judicial appointments as it stands in the Constitution, because it is not now expedient to change it, and also because it being done by the annual agents of the people it is only one remove from the mode of appointment by the people themselves; yet I desire to say, as a member of the bar, and one who has had some little experience in this matter of a judiciary independent of the people, that, in my judgment, if there is any one correction important to be infused into the fundamental law of this Commonwealth, in order to make it republican, in order to make it harmonious with all other institutions and agencies where the people govern, and in order to dispense justice impartially and courteously, as well as wisely, it is that you should limit the life tenure of your judges.

Sir, the eloquent gentleman who addressed us this morning, (Mr. Choate,) and with whom I agree on the subject of the appointment, and disagree on the subject of the tenure,—referred us, as if it were an authority, to the opinions of Alexander Hamilton, which I find, on examination, are given in the *Federalist*, No. 78, where, in 1788, he advocated the life tenure of the judges of the United States Court. I do not accept Mr. Hamilton as an authority on republican government, and yet it may be well to recollect that afterwards, in 1804, the same Alexander Hamilton, as an advocate, defended Harry Crosswell in a prosecution of "The People vs. Crosswell," for a libel upon Thomas Jefferson, and maintained the right to give the truth in justification. And it was on that occasion that Alexander Hamilton said, very differently from what he said in the "Federalist," that it was only by the abuse of the forms of justice that this people could ever be enslaved. "An army," said he, "can never destroy our liberty. It is to be subverted only by a pretence of adhering to all the forms of law, and yet breaking down the substance of our liberties."

And no judiciary could ever usurp arbitrary power, or break down our liberties by subverting laws and Constitution, through false interpretations, except by judges holding office for life, irresponsible to the people.

That was Mr. Hamilton's sound conviction and after-thought, when he was practising at the bar; and that is the conviction very often wonderfully enforced—much oftener than openly expressed—on the minds of members of the bar when engaged in practise before our courts. That eminent counsellor may not have felt this so much as others have, and yet I think he has felt it.

On another point, the learned gentleman in-

quired if there was any want of integrity in the judges? Let me answer that at once. No, Sir. There is no doubt about the integrity of the present judges. But the question is not present personal character, but the principle of life tenure in a democratic government.

Again, the gentleman asks, Is there any doubt about their ability? No, there is no doubt of that, as a general proposition. But neither honesty nor ability entitle men to hold office for life.

I wanted to ask him one other thing, which he omitted; is there *courtesy* in the judges? and the gentleman might have answered that, from observation, at least, if not experience. Now, Sir, I say forcibly, I want to give to our judiciary the grace of courtesy; I want not only to have the *fortiter in re*, but I also want the *suaviter in modo*; and where are you to get it? Only in the creation of a future bench without a life tenure, and whose periodical reappointment shall lie in the power of the people.

Sir, when I was a student at law, I remember to have heard said what I have never forgotten, by a very eminent professor of that day, Mr. Ashmun, one of the first professors of the Law School at Cambridge, when he had been contemplating some of these evils that grow out of an irresponsible judiciary—"give me" said he, "a court for the correction of errors, if it be but a body of selectmen!" And so say I; give me accountability; give me some body behind your judges, if it be but a town council or a board of selectmen, who can somewhere at sometime or other say that the hour of accountability has come. The gentleman cited Hamilton for life tenure. I prefer the opinion of Thomas Jefferson, who, in his letter to Mr. Kircheval, July 12, 1812, upon the subject of an independent judiciary, in answer to one of these old, worn out arguments about the appointment of judges for life, in England, to make them independent of the crown, said that this was an argument that an American lawyer should never utter in an American assembly; because, the question of dependence was entirely different where the appointing and removing power was in the hands of an hereditary executive, like a king,—then it was a great point gained to have the office continue for life, "but in a government founded on the public will, this principle [of life tenure] operates in an opposite direction, *against* that will."

The reason changes, for, says he, while in England they make the judges independent of the king, here by appointing them during life "you make the judges dependent on none but themselves!" There is the difference, Mr. President. Our judges with life tenures are dependent upon nobody but themselves; and that enables them to be independent of what? Not only independent of the people, but independent of good manners; independent, if they choose to be, of their own consciences and convictions; independent of any errors which they may make in judgment; independent of the grossest partiality, in fact of everything but crime, while they may be dependent upon, and may, unconsciously and honestly yield to the political and social influences that surround them—these cliques, these clubs, those circles that are drawn around them as men and politicians before they are judges, and under the influence of which they go upon the bench. They may be perfectly honest, I have no doubt of that, and yet they are

imbued with the atmosphere of local and social sentiment, and interest, and they find it, the best and purest of them, in giving opinions upon religious freedom and similar matters, very much as the distinguished jurist who preceded me in this argument, (Judge Morton,) found it, when he was on the bench. I refer to a grave question of religious freedom,* wherein that local and social influence was so strong upon him that he found himself constrained, although he gave his opinion right, to give his judgment wrong; and therefore, and for all that I have said, and much more I might say, give me accountability in the judges by at least periodical returns to private life.

Mr. Hallett here yielded the floor at the request of Mr. MORTON, of Taunton, who moved that the vote be reconsidered by which the hour of four o'clock was assigned for taking the question, and that it be fixed at ten o'clock to-morrow morning, remarking that, as was apt to be the case, he had consumed so much time himself, that he had deprived others who wished to be heard, of an opportunity to speak.

Mr. BUTLER, of Lowell. I would inquire if the gentleman from Taunton is one of those who voted with the majority.

The PRESIDENT. The rules of this Convention do not require that. The hour has arrived, at which the Convention has ordered the question to be taken.

Mr. BUTLER. I hope that the motion to reconsider will not prevail. This matter has another stage to pass through, and while it is not so important that we should have farther discussion now, I think it is important, for various reasons that I might suggest, that we should come to a vote. At the present time I think the most important thing which this Convention can do is to vote and go home.

Mr. HALLETT. I trust that the Convention will not, from any considerations personal to myself, reconsider this motion. I should much rather prefer that they would bring this matter to a close now, than that they should, out of mere courtesy to me, extend the time beyond what is necessary in order that the vote may be taken understandingly.

The question was taken on the motion to reconsider the order, and it was not agreed to.

The Convention proceeded to vote upon the pending question.

The question being upon the amendment of the gentleman from Fall River, to the amendment reported from the Committee, the yeas and nays were taken, with the following result—yeas, 101; nays, 226:—

YEAS.

Adams, Shubael P.	Buck, Asahel
Allen, James B.	Burlingame, Anson
Allis, Josiah	Butler, Benjamin F.
Alvord, D. W.	Case, Isaac
Baker, Hillel	Chapin, Daniel E.
Bancroft, Alpheus	Childs, Josiah
Bates, Eliakim A.	Clarke, Alpheus B.
Bates, Moses, Jr.	Clark, Henry
Bigelow, Edward B.	Cleaverly, William
Bird, Francis W.	Cole, Sumner
Bradford, William J. A.	Crane, George B.
Breed, Hiram N.	Cushman, Henry W.
Brown, Hammond	Cushman, Thomas
Brownell, Frederick	Davis, Ebenezer
Brownell, Joseph	Davis, Isaac
Bryant, Patrick	Day, Gilman

*Commonwealth vs. Kneeland, 20 Pickering, 206.

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Dean, Silas
Duncan, Samuel
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Abram
French, Charles A.
French, Rodney
French, Samuel
Frothingham, R'd, Jr.
Gooding, Leonard
Griswold, Josiah W.
Griswold, Whiting
Hapgood, Lyman W.
Hawkes, Stephen E.
Holder, Nathaniel
Hood, George
Hooper, Foster
Hoyt, Henry K.
Jacobs, John
Kingman, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Mason, Charles
Merritt, Simeon
Morss, Joseph B.
Morton, William S.
Nayson, Jonathan
Nichols, William
Norton, Alfred
Nute, Andrew T.
Orne, Benjamin S.

NAYS.

Abbott, Josiah G.
Adams, Benjamin P.
Aldrich, P. Emory
Allen, Joel C.
Alley, John B.
Andrews, Robert
Appleton, William
Aspinwall, William
Atwood, David C.
Austin, George
Ayres, Samuel
Ballard, Alvah
Barrows, Joseph
Beal, John
Bennett, William, Jr.
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Bradbury, Ebenezer
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Brown, Alpheus R.
Brown, Artemas
Bullock, Rufus
Bumpus, Cephas C.
Cady, Henry
Carter, Timothy W.
Caruthers, William
Chandler, Amariah
Chapin, Chester W.
Choate, Rufus
Churchill, J. McKean
Clark, Ransom
Coggin, Jacob
Cogswell, Nathaniel
Cole, Lansing J.
Conkey, Ichamar
Cook, Charles E.
Coolidge, Henry F.
Copeland, Benjamin F.
Crittenden, Simeon
Crockett, George W.
Cross, Joseph W.

Osgood, Charles
Parris, Jonathan
Partridge, John
Perkins, Daniel A.
Perkins, Noah C.
Phelps, Charles
Pool, James M.
Rawson, Silas
Richardson, Daniel
Rogers, John
Royce, James C.
Sanderson, Chester
Simmons, Perez
Simonds, John W.
Sprague, Melzar
Spoonier, Samuel W.
Stacy, Eben H.
Stevens, Joseph L., Jr.
Sumner, Charles
Taft, Arnold
Thayer, Willard, 2d
Tilton, Abraham
Upham, Charles W.
Weston, Gershom B.
White, George
Whitney, Daniel S.
Whitney, James S.
Wilbur, Joseph
Williams, J. B.
Wilson, Willard
Wood, Charles C.
Wood, Otis
Wood, William H.
Wright, Ezekiel

Hammond, A. B.
Hapgood, Seth
Harmon, Phineas
Haskins, William
Hathaway, Elanathan P.
Hayden, Isaac
Hayward, George
Heard, Charles
Heath, Ezra, 2d
Henry, Samuel
Hersey, Henry
Hewes, James
Hewes, William H.
Hillard, George S.
Hinsdale, William
Hobart, Aaron
Hobbs, Edwin
Howard, Martin
Hubbard, William J.
Hunt, William
Huntington, Asahel
Hurlbut, Samuel A.
Hurlbut, Moses C.
James, William
Jenkins, John
Johnson, John
Kellogg, Giles C.
Kendall, Isaac
Kimball, Joseph
Kinsman, Henry W.
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Knowlton, Charles L.
Kuhn, George H.
Ladd, Gardner P.
Ladd, John S.
Lincoln, Abishai
Lincoln, Fred. W., Jr.
Littlefield, Tristram
Livermore, Isaac
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Marvin, Theophilus R.
Miller, Seth, Jr.
Moore, James M.
Morey, George
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Newman, Charles
Noyes, Daniel
Ober, Joseph E.
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Paine, Benjamin
Paine, Henry
Parker, Adolphus G.
Parker, Joel

ABSENT.

Abbott, Alfred A.
Allen, Charles
Allen, Parsons
Ball, George S.
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bartlett, Sidney
Barrett, Marcus
Beach, Erasmus D.
Beebe, James M.
Bell, Luther V.
Bennett, Zephaniah
Bigelow, Jacob
Bronson, Asa
Brown, Adolphus F.
Brown, Hiram C.
Bullen, Amos H.
Chapin, Henry
Clark, Salah
Clarke, Stillman
Cressy, Oliver S.
Crosby, Leander
Crowell, Seth
Davis, Robert T.
Dawes, Henry L.
DeWitt, Alexander
Dorman, Moses
Durgin, John M.
Easton, James, 2d
Eaton, Calvin D.
Gardner, Henry J.
Gooch, Daniel W.
Gould, Robert
Goulding, Jason
Greene, William B.
Haskell, George
Heywood, Levi
Hobart, Henry
Hopkinson, Thomas
Houghton, Samuel

Howland, Abraham H.
Hunt, Charles E.
Huntington, Charles P.
Huntington, George H.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jackson, Samuel
Jenks, Samuel H.
Kellogg, Martin R.
Keyes, Edward L.
Langdon, Wilber C.
Little, Otis
Loomis, E. Justin
Lord, Otis P.
Meador, Reuben
Mixer, Samuel
Monroe, James L.
Nash, Hiram
Packer, E. Wing
Park, John G.
Parker, Samuel D.
Payson, Thomas E.
Peabody, George
Perkins, Jonathan C.
Pierce, Henry
Read, James

Absent and not voting, 91.

So the amendment to the amendment was rejected.

The question recurred on the amendment reported from the Committee of the Whole.

Mr. HALLETT, for Wilbraham, moved to amend by striking out the words, "but in no case to continue in office after attaining seventy years of age."

The question was taken, and upon a division, there were ayes, 148; nays, 98.

So the amendment was adopted.

Mr. BUTLER, of Lowell, moved to amend by striking out "ten" and inserting "seven." The question was taken, and by ayes 88, noes 180, the amendment was rejected.

Mr. BATES, of Plymouth, moved to amend by striking out the following words: "Said justices to be ineligible to reappointment."

The amendment did not prevail.

The question recurred upon concurring in the amendment reported by the Committee.

Mr. BIRD, of Walpole, moved that when the question was taken upon the amendment, it be taken by yeas and nays.

The motion was agreed to, and the yeas and nays were ordered.

Mr. COLE, of Cheshire, moved to amend by adding, after the word "appointed," the words "by the governor of the Commonwealth by and with the concurrence of the Senate."

The amendment did not prevail.

The question being on concurring in the amendment reported from the Committee of the Whole, the yeas and nays were taken, and resulted—yeas, 158; nays, 160—as follows:—

YEAS.

Abbott, Josiah G.
Adams, Benjamin P.
Adams, Shubael P.
Allen, Charles
Allen, James B.
Alley, John B.
Allis, Josiah
Austin, George
Bancroft, Alpheus
Bates, Eliakim A.
Bates, Moses, Jr.
Beal, John
Bennett, William, Jr.
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Bradbury, Ebenezer
Bradford, William J. A.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Case, Isaac

Thursday,]

THE JUDICIARY, &c. — ALLEY.

[July 14th.

Chapin, Daniel E.
Childs, Josiah
Clark, Henry
Clark, Ransom
Clarke, Alpheus B.
Cleverly, William
Cooledge, Henry F.
Crane, George B.
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Earle, John M.
Easland, Peter
Edwards, Elisha
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Rodney
French, Samuel
Frothingham, R., Jr.
Giles, Charles G.
Giles, Joel
Graves, John W.
Green, Jabez
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Happgood, Lyman W.
Happgood, Seth
Haskins, William
Hathaway, Elvathan P.
Hayden, Isaac
Heath, Ezra, 2d
Hewes, William H.
Howard, Martin
Hoyt, Henry K.
Hurlbut, Moses C.
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Littlefield, Tristram
Marble, William P.

NAYS.

Aldrich, P. Emory
Allen, Joel C.
Alvord, D. W.
Andrews, Robert
Appleton, William
Aspinwall, William
Ayres, Samuel
Baker, Hillel
Ballard, Alvah
Barrows, Joseph
Barrett, Marcus
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Braman, Milton P.
Breed, Hiram N.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.

Marcy, Laban
Marvin, Abijah P.
Mason, Charles
Merritt, Simeon
Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Newman, Charles
Nichols, William
Norton, Alfred
Ober, Joseph E.
Orne, Benjamin S.
Osgood, Charles
Paine, Benjamin
Paine, Henry
Parsons, Samuel C.
Partridge, John
Penniman, John
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pool, James M.
Rawson, Silas
Rice, David
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ross, David S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sherril, John
Simonds, John W.
Smith, Matthew
Stacy, Eben H.
Stevens, Granville
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Sumner, Charles
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d
Tilton, Horatio W.
Turner, David P.
Viles, Joel
Vinton, George A.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom, B.
White, George
Wilbur, Joseph
Wilson, Henry
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wood, William H.

Crittenden, Simeon
Crockett, George W.
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Dana, Richard H., Jr.
Davis, John
Davis, Solomon
Dehon, William
Denison, Hiram S.
Doane, James C.
Eames, Philip
Eaton, Lilley
Edwards, Samuel
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fiske, Emory
Foster, Aaron
Fowler, Samuel P.
French, Charles A.
French, Charles H.
Gale, Luther
Gates, Elbridge
Gilbert, Wanton C.
Gilbert, Washington
Goulding, Dalton
Gray, John C.
Greenleaf, Simon
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Harmon, Phineas
Hawkes, Stephen E.
Hayward, George
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James
Hillard, George S.
Hinsdale, William
Hobbs, Edwin
Holder, Nathaniel
Hood, George
Hubbard, William J.
Hunt, William
Huntington, Asahel
Hurlburt, Samuel A.
James, William
Jenkins, John
Johnson, John
Kellogg, Giles C.
Kendall, Isaac
Kinsman, Henry W.
Knight, Joseph
Knowlton, Charles L.
Knowlton, J. S. C.
Kuhn, George H.
Ladd, John S.
Lincoln, F. W., Jr.
Livermore, Isaac

ABSENT.

Abbott, Alfred A.
Allen, Parsons
Atwood, David C.
Ball, George S.
Banks, Nath'l P., Jr.
Bartlett, Russel
Bartlett, Sidney
Beach, Erasmus D.
Beebe, James M.
Bell, Luther V.
Bennett, Zephaniah
Bigelow, Jacob
Bronson, Asa
Brown, Adolphus F.
Brown, Hiram C.
Bullen, Amos H.
Chapin, Henry
Clark, Salah
Clarke, Stillman
Cressy, Oliver S.
Crosby, Leander
Crowell, Seth
Cutler, Simeon N.

Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marvin, Theophilus R.
Miller, Seth, Jr.
Morey, George
Morss, Joseph B.
Morton, Marcus
Nayson, Jonathan
Noyes, Daniel
Nute, Andrew T.
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Parker, Adolphus G.
Parker, Joel
Parsons, Thomas A.
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Jesse
Plunkett, William C.
Pomroy, Jeremiah
Preston, Jonathan
Prince, F. O.
Putnam, George
Putnam, John A.
Rantoul, Robert
Reed, Sampson
Rockwood, Joseph M.
Rogers, John
Sargent, John
Schouler, William
Sikes, Chester
Sleeper, John S.
Sprague, Melzar
Stevens, Charles G.
Storror, Charles S.
Taylor, Ralph
Tileston, Edmund P.
Turner, David
Tyler, William
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
Whitney, James S.
Wilder, Joel
Wilkins, John H.
Wilkinson, Ezra
Williams, J. B.
Wilson, Milo
Winn, Jonathan B.
Woods, Josiah B.
Wright, Ezekiel

Hunt, Charles E.
Huntington, Charles P.
Huntington, George H.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jackson, Samuel
Jacobs, John
Jenks, Samuel H.
Kellogg, Martin R.
Keyes, Edward L.
Langdon, Wilber C.
Little, Otis
Loomis, E. Justin
Meador, Reuben
Mixer, Samuel
Monroe, James L.
Packer, E. Wing
Park, John G.
Parker, Samuel D.
Parris, Jonathan
Payson, Thomas E.
Peabody, George
Perkins, Daniel A.
Perkins, Jonathan C.
Pierce, Henry
Powers, Peter
Read, James
Richards, Luther

Absent and not voting, 102.

So the Report of the Committee was concurred in and the resolves were ordered to a second reading.

Personal Explanation.

Mr. ALLEY, of Lynn. I rise, Sir, for the purpose of asking the indulgence of the Convention to make a personal explanation.

The PRESIDENT. If no objection be made, the gentleman will be at liberty to proceed.

The Chair understands that no objection is made.

Mr. ALLEY, of Lynn. Mr. President, it was my purpose to have remained silent in relation to the unprovoked attack upon me, which was made the other day by the gentleman from Boston, (Mr. Hillard). I have always recognized the wisdom of the advice of Chesterfield to his son: "That he should never notice an insult; for no gentleman will insult you, and no one else can." I have been informed that it was the purpose, or desire, of that gentleman, to have the remarks which he made the other day suppressed from the records; but I notice in one of the daily papers of this morning, a full report of that gentleman's speech, revised and corrected, I presume, by himself, in which occurs this language:—

"The gentleman from Lynn, (Mr. Alley), the other day, upon this text, discharged at me a small pellet of something that tried to be sarcasm, but could not. The report of his pop-gun was so faint that I do not think it was heard by half the Convention. Indeed, nothing but a respect for the decorum of the place, prevented me from calling out *encore*! I thought it selfish to be amused by an exhibition in which so few participated."

Mr. President: In view of this publication, and finding that some misapprehension exists with regard to the occasion of that attack, I feel it is due to myself to say a few words of explanation. In the first place, I would remark, that I was not present when the attack was made. In what I have to say, my purpose is not to return railing for railing, for I speak more in sorrow than in anger. Permit me to say, that I have been associated in legislative halls and deliberative as-

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PERSONAL EXPLANATION. — ALLEY — HILLARD.

[July 14th.]

semblies, in the counting-room and in the workshop, with men of every degree, calling, and profession, and this is the first time in my life that I have ever been so grossly assailed. It is inexplicable to me why I should be attacked by one who has occupied so high a position in social and literary life—an individual some ten years my senior—one to whom I never spoke in my life but once, and then only a few words upon matters of business. When I consider, Sir, that the attack was made upon one whom the gentleman evidently supposed had not the power of repelling it, I have no language adequate to the expression of the sentiments of my heart. I have made no extended remarks in this Convention but once, and then only in obedience to the call of duty.

In attempting to speak before this Convention under any circumstances, I feel very much, as I doubt not many others do in this body, who are, like me, men of acts rather than of words—that it is complete martyrdom. A few days after I had the honor to address the Convention, the gentleman from Cambridge, misapprehending my remarks, ascribed to me sentiments which I did not utter, and it was only for the purpose of putting myself right upon the record, that I occupied just two minutes, as appears by the record of the chairman at the time, in making an explanation of my views. Upon that occasion, I simply alluded, without a word of commentary, to the famous declaration of the gentleman from Boston, that “we should be careful how we strike the hand that feeds us.” This, Sir, was the whole length and breadth of my offending; and for this I have been assailed with a contempt of manner and appearance of malignity, almost without parallel in the history of legislative bodies.

The gentleman complains most bitterly that he was misapprehended and misrepresented; but I submit, Sir, whether the language of the gentleman is not justly susceptible of such a construction. When I heard the gentleman make the remark, I said to a friend near me, that I was sorry to hear him make it, and that I did not believe that he meant it. I also added, that he would never hear the last of it; and, Sir, I think my prediction is likely to be fulfilled. I have heard many of that gentleman’s political friends say that they so understood it; and that, furthermore, they believed that he had thus unwittingly revealed the real sentiments of his heart. Now, Sir, if members of that gentleman’s political party say that the language was clearly susceptible of such a construction, certainly he cannot expect his political opponents to be any more charitable. But permit me to say, that I am unwilling to believe that the gentleman intended to make an exhibition of such base servility as those remarks would seem to indicate. I advise him, however, for the future, instead of abusing others, for which his own imprudence is justly responsible, to try and learn wisdom from experience.

That gentleman spoke of me in terms of contemptuous disparagement. Sir, I lay no claim to the graces of oratory, but I was sent here by as good a constituency as those whom that gentleman represents. I came here for the purpose of endeavoring to discharge my duty—not as brilliantly, but as faithfully, and perhaps, as usefully as some of those who belong to the class whom that gentleman represents; and I certainly did not expect to be assailed with such severity of criticism, representing, as I do, so modest a class as the practi-

cal business men of the community. I have lived long enough to value men for their deeds, rather than for their words. I am too much occupied with the cares and perplexities of other and more congenial avocations, to spend a great deal of time in preparing speeches. That gentleman has lived long enough, and has studied history often enough, to know that great results are seldom achieved by mere rhetoricians. Edmund Burke once said that the graces of oratory and solidity of judgment are seldom combined in the same individual. Another great writer has said: “Give me, to found an empire, or raise a nation, the farmers, the sailors, and the mechanics, for when grand objects are to be attained, how real and how solid such men appear in the presence of mere scholars and talkers.”

A distinguished gentleman once said to me—an individual of great attainments, and an acquaintance of the gentleman from Boston—“How astonishing it is that some men talk so well when they have so little practical sense;” and, said he, “how much knowledge some people have, with very little wisdom!” Far be it from me to disparage literary attainments; no man values mental culture more than I do. Heaven knows how gladly I would part with pecuniary possessions for a little, even, of that culture which is the pride and boast of the gentleman from Boston. But, Sir, if I could have it all, if its possession involved the sacrifice of judgment and common sense, I should say it was not worth having. Sir, I prize but little mere talking men. As an eminent poet says—one whom the gentleman himself is so fond of quoting:—

“How fluent nonsense trickles from his tongue.”

I have said thus much, Mr. President, because I believed that the occasion demanded it; and if the gentleman from Boston is satisfied to have his unprovoked attack upon me go down to posterity without a single word of explanation or apology, upon the enduring records of this Convention, so let it be—I am content.

MR. HILLARD, of Boston. The gentleman from Lynn has come here with an elaborate speech, studiously prepared, stuffed with quotations, and committed to memory, the whole purport of which is a glorification of himself and disparagement of me,—a glorification of men of judgment, men of common sense, and men of practical skill, and a disparagement of men endowed with those scholarly qualities which he supposes I am endowed with. That part of his remarks, Mr. President, I shall not reply to. I doubt if there is any gentleman in this Convention or out of it who has a lower estimate of my powers or my attainments, than I have myself. On that side, at least, the gentleman may be assured that I am not vulnerable.

I never, to my recollection, saw the gentleman from Lynn, until I met him in this Convention, and certainly never in any way gave him any provocation. The other day, when he was addressing the Convention upon some matter connected with the question of representation, I was listening to him with attention, for his manner was becoming and gentlemanly. As he had spoken but seldom, I listened to him with a sincere wish to learn what manner of man he was. To my great surprise he wound off by saying, that after the threat or the intimation which has fallen from the gentleman from Boston, it became the Convention so

to arrange the system of representation as to protect the country against the city, or words to that effect, at the same time feathering his shaft by an expressive glance at me.

Was that an attack, or was it not? Was my reply provoked, or was it not? I submit that I felt then, and I feel now, that the remark was made for the purpose of the fling at me, for no man could make so fatuous a remark upon any other explanation. The man who really thinks that the country ought to be protected against the city, has no right to be here. His place is in a certain other Convention in the town of Somerville—a Convention that never adjourns, and which is presided over by a member of this body. You, Mr. Chairman, (Mr. Wilson, of Natick,) with that courage and readiness which always characterize you, came to the aid of our friend, and you said that I had not done right to bear so hard upon so respectable and so well-informed a gentleman. Sir, I thought of that scene in the “Merry Wives of Windsor” between Dr. Caius and Mrs. Quickly, when the doctor found the young man in his closet. Mrs. Quickly was sure that he was an honest man; whereupon the doctor replied by a pertinent question, “What is the honest man doing in my closet?” Now I say, as Dr. Caius said: Why does this respectable and well-informed gentleman attack me without any provocation. So far as that attack was concerned, he was neither respectable nor well-informed. I contend that my comment was no more than the hard hitting which he had began, and of which he has no right to complain.

Mr. President, the gentleman in this personal explanation has adverted to many matters which I will not go into. A few days ago I took occasion to make a personal explanation and vindication, which sometimes took the form of attack. I hope that those who remember it against me will remember the provocation also. I am not going to repeat that performance. It is not to my taste, and I do not think that any provocation which can pass under the President’s hammer, will induce me to recall this determination.

Sir, the time of the Convention is precious. I will not occupy one moment of it in anything like personal altercation or party contest. And, Sir, still more:—the shadow of death is resting upon the assembly. The hand of God has been stretched forth, and has taken from us one whose hopes were as warm, and whose prospects were as bright, as those of any of us. Some of the clergymen in the Convention, the other day, took occasion to enforce this dispensation upon our minds, to speak to us of the vanity of human hopes and wishes, and to remind us that no one knew on whom the lot next might fall. I took their admonitions to heart, and, were there no other reason, I would not, while their teachings are so fresh, obtrude upon the notice of the Convention topics of discussion like those for which I asked their attention a few days ago.

So much for our rights and duties as members of this Convention. As between man and man, if I have done the gentleman wrong, or wounded his feelings, I regret it. And I hope he will believe me, when I say that nothing that has passed between us shall leave any permanent shadow of unkindness or ill-will to rest upon my heart; and if an opportunity should occur hereafter, in the chances and changes of life, in which I can be of service to him, then, perhaps, I may be

Thursday.]

QUORUM OF THE HOUSE, &c. — FRENCH — BUTLER — GRISWOLD — HALLETT.

[July 14th.

able to convince him of my sincerity in this last remark.

Mr. OLIVER, of Lawrence. I move that the Convention do now adjourn.

Mr. BIRD, of Walpole. On that motion I ask for the yeas and nays.

(Cries of "No, no;" and "It will not save time.")

The yeas and nays were not ordered, and the question recurring on the motion to adjourn, it was decided in the negative.

Suspension of the Rules.

Mr. FRENCH, of New Bedford. I move that the rules of the Convention be suspended, in order that the Convention may now proceed to the second reading and final passage of the resolves in relation to the judiciary. We have now as full a house as we shall perhaps ever have; the subject has been most amply discussed, and I think by taking the final question to-night, we shall save time and finally settle a question which has been much agitated. I hope the rules will be suspended.

(Loud cries of "No, no, no.")

Mr. BUTLER, of Lowell. I desire to say that these resolves have been discussed and voted upon at a time when it would hardly be proper to take a final vote. Since the vote ordering them to a second reading was taken, a large number of members have left the hall; and I think it would be better for us to pause for a moment before we do this.

Mr. FRENCH. At the suggestion of friends, I withdraw the motion.

Quorum of the House of Representatives.

On motion of Mr. BUTLER, of Lowell, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

For the purpose of taking up a resolution offered by Mr. COLE, of Cheshire, in relation to the number of members necessary to constitute a quorum of the House of Representatives, Mr. GILES, of Boston, in the chair.

The resolution was read, as follows:—

Resolved, That the Constitution be so amended that a majority of the members of the House of Representatives shall be necessary to constitute a quorum.

Mr. GRISWOLD, for Erving. I would suggest to the gentleman from Lowell, not to go into Committee on this subject at this time. The proposition before the Committee of the Whole is an order or resolve offered by the gentleman from Cheshire, for the purpose, mainly, I apprehend, of calling the attention of the Committee on the House of Representatives to the subject. The Committee on that subject have waited until this time to see what disposition the Convention would make of the representation question, in order that they might know how large a House we would be likely to have. I purpose to call the Committee together to-morrow, for the purpose of acting upon this and several other subjects which yet remain for their consideration, and I would inquire of the gentleman from Lowell, whether he does not think that we will dispose of this matter better by leaving it for that Committee to report upon, taking this order also into consideration, and then for us to act upon the Report of

that Committee? I merely make this suggestion. I am willing that the question should be taken up now, but I think it would save time to wait until we have the Report of the Committee which has this matter specially under its consideration.

Mr. BUTLER. The reason why I made this motion was, just that we might get at the matter in the mode in which the chairman of that Committee has suggested. This resolve is now in Committee of the Whole, and the only way that we can get at it, is first to go into Committee of the Whole on the subject, and then report it to the Convention with a recommendation that it be referred to the Committee on the House of Representatives, and then it will come back to us from that Committee. It was for the purpose of getting rid of one more subject from our calendar, that I made this motion to go into Committee of the Whole, so that this resolution might go to its proper Committee and be disposed of in the shortest possible manner. I hope that it will not generate any discussion, and that the Committee will now report it back to the Convention, with a recommendation that it be referred to the Committee on the House of Representatives.

Mr. HALLETT, for Wilbraham. I would suggest to the gentleman from Lowell, whether we cannot get an expression of opinion upon this subject now, and thus avoid the necessity of this reference, and perhaps of considerable discussion afterwards. I am wearied with seeing these subjects referred and re-referred, and brought back again here. Here is a simple proposition in regard to a single delegate as to the number of members necessary to constitute a quorum of the House of Representatives. I do not believe that there is any material difference of opinion in regard to this subject. Nobody supposes that we shall have less than three nor more than four hundred representatives. Can there be any difficulty, then, in fixing a number—say a hundred and fifty, or two hundred? I would submit whether this resolve could not be amended so as to fix the number here, now, and then let the resolve, as amended, be reported to the Convention? Or, if it is to be referred, let it be referred with instructions, so that the Committee may report it back, and it may be passed here without discussion. Unless we adopt some such course as this, we shall lose all the time we have spent upon it. If we expect to get through with this Convention by August, we must dispose of these things as they come up. I move, therefore, to amend the motion of the gentleman from Lowell, so as to resolve that it is inexpedient to adopt this recommendation, and that we so report to the Convention. I move that the Committee report to the Convention that it is inexpedient that this resolution should pass.

Mr. GRISWOLD, for Erving. I have no objection to this matter being discussed and settled here, instead of being referred back to the Committee on the House of Representatives; but there are serious differences of opinion in relation to this matter. I incline myself to the opinion, that the number necessary for the transaction of business, should be higher than the present number of sixty. I think it should be a hundred; but I shall go with the majority in regard to whatever number may be determined upon. I hope, therefore, that the amendment of the gentleman for Wilbraham, will not prevail, because I suppose it precludes any action upon

the subject by the other Committee. If the Committee of the Whole are disposed to act finally upon the subject now, I would move to amend the amendment by substituting the number "one hundred" for the "majority;" but I do think that it would simplify the matter at this time to adopt the motion of the gentleman from Lowell, by having this Committee rise and report a reference of this resolution to the Committee on the House of Representatives. If, however, the gentleman for Wilbraham insists upon his amendment, I have no objection, provided that the number be fixed at one hundred.

Mr. HALLETT. I have not the least objection to recommend to the Convention now, the amendment of the gentleman, to my motion, that hereafter a quorum of the House should consist of one hundred members. That, perhaps, would meet the wishes all round. It is now required, by the Constitution, to be sixty. I see no practical inconvenience in having it increased to one hundred.

Mr. BUTLER, of Lowell. I have a word to say upon this matter, which I endeavored to intend to have said when I arose before.

The CHAIRMAN. The Chair would state that the third amendment is not strictly in order at this time. If the gentleman for Wilbraham, will withdraw his amendment to the motion of the gentleman from Lowell, (Mr. Butler,) then the amendment of the gentleman for Erving, (Mr. Griswold,) will be in order.

Mr. HALLETT. I accept the amendment of the gentleman for Irving, as a substitute for mine.

Mr. BUTLER. I was about to say that the reason for my motion was this. This whole subject was referred to the Committee on the House of Representatives. The gentleman from Cheshire, (Mr. Cole,) brought in a resolution on this subject—which he had a perfect right to do—and by inadvertence that resolution was referred directly to the Committee of the Whole, instead of to the Committee having in charge matters of that nature. I knew that the Committee on the House of Representatives was to have a meeting to-morrow morning to discuss this very question, and if we should go on and discuss it here to-night, the Committee would come to their conclusion upon it, and report the same to the Convention, and then we should have the whole subject up, and it would all be gone over again. It was, therefore, in order to save time all around, that I made the motion, and if it had not been for the amendment of the gentleman for Wilbraham, (Mr. Hallett,) we should have been through with it, and have proceeded to something else. What use is there in trying to settle the matter here, while the whole subject is before the Committee on the House of Representatives? The majority of that Committee are not here, and when they come together, they may come to the conclusion to report a very different resolve, and then we must review the whole matter. Why not have the whole subject before us at once?

The gentleman thinks one hundred members a good number to constitute a quorum. Well, perhaps I think one hundred and twenty-five, another thinks a hundred and fifteen; four or five think a hundred and fifty is a good number. And so we have a variety of opinions, and the whole matter must be discussed. The gentleman himself says there is a difference of opinion about it.

Thursday,]

QUORUM OF THE HOUSE.—SCHOULER—BRIGGS—HALLETT—WHITNEY—BUTLER.

[July 14th.

When we come to go into the discussion of this matter, I shall be ready to say that I do not think the Constitution should give permission to three-quarters of the House of Representatives to go home and leave the other quarter here to do business. I have seen fifty thousand dollars of the State's money voted away when there were only forty-four members voting upon one side and forty odd upon the other, and I do not think it was a good sight. However, I am not going into the general question. I think we had better let the whole matter go to the Committee on the House of Representatives, and we shall thereby save the time of the Convention.

Mr. SCHOULER, of Boston. I suppose that under the general resolution, which refers all matters having reference to the House of Representatives to the Committee upon that subject, this matter of a quorum would be naturally brought before us. As that subject is before the Committee, of which I am a member, I trust that this matter will be referred to it, so that we may act upon it and make one report upon the whole matter. I think that is the quickest way to dispose of it.

I think, upon reflection, that it will be found that sixty members is a sufficient number to form a quorum, because the only difficulty about a quorum has been when the House meets in the morning, and, for the last few years, the Speaker has not called the House to order until some minutes after the hour to which the House stood adjourned, on account of there not being a quorum of sixty persons present. But as soon as sixty persons are present, the House is called to order, the journal of the previous day read, and then the morning hour is taken up in presenting petitions and reports, and by that time the House is as full as it generally will be during the day. The only effect in my judgment—though I may alter my opinion after hearing the arguments on both sides—of increasing the number from sixty to one hundred, would be to delay the public business. However, I am not going into the discussion of that question now. I shall vote for the motion of the gentleman from Lowell, that the Committee rise and report to the Convention a recommendation that the resolve be referred to the Committee on the House of Representatives.

Mr. BRIGGS. I hope the motion of the gentleman for Wilbraham will not prevail, and that the one from the gentleman from Lowell will. It seems that this subject, which is one of importance, is in the hands of one of the standing committees of this body. My friend from Cheshire, (Mr. Cole,) some time ago introduced a resolution fixing the quorum at one half the members of the House, and it was referred, by mistake, to the Committee of the Whole, instead of the Committee on the House of Representatives, so that no committee has acted upon it, and I do not feel ready now to act upon a question of that kind. I think the proper mode is to discharge the Committee of the Whole from the farther consideration of it, and then refer it to the Committee on the House of Representatives, to which it should have originally been referred, and have it come up again in the usual order of business.

Mr. HALLETT. I suppose I have been meddling with a subject which did not belong to me, and I do not think I shall try it again. But if there are any practical men in this Convention,

who desire to get through with it, I wish that they would sometimes listen to somebody except those who assume to direct the whole affairs of this Convention.

The proposition before us is a very simple one. A resolution has been offered and referred to the Committee of the Whole, and a gentleman deliberately rises and proposes to go into the Committee of the Whole, for what? Why to render ourselves ridiculous, if we follow out his suggestion. What does the gentleman send us into the Committee of the Whole for? Is it merely to go out of it again? Why did not he move in Convention that the subject be taken from the Committee of the Whole, and sent to the Committee on the House of Representatives, and thus save us all this trouble? Now we have got into Committee, and I want to do something. I say we can dispose of this whole subject to-night, and not be troubled with it again. If the motion prevails to send the matter to the Committee on the House of Representatives, what is to be done? You cannot get that Committee together as easily as you could fit out a clipper ship for California. It will remain with them until they are ready to report. When it comes in, it goes into the Orders of the Day, and when four or five days after you take it up, you are ready to discuss the whole subject, and consume the time of the Convention with unnecessary talk upon a matter in relation to which there has been no difficulty for seventy years or more.

I suppose that sixty members is enough to make a quorum. Gentlemen say this is a very important affair. What is its importance? It is simply whether you will have sixty, one hundred, or one hundred and twenty, or any other number of members to form a quorum. Everybody knows that it would be impracticable to have a large number. If you should require a large number, you would not be able to meet to do business one day out of six, because you would not have a quorum present. If you attempt to put the number higher than one hundred, or even over sixty, as I think, you increase the danger of the House being unable to do its business for want of a quorum, and instead of limiting the sessions of the legislature to one hundred days, you ought to increase it to two hundred. Now I ask, as this is a simple proposition, and as it is now before us, and we have the right to act upon it, why we cannot report to the Convention whether we will have sixty or one hundred for a quorum of the House? I say one hundred members, because the gentleman for Erving, (Mr. Griswold,) suggested it, though I prefer sixty. Yet perhaps it would be better to compromise the matter by agreeing upon that number. Now if we say to-night that we recommend to the Convention that they shall adopt the number "one hundred" for a quorum of the House of Representatives, that recommendation will go into the Convention and be put upon the Orders of the Day, and we can dispose of it there by adopting it, and passing an order to discharge the Committee on the House of Representatives, from the farther consideration of that matter. That will take but one-half an hour if you do it to-night, but if you adopt the course suggested by the gentleman from Lowell, it will consume two days.

Mr. WHITNEY, of Conway. I agree with the gentleman for Wilbraham, that we ought to

dispose of this matter to-night, and I think the motion he first made would have disposed of it, to wit: to report back to the Convention that it is inexpedient to adopt this resolution. It seems that this is a subject appropriate for the consideration of the Committee on the House of Representatives. They have properly the whole matter before them, and this was referred to the Committee of the Whole, by mistake. They will consider the whole subject, and report upon it, and I therefore shall vote against the motion. The original motion of the gentleman for Wilbraham was equivalent to the motion of the gentleman from Lowell, and I think that one of those motions should prevail.

Mr. BUTLER, of Lowell. I do not know whether it belongs to me, or to the gentleman from Boston, (Mr. Schouler,) or to the gentleman from Pittsfield, (Mr. Briggs,) to reply to the suggestion which came from the gentleman for Wilbraham, (Mr. Hallett,) that somebody assumes to direct the proceedings of this Convention, and that other people could not get listened to. I can only say that if gentlemen are not listened to, they must not blame the Convention, but they must talk decent sense. [Laughter.] That is the only recipe I can give. It is the only way I can get listened to, and gentlemen are perfectly at liberty to use my recipe, as I do not claim a patent upon it, though some may find it as difficult as David did to wear Saul's armor. [Laughter.]

I do not wish it to be understood that I have assumed to take upon myself any direction of affairs. But one good result has arisen out of this discussion—the gentleman for Wilbraham (Mr. Hallett) has said he never will interfere in this way again. [Laughter.] Now if he will not we shall get on, and if I have done that good thing I certainly shall take great credit to myself, because if he had let us alone, we should have been through with this subject, and upon something else a long time since. I knew this matter would be discussed when it came up and—

Mr. HALLETT. Why not discuss it now?

Mr. BUTLER. Because we cannot finish it to-night at the usual hour of adjournment. Another thing. I knew from various sources that different gentlemen had various numbers in their minds, which they desire to present, and I think a great deal of discussion can be avoided by having the matter considered by the Committee.

The Committee on Representation are always up to their duty. If the gentleman chooses to say of the Committee on the Bill of Rights, of which he is a member, that they can never be got together, I am content; but the Committee on Representation come together whenever they are called, and he must not speak so of us, because he does not belong to us. If he chooses to enlist a crew for a California clipper, rather than undertake to get his Committee together, I am content. I only mean to say that our Committee come together and work, and present the result of their labors to the Convention.

Mr. COLE, of Cheshire. Having had the honor of introducing this matter to the Convention, I will simply say that I supposed, it would be referred to the Committee on the House of Representatives. It was referred to the Committee of the Whole, through mistake, and I am of opinion, for various reasons, that it should go into the hands of the Committee on the House of Representatives, and I hope it will be sent there.

Friday,]

QUORUM OF THE HOUSE, &c. — HALLETT — COLE — BRADBURY — BATES — BUTLER.

[July 15th.

The question was then taken on the amendment of Mr. Hallett, and there were, on a division, ayes, 63; noes, 55.

So the amendment was adopted.

Mr. HALLETT. I move that the Committee do now rise, and report the resolution to the Convention, with the recommendation that it do pass.

Mr. BIRD, of Walpole. Is it in order, pending that motion, to move that the resolve be reported to the Committee with the recommendation that it be referred to the Committee on the House of Representatives?

The CHAIRMAN. It is not in order at this time.

The question was then put, and Mr. Hallett's motion was agreed to.

The Committee accordingly rose, and the President having resumed the chair of

THE CONVENTION,

The chairman, (Mr. Giles, of Boston,) reported that the Committee of the Whole had, according to order, had under consideration the resolve referred to them relating to a quorum in the House of Representatives, and had instructed him to report it back to the Convention with an amendment.

Mr. ELY, of Westfield. I move that the resolve with the amendment be referred to the standing committee having in charge the subject of the House of Representatives.

Mr. HALLETT. I rise to submit one or two considerations to the Convention, and particularly to my friend from Westfield, (Mr. Ely,) who has made this motion. I hope he will vary his motion and allow the Report of the Committee of the Whole to lie upon the table for the present. We can thus discharge the Committee on the House of Representatives from the farther consideration of this subject, and have it finally disposed of here in Convention. What do we want another report from that Committee for? Why not discharge them from the farther consideration of the subject? We may then have the subject before us, and can dispose of it without consuming the time, which we must inevitably do, in the consideration of another report, and have no more trouble about it. I therefore hope the motion of the gentleman from Westfield will not prevail. I move that the whole subject be laid upon the table. I believe that motion has precedence of the motion of the gentleman from Westfield, and I give notice that if my motion is carried, I will follow it with a motion to discharge the Committee having in charge the subject of the House of Representatives, from the farther consideration of this subject.

The motion was agreed to, and the whole subject laid upon the table.

Mr. HALLETT. I now move that the Committee on the House of Representatives be discharged from the farther consideration of the matter of a quorum in the House of Representatives.

Mr. BRADBURY, of Newton. I would ask whether any Committee of the Convention has anything connected with this subject in their charge?

Mr. HALLETT. The Committee on the House of Representatives have it in their charge.

Mr. BRADBURY. As I understand it, this subject has not been referred to that Committee at all. The resolution was introduced by the

gentleman from Cheshire, (Mr. Cole,) and referred directly to the Committee of the Whole. It has been reported from the Committee of the Whole, and now lies on your table in Convention. I submit that neither that nor any other Committee have the matter in charge, and that the motion of the gentleman for Wilbraham is not, therefore, necessary.

Mr. HALLETT. Will the gentleman allow me to explain? The Committee on the House of Representatives have undoubtedly the whole matter connected with the House of Representatives in their charge.

This resolution, introduced by the gentleman from Cheshire, was referred by mistake, as I understand, to the Committee of the Whole, and upon that we have been acting, and it is that resolution which now lies upon your table. The Committee on the House of Representatives still have the subject before them, and it is to relieve them from its farther consideration that I have made the motion. Now, is there any necessity of having a report from that Committee? We have the whole subject before us, and why should they bring it before us again by a report? Why not discharge them from its consideration, and dispose of the matter at once. I hope this motion will prevail, and then we shall not be troubled with another report of that Committee upon the subject.

Mr. COLE, of Cheshire. I desire that the members of the Convention shall understand that my only object in introducing this resolution was, that it might be referred to the Committee on the House of Representatives. I still desire that it should take that direction. I do not understand that that Committee will have to meet again for this purpose alone. I understood, from its chairman, (Mr. Griswold,) that they would have another meeting, and I therefore introduced the resolve for the purpose of bringing the matter before them. I still desire that the resolve may be thus disposed of. It will not consume any more of the time of the Committee. They have the subject properly in their charge. They can report to the Convention, and then we shall have the subject regularly before us. I hope the motion of the gentleman for Wilbraham will not prevail.

The PRESIDENT. The Chair understands that an order was sent to the Committee having in charge the subject of the House of Representatives. The subject is, therefore, properly before that Committee, and the question is now upon the motion of the gentleman for Wilbraham, to discharge that Committee from the farther consideration of that subject.

Mr. BATES, of Plymouth. I desire to say, that, according to my understanding, the motion just now stated by the Chair is the precise question before the Convention. In the first place, an order was referred to the Committee on the House of Representatives, embracing the subject of a quorum, and all other matters relating to the House of Representatives. Subsequently, a resolution was introduced by the gentleman from Cheshire, (Mr. Cole,) upon this subject, and by mistake was referred to the Committee of the Whole instead of to the standing committee, where it should properly have gone. There was no necessity for the resolution, inasmuch as an order which had gone before it made it the duty of that Committee to consider the subject. Now

that Committee propose to have a meeting to-morrow morning, for the purpose of considering that among other subjects. I hope, therefore, that the resolution reported from the Committee of the Whole will be allowed to lie upon the table until the Committee shall report what number they think necessary to constitute a quorum, and then let the whole matter be disposed of. With a view, therefore, of giving that Committee an opportunity to report upon the subject, I move that the Convention do now adjourn.

The motion was not agreed to.

Mr. BIRD, of Walpole. I move the previous question on the motion of the gentleman for Wilbraham.

The previous question was seconded, and the main question ordered to be now put.

The question was then taken, and the motion agreed to. So it was

Ordered, that the Committee on the House of Representatives be discharged from the farther consideration of so much of the subject referred to them as relates to a quorum in the House of Representatives.

On motion of Mr. ELY, of Westfield, the Convention then adjourned until to-morrow, at nine o'clock, A. M.

FRIDAY, July 15th, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President at nine o'clock.

Prayer by the Chaplain.

The Journal of yesterday's proceedings was read.

Orders of the Day.

On motion of Mr. BUTLER, of Lowell, the Convention proceeded to the consideration of the Orders of the Day.

Limitation of Speeches.

The PRESIDENT stated the first business in order to be the consideration of an order presented yesterday by the gentleman from Bernardston, (Mr. Cushman,) to limit the time allowed to each member to speak upon any question, to half an hour.

Mr. BUTLER observed, that he did not mean to oppose the adoption of the rule; but, he would remark, that we had for sometime had a rule of the Convention, limiting the speeches of members to an hour each, yet that rule had never been enforced in one single instance. Whenever a gentleman had consumed his hour without concluding his remarks, members would cry, "go on," "go on," and he would go on so long as he pleased. Under such circumstances, of course, it would be a personal matter for any gentleman to get up and object. He was in favor of limiting the debate, but he saw no benefit in adopting a rule you could not enforce, and gentlemen had better carry out their hour rule before they undertook to make any new ones upon the subject. Unless there could be an amendment to the order now before the Convention, which should limit gentlemen to half an hour, and then make general consent for them to go on, go for nothing, he thought the rule would be of little avail. He saw, very much, the need of curtailing the debate. He could say all he had to say, and more too, in the course of half an

Friday,]

LIMITATION OF SPEECHES, &c. — CUSHMAN — KNOWLTON — STEVENS — THOMPSON.

[July 16th.]

hour. And if any gentleman thought any good could be effected by the adoption of the order, it should have his vote.

Mr. CUSHMAN, of Bernardston, thought there was a great necessity for something of this kind to be adopted. The Convention were now in the eleventh week of their session. They had already consumed much more time than was expected when they commenced, and some measure should be adopted to bring their labors to a close. He appealed to gentlemen to say if, at this period of the session, half an hour was not long enough for any member to speak? The Convention would not listen patiently to them for a longer time. If they desired their speeches to produce an effect upon the Convention itself, they would certainly fail to accomplish the object by continuing them beyond that limit; and if they desired that their speeches should go upon the record for the perusal of posterity, they would be much more likely to be read by making them short.

In regard to the suggestion of the gentleman from Lowell, (Mr. Butler,) he thought it would be rather inconsistent for him to accept it as an amendment; but he would say, for himself, that if the order was adopted, and hereafter at the close of any half hour speech, there should be a cry of "go on," "go on," he would pledge himself to rise in his place, and object. If the order was adopted, he hoped it would be adhered to rigidly, and he could see no reason why it should not be.

A MEMBER suggested that all the subjects of importance had been before the Convention, and had been discussed to a considerable extent, and there was, therefore, no more need of long speeches.

Mr. EARLE, of Worcester, said, that so far as he was personally concerned, he did not care whether the order was adopted or not, but if it was adopted, he hoped that members would not be allowed to go on by general consent, beyond the time allotted to them under the rule. If one member was allowed, by general consent, to go on beyond his time, no gentleman would think of enforcing the rule against another member who desired also to speak more than his time. He hoped the rule would be rigidly enforced if it was adopted. And he gave notice that if, should it become one of the rules of the Convention, and any member in future was allowed to go on beyond his time, he would move to abrogate the rule itself.

Mr. KNOWLTON, of Worcester, said, he was as anxious as any member in the Convention to bring this session to a close. He had given a practical demonstration of his anxiety in that respect, by sitting quietly in his seat ever since the session first commenced. But there were important questions upon the table of the Convention, which had not been touched. There was one, especially, which he had been waiting a fortnight for an opportunity to call up, but had not yet found a chance—a subject which is regarded by a portion of the community, and an influential portion too, as one of the most important that can be brought before the Convention. While, therefore, he did not wish that any man should occupy the time of the Convention for a moment more than necessity required, he desired that the subject to which he had referred should receive more consideration than it could receive in a half hour discussion. For that reason, he hoped the order would not be adopted.

Mr. STEVENS, of Rehoboth, remarked that he had noticed, since the hour rule was adopted, that when members had spoken to the extent of their limit, there was a general cry of "go on," and they had taken it for granted that such was the desire of the Convention, and without any formal action upon the part of the Convention granting them leave, have gone on. That was all right. He supposed that when any one came to the end of his hour, and no one cried "go on," he would take it for granted that the Convention did not want to hear him, and sit down.

Again, he had noticed that when any attempt had been made here to curtail debate in any shape whatever, for the purpose of progressing more rapidly with the business, nothing had been accomplished by it, and he believed no good would be accomplished by the adoption of this limit. There was yet important business to come before the Convention. The gentleman from Worcester, (Mr. Knowlton,) had referred to an important matter which he had been for some time waiting for an opportunity to call up.

So far as the one hour system was concerned, if any gentleman could not say all he wanted to say in that time, and it should be the general wish for him to continue, he saw no objection. He should vote against the adoption of the order.

Mr. WALKER, of North Brookfield, trusted that the motion would prevail, as the Convention ought to adjourn next week, and the adoption of this rule would facilitate such a result. The hour rule had worked well, and although in a few instances speakers had been allowed to go on beyond their hour, yet we had gained a good deal of time in the long run by its adoption. He hoped, therefore, that the present proposition would be adopted.

Mr. ALLEN moved the following amendment, to come in at the end of the resolution:—"Provided the chairman of each Committee of the Convention shall be allowed one hour upon the subject of his Report."

The question was taken on the amendment, and it was agreed to.

The question was then taken on the order as amended, and it was agreed to.

Loan of State Credit.

The PRESIDENT. The first question before the Convention is upon the motion of Mr. Thompson, of Charlestown, to reconsider the vote by which the resolve concerning the loan of the State credit, was ordered to a second reading.

Mr. THOMPSON, of Charlestown. I have but few words to say in reference to the motion I had the honor to submit a few days since. I deem the question to be too important, involving as it does the great interests of the Commonwealth, to be settled by so thin a House as it was the day when the amendment was offered to the original Report, and adopted by the Convention. I am opposed to that amendment, and desire to submit some reasons why I am thus opposed. Sir, I am opposed to thus restricting the legislature in their action upon a matter of so much interest to the Commonwealth. What has been the experience of the State in relation to the action heretofore taken by the legislature upon this subject of loaning the credit of the State? Has it not been promotive of her best interests? I believe no one will deny that it has, at least no member has as yet denied it. Has it not done

more to develop the mineral and other resources of the Commonwealth, to build up villages and increase the taxable property of the State on the lines of the several roads to which the loans have been made, than any other cause? And I would ask, has the Commonwealth suffered any loss, or is it within the range of probability that she can suffer any loss, from the course pursued on this matter? I believe no one will for a moment pretend that she has, or that she can. Two corporations to whom smaller loans have been made by the State, have been prepared to reimburse to the State, and if I am correctly informed, have offered to redeem the whole, or a large portion of that loaned to them, but the Commonwealth declined taking it. How stands the matter with reference to the other great corporation about which so much has been said here, and to which the loan of four millions of dollars was made. The Commonwealth holds stock of that corporation to the whole amount of the loan, besides having a preference over the whole stock held by individuals in that corporation, which is now worth about par, and has been within a short time above par, and could have been sold in the market at a profit of over \$50,000. It may be asked, why was not that done? I believe a good and sufficient answer to that is, it was for the interest of the Commonwealth to allow it to remain, for the reason that the State was receiving from that stock seven or eight per cent. interest, and she could not have obtained over five per cent. upon the money derived from the sale thereof; hence, as a business transaction, I say it was a wise and judicious course for the executive to refuse to sell the stock, or take any portion of the money.

We are told these loans were an experiment. Admit they were; but does the success of an experiment furnish any argument why it should not be repeated? I think not.

The amendment which was adopted, I conceive to be one that amounts to an entire prohibition of loaning the credit of the State, under all or any circumstances. What is it, and what does it require? A vote of two-thirds of both branches of the legislature—a greater vote than is required to amend the Constitution. I think, Sir, it would be more to the credit of the Convention, to come up openly and boldly, and assert, in the organic law, that the credit of the State shall never be loaned, than to attempt to prohibit it by such an indirect measure as this amendment would practically carry out. Sir, I am in favor, in all cases, of doing things openly and boldly, and not by any covert means, or the introduction of amendments which may have some plausibility in them, but which, when they come to be applied practically, amount to a prohibition, as much as if explicit words to that effect had been used in the Constitution. I wish that the legislature may stand, in reference to this matter, as they have stood heretofore; and, as I before remarked in relation to the experience of the Commonwealth, it does strike me that it is the dictate of wisdom to profit by the experience of the past. Generally, in business matters, the lessons of experience are the most advantageous and profitable; and I think we need not fear any loss by following the experience of the past in this matter, and allow every case that comes up to be judged of or acted upon in reference to its merits. There may be, and I have no doubt there will be, cases come up when the interests of the Commonwealth may be

Friday,]

LOAN OF STATE CREDIT.—THOMPSON—GRISWOLD.

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promoted to as great an extent as they have been in times past; but if we allow this amendment to remain as the action of this Convention, however great may be the necessity, and however much the interests of the Commonwealth might be promoted by carrying out or adopting the same policy which has been heretofore pursued, the gates are entirely closed against the adoption of any such policy. I hope, therefore, that the restrictive amendment will be rejected, upon farther consideration, and that we shall trust the servants of the people to legislate upon this subject as they have in times past, believing, as I do most fully, that the interests of the Commonwealth will be guarded and protected, and that we may expect a promotion of our true interests, instead of any loss which may accrue from such a course.

Mr. GRISWOLD, for Erving. I have been desirous, at some stage of the proceedings, to make a few remarks in relation to this matter, and I will now occupy but a few minutes of the time of the Convention. It seems to me that some false issues have been raised in the course of this discussion. In the first place, the proposition which has been adopted by the Convention, and which it is now proposed to reconsider, will have the effect of putting it out of the power of the legislature hereafter to make a loan in any case; because, if you make a restriction that it shall require a vote of two-thirds of each branch of the legislature, any gentleman can see that it is equivalent to shutting down the gate altogether. I have taken the trouble to go back and examine the yeas and nays upon the loans which have been made heretofore, and I find that where they were taken in the House, in no one instance—I have only examined those in relation to the Western Railroad—did one of these loans pass by a vote of two-thirds of the members present. If you require a vote of two-thirds of all elected, it is nearly absolutely certain that no loan hereafter can be passed by the legislature, so that the question before this Convention is, whether you will do as you have done in times past, and leave it to the legislature to settle these matters upon their merits, or whether you will put an absolute prohibition into the Constitution. That is the practical effect of the proposition which we now propose to reconsider. I am not a little surprised at the course which this question has taken. Who supposed, when this Convention was called, that the proposition would be seriously entertained here of incorporating a provision in your Constitution which should forever after tie up the hands of the legislature, and put it out of their power to enter upon and maintain such a policy, however great the emergency might be for a different course of policy. This is a new proposition. It was not entertained by gentlemen who first advocated the proposition for calling this Convention. I think that our true policy requires that we should make such changes, and such only, in the Constitution as are clearly warranted and demanded by the public sentiment of the Commonwealth. I think it would be a short-sighted and dangerous policy for this Convention to enter upon experiments and incorporate into the Constitution a provision in regard to which no great feeling was entertained—a provision which, perhaps, in its results, might endanger the whole Constitution. I say then, as a matter of expediency, let us confine ourselves in our action here to those changes which the public clearly de-

mands, and upon which there cannot be that diversity of sentiment which must exist in regard to the question now before us. In the first place, is there any necessity, any exigency for incorporating such a provision into the Constitution? I do not now raise the question as to the expediency or propriety of granting loans by the State at all; but is there anything in the past experience of Massachusetts which requires that any such provision should be incorporated into the Constitution? None whatever. Massachusetts has loaned her credit to seven different railroad corporations. Almost every portion of the Commonwealth has received the benefit of the resources of the Commonwealth in this respect, and every one of these loans has been perfectly safe to the Commonwealth. I have taken the trouble, in order to put this question at rest, to examine this matter myself, and I have a letter also before me from the auditor of the Commonwealth, who of course is perfectly familiar with this whole subject, in which he says that there is no probability that the State will ever lose the first dollar by it. Every one of these lines is perfectly secure; the interest has been promptly paid whenever it was due, and the principal itself is sufficiently secured in future, and two of the roads have paid up the loans. If this be so, what is the reason for incorporating into the Constitution a provision such as this, when the legislature has hitherto been a wise and safe depository of this power. Why, gentlemen say, because other States have run foolishly into debt. This reminds me of a person in health sending for a physician. The physician calls, and he tells his patient that he is not sick, and that he has no need of a physician; but the individual says, My neighbor is sick, and I shall certainly be sick, and I must take some medicine; and thus, against the protestations of the physician, he concludes to take medicine and thus destroys his health, when, if he had let it alone, he would have been quite well. The fact that other States, upon this subject of granting loans, have run into experiments, is no argument for Massachusetts.

Allow me to say a single word in relation to the matter of our farms being mortgaged. I do not know that I should have said anything upon this point, had it not been that an appeal was made to the Democratic portion of this Convention. I know very well that at one time there was a great cry in this Commonwealth that our farms were all mortgaged in consequence of loans to the Western Railroad. I am free to confess that I joined in that cry myself; and it was one of those things which the party with which I was associated used for political capital for several years. I was honest in the sentiments I then entertained, that our farms were mortgaged, and that these loans were not safe; but a most careful examination of the whole matter, together with the experience of eight or ten years, has convinced me—and I am equally honest in saying now what I know to be true—that there is no incumbrance whatever upon our farms in this respect, but on the other hand, there can be no doubt that the real and personal property of Massachusetts has been advanced in value by these loans, many millions.

Why, Sir, I speak from the book in relation to this matter, for I have been now nearly four years in the direction of the Western Railroad, as one of the State Directors. Will gentlemen just look

for one moment at the position of the Commonwealth of Massachusetts in relation to the Western Railroad. That road, in round numbers, cost \$10,000,000; \$5,000,000 of which is represented by capital stock, \$4,000,000 of which is owned by private stockholders, and \$1,000,000 by the State. The other \$5,000,000 is represented by scrip; \$4,000,000 of which is State scrip, or sterling bonds, and \$1,000,000 of which is scrip of the city of Albany. Two sinking funds are provided, one for each amount of scrip. These funds are instituted by the premium on the sale of the scrip, one per cent. which the Western Railroad is obliged by law to pay, annually, into each fund, and the annual increase of the funds by interest.

Since the opening of the road from end to end, that is, since about 1844, the Western Railroad has paid the interest on this five millions of scrip, has paid one per cent. annually into each of the sinking funds; has built a second track from Worcester to Springfield; has greatly improved its baggage and passenger cars; has built new, large and commodious depot buildings and freight houses along its whole line; has paid an annual loss of from five to \$8,000 on the guaranty on the Pittsfield and North Adams Railroad; has paid its president a salary of \$5,000 annually, and other officers and agents in proportion, has suffered a defalcation which shocked the whole financial community, resulting in a loss of from \$50,000 to \$75,000; has a contingent fund of over \$100,000, and during this period has paid upon the five millions of stock a semi-annual dividend of four per cent.

Now, what is the state of this matter? The sinking fund of the Western Railroad loan is now nearly \$800,000; the sinking fund of the Albany loan is more than \$350,000. The sterling bonds, the scrip issued by the State, is payable in thirty years from the time it was issued, and of course about 1870, and the Albany scrip is payable, I believe, about the same time. If you will go down to the auditor's room and see him, (he having made the calculations,) he will tell you that if the Western Railroad continues as it has for the last few years, it is absolutely certain that in 1870 it will be nearly or quite able to meet the \$4,000,000 scrip, the sterling bonds, and the \$1,000,000 Albany scrip. Then what have you? You will have—

Mr. HOPKINSON, of Boston. I wish to ask the gentleman for Erving, a question. I wish to know if the Western Railroad Company has paid four per cent. annually from the time the stock was paid in.

Mr. GRISWOLD. I said from about the time the road was completed, which was in 1844 or 1845.

Mr. HOPKINSON. I think it is not more than about three and a half per cent. since the stock was paid.

Mr. GRISWOLD. I presume that may be so. Mr. HOPKINSON. Does the gentleman say that the double track was built out of the income of the road?

Mr. GRISWOLD. I suppose it was not. I am only stating general facts in relation to the road. What I say is this,—and you will not rely on my authority, if you will look through the Auditor's Reports of the last few years, you will see the same facts stated there,—that you will find that in 1870, these five millions of scrip will be nearly or quite paid off. Then how will the

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Western Railroad stand? Why, the entire income of that road will be applied upon the five millions of stock, one million of which the State owns.

Now the interest which the Western Railroad pays annually on the \$5,000,000 of scrip, and the one per cent. which it pay into the sinking funds, will then be divided upon the five millions of stock, in addition to the eight per cent. which we now divide annually, making fifteen cents on the dollar, which they will divide after about 1870, upon the five millions of stock. So that, instead of the State's ever losing a dollar from the Western Railroad, if we can believe in the future, she will double the value of her million dollars of stock which she now owns. Every dollar will be worth double its par value. The auditor has reached the same conclusions in his reports for the last few years.

Now what incumbrance is that upon the farms in Massachusetts? It is the same incumbrance which the issue of scrip in the city of Boston, for obtaining Cochituate water is, or, rather it is not half as bad, for I understand that the income from the water does not pay the interest on the scrip issued for obtaining this water. But the introduction of this water, at the expense of more than five million dollars of scrip of the city of Boston, has advanced the value of the real estate in this city, and why? Because the benefits, present and prospective, arising from the Cochituate water, are greater than the interest on the five millions or more of scrip which they have issued to bring that water into the city of Boston. It is just so in the matter of the State scrip, only it is a much better case. I am willing to stand upon the facts in the case, and I dislike to have gentlemen take us back to the old issue upon the subject of having our farms mortgaged. I know very well that the party with which I was connected, thought, at that time, the loans would be unsafe, and I dare say, if I had been a member of the legislature at that time, I should have voted against them myself. But all experience has shown us that the loans are safe, and that the State, so far from losing anything, will make a half a million or a million of dollars, if she holds her stock till 1870.

But the great point in this question, is this. Will you leave this matter to the legislature, or will you submit it to the people, or require a two-thirds vote? The question of submitting it to the people, I think, is now out of the case; that has been decided shall not be done. It seems to me that as this policy has worked well heretofore, as the State has incurred no risk, as the State is in no possible danger from any loan hitherto made, it is the part of wisdom and good policy to leave it where we find it. It will be soon enough to put in a constitutional provision upon the subject, whenever the State is in danger in this respect.

I will say that, as something has been said in relation to the Hoosac Tunnel, that is not the issue before this Convention. It is not properly raised in this connection. The question is, whether we will trust the legislature, who are the proper judges, and before whom the facts in one case and another can be presented, so that they will be able to understand them. The question is, not as to this measure or that measure; and I am not to be drawn into a controversy on such an issue, for I am unwilling to tie up my hands in that manner. Other counties, the county of

Bristol, the county of Plymouth, the county of Barnstable, the county of Essex, and even the county of Suffolk, may need this aid. The time may come when it will be an object of immense importance that a loan should be made by the State, for an object in one or the other of these counties, which every-body will agree is important and safe. Now will you put a provision into this Constitution which will tie forever the hands of the legislature, when you might as well leave it as it has been left in the past, to the discretion of the legislature, which has acted wisely and safely heretofore?

I wish to say a single word farther. I dislike to allude to matters that concern party, and I rarely or never do it in debate. But an appeal has been made, evidently with a design to influence some gentlemen with whom I am politically connected, or the party with which I am associated. Now, allow me to say, it has always been a Democratic doctrine in this country, so far as I understand it, to favor internal improvements; and every Democratic president, from Jefferson down to president Pierce, has done it. Jefferson, Madison, Monroe, Jackson, and Polk, each in turn, suggested to the people of this country, the propriety of changing their Constitution, so that a system of internal improvements could be carried on by the general government, so powerfully were these great men impressed with the necessity of internal improvements, and with the belief that the Constitution did not permit them to be made by the general government, except to a limited extent. And several of them strongly recommended that, so long as it could not be done by the general government with the United States Constitution unamended, it should be done by the States themselves, which would better understand the wants of each locality. I do not wish to advise to enter upon any rash experiments. I would not grant a loan in every case, but I would leave that power with the legislature; so that whenever there is a necessity, and wherever there is a great public exigency, and the loan can be safely made, I would make it, at least. I would leave it to the legislature, which is the proper body to settle that question. Shall we sit here to forge chains and shackles and sepulchres, I may say, for the industry of Massachusetts? For one, I will not do it.

I have not time, but I should like if I had a few moments, and if I had the ability, to set forth the advantages which have accrued to Massachusetts, to Boston, and to every part of the State, from the great railroad enterprises which were aided, to a very great extent, by the credit of the Commonwealth, many of which would, probably, not have been built without that aid. And this aid has been granted, too, without the Commonwealth being in danger of losing the first mill, and by simply endorsing this paper. I would like, if I had time, to set forth in my poor way, some advantages which have accrued to the people of this Commonwealth from these loans, or from the railroads to which they were loaned. Sir, standing here, we seem to underrate the great advantages to the farmers, the mechanics, to the manufacturers, to the mercantile interests, and to all the industrial pursuits in Massachusetts, accruing directly and immediately from the construction of these railroads. Look over the valuation of 1850; look at Pittsfield, and Springfield, and Worcester, and Boston, and Lowell, and Fitchburg, and all

the main points where these great railroads pass, and look at the millions and millions of increase of property. It is a direct and immediate result, to a very great extent, of the construction of these roads. Sir, when the policy of Massachusetts has resulted in such beneficence and advantage to the State, I am surprised that there is any man of any party who will come up here and seriously propose to shut down the gate entirely, and put it out of the power of the legislature, even in the greatest exigency and the safest loan, to grant the credit of the State.

Sir, for one, I take my stand on the side of internal improvements; not that I would embark the credit of the State to an unreasonable or unsafe extent; but, for one, living in this age, I take my stand in favor of internal improvements, and I undertake to say that no man can stand up and defend himself in Massachusetts, in New England, in New York, or in this country, who is opposed to internal improvements.

I hope, Mr. President, that this matter will be left, as it has been before, with the legislature. There is no danger of any unsafe loan being made. The great corporations which are interested to defeat any loans, using their influence in connection with men who are themselves opposed to these loans, will be power enough for any company who wish for a loan, to meet; and there will be no danger whatever, that an imprudent or unsafe loan will be made hereafter.

MR. WILKINS, of Boston. MR. PRESIDENT. It has been no purpose of mine, to occupy a moment of the time of this Convention in discussing this subject. I have listened to the discussion, thus far, without wishing to be heard, because I thought I saw that the sense of this body was correct, and needed no aid from me, in coming to a correct conclusion. But the position of this matter has undergone a change—the right appears to me in jeopardy—and I must claim the indulgence of the Convention, while I briefly express my views upon it.

It is altogether too late to attempt to disguise the fact, that the topic under discussion is indissolubly connected with the Hoosac Tunnel. The first speech made on the subject, by the gentleman from Abington, (Mr. Keyes,) has dovetailed them together; and nearly every subsequent speech and vote has only demonstrated the connection. Hence, it has seemed to me, that we have been engaged, while discussing this matter, in legislation, and that of the worst kind: special legislation. And, it would have been hardly an inappropriate mode of proceeding; to have issued an order of notice to the Troy and Greenfield Railroad, so that they might appear with their counsel and witnesses, and have a full hearing upon the merits of their case, before the Committee of the Whole.

It is true that some few have addressed this body, either in Convention or in Committee, upon the merits of the question, without any apparent bias. My colleague, who early addressed the Committee, (Mr. Hillard,) in favor of the Report of the Committee, and the gentleman representing Manchester, (Mr. Dana,) and my colleague, (Mr. Gray,) who immediately followed him, both in favor of the Report, seem to me to have fully and satisfactorily met every argument that has been or can be brought on the other side—and they have kept aloof from present exigencies, and from preconceived opinions.

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But how is it with some others who have taken part in this debate? Are they in a position to bring to this topic unbiased opinions, and candid judgment—and are their arguments entitled to the right in this matter, which we should all deem them entitled to on indifferent subjects?

The gentleman from Taunton, (Mr. Morton,) has taken a conspicuous part, and made untiring efforts to defeat the acceptance of the Report, and what is his position? Why, Sir, he has himself told us, that his views on State credit were put upon record many years ago; and some of us well remember them. He has himself alluded to the *probable* fact, that in consequence of these recorded opinions, he found that he was obliged to quit a temporary office, for the attainment of which he had given up a permanent one. If that gentleman has any regrets for the change he then made, I will assure him that I believe he has the hearty sympathy of his political opponents. We, then, and still think, he left an office, the duties of which he was eminently well qualified to discharge, and was discharging, with great usefulness and acceptance, and entered upon another office, about his qualifications to fill which, there were at least two opinions at the time, though there appears to have been an approximation to one sentiment on the subject before the year expired.

Now, Sir, it appears that this sentiment concerning the credit of the State, formed and enunciated in the dark prospects which then overhung the Western Railroad enterprise, is still, with him, a cherished sentiment. It has cost him too much not to be highly prized, and he now is desirous that the Convention and the people should adopt what the people then repudiated. The gentleman undoubtedly formed, and still cherishes this opinion, in all honesty and sincerity; but I submit, whether there be not with him some pride of opinion, some sticking for consistency, which may obscure his better judgment, under the particular circumstances of the present case; and whether he has not attached a value to this opinion, derived rather from what it has cost him, than what it is worth to us.

And how is it with other gentlemen, who are throwing obstacles in the way of accepting the Report? One of my colleagues, (Mr. Hopkinson,) who has twice spoken on the matter in opposition, (though I was not present to hear him,) daily eats the bread that flows from the bounty of the State. Though not connected with the Western Railroad, that I know of, yet he is most intimately connected with another corporation whose life's blood is derived from the Western, and the Norwich and Worcester Railroads—both of which owe their existence to the credit of this State. Now, Sir, situated as that gentleman is, surrounded by such accidents as he is, he must feel no surprise if much less weight be attached by others to his arguments and suggestions, than he thinks them entitled to, and which, under other circumstances, they would undoubtedly be entitled to.

But my catalogue is not yet finished. One other colleague, (Mr. Giles,) has proposed an amendment which threatens the acceptance of the Report; and still another colleague has announced his intention to offer another in opposition, if an opportunity occurs. And, what is the position of these gentlemen in relation to this matter? I find them, Sir, both to have been opponents to the

Hoosac Tunnel bill, in the House of Representatives in April last. Among the *nays* upon the passage of that bill, I find both their names recorded, with those of seven others only of the Boston delegation. Now, Sir, these gentlemen are committed, both of them, upon this matter. They have preëxistent opinions to sustain, a consistency to maintain; and they appear to be throwing the weight of their talents into a scale here to defeat a measure which they were unable to defeat in the House of Representatives. If, Sir, these gentlemen had voted for that bill, and now should propose to take from the legislature the power to make such grant, then we should have proof that these gentlemen were actuated by principle and an unbiased judgment; and that in this course they were seeking the public good, though it would conflict with a great enterprise, to which they had showed themselves to be entirely friendly. But, we have no such exhibition before us; but on the contrary, we witness endeavors on their part to induce measures that will embarrass and defeat a great public enterprise, and this under circumstances calculated to raise a doubt of the unbiased character of their judgments and opinions upon those measures.

Here, Sir, I close what I have to say upon the debate thus far. I will now address myself to the matter in hand, and advert to some matters not yet, I believe, touched upon.

In settling the basis of representation, this Convention has departed from what it regarded right, and has bowed to the paramount force—exigency. Were we beginning the formation of a government, we should have formed one differently. We found we were too late in the day to follow out theory, but were obliged to be controlled by practice. Now, Sir, it seems to me that we are in precisely the same predicament in relation to State credit. It is too late to set up a theory, but we must be controlled by practice. The current of State bounty and of State credit is already in motion; its refreshing influence has already been felt, and its sustaining power has imparted its blessings. Credit, both public and private, is the great instrument by which the miracles of civilization are being wrought in this nineteenth century. We have all read the beautiful simile of Junius, which is no more beautiful than true. "Individual credit," says he, "is wealth; public honor, is security; the feather that adorns the royal bird, supports his flight—strip him of his plumage and you fix him to the earth."

Credit, Sir, both public and private, is the great element, the chief ingredient, of all true progress in civilization and refinement. By it, the experience of the past and the hopes of the future are made to blend and work in the present. Without it, we should retrograde, and with rapid strides should return to barbarism. It enters deeply into our social system and civil relations. It is like the air we breathe, everywhere circumambient, but ever unfelt. Deprive us of it, even in a slight degree, and we pine and die. It is a system of mutual obligation and mutual forbearance. It grows and flourishes upon mutual wants and mutual benefits; and it unites and knits together the mass of a community, so that it acts and works to one end like one man.

Now, Sir, I say it is too late to rise up and stay this current of public credit in this State. It has been beneficially exercised. Its blessing are felt every day; and these blessings are of two kinds,

one public and the other private. The credit of the State has been applied to improvements in the northern, the eastern, the southern, and the western parts of the State; but not in the north-western. The ground on which this credit was loaned, was that the whole State, the public, was to be benefited thereby. This was true ground; but individual benefit and private good were also blended therein. For example, the Western Railroad was aided because it was deemed to be a benefit to the whole State. But, besides this public benefit, every farmer and mechanic on the line of the road, received a personal and private benefit which was not partaken of in any considerable degree by others of the line.

Now, to accomplish these public and private benefits, the credit of the State has been loaned, and, as the gentleman representing Wilbraham, truly remarked, every man's farm and stock has been mortgaged for its redemption. To construct the Western Railroad, the farms in Shelburne have been just as heavily mortgaged as the farms in Chester; but, besides the public benefit derived therefrom, which accrues to the inhabitants of both Shelburne and Chester equally, there has accrued to the inhabitants of Chester an enormous private benefit which is not shared at all by the inhabitants of Shelburne. This benefit lies in the increased value of land, of water power, and other articles, growing out of the increased facility of reaching a market.

Out of this very unequal private benefit growing out of the public loan, arises a demand, I will say a claim, for reciprocal accommodation; a claim resting upon justice, though of course not to be enforced by law. A claim, the justice of which every upright mind sees, and every honest heart acknowledges: Then, I repeat, that if in the four quarters of the State, great and important private advantages have been derived from the loan of the State credit over and above the advantages derived equally to all the citizens of the State; and if these private advantages have been attained by a lien upon the private property of those living out of the range of these advantages—then I say these citizens who have obtained no private advantages from such public loan or credit, have a claim, and I think a strong and irresistible one, for reciprocal accommodation and favor.

As this point has not been before alluded to, I will dwell a moment upon it.

The people of this State, dwelling along the lines of various railroads, and especially upon the line of the Western, have derived great benefit individually from the loan of the State credit, in which benefit the people living in the north-western part of the State had no interest. But the people living in the north-western part of the State, were as much bound, and their property as much pledged to pay said loan, as were those living in the benefited districts. Now, it seems to me, that out of this fact which exists, and has existed for years, the people of the north-western part of this State have a claim, a forcible and a valid claim, upon the people of the other parts of the State for reciprocal favor—a claim which will not be lost sight of, and not be the less urgent, because there is no tribunal to enforce it. And while such a claim exists, and is unrealized, it is, as it appears to me, a gross piece of injustice to increase the difficulty, and throw impediments and obstacles in the way of obtaining that reciprocal benefit to which they are

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entitled. I cannot reconcile it to my sense of justice and propriety, thus to shut down the gate at this time, and stop the flow, I will not say of favor, but of equity.

But, it will be said that the proposition now before us does not shut down the gate, it only increases the ordinary and common difficulty of accomplishing the object. This is true in the end, but not, I think, in fact. I think it shuts down the gate.

Sir, the gentleman for Manchester, (Mr. Dana,) in his forcible argument, stated that the questions which would arise in relation to the State credit, would be *sectional* questions. This is true, and need not be put in a prospective form. It is now, here on this floor, and has been and will be in our legislative hall, a sectional question. We hear it here in the speeches on what should be an abstract question. We see it in the votes. The interests promoted by and connected with the Western Railroad, are here, and have been elsewhere, an adverse party to this claim in equity. There is no pretence that that corporation is not deeply interested in this question, and did not influence many votes upon it. Now this is sectional. That road runs, with its adjunct having identical interests, through the whole length of the State. Its interests are identified with the interests of the people dwelling upon its line, between Boston and the New York line. There is a tremendous local and sectional interest already blossomed, and fast running to seed, standing before the public, and in divers ways operating upon public sentiment adversely to the exercise of the proposed power by the legislature.

Now, Sir, we have agreed to a basis of representation which, in future, will give a House of four hundred and seven members; a majority will be two hundred and four, and two-thirds two hundred and eighty-one. It will require, then, seventy-seven more votes in a full House to carry such a measure, if the proposition before us be carried, than it will to pass ordinary bills. Is there here a single individual who believes that a bill of the character of the Hoosac Tunnel bill could ever be carried by such a vote, in the face of such an enormous local and sectional opposition as has already manifested itself, and is lively and active at this moment? And this, too, entirely irrespective of the merits of the case. For the greater the merits of the case, the stronger and more vigorous the opposition. If the Tunnel cannot be made, then the interests on the line of the other road have no special reason for opposition; but the more feasible such an enterprise is proved to be, the more those interests are endangered, or deemed to be endangered.

I cannot, therefore, think that any person can vote for the proposal before us, who is not willing to pass judgment upon the Tunnel enterprise, and shut down the gates of right and equity upon the people of that section of the State.

Now, Sir, allow me to say a word in relation to the effect which such an article in the Constitution will probably have upon its adoption. I do not profess to know very well what the people will do and what they will not do, in given circumstances. They have done some things which I thought they could not do, and they have sometimes failed to do what I thought they could do. But, Sir, we all know that sectional feeling is not all on one side. When it is indulged in in one region, a counter feeling will certainly be engen-

dered in the other. If the proposed provision be inserted in the Constitution, how will the northern half of this State, from Boston to the New York line, vote upon it? Sir, it seems to me that we need no prophet to tell us; it seems to me that the people in that region, must be hungering and thirsting for a new Constitution, if they are willing to adopt one containing a clause so hostile to their interest, and inserted with almost the avowed purpose of rendering the execution of a favorite enterprise forever impossible.

Mr. President, allusion has been made here to the practice of other States. It seems that a considerable number of the other States of the Union, have adopted a clause in their Constitutions, prohibiting their legislatures from granting the credit of the State to the aid of individual or corporate enterprises. Sir, I imagine that there is some misapprehension upon that subject. Most of the States which have adopted this provision—at all events very many of them—are States which have been unfortunate in their undertakings, and have suffered considerable loss in consequence, and incurring large debts. But, Sir, I apprehend that in most of the cases in which losses have been sustained, they have been those in which the State itself has undertaken to carry out the enterprise, and not in instances in which their credit has been loaned to companies for that purpose. Michigan, Illinois, Indiana, and Pennsylvania, to some extent—though not to the full extent—and all the other States which have suffered, are those States which have undertaken to do their own work, and reap the profits. I do not remember—to be sure I am not very well posted up in these matters, and there may be instances which have not come to my knowledge—but I do not believe that a single instance can be found of any of those States having loaned their credit to the amount of a single pistareen to any private company; and what losses they may have incurred, have doubtless been in consequence of having undertaken these works themselves; and there can be no doubt, that they have met with great losses. The State of New York has adopted both of these modes. She has both loaned her credit, and carried on internal improvements on her own account. She has aided companies; and one which I have now particularly in my mind, is the New York and Erie Railroad. When that road was first projected, the company raised a certain sum—I do not remember how much—but having a very hard grade to overcome in passing from the Hudson River to Orange County, they spent all their money, and the State loaned them several millions. Still, not having enough to complete it, the State took the road and sold it at auction, but did not realize anything worth while, and the State itself sustained considerable loss. But now that road is completed; and when four or five millions of dollars had been expended upon it, and the principal difficulties overcome, another company came in and took up the road and completed it. Now, Sir, it is quite probable, that the whole of that region would yet have been without that railroad accommodation, had it not been for the expenditure of the State; and if you now go into that State, I doubt whether you can find five reasonably intelligent men in the whole of it, who do not rejoice at this day that the State made this advance.

[Here the hammer fell.]

Mr. LADD, of Cambridge. I am glad to find at length that the policy in regard to granting the

aid of the State credit in furthering and carrying on the great objects of improvement in our Commonwealth, has at last received its proper consideration; and while I concur entirely in what appear to me to be the very conclusive views of the gentleman for Erving, (Mr. Griswold,) on this subject, as a reason why we should not now, and at this stage of our progress, forever close all chance in the future of aid from the Commonwealth in regard to projects of this character, I will take the liberty of presenting very briefly my views upon this question; and while they may be very general in their character, I will premise that if they have no other quality to recommend them, they shall at least have that of brevity.

I am one of those who, from principle, have always adhered to that policy of legislation which is not confined to the minimum amount of legislation—not to those simple and naturally general laws—but I have always regarded it as one of the highest functions of the Commonwealth, and of its legislature, to extend a beneficent and parental aid to those projects which tend to develop all the resources of the State, and for the improvement of the possessions of all its citizens; and is there any gentleman on this floor, or any man in this Commonwealth, that will deny that that policy which has been pursued for twenty or twenty-five years in encouraging these enterprises, has been a good policy? Is there any man who will deny that it has been a sound policy? Will any man deny that it has brought untold riches to the Commonwealth, and that it has contributed, directly or indirectly, to the wealth and prosperity of our citizens? No gentleman, I think, will deny it. Then the question comes, whether at this time the policy should be changed; whether we should introduce into our organic law in absolute prohibition that no legislature hereafter shall grant any such aid? And yet I understand that to be the effect of the amendment as it now stands, if it should be adopted. This matter, then, it seems to me, depends upon higher considerations. If we come to that conclusion, we must foresee that the time has arrived when no farther aid should be granted, and all supplies of this nature in future should be forever stopped. Now, this is sufficiently answered, by the fact that we have brought into this discussion a great enterprise, in which a large portion of the Commonwealth is directly or indirectly interested. It can only be brought in here for the purposes of illustration; and does not every gentleman know that if this provision passes, requiring a vote of two-thirds of both houses of the legislature before any such grant is made, it will defeat the object to which I refer, and perhaps every object, however meritorious?

I concur with the gentleman for Erving, that it might, and in all probability will, have that effect in the organization of the legislature of the Commonwealth on questions of that kind; that there will be differences of opinion—honest differences of opinion—in the first place, as to its necessity, and in the second place, as to its security, and in the third place, as to the propriety of granting aid in any particular instance; and the result will be in every case, however meritorious, if you require two-thirds of each House of the legislature to concur in the grant, that they never will concur. I think, therefore, that gentlemen ought not to come hastily to the conclusion that it may

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never hereafter be desirable that such aid should be granted. And if that be so, are gentlemen prepared to incorporate a provision into the Constitution, the effect of which will be to declare that it never hereafter shall be granted? Such will be the effect of the provision as it now stands. Why require that two-thirds of the legislature shall be required to concur? Sir, it seems to me that such a provision originates in this consideration: that you are not willing to trust the legislature. A distrust of future legislatures, appears to me to be the sole foundation of the argument on which the proposition is based. And why should that be so? Why are you unwilling to repose in successive legislatures a reasonable confidence that they will not abuse the trust confided to them? With all the checks and securities that you have, is there any danger that they will overstretch their power? Is there any danger that any proposition will be passed, unless it be such a one as ought to be adopted? Sir, with the light of past experience, with the facts which we have all around us, illustrating the policy of the Commonwealth on this subject, it seems to me that we cannot shut our eyes to the importance of leaving this matter entirely free to the legislature. We do not, and we cannot know what important questions may arise. I am, therefore, in favor of a reconsideration of this subject, with a view to strike out that provision requiring the concurrence of two-thirds of each House. I would have the matter left entirely to the wisdom and discretion of successive legislatures to determine. We must repose confidence somewhere; and I do not know where we can repose it better, or more securely, than in the legislature chosen by the people to watch over their interests.

Mr. HATHAWAY, of Freetown. When this subject was under consideration the other day, I had, I believe, about four or five minutes time in which to express what I desired to say. I then stated to the Convention, that at some future time, if I found an opportunity, I should endeavor to present my views in relation to this matter of loaning the State credit. As my friend from Fall River, (Mr. Hooper), remarked, a day or two ago, I never made a set speech in my life, and therefore my remarks may be of rather a desultory character; but I have my views in respect to this question, and they are views which I have entertained for a long period of time.

Permit me to say, before advancing farther, that the gentleman for Erving remarked that this was not a part of the programme under which the Convention was called together. I do not know that it was; but I know very well—as well as that gentleman knows—that this matter has been before the people, and has been discussed for years, and years, and years, that have passed by; and, as my friend from Taunton, (Mr. Morton), said the other day, such is the truth. I have had something to do with this matter for years, and years, and years; and I am not yet convinced but that the argument—I am not about to say in reference to the particular matter which has been referred to, whether all the farms were mortgaged or not, or whether our farmers would suffer from the establishment of railroads or not—but the principle involved in this provision I then maintained, and yet maintain to this day, as being true. In reference to this matter of loaning the credit of the State, or the funds of the State, I have to

say, that the funds of the State belong to the State; the credit of the State belongs to the people, and to the individuals who make up that people. But, permit me to say, Sir, that the individuals who make up the people, have an interest not only in the credit of the State, but they have an interest, also, in the money that is in the treasury of the State. I was remarking the other day, when I was up before, when the proposition of the gentleman from Taunton was under discussion, that that proposition did not go far enough for me, but yet that I should vote for it, because I thought it probably was the best we could get. After it was negatived in the Convention, I made up my mind to take the next best that I could find, and that came as near shutting down the gates as might be; and hence I voted for the proposition of the gentleman from Boston, that is now the subject of reconsideration. If any corporation, Sir, in this Commonwealth—I lay it down as a rule, and more especially railroad corporations, when fairly looked at and considered—will probably yield six per cent., and the community are satisfied that it will yield six per cent., there will always be a sufficient amount of private capital in the Commonwealth to take the stock. It probably never will be otherwise in all time. Hence, if the Hoosac Mountain is to be bored, if there is a tunnel to be made through it, if a railroad in that direction will be a six per cent. paying stock, there is no danger but that sharp-eyed individuals and keen-sighted speculators—the men of money and of means—will be ready to take that stock; aye, plenty of them; and there will be no necessity for ever asking the loan of the State credit.

Sir, the Western Railroad was a matter of experiment; so, too, was the great canal which was opened from Buffalo to Albany. Both of these were mere experiments. Every one saw the necessity of having a great highway from Albany to Buffalo, in order that the waters of the Hudson and the waters of the lakes might be connected. Every one saw the necessity of having a highway between Boston and Albany, as the products of the West might as well and as cheaply find their way to the eastern section of the country, as to go down the waters of the Hudson to the city of New York. But, because we have experimented once or twice, and may have come out well, is that any reason why we should be continually experimenting so long as any person wishes so to experiment? By no means. Shall we bring our experiments into competition with each other? I think that that is altogether unnecessary.

If the Western Railroad does all that is necessary to be done, and all that was expected to be done, under that experiment, then why experiment farther? Sir, I am not disposed here to go into statistics, although I have seen some statistics upon this subject. I am not disposed to show here, if I could, that the reduction upon the carriage of freight is going to be but very small, provided you build your railroad from here to Troy. I rather think that a matter not to be discussed here.

But, in reference to this matter of experiment, what are the facts? The great State of New York took the lead, as to these great avenues of travel which have been opened. She opened her canal from Albany to Buffalo. Pennsylvania followed, and she not only opened her canal, but a railroad,

in order to connect the two extremes of the canal on either side of the mountains from Johnstown on the one side, to Hollidaysburg on the other. It was an undertaking which required a great amount of capital, but being an experiment, not an individual who was a capitalist, dared to hazard his money upon it. It became necessary, then, in order to ascertain whether this experiment would be profitable or not, that the State should loan its credit to the enterprise. It did not exactly loan its credit either, for that great internal improvement belonged to the State, and not to an individual corporation. The State took the stock, and the State built it. There was no asking the State to loan its credit for the encouragement of any association of individuals. The work was State property.

Well, what followed in process of time? The next thing we see, so far as the State of New York is concerned, is a railroad laid along, almost upon the banks of the canal, from Albany to Buffalo. The different links in the chain were built and owned by different corporations, but they are virtually one. Was there any loaning of the State credit to this corporation. No, there was not. But instead of this, individuals of capital vested their money in different portions of that chain, as they advanced from one stage to another. And what did the State of New York do? She imposed upon that road burdens, and because the State itself owned the canal, she would not permit the railroad from Albany to Buffalo to carry a single pound of freight over their road, between those two points, without paying precisely the same duty to the State, which the owners of property transported upon the canal, paid to the State. That was very well for the time being. In process of time, the project of the New York and Erie road was started. I supposed the gentleman from Boston was going through the history of that enterprise; but he did not tell us the end of the matter. That road went on for a time, and they asked the loan of the State credit to assist them. Mark, the first experiment in reference to the canal was paid out of the public purse, and the first road built from Albany to Buffalo, was an experiment paid for out of individual funds. Then comes the New York and Erie road, the object of which was to open another great highway between the waters of the lakes and the waters of the Hudson River and the ocean, for the exportation and the importation of goods, from this section to that section, and the produce of these different sections to New York. They call upon the great State of New York to loan its credit. The loan was made, to the amount, according to my recollection, of three millions of dollars. Well, they undertook to build their road—that is, the corporation, and not the State—with the loan of about three millions of dollars of the State credit to assist them. They constructed the road as far as the village of Elmira, and there they stopped, for want of funds. The stock was not worth a dollar in the market. But they formed a connection with another road which came down from the head of Seneca Lake to Elmira. By this means they were able to diverge to that lake, take a steamboat, and land at Geneva. Now, pray tell me, if they stopped there in the construction of their road, how much better off the State of New York would have been for this loan of three millions of dollars? What was the consequence? The State of New

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York, to induce that company to carry through their road in a given reasonable time, said: "Gentlemen, I know you will never proceed another inch, and the people of the State will lose the money they have loaned you. We know your work is to come into competition for the same business done upon our canal and by the other road. We cannot raise a single dollar from the road to pay us our three millions, and if you will go on and complete your road in a given time, we will give you the three millions of dollars."

That was the condition in which that great Erie road stood. They went through with the work, and yet, with this gift of \$3,000,000, how much is the stock worth? Is it worth the one hundred dollars the share, the par value? By no means, and never will be; and I do not believe that any man in his senses believes it ever will be worth that. After that contribution of three millions, I believe the stock is worth about eighty or ninety dollars on the share. But that is not the end of the matter. The road between Albany and Buffalo comes to the legislature, and says: "You have imposed a restriction upon us in regard to the transportation of freight, and now you have put a road in competition with us. Now, we do not ask of you a gift of \$3,000,000, but we ask permission to carry freight free of tolls at that season of the year when your canal is frozen up. You have imposed upon us a duty, when you could not carry a pound of freight upon your canals. We ask you to remove that restriction, and put us upon the same footing with the other road."

And what did the State of New York do? They took off the duty, and that road is now permitted to carry freight in precisely the same manner as the southern road does, and although duty is to be paid upon goods transported upon the canals, no duty is paid upon that which is carried upon the railroads.

This is the history of the internal improvements of the State of New York. Now, who has suffered from that policy? Who but the individuals that live in the State of New York?

Sir, I should not have said a word in reference to the history of these great matters in the State of New York, had not the subject of the Hoosac Tunnel been introduced here. I am opposed to the proposition of loaning the State credit, from principle. If I had been here at the time when the credit of the State was loaned to the Western Railroad, I should have been opposed to it, because it was a matter of experiment; and I hold that the agents of the people ought never to experiment with the people's money. But the loan was granted, and I pray it will turn out well for the State.

I believe the State of New York also loaned its credit to another railroad, called the Hudson and Berkshire Railroad. What is the condition of that road to-day? I understand it is advertised for sale for the non-payment of the interest to the State. It never will be a road paying six per cent.

Well, Sir, what is applicable to a great community is applicable to a small community, and what is applicable to a small community is applicable to a great State. Now, let us see how this matter has worked, when applied to a smaller body than the State. The city of Bridgeport, in Connecticut, under the authority of the legislature, loaned their credit to a railroad called the

Housatonic. They did this under the mania and fever that was then raging in relation to railroads. Repudiation was the consequence. When the scrip which was issued by them became redeemable, there was a perfect tumult in reference to the matter; and yet I venture to say that every person in Bridgeport, at the time the scrip was issued, was in favor of it. Yet repudiation took place, and execution after execution issued to enforce the payment. They went to the supreme court of Connecticut, and it was not until the law had been confirmed, over and over again, that they would pay.

In consequence of the great amount of internal improvements in which Pennsylvania became interested, she almost came to the door of repudiation. Time after time she could not pay the interest upon the money she had borrowed in Europe.

How has this matter been at the West? This perfect avalanche of excitement and feeling in relation to railroads, which seemed to pervade the whole community here, found its way to the West. And what was the result? Repudiation after repudiation, and disgrace after disgrace; and I would by no means bring the ancient Commonwealth of Massachusetts within that vortex of repudiation which has been exhibited all over the Western States.

But I would go even farther than to prohibit the loaning of the State credit. I would not only say that the legislature should not loan the State credit, but I would not permit the legislature to authorize any municipal corporation to loan its credit to, or take stock in, any corporation whatever.

How came this matter of repudiation to be so extensive at the West? I think I know something about it. The burnt child always dreads the fire. I had a slight visitation in reference to that matter, and perhaps I am not exactly a disinterested witness in relation to it.

Mr. WILSON. I wish to ask the gentleman if he will have the goodness to inform the Convention which of the Western States have repudiated their debts?

Mr. HATHAWAY. Why, Mr. President, I thought what I alluded to was a matter of public notoriety. It will be recollected that Pennsylvania did not pay her interest. I suppose the gentleman would not call that repudiation. There are some of the Western States which, in a like manner, have declined to pay the interest upon their liabilities. I call that repudiation, but I presume the gentleman would not. The difference between us is a mere difference of words, and I am sure we shall not quarrel about that. He knows what I mean, when I speak of repudiation. I do not say that the people of these States refuse, absolutely, to pay their liabilities, but they did decline to pay the interest upon them, and that I regard as an element of repudiation.

Now, Sir, in reference to these Western States, how came they by these State debts? Just look at the history of the matter. It was not in consequence of the great internal improvements by the States themselves. It was not in opening these great public channels of communication, but it was because the people of the various sections of those States seemed to have an absolute mania for these improvements. Corporation after corporation was authorized by the legisla-

ture, supposing that they would be equally beneficial with those great projects which the State had entered into. And what was the consequence? Why individuals connected with those corporations were the sufferers. I speak what I know in reference to this matter, for I have been a sufferer, to some extent, from that mania in one of those corporations. Under Providence, it was my fortune to have a little patrimony, located within the limits of one of them, and it happened to be real estate, and I felt the effects of it. Every town, every county almost, became connected with these projects for internal improvements. And what was the consequence? Why individuals failed in their bonds. They would carry their roads through certain sections, and then bring up. Then they would go into the next county, perhaps, and say: "If you will take half a million of our stock, or get leave of the legislature to authorize you to loan your credit to that amount, one or the other, you may have the railroad through your county. Otherwise, we must go through the adjoining county." Well, Sir, this mania continued to prevail among the people—

Here the hammer fell, the half-hour, fixed by order of the Convention, as the limit for speeches, having expired.

Mr. SCHOULER, of Boston. The gentleman from Freetown, (Mr. Hathaway,) has spoken about every State, except the State of Massachusetts.

Mr. HATHAWAY. I was going to speak about that, when the half-hour cut me off.

Mr. SCHOULER. Well, Sir, I do not know what the gentleman would have said, if the half-hour had not cut him off, but I wish to make a remark in relation to what he has already said. In the first place, I understood him to say that he had always been opposed to loaning the State credit to private corporations, though he had never committed himself fully upon the mortgage question. He had never expressed his opinion definitely, upon the question of mortgaging the farms of the people.

Mr. HATHAWAY. If the gentleman will permit me, I will explain. What I did say was, that in former times, there was a question before the people in reference to the matter of which the gentleman speaks, but whether it was right or wrong, I had nothing to say.

Mr. SCHOULER. Now I wish to say a word to the reformers of this Convention. A great deal has been said about the reform party in this Convention, and, as I place myself in that category, I wish to address myself to the reform members of the Convention.

A MEMBER. As brothers?

Mr. SCHOULER. Yes, as brothers. Now, Sir, we have made some improvements in our Constitution. But that Constitution has yet to receive the sanction of the people, before it becomes the organic law of the Commonwealth. It seems to me that there is such a disposition to load it down with all manner of local questions, that you will kill the Constitution before the people. The very fact of putting into your Constitution this provision, which you are considering, will, in my judgment, deprive it of a great many votes. In certain parts of the State, disguise it as you will, this Hoosac Tunnel question is one which will have an influence on the acceptance of the Constitution we may submit,

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if it contains a provision incorporated for the purpose of preventing the aid of the State being given for that work. In the northern and western portions of the State, there is a very strong feeling in favor of that Tunnel, and if you place in your Constitution a restriction which shall prevent the majority of the legislature, and a majority of the people of the State, from expressing their opinions upon the subject of loaning the credit of the State to aid in its construction, a large class of the people in those sections of the State, will vote against your Constitution for that reason. I want the reformers of this Convention to consider that fact.

Now, Sir, I want the majority of the legislature to settle this question, just as they have settled it under the present Constitution, in years past. However much we may talk about the improvidence of other States, there has been no improvident legislation in Massachusetts upon this subject of the credit of the State.

I hold in my hand the Report of the Auditor, from which I find that the whole amount of responsibility upon the part of the State, to the different railroads of the State, is about \$5,000,000, and here are the details:—

<i>Western Railroad—</i>	
Due April 1, 1868,	£135,000
“ Oct. 1, 1868,	327,500
“ “ 1, 1869,	90,000
“ April 1, 1870,	189,000
“ “ 1, 1871,	157,400
	£899,900 is \$3,999,555 56
Add for exchange, \$320,000.	
<i>Eastern Railroad—</i>	
Due July 1, 1857,	\$100,000 00
“ Sept. 1, 1859,	109,000 00
“ April 1, 1859,	300,000 00
	500,000 00
Norwich and Worcester Railroad, due July 1, 1857,	400,000 00
Andover and Haverhill Railroad, new Boston and Maine, due August 1, 1857,	100,000 00
Boston and Portland, new Boston and Maine, due August 1, 1859,	50,000 00
	\$5,049,555 56

Now, Sir, the State has a clear mortgage upon every dollar of property belonging to every one of these railroads for the money, or rather the credit she has loaned them, amounting, in all probability, to not less than from \$20,000,000 to \$25,000,000. Does that look like repudiation on account of these improvements? Sir, there is not a man in this Convention; there has not been an attempt in this debate, to show where the State of Massachusetts ever run any risk, or that she is likely to lose a single cent, by any act of her legislature in loaning the State credit.

Now, Sir, I am ready to leave this question to the legislature. If it should appear that there is any portion of the State which has not enjoyed the benefit of any assistance upon the part of the State to develop its resources, and the loan of the credit of the State is necessary to carry out any great project which they have in view for that purpose, I say, in God's name, let them have it.

Sir, I say—and I say it without fear of contradiction—that if the State of Massachusetts had to pay every cent of scrip to which she has put her name, for the encouragement of these internal improvements, it would be money spent to better advantage than any ever spent since she became a State. It has raised up the State; it has added to her population; it has added to her taxable property as much as \$200,000,000. And if we had not lent the aid of the State, or, at least, if they had not been carried out—and it is exceedingly doubt-

ful whether they would ever have been carried out without the aid of the State—we should have fallen in every respect far behind what we are now; we should have fallen farther behind, in proportion to our former position, than any State in the Union.

I am surprised, that at this late day, when we have the light of experience, that gentlemen should talk about crippling the energies of the State, by placing a provision in our Constitution which shall deprive the legislature—by depriving a majority of the people of the State, through the representatives in the legislature—of the power of expressing their opinion upon this subject. I am opposed to any such provision. I hope the vote of the Convention, by which the provision now before us was adopted, will be reconsidered, and that the whole matter will be left in the power of the legislature.

It will be found very difficult, in practice, to get two-thirds of the members of the legislature to go for any measure of that kind. If such a provision had been incorporated into our present Constitution, in all probability, we should never have had the Western Railroad at all. True, it was an experiment. We could not tell how it would work. But, Sir, when it came to be put through, and to develop the wealth and resources of the Commonwealth, we found that we had made a good experiment. But now we have the light of experience. We know what can be done, by what has been done. And yet, gentlemen are afraid to trust the majority of the legislature, to say whether they will loan the credit of the State, or not.

Sir, it seems to me that it comes with a rather bad grace from the members of the Convention, from the city of Boston, and from members who come from those portions of the State which have been enriched by the credit of the State, to come here and try to cramp the energies of the Commonwealth; to try to place a bridle upon our necks, and to prevent us hereafter from ever assisting that portion of the Commonwealth which has never received one single dollar for the purpose of developing its resources. I am in favor of treating every portion of the Commonwealth with equal liberality.

Now, Sir, the gentleman from Freetown, (Mr. Hathaway,) and every other gentleman who has spoken here upon the same side of the question, will find it impossible to make out any argument in favor of the provision now before us, from any act of the legislature of Massachusetts upon the subject. If the legislature had been improvident, that might have furnished some ground for an argument. But it has not. The gentleman from Freetown told us of three millions given up by the State of New York, which she had loaned to the Erie Railroad. Why, Sir, if that road could not have been built without the aid of that three millions of dollars—and I take it for granted that it would not have been built—I ask any gentleman here whether it was not a good investment upon the part of the State of New York? Where could she have invested her three millions to better advantage? And I may say just as much for the Erie Canal, which has been so great a source of wealth and population both to the State and city of New York. The whole West have become tributary to her. And, Sir, we wish to avail ourselves of some portion of the wealth of these Western States.

In regard to the State of Illinois, every one knows there was a system of log-rolling carried on in her legislature, which was the cause of all the trouble. In order to get one project through the legislature, members were obliged to vote for others, in which other members were interested, but which were of no public interest or importance whatever. That is the way in which these Western States have become so deeply involved in debt. And I believe repudiation has taught them a lesson in this respect. But, Sir, these States are rapidly filling up, and the time will come when these very improvements, which, up to the present time have not been productive, will become productive, and they will more than compensate for all the losses they have occasioned. But here in Massachusetts we have involved ourselves in no such difficulties. Everything has gone on well, and why not allow the system to remain as it is?

The gentleman talks about experimenting with the credit of the State, and experimenting with the people's money. I will ask him whether it is not, at least, as bad to experiment with the Constitution of the State? He proposes to experiment with the fundamental law in reference to this subject, and I ask him whether the credit of the State is any more sacred than the fundamental law of the State?

Sir, I am willing to stand by the past experience of the State, and I believe the people are willing to stand by it. But I should like to ask the gentleman from Freetown, whether he can tell me if many of these appropriations of other States did not pass by a majority of two-thirds? I think the probability is, that at the time when there was such a rush for these internal improvements, many of the appropriations were passed by a two-thirds vote? There are a number of States which a few years ago were repudiating States, but one by one they have got back again. Pennsylvania was one of the repudiating States, but she has entirely recovered, and I have no doubt, in a great measure, in consequence of these very internal improvements which were the cause of her repudiation. Now she is not a repudiating State. I thought a few minutes ago that Mississippi was the only State in the Union that actually repudiated, but I think Illinois has once not been able to pay her interest, and she will, therefore, have to be placed in the same category. But, Sir, that State is filling up rapidly, and I doubt not the time will come, and within ten years too, when the State of Illinois will be able to pay every cent of principal and interest upon her public debts. It cannot be otherwise.

I had no intention of speaking upon this subject, but I believe it to be a question of considerable public importance; and I believe if the Constitution goes out to the people with this provision in it, it falls dead. That, of itself, will engender such an opposition as to defeat it. The whole people on the line of the railroad for which this loan of the State credit is now asked, will go against it. In the northern part of Berkshire, in the whole of Franklin, in parts of Hampshire, in the city of Boston, and scattered here and there all over the State, there is a class of men who are determined that the credit of the State shall be lent to that corporation, and if this Convention undertakes to go out of its way to prevent it, they will vote against the Constitution.

Again, I ask the reform members of this Con-

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vention if they are ready to put this lump of lead round the neck of your Constitution, which will sink it so deep that you will never be able to find it again? I trust not. I go for the reconsideration of this vote, and for leaving the Constitution precisely where it now stands in regard to this subject. I ask that the people in their representative capacity may decide the matter for themselves, and that this Convention shall not undertake to do that for them.

Mr. BISHOP, of Lenox. Mr. President: On Saturday last, upon the motion of the delegate from Boston, (Mr. Giles,) this Convention resolved that "the legislature shall not have power to grant the credit of the State to any individual or Corporation, without a two-thirds vote of the House of Representatives and the Senate in its favor."

The delegate from Charlestown, (Mr. Thompson,) has moved a reconsideration of the vote adopting this resolution. To its general object and policy, I have no disposition, and am not called upon by the motion for reconsideration, to object. The power of the legislature to pledge the credit and good faith of the people, if not a questionable, is, in my opinion, a very limited one. I deny its power, to aid by this mode, enterprises of a merely private character. It has no authority to sign and endorse negotiable notes, or draw and accept bills of exchange, in the name of the State, for the accommodation of individuals, mercantile or manufacturing firms, or corporations, engaged in manufactures, navigation or commerce, for their benefit solely, or to make the people their copartners in business. From this proposition, no well-informed legal gentleman would, I think, dissent. If there be danger of the people's becoming involved, through the act of their legislature, in the hazardous enterprises of navigation, manufacturing, banking, &c., it is wise to dispel it at once, by some decisive constitutional restriction. No danger of this sort, however, is apprehended. The sole question is this, shall the State aid by its credit, those improvements of a *public* character, now made and to be made by corporations for the benefit of the people, and which can be authorized only by the legislature. Improvements of this character, when too vast for individual capitalists, are, in other States, made, owned, and carried on, by the people themselves. It is thus, with the great canals of New York and Pennsylvania. They are the work, and under the administration, of the State. This State has adopted a different policy, whether safe and prudent, wise or unwise, is too late now for discussion. The policy is fixed and settled, and has now gone too far, perhaps, to be arrested. Whether the people should not have retained in their own hands those great and perilous powers which they have imparted to corporations, and have done on their own account and at their proper charges, what they have employed these corporate bodies to do for them, is a subject past the period of debate and inquiry. The instrumentalities of effecting the great and necessary public facilities, which bring about the intercommunication of Massachusetts with the rest of the world, are established. I can say with truth, to my much respected friend from Taunton, (Governor Morton,) this was no policy of yours or mine. That day may yet turn out to be an evil day, when the legislature of this State carved from the

sovereignty of the people, so much thereof, as relates to railroads, and dished it out to corporations. This system of legislation, if pursued in relation to other matters, as it has been in relation to railroads, might, in time, and at some day not very far away in the future, strip the people entirely of that portion of their sovereign power by which they may now plan and execute for themselves, and fatally weaken and abridge the means which they may be required to use hereafter, by the frequently occurring and constantly varying demands and exigencies arising from progressive changes and improvements. Such grants, fixed and rendered irrevocable by the doctrine of vested rights, as that doctrine has been expounded and enforced, may leave the people mere spectators of the achievements of their own delegated strength, and like Sampson, shorn and shaven, they may wake up and find their strength departed, and themselves bound down by Philistines, which their own charters have made.

The people demanded these improvements. The world demanded them. In space, they are local. In usefulness, however, as parts of a great system, they are world-wide. The people have chosen to make them by chartered companies, giving to these companies, for their hazards and investments, an equivalent in special benefits and exclusive privileges. It is solely upon the ground of their having undertaken the State's business, that they are entitled to the State's aid and favorable regard and care—upon the ground, that having assumed the people's obligations, they are entitled to their encouragement and support. Now, Sir, I am opposed to the restriction of this encouragement and aid, which the resolution proposes. I regard it as thoroughly prohibitory; and, if not so, as partial, inequitable, unjust—defeating the reasonable expectations which have been raised. No system of public improvements should be adopted by the State, which is not general; and in considering the question before the Convention, the relative claims and present condition of the several sections of the State, should be regarded. If the system, in order to its completion, ought to be farther extended, if certain parts of the State are not provided with the railroad facilities accorded to others, whose claims are no better, some sound reason should be adduced for withholding them. Impracticable schemes and embarrassed finances would unquestionably be good cause for prohibiting future, or withholding present assistance. If the past shows recklessness, and improvidence, or wastefulness, limitations should be placed upon the exercise of legislative power. With the present influence of railroad corporations over legislative proceedings—an influence, not peculiar, but common to them and all men, and bodies of men of great means and control, I regard the vote passed, not as a restriction, not as a limitation, but as a full inhibition. It is proposed that the Senate consist of forty members. Fourteen only are required to stifle all action upon this subject. It is the interest of existing railroads to prevent their multiplication—to monopolize, if I may use the word, and secure to themselves the entire transportation of men and merchandise; and can they not, with all convenient ease, without apparent activity, or semblance of trick or artifice, throw into that body, of those personally interested, enough to prevent competition by new roads, and defeat every project, which, if carried

out, might diminish their profits? The answer is obvious. It would place the enlargement and multiplication of this branch of public improvements, entirely under the control of existing corporations, and to them, in the first instance, would the people have to apply, to extend these great facilities, now made necessary to all departments of industry. In short, upon this great subject, intimately interwoven with the leading interests and prosperity of the country, corporations virtually would legislate, and not the people, through their representatives. Is not this, by indirection, to be sure, but substantially and effectually, a grant by the people, through their legislature, of a part of their sovereign power and right of eminent domain? The grant may hereafter be revoked, if it does not get to be too strong, but while in force, are not that power and that right suspended. I am confident, that such would be the effect of the proposed restriction—that while it takes a measure of power from the legislature, it imparts exactly the same measure to existing corporations. Sir, I am not for such a limitation of legislative action. I am not for a prohibition, which passes over all, which is prohibited to bodies which have had their full share of legislative succor—which have had all they could ask—all, which is necessary to the completion and success of their enterprises. I am for no such constitutional restriction upon the government, as shall operate as a grant of the patronage and aid left to it—to those, to whom aid and patronage have been meted out in generous and abundant measure. "To him that hath shall be given," may be sound theology, but "from him, that hath not, shall be taken away even that which he hath," certainly requires to be examined, before being adopted, as a rule in the distribution of legislative favors. If the chartered powers and immunities, through which we have chosen to construct our public works, operate safely and beneficially, make them general, as the public good requires. If they prove productive of evil, should not that evil come to us diluted by diffusion. I discuss this question by itself, disconnected entirely from any of the other modes proposed to abridge legislative authority over public credit. I look at it, as an abstract proposition, apart from any particular railroad, which now is, or is proposed to be made.

Much has been said about the Western Railroad, and the Hoosac Tunnel. They are entitled to no specific consideration in the debate upon the proposed limitation. They may be parts of a whole, which may have relation to it. I certainly entertain no hostility to the first, and would not favor the execution of the other, if it be impracticable, or not called for by the general welfare, and whether it be practicable, or would be of public benefit, I certainly am not advised. These questions require more close and accurate investigation than one not specially concerned is inclined to give, or can give. If those mountain barriers can be perforated, so as to admit to a passage through, a locomotive and its train, without great and disproportional expenditures, and the voice of the people call for it, and they can be assured by the severest inquiry which they may make, that no loss will be incurred, let the mountains be tunneled. Pledges, as solid as the bonds of the "solid men of Boston," should be required, if the State, by her credit, gives aid. It is right that such pledges be required, for although a public work,

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it is to be executed mainly upon the judgment of individuals, and largely by their capital, who carefully compare and balance the privileges granted with the risks assumed, and should stand by them.

It is said that the Western Railroad is not only an exhibition of the active, intelligent enterprise, but a standing monument of the munificent wisdom of the State. It has, indeed, thus far accomplished all the purposes of its creation; all that it promised, it has doubly fulfilled, and more. Its security is pronounced ample, firm as "terra firma"—subject to diminution only by earthquakes or volcanoes. Stripped of it, the State would be without one of its greatest sources of prosperity, and, so long as it shall be administered as it has been, with reference to the public accommodation and wants, and economically and efficiently; so long as it shall, as it has done, appoint for its conducting officers gentlemen, courteous, kind, and attentive, to whom we can commit our wives, our children, ourselves, assured of exposure to those casualties only, which come in spite of human vigilance and forecast, it will retain, as it holds, the special favor and regards of the people, and their government. It has, however, been created for special purposes. Its rights and its powers are limited and defined. Other rights, it cannot claim, other powers it cannot exercise, without transcending and violating its charter, and exposing it to forfeiture. It is said that this corporation is here in the Convention—that it sat with the last legislature, during its protracted session. It has no business here. It had no business there. It has no power to make constitutions or laws, except for "the orderly conducting of its own business." It has a legal existence only—is a legal person, with specific functions, created for determinate purposes, and should it assume other offices, or attempt other purposes, its claim to exist would and should cease. It is enough that its stockholders have and retain their several individual rights, and can defend and protect their interest, as others may, whether that interest be in lands, chattels, or stocks. Its officers, like other men, are eligible as delegates and legislators, and if, like others, they are jealous and watchful of their rights, the corporate body, of which they are members, would hardly be obnoxious to censure. When corporations shall appear voluntarily, as such, in either department of the government, expending their funds and using their powers to control its proceedings in matters not within their charters, and attempt to arrest public improvements, cripple private enterprises, or get rid of lawful competition, the time will have come, either for their entire disfranchisement, or for severely stringent circumscriptions, for the world is old enough to have learned, that if there be such a thing as a legal conscience, it has no sting to it. To those who see imminent perils in the factitious powers created by special legislation—powers which set at defiance individual competition, and are strong and dangerous because they can do so, this consolation, at least, is left: that thus far they have been employed, with few exceptions, by honorable men, who know as well their obligations as their rights, and are willing to fulfil them. May a wholesome jealousy watch and guard them, till men, single-handed, with private capital, shall be able to cope with them, as I trust in the revolutions of business they may be, or until a system

of general laws, by their impartial operation, shall have placed them upon common ground.

That the inhibitory restriction proposed, should have found an advocate among the delegates from this city is most wonderful. That every one of them should be found prudent, cautious, in favor of a reasonable, and even a stringent limitation, is not surprising. They are "solid men," so all believe—so said the oracle. The industry and prosperity of city and country are compactly interwoven. The interest of mart and field are almost identical. They should be brought, if possible, into close proximity. The heart beats, not for itself alone, but for the extremities, and their twenty terminals. Boston is not Boston, for her own sake only, but also for every mountain, where the chopper builds his cabin—for every hoof-trod hill-side—for every corn-clad valley. Her citizens should coöperate with those of the country, in all reasonable ways, to enable the latter to come here, at the least expense, and in the shortest time. Fears are expressed of centralization. Centralization of government is, indeed, to be feared, and stout resistance to it should be made. No man, unless it be constitutionally delegated, should have more political control, than belongs to him individually. He is one only of many equal parts, a unit in the whole number; and no municipality or city should be suffered to exercise any more of legislative or administrative influence, than its just popular dividend. Business centres, however, have been, and always will be, so long as streams unite and form navigable rivers, and there are found upon the shores of the ocean, at wide intervals only, secure retreats from its storms. Boston is one of these central points, where land meets sea, in safe and commodious harbor—where landsmen meet seamen, and will always meet them—where they interchange the necessities, conveniences, and luxuries of life, and where, I hope, there will always be an interchange of material things not only, but of the sentiments of kindness, respect, confidence, and hearty good-will. Conventionalities may obstruct the ease and frankness of intercourse, may generate castes and classes, may canker the hearts of the exclusives with pride, and tincture the spirits of the excluded with envy. Conventionality and jealousy are everywhere. They are incident to humanity, and among the diversified forms in which human folly and human weakness show themselves. Those who institute invidious comparisons between city and country, claiming for the one all the wealth and munificence, for the other all the solid intelligence and stern virtue, do a positive evil, by postponing the day, when well-bred intercourse and cordial good fellowship will convict each of mistake, and lead to the mutual correction of errors. Away with all factitious social distinctions. There is no place for them among the serious actualities of life—no time for them with those, who by steam and railroad would bring the world into one neighborhood—into one common feeling of mutual confidence and love. Leave such silly matters to brainless men and idle women. An avenue from every section and corner of the State, if it be called for, and will pay, should be opened to her great commercial capital; and it should no longer be complained of by the dwellers on the western mountains, that it costs double to reach their own cherished commercial capital, to what it does to go to that of a neighboring State, at a greater distance

from them. Sir, what can be done, with full assurance of no consequent loss to the State, in the way of reaching this city cheaply and quickly, should find no obstacles here or anywhere.

Why, Sir, from the western part of Massachusetts, we come to Boston, thank Heaven, much more readily than we did; but it is a fact, that in order to reach our own commercial capital, we pay four hundred per cent. more than we are obliged to pay in order to reach a great commercial capital of another State, at a greater distance from us. There may be physical difficulties in the way, which cannot be removed; and all that we ask is the removal of every obstacle, the filling up of every valley that can be filled, the lowering of every mountain which can be brought down, that we may reach our own commercial capital, transact business with our own citizens, and derive our full benefit from the fact that we have a great commercial city which we love, whose interests we shall cultivate, and with which we shall forever be connected.

Mr. SUMNER, for Marshfield. Mr. President: I have no desire to enter upon the broad discussion which has been opened by the question now before the Convention. There are considerations, of clear and palpable force, which will determine my vote, and which are as simple as they ought to be decisive. These, with your permission, Sir, I will briefly indicate.

It is proposed, by a permanent provision of the Constitution, to tie the hands of the legislature, so that it cannot hereafter, as in times past, lend the credit of the State in aid of any private corporation; and an amendment has been introduced by my friend from Boston, on the other side of the House, (Mr. Giles,) allowing such loan; but only on the difficult and almost impossible condition of a vote of two-thirds of the legislature. Both of these provisions—the original proposition and the amendment—though differing in form and degree, are identical in principle. They both contemplate a restraint upon the existing powers of the legislature in this regard.

Now, Sir, waiving all question of the propriety of such restraint on grounds of abstract policy, or on grounds suggested by the experience of other States, I believe I may assume, without fear of contradiction, that in times past no crying evil has occurred in Massachusetts from its absence. The credit of the Commonwealth has been rarely lent; and when lent, it has been on sufficient security, and for the general good. Witness the instances which have been adduced in this debate. We are not, then, pressed to this measure by any special experience of evil. We have in no respect suffered from the want of it. No such urgency exists. This is something, and, of itself, in the absence of any commanding principle, may well make us hesitate to depart from the established policy of the Commonwealth. But there is another consideration, to which reference has been already made by gentlemen who have preceded me, which completely disposes of the whole question.

Sir, it is notorious that an application has been recently made to the legislature—in conformity with usage in similar cases—for aid in an important, and, as I believe, practicable work of Internal Improvement, which, when completed, will be a glory to the Commonwealth, and a mighty channel of trade and travel. This application, after ample discussion, found favor in the House of

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Representatives, but was rejected, on a very close division, in the Senate—I think by a single vote. But the parties having this grand enterprise at heart, avow their determination to renew it at another session. It is, therefore, at this moment, in the nature of a Pending Question of Internal Improvement, of which the legislature, under the existing Constitution, has jurisdiction. But this is not all. At the very time honorable members were chosen to this Convention, it was then a Pending Question before the legislature. Under these circumstances, and in the absence of any besetting evil, or controlling principle, it seems to me highly impolitic and meddlesome for the Convention to undertake, directly or indirectly, to deal with it. Directly, you would not; indirectly, you should not. On a question thus peculiarly circumstanced—standing by itself, and unlike any other now before the Convention—Public Opinion should be left to operate in its customary channel, without any impediment or breakwater from us.

Sir, I am against the proposition on two grounds; first, because it is not vindicated by any obvious principle, or by any ruling necessity, or even expediency, founded upon the experience of our Commonwealth; and, secondly and chiefly, because, notwithstanding its generality of form, it is practically an offensive interference with a Pending Question of Internal Improvement, which we were not summoned to determine.

Mr GILES, of Boston. I ask the indulgence of the Convention for a few moments, to express some of the sentiments which I have in relation to the resolution now before the Convention. It so happened, the other day, that I found this question up and under discussion. The general drift of the motions before the Convention, was to place a limit upon the legislative power to grant the credit of the State. With that intention I concurred, but I did not assent to the various propositions to obtain that object. During the vote upon one of them, I framed the amendment which is now before the Convention, and with reference to which, as I understand, a motion has been made, and is now the immediate question before us, to reconsider, and which was offered by my friend from Charlestown, (Mr. Thompson). The object which I had in view in framing that resolution, which was done on the spur of the moment, was two-fold; first, to make it intelligible, and second, to make it in a form which would admit of being easily amended. It therefore provides that the legislature shall not have power to grant the credit of the State, to any private corporation without two-thirds of the House, and two-thirds of the Senate agree to it; and it so stands, that if any gentleman wishes to strike out the provision requiring a two-thirds vote of the Senate, and insert one requiring a majority only, or to strike out the provision requiring a two-thirds vote of the House, and insert a majority, it may be easily done.

I wish now to suggest some reasons upon which I found the expediency of some limitation, and make a few remarks with reference to the points which have been started this morning, in the debate. Mr. President, what is the foundation of this resolution? Is it baseless as a vision or a dream in the night; or has it a foundation in reason? If so, what is it? I say it does stand on a foundation; and that foundation is, first, that the granting of the State credit is no part of

governmental action; it is an exception, an extraordinary act, and it is no part of ordinary governmental action to grant the credit of the State to private corporations.

That being one corner-stone of the resolve, I say that the act of granting the State credit, should be guarded farther than the ordinary acts of the legislature, which simply require a majority. The other foundation is, that the history of these grants of the State credit to individuals and corporations in this country, including the government of the Union, and the government of each State in the Union, shows that there is danger of abuse. I am not going into any particulars; I am not going to assert that any particular instance is an abuse; but I do say that it is the conviction of the public mind in this country, and not only in this country, but in other countries, that there is danger of abuse from this power of the legislature.

Then, this being an extraordinary act, and one which is in danger of being abused, it does call for more guards than ordinary legislation, to wit: the majority vote.

The proposition the other day, was to put the question to the people. I opposed it; not upon the ground of any distrust of the people. I said then, and I say now, that if I thought there was not sufficient intelligence in the people to enable them to pass upon any proposition which this Convention should put to them, I would vote to double the school fund again and again till there was. But the reason why I would not put it to the people, was this. I am in favor of internal improvements, as well as my friend for Erving, (Mr. Griswold); I go for them, heart and hand. I always have and always will. I wish these improvements to have the good will of every man in the Commonwealth; and that is the reason why I would never put one of these great enterprises to the people in a shape that would compel them to take sides for or against it. You put a proposition of this kind to the people, and they are compelled, by all the machinery of caucus and electioneering, and party influences, to take sides for or against it. And what would be the result? Suppose they go for it, and you get the credit of the State. Good. But suppose that half, or nearly half, the people of the Commonwealth go against it, and you do not get the credit of the State. Bad; bad every way; bad, because the corporation has not got the State credit to aid the enterprise, and because there will be thousands of men in the Commonwealth ready to rejoice in the failure, and say that it was but a fulfilment of their prophecies, that they always knew it was a bad enterprise, and must fail. That is the reason why I would never put a part of the people in a position which would make them the enemies of any project for internal improvement. Credit is based on good-will. I wish every one of the improvements in the State to have the general good-will, and the particular good-will, of every man in the Commonwealth.

My friend says, leave it to the legislature. So say I. But not without a limit, because the very legislature to which you leave it, is the identical legislature which will be deeply interested in the question for or against it, and men are but men, and subject to influences, and I am not one to stand here and condemn the fact that men are subject to influences. I agree with the old philosophic doctrine, that man is but a bundle of in-

fluences. I assent to the sentiments of Cicero, uttered in the chamber of the Senate of Rome, on a remarkable occasion, when he made a remarkable oration, and was reproached by the demagogues of that city and that day, who said that his knees trembled so that they knocked together in the presence of that august body of patricians; and his reply was: "I did tremble; and my knees did knock together, but not because I feared the face of man, but because I was a man; and I thank the gods that I am subject to influence, because if I am not subject to influence by others, how can I influence others myself?"

Now, Sir, it is the part of wisdom not to impeach our Maker, and condemn his arrangement of the human mind and human system, but to take it as we find it, and act wisely in reference to our organic laws, for their action and development. My friend said again, that the experience of this State has been fortunate; that it has not lost a dollar. Agreed. That it will not lose a dollar. Grant it. That it will make, has made, and does make, much money. True. But I do not assent to that policy. I say it is wrong for a State to enter into the business of the people, and take it out of the people's hands. I am for having this business done, but I am for having it done by the people, and if it be successful, I would have the people put the money into their own pockets, and not be obliged to go into competition with corporations aided by the State. Therefore, it is no argument in favor of granting the State credit, that the State will thereby replenish its treasury. If that be good policy, I would say to the gentleman from Lenox, why not go into the issuing and endorsement of bills of exchange, and go into the bonding system, and inspect the board of fancy stocks, day by day. Nobody wishes for that.

One word more, Mr. President, upon the subject of corporation influence upon the legislature. I have called no corporation by name, and I shall not do so—I allude to no individual and to no corporation; that makes no part of my thoughts, or of my argument. My friend from Lenox said that no corporation is here to-day. I wish that were true; but if no corporation is here to-day, why do we hear of any corporations? Now, Sir, I am ready to express the conviction which I have for several years felt; but before I do it, I will state what is hardly necessary for me to state to anybody who knows my course, that I am a friend to corporations—that I have called them, and I still believe them to be, the right arm of the industry and enterprise of this Commonwealth. I could talk an hour upon their beneficent action, and describe the blessings which they have spread through the land, where they have brought comfort and luxury, and have stimulated all the best appetites and tastes of our nature; but I have not time for that. I say they have done what must be done, and what will not be done at all except by associated wealth, in every new country. But there is a period coming, and it has begun in this country, when your corporate production cannot compete, and will not compete, with individual production, and enterprise, and capital, because it can no more produce a yard of cotton cloth so cheap as I can, than the State can do so cheap as I can. No, Sir; it neither makes the market more than it is, nor has its sensitive hand upon the public pulse to know when to produce, and when to stop—when to buy, and when to sell;

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and it has, in addition to its ordinary expenses, a whole roll of corporation expenses, salaries, &c. But in reference to corporation influence upon the legislature, what is my conviction? It is this. I speak from what I do know; I am not going to speak from anybody's knowledge, but from that which produces my own convictions; and I say here, to this Convention, and to the people of the Commonwealth of Massachusetts, that your corporation wealth is, at this day, and at this moment, too strong for your Commonwealth. Your corporation wealth has been increasing, is increasing, and in my judgment, ought to be restrained. Your corporation influence has increased, is increasing, and in my judgment, ought to be restrained. It is too strong for the Commonwealth, and your corporate wealth is too strong for the Commonwealth; and I say that, in my judgment—friend to corporations as I am, and it may go for what it is worth—I say woe to the corporate institutions of Massachusetts, and the corporate interest and the corporate influence of Massachusetts, when, by intermeddling with the legislature of the people, or the conventions of the people, they shall touch and rouse the heart, and muscle, and bone, of the masses of the people to come to the rescue of the people's legislatures and the people's conventions against corporations. Woe to them, when they bring that day upon their heads, and that day they are bringing.

One other point I will allude to. I must go by points or I shall not get through. That is this: I have heard it said by distinguished gentlemen here to-day, and heretofore, that the State credit is to be claimed, is now claimed, and I know it has been claimed from other quarters, independent of the specific merits of the specific cases, merely because the State has granted its credit to others; and every road and every enterprise is in its nature local, and is producing great advantages in a particular locality. The claim comes up; "You have granted it here, you have granted it there, and you ought to grant it again, because you have granted it so and so before." Now, Sir, every road is local; every road must lead somewhere. I will say what was once said by a distinguished man in reference to a western road, the Maysville Road—no road can lead everywhere, except the road to ruin. I do not recognize the solidity of this argument in favor of the State granting its credit, merely because it has done so before; for that would lead us into the maelstrom of speculation; and if we came out whole and sound, we should have another cause in addition to the innumerable instances which we now have, of grateful acknowledgment to that superintending Providence which is wiser than we, and most wise where we are the least so.

Now, Sir, in regard to the particular number of two-thirds, amend it as you please—make it two-thirds of the House and a majority of the Senate, or the other way, or suppose you adopt anything near two-thirds, anything that shall accomplish this result; when a case comes up, I wish the attention of the legislature drawn right to this point—is this an extraordinary exigency? Is it one that will justify the State in granting its credit? I want it to serve at the same time as a caution to them and to the petitioners, and to support your legislature and your governor; for I do believe that every successive legislature and governor that shall ever honor this State and be honored by it—and I hold that the State and its

officers, thus far in its history, to have mutually honored each other—will be thankful for something of this kind in your Constitution. Any basis of representation that is likely to be adopted will result in this, that two-thirds of your House may be elected by about one-half of your people; and that is an idea that is worthy of consideration. This restraint will not, therefore, be like a restraint upon the majority of the people, so far as this is concerned.

Now, with regard to the effect which this would be likely to have if ingrafted into your amendments to the Constitution, when you put it to the people for a popular vote upon its adoption or rejection, that is a thing that I have not looked at; but it is a consideration worthy of being looked at. I would not put anything in which I thought would be likely to endanger that which I deem important and valuable; and I would put nothing in which was not needed to bring the Constitution nearer to perfection. If, therefore, you think that such a proposition would endanger any of its associates, put it separately, so that the people can say yea or nay upon it, and nothing else; and if a majority of the Convention shall deem that its being in their amendments at all will endanger the rest, do with it in your wisdom what you please. I have myself but one course, and that is, to consider every effect within my knowledge of the course of action which I am about to take, and to do as well as I can, according to the dictates of my judgment and my conscience, and put unbounded confidence in the good and judicious action of the people; in other words, I shall do according to what is termed part of the code of a gentleman, and that is, to consider every man a gentleman until he proves himself to be no gentleman, and treat him accordingly; and I shall treat the people accordingly. I will put to them, therefore, what I deem to be best; and if they do not agree to it, they can reject it, as we have agreed they shall. I have no desire to have one improvement in the Constitution carried by connecting it indissolubly with another, when it is of a doubtful character; but I do believe in the expediency of some restriction upon this granting of the State credit.

My friend alluded to the idea that this restriction was in the nature of a cramp; yea, and a cramp upon the industry of the people. But do I go for any such thing? No, Mr. President. Did I not say to him the other day, lay not the icy hand of death upon the enterprise of the people of this Commonwealth? This enterprise is instinct with trade, with life, and energy; and I said then, as I say now—support, encourage, cherish, sustain that enterprise, here and everywhere. But it is with the enterprise of this community as it is with the leading and dominant spirit that acts in man and in the nation; it is not to be cramped, but it is to be guided, and this is the way in which you are to aid it. Let the flood burst from your mountains, and fall into a course where there are no banks; will it not overrun your plains and devastate your fields? But let it go in such channels as the Maker of the earth has formed for such beneficent streams, and what is the result? It makes a river, bordered with cities and villages; it is then a blessing to the country, for it makes it populous, prosperous, productive, and happy. I claim, therefore, that I go with him who goes the farthest in favor of enterprise and credit, energy and industry, and

everything that we deem good; but I claim it to be wise, from past experience and the nature of the case, to impose some restriction upon the granting of the State credit.

I will say to my friend from Lenox, who doubts the constitutionality of any grant, that the Constitution says that the legislature shall have power to enact all wholesome and reasonable laws, and to take private property for public uses. There is the foundation of this policy, and there let it be. It has worked well, and it will work well; but when you come to grant the State credit, which is my credit, and your credit, and his credit, and every man's special and private credit, as well as the associated credit of the whole, then let it be done wisely. Let the instance be such as to commend itself to more than a bare majority, under all the influences which I do not deprecate, but which I expect will be brought to bear upon the legislative body in that particular case; and if the case be a good one, it can command more than a bare majority of the legislature, and it will command the assent of the people. But if it fail, this failure will not destroy its own credit, as a failure under a mere majority might. If it succeeds, it will give you not only the amount in millions, but it will double that amount in the good-will and coöperation of the whole people in your favor. That is what you need—that is what I want you to have—that is what I design to give you, and that is the object of this resolution, so far as my individual mind enters into it. It is in the power of the Convention to do with it as seems just and expedient to them, and I shall be content.

Mr. THOMAS, of Weymouth. Mr. President, this subject has been amply discussed on both sides; every member of this body has probably made up his mind upon the subject, and I therefore move the previous question.

The motion was agreed to.

The question being then taken on reconsidering the vote by which the resolution was ordered to be read a second time, on a division there were—ayes, 189; noes, 87—so it was agreed to.

The question then recurred, on ordering the resolve to a second reading, as amended.

Mr. FREEMAN, of Franklin, demanded the previous question.

Mr. EARLE, of Worcester. I desire to inquire of the Chair, whether, if the main question were not pending, it would not be in order to move for a reconsideration of the vote by which the Convention adopted the amendment which now stands as the resolve.

The PRESIDENT. It would be in order.

Mr. EARLE. I suppose that many gentlemen voted for a reconsideration under the belief that it might be done.

Mr. LORD, of Salem. I move to amend the resolve by striking out the words "two-thirds," and inserting the words "a majority." The resolve now reads:—

That the legislature shall not have power to grant the credit of the State to any individual or corporation without a two-thirds vote of the House of Representatives and the Senate in its favor.

I understand the motion to reconsider, is made with the view of striking out the words "two-thirds" and inserting instead the words "a majority," and if I understand rightly, the President

Friday,]

LOAN OF STATE CREDIT. — GRAY — CROWNINSHIELD.

[July 16th.

ruled that amendment out of order. Since that time, I understand that the President has reversed that rule, and now rules that such a motion is in order. I only desire to know whether the President considers that motion before the Convention, so that if the previous question be voted down, the question will recur on that amendment, or whether the previous question having been called for at a time when the President ruled the motion out of order, that motion will now stand.

The PRESIDENT. The Chair will state to the gentleman from Salem, the position of the question as it now stands. The resolution is as follows: That the legislature shall not have power to grant the credit of the State to any individual or corporation, without a two-thirds vote of the House of Representatives and the Senate in its favor. To strike out the words referred to by the gentleman from Salem, and insert those proposed by the gentleman from Monson, would make a change in that to which the Convention have already agreed, and it is not, therefore, in order at this time.

Mr. GRAY, of Boston. I would ask the Chair if the demand for the previous question prevails, and the main question is ordered, whether that main question will not be the passing to its next stage, of the amendment of my colleague?

The PRESIDENT. That will be the main question.

The call for the previous question was sustained.

Mr. CROWNINSHIELD, of Boston, moved, that when the vote be taken, it be taken by yeas and nays.

The motion was agreed to, and the yeas and nays being taken, resulted—yeas, 112; nays, 199—as follows:—

YEAS.

Aldrich, P. Emory
Appleton, William
Austin, George
Barrows, Joseph
Beach, Erasmus D.
Beal, John
Bliss, Gad O.
Boutwell, Sewell
Bradford, William J. A.
Breed, Hiram N.
Briggs, George N.
Brown, Hiram C.
Brownell, Frederick
Cady, Henry
Carter, Timothy W.
Case, Isaac
Chapin, Chester W.
Clark, Henry
Cogswell, Nathaniel
Copeland, Benjamin F.
Crane, George B.
Crowninshield, F. B.
Davis, Solomon
Deming, Elijah S.
Denton, Augustus
Doane, James C.
Dunham, Bradish
Earle, John M.
Eaton, Lily
Ely, Homer
Fitch, Ezekiel W.
Fowle, Samuel
Gardner, Henry J.
Gilbert, Wanton C.
Giles, Joel
Gray, John C.
Hale, Artemas
Hallett, B. F.

Hammond, A. B.
Hapgood, Seth
Haskell, George
Hathaway, Elnathan P.
Hayward, George
Heard, Charles
Hersey, Henry
Hobart, Aaron
Hopkinson, Thomas
Hurlburt, Samuel A.
Jackson, Samuel
James, William
Jenkins, John
Knight, Hiram
Knight, Jefferson
Lawton, Job G., Jr.
Lincoln, Abishai
Littlefield, Tristram
Lowell, John A.
Miller, Seth, Jr.
Morey, George
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Newman, Charles
Nichols, William
Norton, Alfred
Oliver, Henry K.
Orcutt, Nathan
Orne, Benjamin S.
Parker, Adolphus G.
Parker, Joel
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Noah C.
Rantoul, Robert
Rawson, Silas

Reed, Sampson
Rockwood, Joseph M.
Rogers, John
Ross, David, S.
Royce, James C.
Sikes, Chester
Simmons, Perez
Simonds, John W.
Sprague, Melzar
Stevens, Granville
Stevens, Joseph L., Jr.
Stevenson, J. Thomas
Stiles, Gideon
Taber, Isaac C.
Taft, Arnold
Talbot, Thomas
Taylor, Ralph
Tilton, Horatio W.

Abbott, Josiah G.
Adams, Benjamin P.
Allen, Charles
Allen, James B.
Allen, Joel C.
Alley, John B.
Allis, Josiah
Alvord, D. W.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Baker, Hillel
Ballard, Alvah
Ball, George S.
Bancroft, Alpheus
Barrett, Marcus
Bates, Moses, Jr.
Bell, Luther V.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Booth, William S.
Boutwell, Geo. S.
Braman, Milton P.
Brinley, Francis
Bronson, Asa
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brownell, Joseph
Bryant, Patrick
Bullock, Rufus
Bumpus, Cephas C.
Burlingame, Anson
Butler, Benjamin F.
Caruthers, William
Chandler, Amariah
Chapin, Henry
Childs, Josiah
Churchill, J. McKean
Clark, Ransom
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Cook, Charles E.
Coolidge, Henry F.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cummings, Joseph
Cushman, Henry W.
Cushman, Thomas
Dana, Richard H., Jr.
Davis, Charles G.
Day, Gilman
Dean, Silas
Denison, Hiram S.
Duncan, Samuel
Durgin, John M.
Eames, Philip
Easland, Peter
Edwards, Elisha
Edwards, Samuel

Turner, David
Turner, David P.
Wallis, Freeland
Walker, Samuel
Ward, Andrew H.
Waters, Asa H.
Weeks, Cyrus
Wetmore, Thomas
Wilbur, Daniel
Wilbur, Joseph
Wilkinson, Ezra
Williams, Henry
Williams, J. B.
Willson, Willard
Winslow, Levi M.
Wood, Nathaniel
Woods, Josiah B.
Wood, Otis

NAYS.

Ely, Joseph M.
Eustis, William T.
Farwell, A. G.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Foster, Aaron
Foster, Abram
Fowler, Samuel P.
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Gale, Luther
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Gooding, Leonard
Graves, John W.
Green, Jabez
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hall, Charles B.
Hapgood, Lyman W.
Harmon, Phineas
Haskins, William
Hawkes, Stephen E.
Hayden, Isaac
Heath, Ezra 2d.
Henry, Samuel
Hewes, James
Hewes, William H.
Hillard, George S.
Hindsdale, William
Holder, Nathaniel
Hood, George
Hooper, Foster
Howard, Martin
Hoyt, Henry K.
Hunt, Charles E.
Hunt, William
Huntington, George H.
Hurlburt, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Jenks, Samuel H.
Kellogg, Giles C.
Kendall, Isaac
Kimball, Joseph
Kingman, Joseph
Knight, Joseph
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Kuhn, George, H.
Ladd, Gardner P.
Ladd, John S.
Lawrence, Luther
Leland, Alden
Lincoln, Frederic W., Jr.
Livermore, Isaac
Marble, William P.
Marcy, Laban
Marvin, Abijah P.

Mason, Charles
Meador, Reuben
Merritt, Simeon
Moore, James M.
Morton, William S.
Noyes, Daniel
Ober, Joseph E.
Osgood, Charles
Paine, Benjamin
Paine, Henry
Park, John G.
Parris, Jonathan
Parsons, Samuel C.
Partridge, John
Penningman, John
Perkins, Daniel A.
Perkins, Jesse
Phelps, Charles
Phinney, Silvanus B.
Plunkett, William C.
Pomroy, Jeremiah
Pool, James M.
Prince, F. O.
Putnam, George
Read, James
Rice, David
Richards, Luther
Richardson, Nathan
Richardson, Samuel H.
Sanderson, Amasa
Sanderson, Chester
Schouler, William
Sheldon, Luther
Sherril, John

Sleeper, John S.
Southern, John
Spoonor, Samuel W.
Stevens, William
Sumner, Charles
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Abraham
Tower, Ephraim
Train, Charles R.
Tyler, William
Underwood, Orison
Upham, Charles W.
Viles, Joel
Vinton, George A.
Walcott, Samuel B.
Walker, Amasa
Warner, Marshal
Warner, Samuel, Jr.
Weston, Gershom B.
Wheeler, William F.
White, Benjamin
White, George
Whitney, Daniel S.
Whitney, James S.
Wilder, Joel
Wilkins, John H.
Wilson, Henry
Wilson, Milo
Winn, Jonathan B.
Wood, Charles C.
Wood, William H.

ABSENT.

Abbott, Alfred A.
Adams, Shubael P.
Allen, Parsons
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bartlett, Sidney
Bates, Eliakim A.
Beebe, James M.
Bigelow, Jacob
Blagden, George W.
Bliss, William C.
Bradbury, Ebenezer
Brewster, Osmyn
Brown, Adolphus F.
Buck, Asahel
Bullen, Amos H.
Chapin, Daniel E.
Choate, Rufus
Clark, Salah
Coggin, Jacob
Cole, Lansing J.
Cole, Sumner
Conkey, Ithamar
Crockett, George W.
Crosby, Leander
Crownell, Seth
Curtis, Wilber
Cutler, Simeon N.
Davis, Ebenezer
Davis, Isaac
Davis, John
Davis, Robert T.
Dawes, Henry L.
Dehon, William
DeWitt, Alexander
Dorman, Moses
Easton, James, 2d
Eaton, Calvin D.
Fiske, Emory
French, Charles H.
Frothingham, Rich'd, Jr.
Gardner, Johnson
Gooch, Daniel W.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Greene, William B.
Greenleaf, Simon
Hale, Nathan
Heywood, Levi
Hobart, Henry
Hobbs, Edwin
Houghton, Samuel
Howland, Abraham H.
Hubbard, William J.
Huntington, Asahel
Huntington, Charles P.
Hyde, Benjamin D.
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kinsman, Henry W.
Langdon, Wilber C.
Little, Otis
Loomis, E. Justin
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Marvin, Theophilus R.
Mixer, Samuel
Monroe, James L.
Morse, Joseph B.
Nash, Hiram
Nayson, Jonathan
Nute, Andrew T.
Packer, E. Wing
Paige, James W.
Parker, Samuel D.
Parsons, Thomas A.
Payson, Thomas E.
Perkins, Jonathan C.
Pierce, Henry
Powers, Peter
Preston, Jonathan
Putnam, John A.
Richardson, Daniel
Ring, Elkanah, Jr.
Rockwell, Julius
Sampson, George R.
Sargent, John
Sherman, Charles
Smith, Matthew
Stacy, Eben H.
Stetson, Caleb
Stevens, Charles G.
Storow, Charles S.
Strong, Alfred L.
Stutson, William
Sumner, Increase
Swain, Alanson

Friday,]

HARVARD COLLEGE, &c. — MARVIN — KNOWLTON.

[July 15th.

Thayer, Joseph
 Tileston, Edmund P.
 Tyler, John S.
 Upton, George B.

Wales, Bradford L.
 Wallace, Frederick T.
 Wright, Ezekiel

Absent and not voting, 107.

So the resolution was not ordered to be read a second time.

On motion, by Mr. WILSON, of Natick, the Convention then adjourned until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

A Committee Appointed.

The PRESIDENT announced the following gentlemen as constituting the Committee, under the order adopted by the Convention, relative to legal remedy to representatives of persons deceased by railroad accidents: Messrs. Hallett, for Wilbraham, Stevenson, of Boston, Haskins, of Medford, Richardson, of Middletown, and Fowler, of Danvers.

Vacancies Filled.

The PRESIDENT appointed Mr. Knowlton, of Worcester, to fill the vacancy in the Committee, on Reporting and Printing the Debates and Proceedings of the Convention, occasioned by the death of the Hon. F. R. Gourgas.

Also, Mr. Bird, of Walpole, to fill the vacancy in the Committee, on the Preservation of the Records.

Orders of the Day.

On motion of Mr. BROWN, of Medway, the Convention proceeded to the consideration of the Orders of the Day.

Reconsideration.

The first subject on the Orders of the Day, was the motion of Mr. Marvin, of Winchendon, to reconsider the vote by which the Report of the Committee on the Qualification of Voters, was accepted.

Mr. MARVIN, of Winchendon. I ask the indulgence of the Convention for a few minutes, to explain the design which I had in offering this order. The order, as will be seen, requires that all persons who may attain to the right of voting in the year 1856, shall be able to read the Constitution of this Commonwealth, printed in the English language; and, as the object which I had in view in offering it, has been much misunderstood, I have desired the privilege of briefly stating what that object was. This is the reason why I made the motion to reconsider.

From conversations which I have had with various gentlemen, I believe that there is very little probability of this order being passed, and I suppose, probably, the chief reason is, that it is too far in advance of the times. I merely wish to explain it.

The object, as will be seen, is so to provide in the Constitution, that from and after the year 1856, all persons admitted to vote for any officer in the State of Massachusetts, shall be able to read the Constitution of the Commonwealth, in the English language; because, I think if they can read that, they can read almost anything else. The design is not, as many gentlemen suppose, to

restrict the right of suffrage at all; and the order was submitted to the Committee for the Encouragement of Literature, because the object of it was the promotion of education. It did not, by any means, look to the restriction of the right of suffrage. I will go as far as any gentleman, in extending that right; but it seems to me, in adopting this order, we put into operation a strong motive to induce every person, and especially every man, to learn to read. It would not affect any person who has the right to vote at present, nor any one who might become entitled to the right of suffrage previous to that time. All young men, who are eighteen years of age, and upwards, would have three years in which to learn to read; and, as we have the means of education provided for all who choose to avail themselves of it—both children and adults—there is no reason why every man in the Commonwealth, in the course of three years, should not be able to read the English language. That was the object I had in view, and it appeared to me to be an object highly worthy of our attention, if, by any possibility, it could be reached.

Some few years ago, it was recommended that all persons should be compelled to send their children to school. I suppose, however, that that could not be done. Indeed, I suppose it never would be done—at least, I hope not, for I dislike compulsion in this matter; but if a provision of that kind was made, there would be an inducement held out to every man to learn to read.

I will not dwell upon the subject longer, except to say that nothing would contribute more to the honor of Massachusetts, than that every man who was a voter was able to read; and secondly, that having such a provision in our Constitution, it would make every man who might come to our State from other countries, truly American. I do not mean by this, that we should do anything to prevent foreigners from coming amongst us; I hope that every foreigner who comes into the country will be welcomed by us with cordiality—that they will feel that they are at home here, and that they will learn our customs, and support and honor our institutions.

Having made this explanation, and understanding that there is no hope of this order being adopted, I will now move to lay the motion to reconsider on the table.

The motion was accordingly laid upon the table.

Harvard College.

On motion by Mr. KNOWLTON, of Worcester, the Orders of the Day were laid upon the table, and the Convention resolved itself into

COMMITTEE OF THE WHOLE,

On the Report of the Committee on Harvard College, Mr. Morton, of Taunton, in the chair.

The resolution reported by the Committee, was read, as follows:

Resolved, That the Constitution ought to be amended by adding to chapter 5, section 1, the following article, to wit:—

The legislature shall forever have full power and authority, as may be judged needful for the advancement of learning, to grant any farther powers to, or alter, limit, annul, or restrain, any of the powers now vested in the President and Fellows of Harvard College: *provided*, the obligation of contracts shall not be impaired; and shall have the like power and authority over all cor-

porate franchises hereafter granted for the purposes of education in this Commonwealth.

Mr. KNOWLTON, of Worcester. Mr. Chairman. It would have been more agreeable to me, and more just to the cause, if the duty of sustaining this Report had been assigned to one of larger experience in deliberative assemblies. But trusting to the forbearance of the Convention, I shall present some of the considerations which seem to me to be pertinent to the subject. My colleagues of the Committee will be able to supply my deficiencies.

Harvard College, Sir, is not alone a question of to-day; but in many of its phases it is a question of the past and of the future. It covers a period of more than two centuries of our history; starting from a point almost back to that in which the germ of our civilization, now so largely developed, was perilled in a bleak winter, upon a desolate coast. The college was, undoubtedly, among the ideas which the colonists brought with them, for its foundation was laid only sixteen years after the landing at Plymouth. Something of history, as well as of legal and moral right, must therefore enter into the discussion of this resolution.

The rights of the Commonwealth in the college, and the power of this Convention to interfere with its organization, depend largely upon certain facts in history. Those facts must arrange themselves around one or two points: first, who was the founder of the college; and second, what were the rights of the founder, and were they ever transferred or surrendered?

These two questions involve two theories, the practical results of which are wide asunder.

If John Harvard was the founder of the college, by his own will or the will of the government, and his rights as founder were never transferred or surrendered, then the power of this Convention to touch the organization of the college, may perhaps be questioned. But if, as I believe, the Commonwealth was the founder, and has never parted with its rights as founder, then the whole subject is clearly within the power of this Convention. We may do what we please, and as we please, with the college, provided we do not subvert or contravene the original purposes of its foundation.

It does not become me, Mr. Chairman, in this Convention, or elsewhere, to assert what is law and what is not law, upon a question of so much importance as this. But I understand, Sir, that our laws and the laws of England are coincident upon this subject; and that the general principle is that the founder of the college—be he the king, an individual, or the state—is the one who first erects and endows it; and that all subsequent donors stand to it in the relation of benefactors. It matters not how great or how numerous may be their donations; they cannot dispossess the founder of his rights as such. He may transfer them to another; but he cannot rightfully be deprived of them; and if he does not part with them, they descend to his heirs or successors.

What, then, are the rights of the founder? If he places the property in the hands of trustees, he parts with none of his rights, but may recall the trust. But if he places it in the charge of a corporation, the right of control is then vested in the corporation; and nothing remains to the founder but the right of visitation; that is, a sort of judicial authority over the corporation to call

Friday,]

HARVARD COLLEGE.—KNOWITON.

[July 16th.]

the corporators to account for any perversion of the funds, or any divergence of the corporation from the aim originally given it. This great right of visitation exists of necessity. If the founder fails to provide for its exercise, then the law provides it for him. If Harvard, as some assert, was the founder of the college, and failed to provide for a visitor, or if the right was parted with or lost, then the general court is in full possession of it. But if the Commonwealth was the founder, then the State, having a self-perpetuating existence, retains the right forever unbroken.

Now, Mr. Chairman, what are the facts which history teaches on this subject?

At a session of the general court held in Boston in September, 1636, as the record says, "the court voted, for the erecting of a public school or college, at Cambridge, £400, to be paid out of the country treasury." It has been found convenient, in later times, to deny that this sum was ever paid; but the denial will avail nothing against the fact of the grant; and besides, the treasurer of the college, in a recent publication, places this grant of the general court of 1636 at the head of the list of donations to the college.

In 1637, Nathaniel Eaton was chosen professor of the school, and was charged with the management of the donations, or funds, or "college stock," as the properties of the college were designated in those times.

In the following year, 1638, the Rev. John Harvard, of Charlestown, died, and made by will a donation to the college of £779 in money, and 320 volumes of books. The general court, the same year, in gratitude for this princely benefaction,—for such it was in those times, and in the then condition of the infant colony,—ordered that the name of Harvard should be given to the college. At that time, there was no corporation in existence. None was then created. It was emphatically the college of the general court. The court had established the rights of the Commonwealth as founder by making the first donation. It appointed the first officers. It directed where and how the college should be built. It took John Harvard's donation, and, to perpetuate his memory, it gave the college his name. But nowhere, and at no time, did it decree that he should be held as the founder of the college, or that his heirs or successors should have the ordinary visitatorial powers that attach to the founders of such institutions. On the contrary, four years afterwards, in 1642, the general court proceeded to establish—not a corporation—but a Board of Overseers, with power to manage the funds, and make all necessary laws for the government of the college; and, at the same time, accountable in all things to the general court.

Such was the character and condition of the college for the first fourteen years of its existence—from 1636 to 1650; and during those fourteen years there was no act of the government that declared Harvard the founder of the college, or even indicated an intention of the court to recognize in him, his heirs or successors, the well-established rights of the founder of such an institution. It is not to be supposed that there was any accidental omission to make such recognition; for the colonists, be it remembered, had but recently left the mother country, where the whole subject of college law was thoroughly understood, and in whose colleges many of them had been educated.

Harvard himself was a remarkable man. He was an educated clergyman, comparatively affluent, as money was then valued, and yet bestowing his wealth in the full confidence of one gifted with the power to anticipate the wants of the advancing generations of men, and to foresee the coming glories of the land on which he had scarcely pressed his foot before he went to sleep in its bosom. Yet nowhere, and at no time, did he express a desire to be considered as the founder of the college, or to reserve to his heirs or successors the ordinary visitatorial power incident to a founder.

He came up to the general court with no such petty interrogatory upon his lips as, "What security can you give me for my money?" No, Sir; he participated in the idea common to the colonists, that it was their mission to establish, upon the new continent, a new order of civilization, founded upon the Christian doctrine of the equality of all men, in the state as in the church. Herecognized, in its full force, the democratic idea of popular sovereignty, and of the capacity of the people to make a perpetual demonstration of the Christian rule that the powers of government are in the people themselves, and not in the institutions of government which they themselves may organize. Acting upon this idea, he placed his munificent donation in the hands of the general court, with no injunction, but to TAKE IT—USE IT; in the concise and explicit language of Puritan legislation, "For the advancement and education of youth in all manner of good literature, arts, and sciences." He did not ask that a self-perpetuating corporation should be established, to watch over his donation; but he trusted to that strong sense of right that pervades the broad bosom of the people, in full assurance that his confidence would never be found misplaced. He no more distrusted the future than he distrusted the Ruler of the universe. He believed that the living ages, as they should advance in perpetual succession, would be just to the ages gone by; and, while he had faith in their integrity, he believed in their right to adapt their institutions to their existing condition.

I come now, Mr. Chairman, to the consideration of the second period in the existence of the college—that of its charter, in 1650. The general court then gave it form, substance, and existence, as a corporate body. Did the general court give it the character of a *close* corporation? or was there an essential reservation in the charter?

By the charter, the corporation was to consist of seven persons, with power to receive and manage the college funds; to fill vacancies caused in their body by death or resignation; to choose college officers or servants; and, generally, to make all necessary rules for the government and conduct of the college. But there was an important reservation in the charter. The counsel and consent of the board of overseers, as established in 1642, were required, to give force and effect to the acts of the corporation. That board is fully recognized, but was not established, by the charter. As its name implies, it was not an independent body, but stood around the college to oversee and guard the rights of the Commonwealth in the institution. Neither body alone was the government; and conjointly their powers were not full powers. The corporation, with the consent of the overseers, had the power to fill vacancies in its body, but it had not the power to create va-

cancies. It could, by the terms of the charter, choose its officers, and remove them; but it could not, by the charter, remove one of its fellows, that power belonging to the founder in the exercise of his visitatorial or judicial authority over the college. The visitatorial right, as we have seen, was never in John Harvard, or in any of his heirs or successors. It was originally in the general court, as the founder; it was not transferred or surrendered by the court when it granted the charter, in 1650; it has never, as I believe, been transferred since that day; and being in the law-making branch of the government, in the outset, it has continued so through the successive generations of men that have held in their hands the legislative power of the Commonwealth during the two centuries that have passed; and must, of necessity, continue there through all time, unless specially and explicitly transferred by the people, or their authorized representatives.

The charter of the college was subsequently amended in 1657 and in 1672, but was in no way materially changed. Other changes were subsequently made, and with like effect.

In 1691, the provincial government was established by William and Mary, in place of the colonial government; and in 1707, the general court confirmed the college in all the rights it had by the charter of 1650. That confirmation was given in these words:—

"And inasmuch as the first foundation and establishment of that house, (Harvard College,) and the government thereof, had its original from an act of the general court, made and passed in the year 1650, which has not been repealed or nullified, the President and Fellows of the said college are directed, from time to time, to regulate themselves according to the rules of the constitution by the said act prescribed, and to exercise the powers and authority thereby granted for the government of that house, and the support thereof."

Four charters were sent to England, but were disallowed by the crown, because the general court would not surrender its control of the college to the royal authority. This was after the colonial charter had been recalled by the crown.

By the charter of 1650, thus revived and confirmed by the general court in 1707, the college was made not an absolute but a qualified corporation. The president and fellows had not then, and have never had, any vested rights which were distinctively their own. All their rights are rights of trust; and those rights were placed in their hands originally by the general court, as the founder of the college, with the explicit provision that they should hold and manage, for specific purposes, the properties given to the college by the founder, and by its long and brilliant array of benefactors, in successive generations, from Harvard to Bussey, and Lawrence, and Phillips.

I have said that it was not an absolute corporation. The act of 1642 established the board of overseers as the representatives of the general court. In the college charter granted in 1650, the power of the corporation is qualified by an explicit recognition of the board of overseers, in these words:—

"And the said seven persons, or the greater number of them, procuring the presence of the Overseers of the college, and by their counsel and consent shall have power, and are hereby authorized, at any time or times, to elect a new President, Fellows, or Treasurer, so often, and from

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time to time, as any of the said persons shall die, or be removed," &c.

Through the whole original charter, and in its subsequent modifications—none of which were material—the counsel and consent of the overseers were made essential to render valid the acts of the corporation, with the single exception of receiving and investing of funds, or dealing in real estate for the use and benefit of the college.

The power of the overseers was not a mere advisory power. Their *consent* was necessary to most of the acts of the corporation. They had the power to render null the elections and appointments of the corporation. They and the corporation had the power to dismiss the officers and servants of the college; but the two boards, neither separately nor conjointly, had the power to dismiss a member of the corporation. That power was in the general court, as the visitor on in its foundation; it was exercised by the court, and has never been given up; and cannot be given up unless the present generation or future generations shall be false to the great trusts confided to them by the founders of the Commonwealth.

Whatever power the Commonwealth had over the college by the charter granted in 1650, it has fully and completely at this day. It is true that in the transitions of political power, consequent upon the English Revolution of 1688, the result of which, so far as this Commonwealth was concerned, was the substitution of the provincial for the colonial government—it is true, that the government was unable, at times, to exercise its rights, through the overseers; but at no time did it lose those rights; and to whatever extent it might have been stayed in the execution of them, they were fully revived and confirmed when the crown tacitly gave its assent to the act of the general court, in 1707, which reaffirmed, in all its original force and effect, the college charter of 1650.

Now, if John Harvard was the founder of the college, by his own will, or was made founder by the act of the general court,—as I understand the college at this time maintains,—then the general court, from that time, had no visitatorial power in the premises; and, of course, it could exercise no such power. But what was the fact? By no charter, act, resolve, or decree of the general court, did the court expressly, or impliedly, transfer, surrender, or part with its original visitatorial or judicial power over the college. In compliment to its first private benefactor, it gave the college the name of Harvard; and that was all it gave. On the contrary, the court went on in the execution of its duty as founder and visitor of the college, the same as it would have done if no such man as Harvard had ever existed, or no such fund had ever been given to the college. Contemporaneous construction shows the character of the charter.

The college charter, let it be borne in mind, was granted in 1650. In 1654—four years only after the establishment of the corporation—its first president, the learned and pious Henry Dunster, resigned his place as president of the college and of the corporation. To whom did he resign? Not to the corporation, or the overseers, who had the power to fill the vacancy, but to the general court, in a letter addressed, in his own language: "To the wherryppful and honored Richard Bellingham, Esq., Governor of the Massachusetts Colony, with the rest of the honored Assistants

and Deputies in the General Court at Boston, now assembled."

In the conclusion of his letter, he says:—"Therefore I here resign up the place wherein hitherto I have labored with all my heart, (blessed be the Lord who gave it,) SERVING YOU AND YOURS. And henceforth, (that you in the interim may be provided,) I shall be willing to do the best I can for some weeks or months to continue the work, acting according to the orders prescribed to us," &c.

Upon receiving Dunster's resignation, June 10th, 1654, the general court passed this order:—

"In answer to a writing presented to this Court by Mr. Henry Dunster, wherein among other things he is pleased to make a resignation of his place as president, this Court doth order: That it shall be LEFT to the care and discretion of the overseers of the college to make provision, in case he persists in his resolution more than one month, and inform the overseers, for some meet person to carry an end that work for the present, and also to act in whatever necessity shall call for until the next sessions of this court, when we shall be better enabled to settle what will be needful in all respects with reference to the college. And that the overseers will be pleased to make return to this court, at that time, of what they shall do herein. The Deputies have passed this, and desire our honored Magistrates' consent thereto:

1654. WILLIAM TORREY, Clerk.
Consented hereunto by the Magistrates,—
RICHARD BELLINGHAM, Governor."

In this matter, the overseers did not act from any rights of their own, but under powers expressly delegated to them by the general court; and for their exercise they were required to make a return to the court. This resignation of Dunster's implied something more than a voluntary retiring from the college. He had fallen under censure for some heretical notions on the subject of baptism; and therefore the overseers, acting for the court, said to him, that "unless he would give satisfaction, according to the rules of Christ, they must be constrained to furnish the college with another president." That, is he must be dismissed from the presidency, and another appointed in his place.

In the same year in which Dunster resigned the presidency of the college into the hands of the court—four years after the charter was granted—the general court exercised, in a remarkable manner, its visitatorial power over the college. The records say that the court, "on perusal of the return of the committee appointed to consider of the college business, order that the stock appertaining to the college should be committed to the care and trust of the overseers of said college."

By the law of 1642, the funds were placed in the hands of the overseers; by the charter, they were taken from the overseers and confided to the corporation; and then, four years afterwards, as I have shown, the corporation was dispossessed of the funds, which were again placed in the keeping of the overseers. A member of the corporation, writing upon this transaction, nearly a century afterward, said:—

"At first view this may seem an extraordinary act in the court, who, by a solemn grant in the charter of '50, had vested the property of that stock in the said corporation. But there is really nothing extraordinary in this act; for, as visitors of their own college, the court had the right at all times, to see that this stock was well taken care of." "This was an act that, in common law, the visitors of a college had a right to do."

Twenty years afterwards, in 1674, the general court again exercised its visitatorial right over the college. The president, the corporation, the overseers, and the students, were summoned before the court; and, after an examination into the condition of the college, the court voted:—

"That if the college be found in the same languishing condition at the next session, the president is concluded to be dismissed without farther hearing."

In 1693, Increase Mather was president of the college. He was a man of ability and learning, but exceedingly ambitious to figure in politics, as well as in religion and literature. He not only chose to retain his place as pastor of the North Church in Boston, but he even left both his church and the college, to go on a political mission to England. In view of his course, the general court voted, that "the president of Harvard College, for the time being, shall reside there, as hath been the custom in times past;" and five years afterwards the court found it necessary to declare again, that "the president should reside at Cambridge." But president Mather, still disregarding the wishes of the government, the general court, in 1701, dismissed him from the presidency, and placed the college in the charge of vice-president Willard; and in 1707, Willard having deceased, John Leverett was chosen to fill the place, and the general court, accepting and approving of the appointment, voted to pay him a salary of £150 from the public treasury, "for his encouragement and support during his continuance in said office, he residing at Cambridge, and discharging the proper duties to a president belonging, and entirely devote himself to that service."

In 1742, Nathan Prince, who had been a member of the corporation for fourteen years, was dismissed by a vote of the Board of Overseers. He was a vigorous and earnest writer, and although guilty of some dereliction in those rigorous times, he was not disqualified to bear witness to future times against an act of usurpation on the part of the overseers. In his appeal to the public, he said:—

"The next, and the only other dismissal of a member of said corporation, was on February last, 1741-2; without any power from the court, or any act of said corporation for the same, but by the sole and sovereign authority of the overseers of the college; who, having no plain law for it, nor from times immemorial any instance of such a thing on their side, seemed now resolved to make one, that so they might plead in future times. Precedents against law are dangerous things; especially if they rise so high as to turn out members of corporations. Such a thing done in England would cause an insurrection; and if this power does not belong to the corporation and overseers of said college by law, the overseers of said college, by such an act, have assumed to themselves the powers of the general court, viz.: those powers, which in President Dunster's case were not the powers of the overseers, but were delegated to them from the court, and so were the powers of that court. Nothing, therefore, can demand a more critical examination than such precedents; and that at their first beginning, before they acquire the force of laws, and in future times will be pleaded as law, against the rights of the general court itself."

The whole drift of Prince's appeal, was to the effect that the power of removing a fellow of the corporation, was not given by the charter to the

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college government, but, in his own words, "that the court had reserved it to themselves;" thus bearing his own testimony, in the most emphatic manner, to the visitatorial right and power of the general court as the founder of the college.

The general court, in all the times of the colony and province, showed its zeal in maintaining the foundation it had established, by paying, for a long period of time, the salary of the president of the college out of the country treasury; by numerous payments to professors in the college; by grants of land; and by donations of £1,500 in 1718, for the erection of Massachusetts Hall; of £1,000 in 1726, for the president's house; of £2,500 in 1762, for Hollis Hall; and of £4,100 in 1764, 1765, and 1766, for rebuilding Harvard Hall; amounting in the aggregate, down to 1786, as stated by the treasurer of the college, to over \$91,000. And he says that in those early days money had a value six or seven times greater than its value in later times.

But the Commonwealth's bounty to the college did not stop with grants of money. In 1640, it gave the college the ferry across Charles river. How much income it afforded, I have not the means of knowing. But in 1785, after the charter of the Charles River Bridge Company, the general court provided for an annual payment of £200 a year by that company for the benefit of the college; and subsequently, for £100 a year each, from two other bridges across the same stream.

In the consideration of this subject, Mr. Chairman, I come now to the third period in the existence of the college; and that is under the Constitution of the Commonwealth, as established in 1780, and revised by the Convention of 1820.

The college had existed *in name*, though not *in law*, as a college, from 1636 to the time of its charter in 1650. It then became both in law and in fact a college. The board of overseers, as I have already said, was recognized by the charter, and made a component part of the government. An appendix to the charter was given in 1657. Another modification was made in 1672; and the whole was confirmed by the general court in 1707.

These were all the laws that were in force touching the college, when the Convention of 1780 assembled. Such was the understanding of that body, and such is the voice of history upon the subject.

In forming the Constitution, the Convention proceeded to secure the rights of the corporation, and the rights of the people as the founder, so that they should be transmitted unimpaired, to future times. The result of its action was the fifth chapter of the Constitution, which was approved and adopted by the people.

The chapter is divided into three sections. The first declares:—

"That the president and fellows of Harvard College, in their corporate capacity, their officers and servants, shall have, hold, use, exercise, and enjoy all the powers, authorities, rights, liberties, privileges, immunities, and franchises, which they now have, or are entitled to have, hold, use, exercise, and enjoy; and the same are hereby ratified and confirmed unto them, and to their successors, and to their officers and servants respectively forever."

The second section confirms to the college all the gifts, grants, devises, legacies, and conveyances, made to the college, to be held and used in conformity to the will of the donors.

The third section provides for the perpetuity of the board of overseers, closing with this proviso:

"Provided, that nothing herein shall be construed to prevent the legislature of this Commonwealth from making such alterations in the government of the said University as shall be conducive to its advantage and the interest of the republic of letters, in as full a manner as might have been done by the legislature of the late province of the Massachusetts Bay."

This proviso refers not to the corporation alone, or the overseers alone, for neither of them in their separate capacity constitutes the government of the college. The form of expression is such that it must embrace both boards, or it would be without sense and meaning. Of course, under the constitution, the legislature of to-day has the same powers of legislation which were had by the general court previous to 1780; and what that power was we have seen in the whole history of legislation during the times of the colony and the province. The court claimed and exercised its rights of visitation, as founder, in as full and perfect a manner as it would be possible for it to claim and exercise any right pertaining to the functions of government. To deny this, is to deny the whole history of the Commonwealth. It is to deny that the college was built, located, and named by the general court. It is to deny that the court watched over it by day and guarded it by night, and sustained it as a parent sustains a child, in all its trials and perils, from its infancy, when Cambridge itself was but a wilderness, up to its strong and vigorous manhood. Without this visitatorial guardianship of the Commonwealth over the college, its light would have gone out, its funds would have been dissipated, its charter would have been a dead letter, and the donations of Harvard, and other generous benefactors, would have been lost forever; and there would have been no broad foundation on which to pile up the splendid legacies of later days.

With all deference, Mr. Chairman, to the opinions of gentlemen learned in the law, I am unable to believe that this is a case beyond the reach of ordinary comprehension; or that it is involved in intricacies and mysteries which common sense cannot fathom. The corporation itself, in its memorial two years ago, told the legislature that:—

"There is no doubt that the founder of a charity has the right in its creation to prescribe the terms and tenure upon which it shall be held, and the statutes by which it shall be governed, and to reserve the power of altering them from time to time; as also general legislative and judicial authority over the trustees, with power of removal and substitution; provided that such terms, tenure, and reservations, be not repugnant to the general law. Nor can it be doubted that, if the grant be general in its terms, for the purposes of the charity, without prescribing any terms upon which it shall be held and managed, such general legislative and judicial power will remain in the founder, to be exercised at his pleasure; nor that, if the whole tenure and government are not granted to the trustees or other persons, the portion not thus parted with will remain in him. And any power thus expressly or tacitly reserved in the founder, is called visitatorial, and may remain in him, or be at any time granted to other persons; and it constitutes a valuable estate or property, recognized as such in courts of law and equity."

This opinion is signed by the chief justice of our supreme court, and by one of the judges of

the United States court, and may, therefore, be taken as sound law in the case. This doctrine is not inconsistent with that of Mr. Justice Holt, that if the founder of an institution fails to provide a visitor, the law provides one for him.

But if I understand the memorial, it avoids the conclusion, by the assertion that Harvard College is a close corporation; and that its franchise is a vested right in the Fellows, which the legislature cannot touch.

If that be so—if John Harvard was the founder of the college, and the right of visitation was in him, his heirs, and successors—then Harvard College can be brought into the same category with Dartmouth College; and the law of the United States court will apply in the one case as well as in the other. But I find no analogy between them.

Dr. Wheelock was the founder of Dartmouth College, and retained for himself, his heirs, and successors, a visitatorial right over the foundation. The legislature of New Hampshire intervened, and changed the organization of the corporation. The trustees appealed to the United States court for redress, under that provision of the United States Constitution which declares that "no State shall pass any law impairing the obligation of contracts." The court sustained the appeal, and the legislature was defeated. But whether a contract was or was not involved in that case, is a question I leave to the logic of the legal profession; as also those other questions, whether the same doctrines were upheld by that court, and if so, how far, in the more recent case of the Warren Bridge; and also whether, as the supreme court of the United States has been constituted of late years, it is probable that the same doctrines would now be laid down as law which ruled in the decision of the Dartmouth case.

In the Convention of 1820, Mr. Webster admitted, in his report, that the college was founded by the Commonwealth. His opinion will, of course, have great weight with a portion, at least, of this Convention. If he was correct in his opinion, then the Commonwealth has a perfect right to modify the organization of the college, whenever the exigencies of the case may require it. Should it do so, upon the theory admitted by Mr. Webster, then there will be no impairing of the obligations of a contract that would make a case that could stand for a moment in the United States court. The exigencies of the case must rule the decision. The court will admit the full rights of the Commonwealth as visitor upon its own foundation; unless, of which I should entertain no serious apprehension, it should throw over the case one of those constructive interpretations of power in the general government, which tend to rob the States of their sovereignty, concentrate all power in the general government, and subvert the liberties of the people.

If the Commonwealth has all the rights and powers of founder of the college, and there exists an exigency, then the corporation is in the power of the general court, acting under such constitutional provisions as the people may prescribe; and there is, and can be, no contract that can be impaired by the action of the people through a Convention, or the general court. In good faith to our forefathers who established the college, and watched over it in its early perils, and fully recognized it in the Constitution—and especially in good faith to its early and its later benefactors, who

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have enriched it with a princely munificence—we are under the most sacred of obligations to see that its funds are not perverted from the purposes to which they were dedicated. If a perversion is proved—or a failure to give them their full force and effect—then the exigency is made out; as it was in the case of Dunster in 1654, and in the case of the summons to the college to appear before the general court in 1674. In such a case, the plea of a contract cannot avail against the Commonwealth.

But in supposed cases of conflict between the general government and the government of a State, it is important to bear in mind the relative powers of each to the other—the theory of civil government among us, and the mode in which power is distributed by our institutions.

The general government is an organization of delegated power. It has no original sovereignty. It is a creature of the States, which created it by contributions from their own sovereignty, powers and rights. It can act upon such powers only as were expressly delegated to it by the States; and the powers which it may exercise are plainly and specifically defined and set forth in its constitution, as well as the powers which it is forbidden to exercise. With the single exception of the powers thus delegated, every State is sovereign of itself, up to the full measure of its reserved powers, rights and privileges; and can be held accountable in no manner to the general government, except for an invasion of the powers it expressly delegated to that government when it became a party to the compact between the States of the Union. When, therefore, there is no collision between a State and the general government, and no question in dispute in the nature of a contract to be impaired, the Commonwealth cannot be called to account in the courts of the United States for any exercise of its reserved sovereignty and power in or upon its own institutions. Upon these premises, it is my full belief that the general government, acting within the limits of its delegated sovereignty, and without the line of the reserved rights of the States, has no more right to touch the Commonwealth for its action upon Harvard College, than it has for its action upon the State Lunatic Hospital, or the State Reform School. Both of those institutions are corporations, substantially of the same nature as the corporation of Harvard College admitted itself to be, from the period of its organization down to about the commencement of the present century.

The provision that "no State shall pass any law impairing the obligation of contracts," was originally a compact of amity between the several States, to protect the rights of the citizens of one State from destruction or invasion by the government of another State.

By the resolution upon your table, Mr. Chairman, it is proposed to affirm in the Constitution the full power of the legislature over Harvard College, as a State institution; subject, however, to such restrictions as shall forever protect the college in all its legal rights. It is a simple proposition, and needs no labored exposition. It gives to the legislature all the power which the people have over the college. It places it in the Constitution as an *express* power, where it now exists in the nature of an *implied* or *inferential* power; the extent of which has always to be determined by judicial interpretation. The language of the resolution is almost identical with

the charters of the other two colleges in the Commonwealth. The charter of Williams College was granted in 1793; and in it the general court expressly provided, in these words:—

"That the legislature may grant any farther powers to, or alter, limit, annul, or restrain, any of the powers vested by this act in the said corporation, as shall be judged necessary to promote the best interests of the said college."

This charter was given thirteen years after the adoption of the Constitution of 1780; and, (as suggested by a member of the committee,) was in all probability an exposition of the view which was then entertained of the powers of the general court, affirmed by the Constitution, as existing under the Province Charter.

Thirty-two years afterwards, in 1825, the legislature chartered Amherst College, and placed in its act of incorporation a transcript of the provision contained in the charter of Williams College; with the farther provision, however, that the legislature should forever elect a portion of the trustees of the college. And that is now done.

One other point, Mr. Chairman, remains to be briefly considered, and that is whether there exists a necessity for the Commonwealth to intervene, in the exercise of its visitatorial rights and powers, to correct abuses in the organization and operations of the college; or to give to the institution greater force and effect.

In the matter of the funds of the college, I make no charges against the corporation. I have none to make. If any are to be made, they must come from some other source. I know nothing of its funds—how they have been invested and applied—except in common with the whole community. I never entered the doors of the college, and know nothing of its internal order and life. Its own reports, and the records of the general court, show that it has been endowed with a profusion that is almost prodigal. And what is the result? A less number of students than is found in some colleges more recently established, and charges for education that are onerous to many who avail themselves of its benefits.

These facts have led to the inquiry whether the college has, or has not, failed to meet the just expectations of the people. Those expectations were expressed in the charter. They were—not that it should be a select school for the education of classes or cliques in particular theories, principles, or tenets, religious or secular—but, in the concise language of the charter, "for the advancement and education of youth in all manner of good literature, arts, and sciences."

What, then, Mr. Chairman, is the relation which the college now holds to the Commonwealth?

Its corporation is now, and long has been, composed of men who are understood to be of one sect in religion, and of one party in politics. That religious sect does not embrace more than one-tenth of the people of the Commonwealth. I do not charge, Sir, that in some of its acts the corporation has shown a culpable insensibility to public opinion; but I do say, that while the college remains in the hands of a sect or a party, it is outside, over and beyond, the reach of the sympathies, the approval, the cooperation of the mass of the people.

Its founders and benefactors never designed

that it should be a sectarian, a narrow, or an exclusive institution. They, of course, had their peculiar notions in theology and in government; but they nowhere incorporated them into the constitution of the college, or made provision that they should rule in its administration.

For one, Mr. Chairman, I propose to make no changes in the original character and purposes of the college. All I propose, is to bring back the college upon its first foundation; to give greater activity and effect to those means of education that have been so liberally supplied by the Commonwealth, and by the largesses of its long line of private benefactors; and, by future constitutional legislation, to place the college in full contact with the beating pulse of the great heart of the Commonwealth, that the generous sympathies of the whole people may cluster around it in the present and in all coming time. Ours is a powerful Commonwealth. Its amplitude of means is daily augmenting. The platform of the college is a broad one. Without impairing the efficiency of the institution that now occupies but one of its corners, the Commonwealth can rear upon it an organization such as the progress of society may demand.

Of course, Mr. Chairman, I have no sympathy with those who cherish errors and abuses because they are old; and dread the progress of truth because its revelations are new; who regard every change as innovation; and who hope that the future may be as the present is, or as the past has been. The Committee with whom I have had the honor to act in reporting this resolution, do not even contemplate a subversion of the established order of the college, or a change of its studies or discipline. If there are duties unperformed, all will agree that they should no longer be neglected. If there are drones in the hive, they should be set to work, or driven out. But these are the appropriate duties of an energetic administration of the college, that comprehends its duty, and has the moral courage to do it.

Harvard College has the means—and what it has not it can have—to place it beyond the reach of competition from all other American Colleges.

Popularized as it should be, and in a land that is progressing with giant strides, it should have its thousands of students where it now has its hundreds. It should be a great centre of good influences—the prolific fountain, from which "all manner of good literature, arts, and sciences" should flow out in abundant streams, to enlarge, to invigorate, to refine, the public mind. It should be the head of our system of public instruction:—not standing aside, in narrow exclusiveness, to furnish a few individuals for the professions:—but educating men, of all classes, for a higher aim in all the pursuits and avocations of life—especially that great body of public teachers who are hereafter to give tone and direction to the ideas and sentiments of the people.

With these views, thus imperfectly presented, and with the hope that my colleagues of the Committee will supply my deficiencies, I ask pardon, Mr. Chairman, for the extent to which I have trespassed upon your forbearance.

Mr. BRAMAN, of Danvers. Being a member of the Committee which made this Report, I ask the indulgence of the Convention for a short time, in order that I may have an opportunity of expressing my views. With some of the views which have just been expressed by the chairman

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of that Committee, I entirely concur; but from others of them I as entirely dissent, although, without doubt, those views are conscientiously and honestly entertained.

I should have preferred to have stricken out of the Constitution all that related to Harvard College; and failing in that, as the next best thing, I would have chosen to have retained the provision as it is in our present Constitution, without alteration or addition.

I have some objection to the present Report. The principal objection I have to it is, that it leaves the relation between the government and the college precisely where it was. It neither confers an additional power on the legislature, nor does it compel them to do anything which they had no power to do, without such a provision. I do not think it wise to make any change in the Constitution, without something is to be effected—without some new power is granted to the legislature, which it did not possess before.

Another objection which I have is, that it rather invites the legislature to do what I believe it has no power to do; and if it should undertake to exercise such power, it would be in contravention of the Constitution of the United States. The contract to which allusion has been made, is a contract which comes within the meaning of the article of the Constitution of the United States, which provides that no State shall pass any law impairing the obligations of contracts, and they probably would refer to the celebrated Dartmouth College case as an authority. In 1769, the crown of England created a corporation consisting of twelve of the corporators of Dartmouth College, by which the whole management of that institution was intrusted. The college continued to flourish under this charter, fulfilling the benevolent intentions of its founder and benefactors, till in 1816, the legislature of New Hampshire—thinking, as many do now, with respect to the corporation of Harvard College, that the institution could be rendered more extensively useful, by putting it immediately under the control of the State—proceeded to provide that there should be two new boards created. Nine trustees were added to the original twelve. There was also a board of overseers, consisting of twenty-five, having a negative upon the acts of the corporation; and the members of both of these boards are made elective by the governor and council. The corporation of Dartmouth College resisted the act. They contended that it was an invasion of their chartered rights, and that it was an indirect contravention, both of the Constitutions of New Hampshire, and of the United States. They took the case into the courts of New Hampshire, and then, after the decision of the courts of that State went against them, they appealed to the United States court, and, after an argument, conducted by some of the most eminent legal men of the country, and after an investigation by the court, adorned by the names of a Marshall, and a Story, the decision of the New Hampshire court was overruled, and the corporation was restored to its original condition and privileges.

Now, I maintain, that the charter of Harvard College is as strong as the charter of Dartmouth College, in its main features; and having read them both, and carefully compared them together, I put it to any legal gentleman, whether there is any such difference between the corporation of Dartmouth College, and that of Harvard College

in 1650, as does not place them both alike under the Constitution of the United States.

Views have been advanced by the chairman of the Committee, and they are advanced also by other individuals, going to show, that the corporation of Harvard College stands on a different footing from that of Dartmouth College, and that it is not within the protection of the Constitution of the United States. I am aware that there are some persons who think that this Convention can exercise a control over this college, which cannot be exercised by the legislature of the Commonwealth; but, Sir, there is no foundation for this idea. The Constitution of the United States has just as much power in a State, acting through a Convention, as it has acting through a legislature, and if any act should be passed by this Convention, if anything should be incorporated into that instrument which is in contravention of the United States Constitution, it would be, just as quickly overruled as it would if it had been done merely by State authority. I know that there are individuals who say that the corporation of Harvard College is a State institution, and they therefore maintain that it is under the control of the State. Now, the phrase "State institution" is a very indefinite phrase—too indefinite to be made the foundation of an argument, without it is more precisely defined. What then is meant by calling it a State institution? Does it mean that the State gave it its charter of incorporation? Some acts of incorporation are contracts, and are, therefore, exempted from all legislative interference. They are not under the control of the State, and are beyond all interference on the part of the government of the State. It must be determined that the corporation is without the control of the Constitution of the United States, before it can be assumed that it can be interfered with. The question, therefore, depends upon the nature and the objects of the corporation that is created. The act of incorporation determines nothing, one way or the other; and if the act of incorporation of Harvard College of 1650, was a contract within the meaning of the Constitution of the United States, then, of course, it is protected by that instrument, and is not otherwise under the power and control of the State, than as its members are subject to the laws which apply to all other parts of the community.

The question then arises, whether a power can be deduced on the part of the State in relation to this institution, in consequence of its being a benefactor to the State.

It has, doubtless, conferred many peculiar benefactions upon the government, but it would have been impossible for the college to have proceeded, without the assistance of the State. But, was it ever known that the conferring of a gift carried with it the power of control over the person or body to whom it was made? When was such a thing ever known? If the State has conferred a gift upon the college, it carries with it no control, except so far as the power is deduced from the assumed fact that the State is the founder of the college. The learned chairman of the Committee, (Mr. Knowlton,) maintained that the State was the founder. This assertion has been disputed, and I think it remains doubtful to this day, whether the appropriation which the State made to the college was ever applied to the uses for which it was made, before the donation of John Harvard was applied to set the college in operation.

Mr. BOUTWELL, for Berlin. I wish to ask the gentleman whether the existing Constitution of the State does not declare that our ancestors founded Harvard College in 1636, and whether at the Convention of 1779, the corporation and board of overseers did not both assent to the insertion of that declaration into the Constitution of the State.

Mr. BRAMAN. The words "our ancestors," may refer to the State, or they may not. But I will waive the point whether the State founded the college or not, because the mere fact that a person, or state, or government, founded an institution, does not necessarily imply that it has the control of it. The doctrine of the common law upon the subject, is this: that the founder retains the right of visitation over the institution as long as he chooses to do so, but he has the right to part with it at any time. He retains the power as long as he lives, and then, I believe, it descends to his heirs, unless he otherwise makes provision for its disposal. But, I say, he has the power to devolve it upon any other body, and when he has disposed of it, whether to an individual, to a state, or to a board of trustees, the whole power is gone from the founder. Mr. Wheelock founded the institution of Dartmouth College, and, as such, had the right of visitation and control. But he chose to part with the power and privilege, and the moment he did that, he had no more authority to meddle with the institution, than the Emperor of China has. And, I maintain, that the State can just as well part with its power over a corporation as an individual can. Cannot the State sell, or convey away property, by gift? Cannot she also dispose of her corporate franchises? I believe this doctrine is maintained by all the writers upon common law. So the fact, if admitted, that the State founded Harvard College, does not give it any right of control over the corporation, provided it has parted with its power. And I maintain that it parted with all its power when it gave the charter of 1650. If that act does not convey complete control to that body over the college, then there are no terms which can convey control; and if it is not a contract within the meaning of the Constitution of the United States, it is not in the power of language to frame a contract.

But, it is said, that the Constitution of 1780 gave to the State all the power over the college which might have been exercised by the provincial government. That Constitution says:—

"Provided, that nothing herein shall be construed to prevent the legislature of this Commonwealth from making such alterations in the government of the said university, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the legislature of the late province of the Massachusetts Bay."

Now, I think, by a fair construction, that the language refers only to the board of overseers. But, suppose it extends to the corporation also; then the question is, what was the power which the provincial government might have exercised over the college? for it is necessary to determine the amount of the one, in order to ascertain the other.

I ask, first, what power did the provincial government exercise? It never exercised any. From the first moment that the charter was granted, up to its reestablishment in 1707, there

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was no act of interference by the legislature, until the Revolution which severed this country from Great Britain. The college went on during that time, and acted according to the powers conferred upon it by the charter, and as independent of the government as though the government had not existed.

But I ask, secondly, was it a power which the government attempted to exercise, by one or more of its departments. It was attempted to be exercised, but the attempt failed. In 1722, I believe, two members of the academic faculty applied for seats in the corporation. The corporation rested their defence upon the charter, and maintained that that instrument confined the membership of the corporation to residents of the college. This measure originated not merely from a desire of the petitioners to obtain seats upon the board, as a desire to remove some obnoxious members from the corporation. This board resisted, and, at length, an appeal was taken to the general court, and the legislature passed resolves favorable to the views of the petitioners. They were concurred in by the council, but were negatived by the governor.

It is maintained, by some, that this attempt on the part of the provincial government, shows the views they entertained, respecting the liability of the corporation to their control, and determines that the government entertained opinions in favor of its powers over that body, which, though rightly possessed, failed to be carried into accomplishment from motives of expediency.

But, let me ask, what was the nature of this power, attempted to be exercised over Harvard College? It was, to all intents and purposes, a judicial power. It undertook to fix the construction of the charter. It undertook to interpret the law, and that law a contract, and to depose some individuals of their franchises, and to admit others in their places.

Now, it belongs to courts of law, and not to the legislature, to exercise judicial powers. I am aware that there are cases where laws are ambiguous and of doubtful construction, and a legislature sometimes passes other laws to remove that ambiguity and doubt; but such laws are, to all intents and purposes, new laws, and not an attempt to ascertain the intention of previous legislatures.

Now, if this was a judicial exercise of power, it does not belong to our legislature, because the Constitution of the Commonwealth expressly makes a distinction between the powers of the legislature and the powers of the judiciary, and says that the one shall not exercise the functions of the other. Of course, therefore, as it was a judicial act, it does not belong to our legislature or to any other.

Let me also ask, whether it was a power which might be rightly exercised, according to the views of morality, for doubtless it refers to such a power as this, if it refers to any power at all. And what is this power? It has no right to annul the charter of any corporation, or to impair it to any extent whatsoever.

"When," declares Judge Story, "a private eleemosynary corporation is thus created by the charter of the crown, it is subject to no other control on the part of the crown, than what is expressly or implicitly reserved by the charter itself. Unless a power be reserved for this purpose, the crown cannot, in virtue of its preroga-

tive, without the consent of the corporation, alter or amend the charter, or divest the corporation of any of its franchises, or add to, or diminish the number of trustees, or remove any of the members, or change, or control the administration of the charter, or compel the corporation to receive a new charter."

I believe Judge Story says, in another place, that the idea that a state cannot interfere with the charter of a corporation, is one of the most stubborn doctrines of the common law.

This was the contemporaneous construction, in 1650, when the charter was given, and again, in 1707, when the charter was reestablished: that a power which gave a charter could not resume it, and could not impair any of its first rights whatsoever.

I am not forgetful of the fact that the parliament of England possesses an omnipotent power; that it has the power of annulling corporate rights, and of violating contracts. It is so, because there is no authority to restrain the exercise of such power, if it chooses to exercise it. It might annul the charters of both Cambridge and Oxford tomorrow, if it saw fit to do so. But it will probably not exercise such power, because it would create a sensation which would endanger the stability of the government.

But while it is admitted that parliament possesses that power, it is also firmly maintained that it has no moral right to exercise it. Should it proceed to violate a charter, it would be considered as an exercise of tyrannical power, and a flagrant outrage upon all principles of morality.

In 1783, an attempt was made by parliament to alter the charter of the East India Company. But it met with strenuous opposition, and failed. It was styled, in the petition of the city of London, not only a high and dangerous violation of the charter of the Company, but a total subversion of all the principles of the law and constitution of the country. It was called, by Lord Thurlow, *a rash, atrocious violation of private property, which cut every Englishman to the bone*. And this was said, be it remembered, at a time when it was admitted that parliament had omnipotent power.

Mr. KNOWLTON, of Worcester. I would ask the gentleman whether the English law places the East India Company upon the same basis as that of literary and charitable institutions; and whether there does not exist a distinct right as to such institutions, which is not recognized by the law of England in regard to business corporations?

Mr. BRAMAN. I think there is a distinction, but it is all in favor of private corporations. They have much less power over such corporations, than they have over the East India Company.

Now, the provincial government might possibly have possessed and exercised the same power, within its sphere, that parliament had. It will be recollected that the colonial government maintained that it had, within its own sphere, powers as transcendent as the parliament of England had within its sphere. But suppose that it had this power, it had no more right to exercise it than the omnipotent parliament had.

It is a power which does not belong to our legislature, and which is against all authority, all right, and all justice.

But I have another argument upon this subject. The Constitution of 1780 confirmed to

Harvard College its privileges and franchises. It is declared—

"That the President and Fellows of Harvard College, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy; and the same are hereby ratified and confirmed unto them, the said president and fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever."

It confirmed all their liberties and all their franchises. Now, what is a franchise? Blackstone defines it thus:—

"It is likewise a franchise for a number of persons to be incorporated and subsist as a body politic; with a power to maintain perpetual succession, and do other corporate acts; and each individual member of such corporation is also said to have a franchise or freedom."

It seems, then, that when the Constitution confirmed these liberties and franchises of Harvard College, it confirmed franchises which it is not in the power of a legislative body to take away. And it was intended as a protection of the college against any such interference. Would it have been wise and consistent for them, after having thrown this shield around the college, to have put another paragraph into the Constitution which should proceed to surrender up the corporation to the mercy of the legislature.

[Here the chairman's hammer fell, the half hour allotted to each member to speak, having expired.]

Mr. HOOPER, of Fall River, moved that the Committee rise, report progress, and ask leave to sit again, with the view to a temporary suspension of the operation of the order adopted this morning, limiting speeches to half an hour.

The motion was, upon a division—ayes, 106; noes, 86—agreed to, and

The Committee accordingly rose, and the President having resumed the chair of

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The chairman of the Committee of the Whole reported progress, and leave was granted to the Committee to sit again.

Mr. ALLEN, of Worcester, moved a suspension of the rule limiting speeches to half an hour, for this day.

Mr. BUTLER, of Lowell, moved to amend the motion of the gentleman from Worcester, so as to suspend the operation of the rule altogether.

Let us, said Mr. Butler, either have the rule enforced, or let us abrogate it.

Mr. HOOPER. My object in moving that the Committee rise, was, that the rule might be so far suspended, as to give to gentlemen on each side of the question, an equal chance of being heard.

The PRESIDENT. By the rules of the Convention, the question on suspending the operation of the order, is not debatable.

Mr. WESTON, of Duxbury, moved that the question on the motion of the gentleman from Worcester, be taken by yeas and nays. The motion did not prevail, and the yeas and nays were not ordered.

Mr. HOOPER moved to amend the motion of

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the gentleman from Worcester, so far as to give to the gentleman who was last in possession of the floor in Committee of the Whole, the same length of time to reply, as was allowed to the chairman of the committee on Harvard College, who preceded him, to address the Committee.

Mr. ALLEN accepted the amendment, as a modification of his motion.

Mr. BUTLER. Is the motion debatable?

The PRESIDENT. It is not debatable.

Mr. BUTLER. Then I move a reconsideration of the vote by which the order limiting the duration of speeches, was adopted.

The PRESIDENT. The question is on suspending the rule for a limited time.

Mr. SCHOULER. Does the Chair decide, that the order adopted this morning is one of the rules of this body, requiring a vote of two-thirds for its suspension?

The PRESIDENT. It is a standing order, and will require a vote of two-thirds for its suspension.

Mr. RANTOUL, of Beverly. It seems to me, Sir, that this is a very simple matter, that it is but a matter of simple justice, to allow the gentleman representing the minority of the Committee, the same opportunity to explain the views of the minority, that was accorded to the gentleman who represents the majority of the Committee, to explain the views of the majority. I hope, therefore, the rule will be suspended, so far as to allow the gentleman from Danvers an opportunity to conclude his remarks.

The PRESIDENT. The proposition, as modified, is that the order adopted this morning be so far suspended, that the gentleman who last addressed the Committee of the Whole, be permitted to conclude his remarks.

The motion, as modified, was agreed to.

On motion of Mr. BRIGGS, of Pittsfield, the Convention again resolved into

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Mr. Sumner, for Marshfield, in the chair, and resumed the consideration of the Report of the Committee on the subject of

Harvard College.

Mr. BRAMAN. I am very sorry to have been the occasion of so much inconvenience on the part of the Convention; I began to wish I had continued to preserve the silence which I had hitherto preserved in the Convention, for I perceive that I am likely to acquire a good deal more notoriety than fame.

When I was cut off in my remarks by the falling of the hammer, I was proceeding to controvert the remark, that the legislature exercised, or might exercise, the power of government over Harvard College. Now, Sir, they never exercised any power over that institution, and they never attempted to exercise any power over it, except that of a judicial character.

Hamilton, in the Federalist, says: "The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex."

Now, Sir, what is the use of applying any governing power to these institutions, except to restrain abuses? It was competent for the legislature to make any provision, almost, in relation to that college, because there was no power to circumscribe its action. They had no power to set the action of a legislative body aside, if its inter-

ferences with the corporation of Harvard College had been ever so numerous. Yet, it would be just as unreasonable to attempt to justify the legislature in its acts of interference with that corporation, as it would to justify the English government in its acts of oppression to its subjects at home and its subjects abroad. It would be just as absurd in one case as in the other. How many acts of wrong make a right? If the first interference with the charter of Harvard College was wrong, then any subsequent act of interference was also wrong.

It may be maintained, that the acquiescence of the corporation in the acts of interference upon the part of the government, were a tacit admission by that corporation, of the right of the legislature to interfere. But gentlemen must remember that Harvard might have acquiesced because it had no power to resist. It might have forborne opposition to the interference of the legislature, because its opposition would have been unavailing. It must also be borne in mind that Harvard College was the weaker power, and that it was dependent upon the beneficence of the State for its pecuniary means to carry on its operations. It might naturally be expected, that, although they would regard the interference upon the part of the legislature as improper, yet that they would succumb to an interference upon the part of the State, to a greater or less extent, because the two parties were united together in a contract—one strong and the other weak,—the latter having no power to restrain any exercise of power upon the latter. But to justify acts of this sort would lead to every possible enormity.

But, to proceed. In 1657, additional powers were conferred upon these corporations. They were authorized to do certain things which they had not before been authorized to do. Among other things, a board of overseers was recognized. They accepted the act very cheerfully, although they well knew that they could not have prevented its formation if it had been unacceptable. I do not know of but one act of resistance upon their part, which was in 1676, when this charter was attempted to be enforced upon them, and they refused it.

Subsequent to this period, another act was passed, empowering the president and fellows of Harvard College to impose upon delinquent students a fine, not to exceed ten shillings, and stripes, not exceeding ten in number. This act was considered as enlarging the privileges of the corporation most essentially, because it suited the stern and rigid temper of the men of those times. It conformed with the habits of those men who had lived under monarchical institutions. This privilege was made use of very frequently, and under circumstances of very great solemnity. It would even be inflicted in the chapel, after a sermon, and then the president would proceed to pray that the infliction might be sanctified to the offender. [Laughter.]

There was also another interference which has been alluded to, and one which was submitted to, certainly not because it was considered a proper interference. When the overseers of the corporation, with the instructors and students, were called before the legislature to receive a reprimand. Now this was such an act of interference—so flagrant in its nature—that I suppose no one would claim it as a precedent for interference upon the part of the legislature. I suppose no one

would claim it as a precedent, even if the act had been comparatively reasonable and moderate. Suppose that now, we should summons the president, professors, and students of Harvard College, to appear before us for any such purpose. We might call the spirits, but would the spirits come when they were called? When such a summons shall be given by our legislature, like Cowper, I should "like to be there to see."

Mr. KNOWLTON, of Worcester, (interposing). I desire to ask the gentleman whether, when the corporation, officers, students, &c., of Harvard College were summoned by the general court to appear before them, they did not appear—thus acknowledging the right of the general court to make the demand?

Mr. BRAMAN. They appeared, but it was not necessarily an act of acquiescence. It was rather an act of submission. It was a submission to a power which they could not resist. They submitted to a power they could not control, because they did not dare to do otherwise. But, Sir, I should like to see such an act enforced now. I should like to see the board of overseers, with its distinguished members of church and state, preceded by the president of Harvard College, with his academical gown, closely following in his footsteps the venerable chief justice of the Commonwealth, bearing in his presence the awful majesty of the law. Nay, I would follow the professors and tutors, fresh from their literary and scientific pursuits; and, bringing up the rear, the whole corps of students, wondering at that mysterious and awful power, before which they with their instructors, were to be brought. Well, Sir, all are marched in solemn procession into this hall, to receive, perhaps, the reprimand of the late speaker of the House of Representatives, or of the president of this Convention. Sir, I should like to see how our worthy president would compose himself to his situation. I would like to see him summon dignity adequate to the occasion. I would like to see whether he would proceed to administer that reprimand with all the self-possession and grace with which he performs the ordinary duties of the Chair.

But I presume, as I have said, that with regard to the interference of the legislature in this instance, no one would quote it as a precedent.

But there was another act of interference upon the part of the legislature, to which I wish again to allude. That was, the attempt to force the charter upon the corporation, in 1672. The corporation refused to receive it. Now, I wish to say that if the interference by the legislature with the corporation of Harvard College upon this occasion, was an act of contemporaneous construction upon one side, the resistance of the corporation to the act of the government, was a contemporaneous construction upon the other. One may very well balance the other, and I let them pass for what they are worth. I have only to say, that these are the only acts of interference under the colonial government. One is so flagrant, that no one would think of quoting it as a precedent, and the other was resisted by the corporation. That is the whole amount of control which the colonial government exercised over the corporation of Harvard College.

Let me ask, what would be gained by the change contemplated by the introduction of the Report of the Committee on Harvard University, and the legislature should proceed to elect mem-

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bers of the board of the corporation of that university, instead of leaving them to perpetuate themselves by election, as now. Would any more able and devoted men be secured to the college, than now compose that corporation? The members that have always, and do now, compose that board, are some of the ablest men in the community, and their fitness to discharge the high trust reposed in them, has never been disputed. No set of men could be elected by the legislature, that would have more needed wisdom to discharge the high obligations which are imposed upon them, and their fidelity and devotion to the interests of the college also are just as freely acknowledged as is their ability. I believe there has been no complaint in this respect. I do not suppose that their places could be supplied by persons who would be more untiring in their exertions to discharge the high trusts which are reposed in them. Being possessed of such a character themselves, the board would be more likely to choose persons of similar ability and devotion, to serve under them, and thus we have as good security as the nature of human things and the allotment of humanity admits, that there would be perpetuated such a body of men to all future generations, as would satisfy all the reasonable wants and expectations of the community. I suppose if the legislature were to elect the corporation, it would be required that it should embody as good a representation as it could, of the various religious denominations of the Commonwealth. These, it is well known, are very numerous, much more numerous than could be exhibited in a corporation consisting of seven members at any one time. Let me mention some of them. There are the Unitarians, naturalists and supernaturalists; the Congregationalists, old and new school, and intermediate schools; the Baptists, Calvinistic and Free Will; the Methodists, Protestant, Episcopal, and Protestant Non-Episcopal; the Universalists, the Restorationists, and the ultra; the Roman Catholics, and Quakers, not to mention numerous other sects existing in the Commonwealth, composed of the odds and ends and scraps of all other denominations, going under the fanciful name and delectable appellation of Come-Outers. [Laughter.] All these, of course, would claim some sort of representation in the corporation of Harvard University, because, being a State institution, as contended for by gentlemen here, of course they must have their share in the representation. Suppose all should be arranged in this respect. What should be done in regard to filling up the departments of instruction. These are so numerous that they might exhibit a good specimen of the great variety of the religious sentiment of the State. What shall be done with the Hollis Professorship of Divinity, at Harvard? How will you divide that? That is a professorship that acts more powerfully upon the theological opinions and character of the students, than all of the other professorships put together. What shall be done with that? Shall there be a coalition formed in regard to it? Political coalitions of two or more parties, for the purpose of dividing political offices among them, will answer very well in the State, but how are you to divide the Hollis Professorship of Harvard University? What is one fish, or one loaf, among so many? The only practicable method would be to select the professors annually, semi-annually, quarterly, or monthly, and let the students select their opinions according to the assortment which these

various professorships would present them. I suppose, also, that gentlemen would require that political sentiments should be represented in the department of instruction, as well as the religious sentiments. Not long ago, a very distinguished candidate for a professorship at Harvard, was rejected by the board of overseers, because he had advanced some obnoxious opinions in regard to the Hungarian Revolution. The gentleman from Natick, (Mr. Wilson,) said the other day that he was not removed for his obnoxious political opinions, but for his ignorance and incompetency. I think, to charge such a body of men as the corporation of Harvard University, with choosing an ignorant and incompetent man to fill one of its departments of instruction, is a very strong assertion for the gentleman from Natick to make. The gentleman said that he was rejected. He told us in another form, rather, that he was rejected because he made a false statement of the truth. A fact is truth. Put it in another form, and it means an untrue statement of truth.

Mr. WILSON, of Natick. I wish to explain by saying that I did not mean what the gentleman says. I meant precisely and exactly what I said then, and now repeat, that Francis Bowen was rejected for the office to which he was nominated, for three reasons: in the first place, for his sentiments and opinions; in the second place, for his ignorance of history; and in the third place, for mis-stating and mis-quoting history; the truth of which, I am ready, here or elsewhere, to prove.

Mr. BRAMAN, of Danvers. The expression which the gentleman used, struck me so forcibly at the time, that I am pretty sure I recollect it. I am quite sure that he said he was rejected for ignorance and incompetency. He says now that he was rejected for ignorance. Then, I repeat again, that it is a strong assertion for the gentleman from Natick to make. Let me say farther, that the members comprising the corporation of Harvard University—I mean no disparagement to the gentleman from Natick, for whom I entertain the highest respect—are quite as competent as he is to judge whether a candidate for a professorship at Harvard is an ignorant or incompetent man. Was there ever any historian, or narrator of any portion of history whatsoever, who has not been detected in mistakes; and I have no doubt that if Hume and Gibbon were alive, and should advance opinions obnoxious to the ascendant party in the State, that they would be rejected by the board of overseers if they were nominated by the corporation of Harvard, on account of ignorance and incompetency. I have not the least doubt, if Macauley should be presented as a candidate for a professorship, if it was known that any of his opinions would not agree with those of the dominant party, that he would be rejected also for his ignorance and incompetency, for the reason that some individuals have criticized his history, and detected mistakes, which they consider as important. All historians commit mistakes, and it cannot be otherwise. They belong to the imperfections of humanity. But, however this may be, there is no doubt that a coincidence of opinion with the dominant party would be considered as an indispensable qualification for a candidate. Men would be chosen to fill departments of instruction, on account of their political opinions, in preference to those who are much more competent to fill the offices, because they were of a different persuasion. The numerous offices of in-

struction at Harvard, would present an invitation to patronage too inviting to be resisted, and violent partisans would be rewarded with places of instruction in the university, for whom there was no room in the political department. Stump speakers would teach stump rhetoric from the chair of oratory. There would be professors of logic, whose speeches would be of no other use than to make very excellent specimens of false reasoning. The fair sex, not always having a fair representation at the university, knock at the doors of the Convention for admission. I mean the male portion of the sex. [Laughter.] They have already knocked at the doors of the Convention, and they have knocked at the doors of the university also. I know that the Convention have treated the application of the fair sex in rather an ungallant manner, notwithstanding the earnest advocacy of Mr. Lucy Stone, and Miss Wendell Phillips, Esq. I should not wonder if, in some future time, and the progress of that political perfection about which we hear so much, that the women shall be admitted not only to the right of voting, but also to a share in the public offices of the other sex, and along the line of illustrious names of those who have presided over the university at Harvard, would be the names of Abby, Ann, Lucy; and then when we shall have a bloomer at the head of the university, it would indeed be entitled to the appellation of *alma mater*, in more senses than one. [Laughter.] Let me say, in conclusion, that I would caution gentlemen very earnestly against doing anything which would commit, or seem to commit, the State to a violation of public faith. The character of Massachusetts for integrity and adherence to justice, has always been high. She has now repaid her obligations, and her bonds are confided in now, as the most valued securities in the world. This reputation for integrity ought to be dear to all her sons, who, while they take pride in her industry and enterprise, in her literary and historical ability, hold dearer than all, her character for uprightness. Let there be no spot on the fair garment of her renown. Let there be nothing done, or attempted to be done, that shall give our posterity cause for emotions of regret and shame; and may her name go down to future generations adorned with every virtue which shall cause the heart to swell; and may the Constitution ever be held in grateful and honored remembrance.

Mr. BOUTWELL, for Berlin. I shall not detain the Convention so long as to prevent the question being taken before the usual hour for adjournment arrives. This question is within a small compass, and does not, to any considerable extent, involve the early history of the university. We propose, by this resolution, to declare that the legislature shall have power to do all that may be done by the people, in reference to Harvard University, and we claim that the people may do everything within the limit of supreme and complete sovereignty, except so far as their power is controlled by the Constitution of the United States. That instrument declares, that no State shall pass any "law impairing the obligation of contracts." We propose, by this resolution, embodied in the Constitution of the State, to authorize the legislature to march boldly up to that line, without, however, authorizing them to go one step farther.

Now, then, the propriety of the resolution is in this: that there is at present some doubt on

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the question whether the Constitution of the State authorizes the legislature to go thus far, or not. Therefore, if the people, in their Constitution, have imposed any restriction upon the legislature, we intend hereby to remove it. We do not intend to harm the college in any manner; but propose to place in the legislature the authority which now resides in the people. This is a plain proposition. Therefore, it does not involve the consideration of the question, whether the college has rights under a contract, or not. I have an opinion on that point. It differs entirely from the opinion expressed by the gentleman from Danvers, (Mr. Braman,) and I think that in a word or two, I can state the elements on which an opinion may be formed by any individual. It is a plain principle, that that which a person produces or creates, is his own. The State created Harvard College; the Constitution declares that it was founded in 1636, two years before the bequest of John Harvard. The record is, that our ancestors created it; the fact that the general court, in 1636, appropriated four hundred pounds for a school or college at Newton, afterwards Cambridge, identifies our ancestors, constitutionally speaking. That is the declaration. The general court created this institution and endowed it. Who shall control it? The general court and their successors, the people and government of Massachusetts, or the corporation of Harvard College? I take it that what our ancestors, as the government of this State, created, we, the governors of the State to-day, control and use, unless we have surrendered that control. I ask gentlemen to consider this plain proposition of law and of right. For there is no difference, whatever men may suppose who have devoted themselves to the consideration of particular topics, there is no difference between law, the perfection of human reason, and that attribute or rule of right and of justice which the Supreme Creator has implanted in the breasts of all. What is this rule? It is, that what we have created we may use, and that that which we have created we may use forever, unless we have surrendered its use into other hands.

Mr. BRAMAN, of Danvers. The gentleman says, that what a person has created, it is his to control entirely. I would like to ask him, if a person who has created a thing has not a right to part with it by giving it away.

Mr. BOUTWELL. I will come to that soon. Those who claim that the right of control has been surrendered, stand in the place of grantees, and it is for them to show explicitly, definitely, and accurately, when that surrender was made. I would ask the gentleman from Danvers, to point to the time when, and the manner in which, that surrender was made on the part of the Commonwealth. Throughout the whole period of its history, it has never surrendered its right to control the college at Cambridge. Trace the records all along through the Colony, the Province, the State, covering a period of more than two hundred years, and you will find nothing to show that we have surrendered our control. Therefore, if we have not surrendered it, it stands to-day. And it is not for us to show the negative, but for those who contend that it has been surrendered, to make that fact appear. They will find that a very difficult point.

I have a word to say to the gentleman in reference to the authorities upon this point, and espe-

cially in regard to the Dartmouth College case. That case I have not read for some time, yet I think I can state the principle upon which the decision of the supreme court of the United States rested. President Wheelock created an institution in 1769, afterwards known as Dartmouth College. In that case the supreme court judged, as we judge to-day, that that which an individual has created, he has a right to control, and inasmuch as President Wheelock had invested that college in his successors forever, there was a contract; and the State of New Hampshire could not come in and violate it.

Now, we stand upon the doctrine of a contract; and inasmuch as our colonial government established this institution, it is not in the power of any body to come in and say we shall not control it. I do not propose to take anything from Harvard College which they have. If the doctrine of a contract gives them exclusive control over that institution, they will have it if we pass this resolution and the people adopt it. But the point of difficulty which we wish to relieve, is this. There may be some doubt as to whether the people, by their Constitution, have conferred the authority upon the legislature to deal with Harvard College, to the extent, and in the manner, that the people themselves may deal with it. We purpose to remove all difficulty upon that point, by giving to the legislature power to do what the people of the State have the right to do, and nothing more. That is safe, proper, wise, and just. Because, whatever may be said of the character of Harvard College,—and I am not here to denounce it, or make any imputation upon it,—I know, well enough, that there are men on this floor who have been acquainted with it, and who will not endorse the doctrine of the gentleman from Danvers, by any means, either in public or in private. They will not endorse it, Sir; and I believe there are those connected with the college to-day, who were as much alarmed two years ago, at the proposition to make the overseers elective by the State, as the gentleman from Danvers is in respect to the corporation, and those same gentlemen are now satisfied that that was a wise and proper measure. The cause of education has been promoted by it; and I look to this institution, notwithstanding the position which I occupy is somewhat hostile, perhaps, as the apex of the educational system of this Commonwealth. And in order that it may be free from sectarianism, and from the control of any party or sect, we put it on the basis on which our common schools rest. Nor will it happen that all the odds and ends of civilization and society will come in and control this college. Gentlemen know well enough the character of Massachusetts; the people will regulate this institution as they regulate other institutions in the State. Gentlemen need not be alarmed. Sir, there will be no coalition in reference to the university at Cambridge. And if there were, it would not be a very disastrous thing, by any means. It might happen, that by bringing together in that institution, men of different opinions in the government, in the discipline and education of the young men, that some broader and better ideas of humanity might be acquired. I am, therefore, in favor of the passage of the resolution, not because it interferes with any of the rights of the college,—for it does not,—but because it gives to the legislature that power which we now believe resides in the people; and we

trust that it will be exercised for the good of the Commonwealth, and the advancement of learning in the university.

Mr. BRIGGS, of Pittsfield. I had the honor to be a member of the Committee which reported this resolution, and, though I was not present at the meeting when the resolution, was adopted, I was at a previous one, when, I believe, substantially the same proposition was agreed to. This is a matter environed with a good many difficulties, if we choose to enter upon the ground where those difficulties exist. But, I believe, it was the opinion of the Committee, and I concur with the gentleman who last spoke, that this resolution would avoid difficulties which would open upon us if we advanced farther, and not do any violence or wrong to the corporation of the college, and, at the same time, assert all the rights of the people in respect to it. Sir, my wish with respect to the Cambridge College, was this: that just so far as the State was concerned, we should cut her adrift; just sever, in an amicable manner, all connection with her as a State, and let the college stand as the other colleges do, upon her own foundation, and be left to her own conduct and management. But it was found, and I think any gentleman who will look the matter in the face, will find, that it was somewhat difficult to do this; certainly the Committee could not see their way clear to do it. They, in their labors, which were repeated and earnest, came to the result which you find in the Report, and I concur with the gentleman who has just taken his seat, that that leaves the matter substantially where it is now, though, perhaps, under a more clear and distinct declaration; that is, the resolution declares that the legislature shall have the power over this institution, which, by the Constitution of the United States, it may have. Sir, it has that now, as I apprehend. But this is a clear, plain, distinct declaration to that effect. Now, Sir, what that power is, I do not think we should discuss, and, though the gentleman from Worcester, and the gentleman for Berlin, have stated, learnedly, intelligibly and ably, the subject, yet, let me say that this is not the place to discuss a great constitutional question of this kind, and the discussion is not needed. The gentleman for Berlin says, he is very clear in his opinions on this subject, as I understand, that the State has the power and control over this corporation. It may be so, and it may not be so. It may not be amiss to say, that our predecessors, something like a generation ago, had this same subject before them, and I think they came to a pretty general, if not a unanimous conclusion, that they had no such power as this. They were good men, wise men, learned men in the law, who spoke and acted on that occasion, and they left the matter as we find it. Now, I think we shall do wisely in doing the same thing; and I believe, if this resolution is adopted, it does not infringe upon the rights of the college; and if, hereafter, a legislature shall attempt to exercise the powers which the corporation think they cannot exercise, all that will remain to be done will be, to go into the proper judicial tribunal, and let them settle it. I hope the resolution will pass in the Committee, and that it will pass in the Convention, and, I think it will meet with the approbation and satisfaction of those, of all denominations and politics, who sent us here.

Mr. PARKER, of Cambridge. I wish to ask

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of the gentleman from Pittsfield, and the gentleman from Berlin, and the chairman of the Committee, one or all of them, whether they understand—and I wish the one who does understand that this makes any difference, would make the answer—I wish to ask them, whether, if this resolution passes, and is incorporated into the Constitution, it will give the legislature any more power than it will possess, if no action is taken upon the subject?

Mr. BRIGGS. For one, I will answer that I do not think it does. I agree with the gentleman from Berlin, perhaps, in saying, that if the existing Constitution does not confer as full power upon the legislature as the Constitution of the United States would, then this resolution may confer an additional power. My opinion is, that it does confer no power whatever, and that it does not substantially, if at all, change the relation between the State and the college.

Mr. PARKER. I would ask for the understanding of the gentleman from Berlin, on this question, if he has no objection.

Mr. BOUTWELL. I understand this resolution to confer all the power upon the legislature, which the people of the Commonwealth have, with regard to the institution at Cambridge. The existing Constitution may, or may not, confer all the power which the people of the Commonwealth have. If the gentleman asks what I understand to be the limit of that power, I take it to be this: The power of the people of this Commonwealth is complete and supreme over that institution at Cambridge, except so far as it is limited by that provision of the Constitution of the United States, which says, that no State shall make any "law impairing the obligation of contracts." Therefore, if there be any doubt about the power conferred by the present Constitution, the legislature has permission to march up to the line laid down by the Constitution of the United States, and we remove that doubt, by giving them the power.

Mr. BRIGGS. I understand that all the power which the people have over this subject, is the power which they have asserted in the provision of the Constitution alluded to, reserving to themselves and the legislature all the power that belonged to the provincial legislature over the subject.

Mr. PARKER. The purport of my inquiry, was, whether, in the opinion of gentlemen, this resolution made any change. If the gentleman from Berlin has no objections, I ask, if in his opinion, this provision inserted in the Constitution, will confer a greater power upon the legislature, than they possess at present, and if so, what that power is?

Mr. BOUTWELL. I suppose the gentleman from Cambridge asks me for an interpretation of the Constitution of the State. I am not quite prepared to give that. I say, that in the minds of some gentlemen, there is a doubt, as to whether the people of the Commonwealth have conferred upon the legislature all the power which the people themselves have, and that this resolution is for the purpose of removing that doubt. If the legislature has not got the power now to march boldly up to the line laid down by the Constitution of the United States, we desire to give that power, by the act of the people.

Mr. PARKER. I asked merely for the personal opinion of the gentleman from Berlin, in relation to the matter, whether this resolution makes

any change. I turn to the chairman of the Committee, and ask him.

Mr. KNOWLTON, of Worcester. Not being a professor of law, I do not know that I am qualified to answer that question.

Mr. PARKER. I do not ask the question as a matter of right, but I would be glad to have the gentleman's opinion.

Mr. KNOWLTON. I understand the matter as has been stated by my friend, the delegate for Berlin. If there is a power in the hands of the people which is not conferred upon the legislature by the present Constitution, over the institution at Cambridge, we express the opinion, that the legislature has that power, and that they may exercise it. It seems to me, to exist in the Constitution now, rather as a matter of inference, than of express declaration. If it exists there as a matter of inference, then it is to be determined by judicial authority. But, by the resolution, we propose to express an open and explicit declaration in the Constitution, that the legislature has that power, and shall exercise it.

Mr. PARKER. I made the inquiry of gentlemen in favor of the passage of this resolution, for the purpose of ascertaining the views which they individually have upon the subject, in order that I might govern my action as a member of this Convention—not as a professor of law, Sir, but as a member of this Convention—upon the subject matter before the Committee at this time. If this resolution, as put into the form of a constitutional provision, is entirely inoperative and ineffective, giving to the legislature no more power than the legislature at present possesses, then all the objection which I could possibly have to it would be that it is useless. The opinion that I entertain of it myself, after having examined it with all the care of which I am capable, leads me to just that result, that it is entirely inoperative; and, therefore, I can raise no other objection to it. But, if it is unnecessary and useless, that is, to my mind, a sufficient reason why we should not adopt it as an amendment to the Constitution. If I am mistaken in this, I desire to know how far I am mistaken; and for this purpose, I wished to ascertain the individual opinions of gentlemen in relation to the operation of this provision, so as to know, if it is to accomplish something, what it is expected will be accomplished by it, and then I could tell better whether I had any objection to it or not. If it is to accomplish anything, I desire to know what it is to accomplish—what power it is to give beyond that which is already given. Until I know that, of course I do not know whether I object to it or not. With the view which I have of it at present, I have no disposition to detain the Committee with any discussion, farther than to say that my vote will be given against it, because I deem it inoperative and useless.

Mr. FRENCH, of New Bedford. Mr. President: I regret, Sir, that any gentleman upon this floor, any member of this Convention, should undertake to hold up to ridicule the lady and gentleman who had the honor of appearing before the Committee on the Qualifications of Voters. Sir, they need no defender in me; for, if that lady and that gentleman were here, and had an opportunity of defending themselves, I run no risk in saying, that no member of this Convention would envy the position of the delegate from Danvers, (Mr. Braman,) who so irreverently attacked

them. Sir, there are gentlemen whose position enables them to say what they please in many places, and no reply can be made. It is not so here. Let me say through you to that gentleman, that, although he may slander them and hold them up to ridicule, and attempt to excite the mirth of this body by saying "Mr. Lucy Stone," and "Miss Wendell Phillips"—he may do that, Sir, but he is powerless to reproach them.

The question being then taken on the adoption of the resolution, on a division, there were—ayes, 125; noes, 31—so it was agreed to.

Mr. BOUTWELL moved, that the Committee rise and report to the Convention that the resolution under consideration ought to pass.

The motion was agreed to. The President having resumed the chair of

THE CONVENTION,

The chairman, Mr. Sumner, for Marshfield, reported accordingly.

The question was then stated on ordering the resolution to be read a second time.

Mr. LOTHROP, of Boston, moved to amend the resolution, by inserting after the words "Harvard College" the words, "the Board of Trustees of Williams, and the Board of Trustees of Amherst College."

Mr. BRIGGS. As I said before, Sir, I was not present when this resolution was drawn, but my impression is, that its language conforms as nearly as possible to the language of the acts of incorporation of those colleges. The gentleman from Worcester can state how that is; but I understood that it was intended to place her upon the same ground as the other colleges, in this respect, reserving any rights of contract.

Mr. KNOWLTON, of Worcester. I will read the language of the charters of those colleges, and if gentlemen will turn to the resolution as printed in document No. 72, they will see that the language of the resolve is almost identical with that of these charters: "that the legislature of this Commonwealth may grant any farther powers to, or alter, limit, annul or restrain, any of the powers vested by this act in the said corporation, as shall be judged necessary to promote the best interests of the said college." The Convention will find that, by turning to the law passed in the year 1793.

Mr. LOTHROP. I see no objection to my amendment on that account, but a farther argument in favor of it, from the fact that the same language is used in the incorporation of those two institutions. If, as has been understood, and as has been stated here by learned legal authority, and by some of the members of the Committee, this resolution does not confer upon the legislature any power over Harvard College but what it now possesses, and if we are to have anything about one college in the Constitution, I would have all colleges put upon precisely the same platform. I would have the recognition of one as distinct as that of the other, and the same power that is now expressed in the acts of incorporation reiterated again in the Constitution, if it is necessary to reiterate it in relation to Harvard College. If the legislature have all the power now which is given to them by this resolve, in relation to the president and fellows of Harvard College, it is unnecessary to make the statement at all; if they have not all this power, then I would, in the recognition of that institution in the Constitution,

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recognize all the others, and place them all upon the same platform. No evil is done, certainly, by the introduction of two other colleges; and we announce the great constitutional fact that all the colleges stand upon the same platform and bear the same relation to the State.

The PRESIDENT. The Chair will state that the amendment moved by the gentleman from Boston, refers to a subject different from that under consideration; and therefore, by the rules of the Convention, it is not in order. The subject under consideration, is in relation to Harvard College; and the proposed amendment relates to other colleges.

Mr. LOTHROP. I submit to the ruling of the Chair.

Mr. HOPKINSON, of Boston. I propose to amend the resolve by striking out the words "advancement of learning," and inserting in lieu thereof, the words "best interests of the college," so that it would read as follows:—

The legislature shall forever have full power and authority, as may be judged needful for the best interests of the college, to grant any farther powers to, or alter, limit, annul, or restrain, any of the powers now vested in the president and fellows of Harvard College: *provided*, the obligation of contracts shall not be impaired; and shall have the like power and authority over all corporate franchises hereafter granted for the purposes of education in this Commonwealth.

The object of this amendment will be apparent. It is to carry out precisely the intention expressed by gentlemen here upon this floor, who tell us that the resolve under consideration is to put Harvard College upon the same footing with the other colleges; and I find that in regard to Amherst College, the language is precisely that which I have incorporated into the amendment. The extract from the law which has been read by the gentleman from Worcester, says, such powers "as shall be judged necessary to promote the best interests of the said college." I have used the words "the college," omitting the word "said." I do not propose to make an argument upon this point, but I do propose to say, that if the intention is to put them all upon the same footing, and if the only reason why such an amendment as was proposed by my colleague who sits opposite, (Mr. Lothrop,) should not be adopted, is, that it is unnecessary, inasmuch as the language used was intended to be the same as the language of the other charters, then it is well enough to conform to that language. Now, Sir, it may be asked, perhaps, whether there is any substantial difference; but it has been thought a sufficient answer to that question, to say that there *may* be a difference. For that reason, it was deemed proper to adopt a provision in the Constitution which it seems is generally understood to leave the college precisely where it is, but which some gentlemen think *may* make some change, but what change they are now unprepared to state. I do conceive that there may be difference, and that difference consists in this: the legislature, in order to carry out the Constitution practically, must act in reasonable conformity to the design of the power which is granted in the Constitution; and there might be legislation very diverse from "the interests of the college" covered up by some general idea of promoting the "advancement of learning" in a general sense; legislation which would not be for the interests of the col-

lege, and so palpably so that the court would feel bound to set it aside. It appears to me, that if the intention is to put all the colleges upon the same platform, it is expedient and proper to adopt this amendment.

Mr. BOUTWELL. I suppose the proper interests of a college are to promote learning, so that we propose to come to the result directly, by saying, that the legislature shall have power to make all such rules as may be necessary to promote the interests of learning. It might happen,—I do not think it would happen, but it might happen,—that in the judgment of some people, the interests of a particular college would be somewhat different from the interests of learning; and for that reason, I do not want to leave that question open. All that we want of a college, is to promote the interests of learning, and, for that reason, we desire to say in our Constitution just what we mean; so that if, in the judgment of anybody, the interests of a college should happen to differ from the interests of learning, they could not have an opportunity to put that construction upon the provision.

Mr. GILES. I think that my colleague who presented this amendment, upon a full examination of the subject, and reflection, would deem it unnecessary. He would be satisfied that the same object is already attained; for, as I understand it, the very amendments which he now proposes to put in, were left out because they were already in the Constitution, in relation to Harvard College. In the proviso of the present Constitution, which was referred to your Committee, you have provided that "nothing herein shall be construed to prevent the legislature of this Commonwealth from making such alterations in the government of the said university as shall be conducive to its advantage and the interest of the republic of letters." That stands now, and is to stand.

The Constitution makes it the special duty of the legislature to cherish that university, and indeed to cherish all our institutions of learning of every kind. In looking through the previous charters of Harvard College, my friend will find the expression, "for the advancement of learning," a good Baconian phrase, "invented," if you choose, by Bacon, and immortalized by the work bearing that name, or upon that subject, which has made his fame as high, as solid, and as immovable as Mont Blanc, or Mount Atlas, or any other mountain whose summit glistens in the sunlight shed upon its everlasting snows. It is a good phrase, and I would not strike it out. It directs the legislature directly, and at once, to the point mentioned by my friend for Berlin, (Mr. Boutwell,) that is, "for the advancement of learning." We do not wish to cherish Harvard College, or any other institution of the kind, for any other purpose. That is the polar star of its destiny. I believe, therefore, that the acts of future legislatures, as referring to this institution, will not only have to be "for the advancement of learning," but for the benefit of that university, as far as that university exists for the benefit of learning; and I understand that to be its object—meaning by "learning," of course, the broad, catholic sense which was given to it by our forefathers, which included divinity first, then law, and the classics, and mathematics, and Hebrew, and all good learning, which is summed up in the fifth chapter of the Constitution, in language which is

not exceeded by any sentence that ever was constructed in the English tongue. That paragraph alone has brought more honor to Massachusetts, where it has been seen and understood, than all the blue books that any legislature, or succession of legislatures, have made in ten years,—not to disparage the legislature, but to exalt it. It is a monument of the wisdom, and of the purity of language, and of the eloquence of expression, used by our forefathers. I hope, therefore, that my friend from Boston will not move to strike out this expression. I really think that the resolution, as it is, embraces the whole object, and is sufficiently definite to guide the whole action of the legislature. If there were time, and the occasion required it, and I felt a disposition to use my half hour, I should like to say something upon it; but, I see that the resolution is likely to be adopted as it is; and as that is my desire, I will not farther detain the Convention.

Mr. HOPKINSON, of Boston. It was not my intention, when I offered this amendment, to substitute a better phraseology than that which I have moved to strike out, because I am equally as partial to it as the gentleman who has just sat down. My design was, to call the attention of gentlemen to the fact, which seems to be disputed, that there was a distinction now being made between the colleges, in a resolution professedly drawn up in order that they might all be treated alike, and all placed upon the same footing. It was not, therefore, for the purpose of delaying, or defeating any action upon this subject, but for the purpose of pointing out distinctly, what appears to me, to have the air of an intention to make a distinction, and single out this college for dissection, leaving the others untouched. Had I proposed to strike out the word "hereafter," in the last line but one, it might, perhaps, have effected the same purpose. If it is expedient to make any provision applicable to one college, it is expedient in reference to all.

I do not care to insist particularly upon this amendment, because I do not think that it will make very much difference. My purpose is gained, if I point out the distinction between the language proposed, as applicable to this and the other colleges.

Having made this explanation, I withdraw the amendment.

Mr. FRENCH, of New Bedford, moved a suspension of the rules, in order that the question might be taken on the final passage of the resolution, without passing the question over to another day.

Mr. BREED, of Lynn. I hope the gentleman from New Bedford will withdraw that motion for the present.

Mr. FRENCH. I will not press it, if there be objection.

Mr. BREED. I move that the Convention adjourn.

The motion was agreed to, and the Convention, at half past six o'clock, adjourned.

— SATURDAY, July 16, 1853.

The Convention met, pursuant to adjournment, at nine o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read and approved.

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GENERAL LAWS FOR CORPORATIONS, &c.—KNOWLTON—WILSON—HALLETT.

[July 16th.

Hour of Meeting on Monday next.

Mr. CRESSY, of Hamilton, moved, that when the Convention adjourn, it adjourn to meet at ten o'clock on Monday next.

The motion was agreed to.

Final Adjournment of the Convention.

Mr. KNOWLTON, of Worcester, presented the following order, which was adopted:—

Ordered, That be a Committee to consider and report at what time the session of the Convention may be brought to a close.

The following gentlemen were appointed as a Committee for this purpose: Messrs. Knowlton, of Worcester; Schouler and Giles, of Boston; Cushman, of Bernardston; Wilson, of Natick; Burlingame, for Northborough; and Eames, of Washington.

Adjournment this Day.

Mr. WILSON, of Natick, moved that the order to adjourn at one o'clock, be modified for this day, so that the time of adjournment be extended to two o'clock.

The motion was agreed to.

Orders of the Day.

On motion by Mr. WHITNEY, of Conway, the Convention proceeded to the consideration of the Orders of the Day, the first order being the resolve on the subject of

General Laws for Corporations.

It was read, as follows:—

Resolved, That it is expedient to incorporate into the Constitution, a provision that corporations may be formed under general laws, in all cases where the object of such corporation is attainable under the same; and where provision is thus made by general laws, no corporation shall be formed by special act.

The pending question being on the following substitute, offered by Mr. Davis, of Worcester:—

Resolved, That it is expedient to incorporate into the Constitution, a provision that corporations shall not be created by special act, when the object of the incorporation shall be attainable under general laws.

Mr. DE WITT, of Oxford. I would inquire of the Chair, if an amendment to this substitute will be in order.

The PRESIDENT. It will be in order.

Mr. DE WITT. Then, Sir, I move to amend the substitute, by inserting before the word "corporations" the words "manufacturing, mechanical, and banking."

Mr. HALLETT, for Wilbraham. The amendment proposed by the gentleman from Oxford, (Mr. De Witt,) is designed to embrace manufacturing, mechanical, and banking corporations, and thereby, by that limitation, to admit all other incorporations. I am opposed to that amendment. The proposition, as it is reported by the Committee, contains the general principle, that it is expedient to incorporate into the Constitution a provision, that corporations shall not be created by special act, when the object can be attained by general laws. That, I regard, as a fundamental principle worthy of being incorporated into the Constitution; but if you incorpo-

rate into the Constitution a provision that certain trades or occupations shall not have charters, leaving it to be inferred by implication, that all others may, then I think you are making your Constitution a mere specific act of legislation. I think, therefore, that this amendment involves a specification which ought not to be adopted, as a general principle, because it makes a discrimination. It virtually says to the legislature, "you may take care of the interests of certain classes, in this respect, but in regard to the interests of other classes, you shall not interfere." I go for a general principle, to be applied in all cases—either that you should leave to the legislature a discretionary authority, untrammelled by a limitation of this kind, or else leave the matter in the precise manner in which it now stands, permitting every individual to come and get a charter of incorporation, by purchasing a ticket in this lottery of special legislation; because that it is a lottery, every one knows who has been engaged in it, either on his own account, or for the benefit of others. The provision, submitted as a substitute for the resolution first reported, brings the principle directly to our consideration. It seems to me to be one of the best expressed provisions for a fundamental law, that I have yet seen introduced in this Convention.

Now, Mr. President, we have simply to choose between special legislation upon incorporations, in all cases, or general legislation in cases where general legislation will meet the case. The proposition to which I allude, is the one which is offered as a substitute, and which I perceive was offered by the gentleman from Worcester, (Mr. Davis).

Resolved, That it is expedient to incorporate into the Constitution, a provision that corporations shall not be created by special act, when the object of the incorporation shall be attainable under general laws.

That is a provision which I desire to see incorporated into the Constitution, and it is the most unexceptionable provision, which, in my judgment, it is possible for words to place there. It expresses exactly what we mean, and that is, if I understand it, that all subject matters of incorporation which can be embraced by provisions of general legislation, shall be provided for, by general laws, which the legislature will be bound to enact, by this injunction in the Constitution. This will take care of all general business concerns, and, on the other hand, whenever a great question arises, which the legislature, in their judgment—subject to the revision of the judiciary if they violate this provision—shall determine is not within the powers of the general law, shall require some special guards or privileges, then the legislature is at liberty to act, by a law to meet the case.

Now, I ask, if there can be any citizen of this Commonwealth, who has no other good in view except that of the Commonwealth, who will stand upon any other principle than that of equality, as here set forth in all business concerns? Can he desire anything more than this? because, if he believes in the propriety of embodying fundamental principles in the Constitution, he has no right to ask for special privileges which are not conferred by general laws; and, in this matter of special incorporations, it is neither more nor less than a special privilege or advan-

tage, conferred upon the few to whom it is given, to the exclusion of all the rest; and to obtain it, outside of a general law, a great public good must be made to appear, which the general law cannot secure.

Mr. President: I am not going into the general question of incorporations. It is one on which I have said and written a great deal, in the course of my life; but I am not considering it now as a question between parties. It comes up here as a fundamental principle; and therefore, I say, in regard to this matter of special incorporations and privileges to enable one man or class of men to carry on any particular occupation or business without giving to all others the same rights, that it is special legislation; and, therefore, when you come to that point, you must do one of two things: either leave it to the will of the legislature to determine in each case that certain persons or classes are, or are not, entitled to these special privileges, and thereby violate the Bill of Rights, or else you must so open this privilege of incorporation, that any and every man may avail himself of it under general laws, giving to the public a proper security, and conforming to proper restrictions.

In regard to this matter of special business incorporations, many persons have held, and still hold, the doctrine that they ought never to have been granted, except under general laws. But if the people, for a long series of years, have failed to check special legislation hitherto, and it has run on to such an extent that benefits and favors have been conferred upon a minority of the community, to the exclusion of a large majority, then the only way is to go on and extend it as far as you can; and for that reason, in regard to this matter, I would at once either establish a constitutional rule that every man, or every class of men, petitioning for any trading charter of incorporation, should have it, as a matter of course; or else I would establish a general rule under which every class of men might incorporate themselves, conforming to the laws in such case provided; and there is not a single special provision which is requisite for a company or association, without exclusive favors, to carry on any trade, occupation, or business, that cannot be incorporated into a general law.

But, it will be asked, "Have we not a general law now in regard to corporations?" True, we have; and what is it? How does it operate? Why, Sir, you will not allow anybody to have a charter of incorporation for anything, unless he petitions the legislature, issues the required order of notice, goes before the committee, employs his counsel, has an agitation about it whenever he is coming in contact with his neighbors; and, finally, either obtains his charter of incorporation, and gets an advantage he is not entitled to have, or loses his time and money if he does not obtain it. Now, what sort of a tribunal is the legislature, to decide upon such matters in individual cases? Why should that body be called upon to determine between the interests of two competitors in trade in some city or village; one party, perhaps, starting the business upon his own real capital, and another upon capital borrowed from his neighbor, or a bank which he has got chartered, each contesting which shall have the advantage over the other? To interfere in such a case, is "special legislation," and that is the very special legislation which is applied to these business cor-

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porations, manufacturing, trading, mechanical, and banking, and others of a like nature, the result of which is, that the legislature in this Commonwealth has become a complete nuisance. Yes, Sir; your legislature has become a public nuisance. I speak, of course, not of the individuals composing that body; for them, individually, I have the highest respect; and I would say that it is impossible that in the Commonwealth of Massachusetts you can gather together, as the representatives of the towns and cities, four hundred men of whom the majority will not be both honorable and intelligent; but when they get here, they are operated upon by influences of which they are not aware in judging of what is proper and what is improper, fair or unfair, in these matters; and it would be expecting too much of human nature, to suppose that they will not, on some occasions, make mistakes, and do great injustice to petitioners, and great wrong to the public.

They must sometimes give the charter where they ought not to give it, and withhold it where it ought to be granted. Well, how will you avoid that result? Instead of requiring that every individual or association shall come and apply for the privilege of corporation, and that no person shall have it unless he has the special favor of the legislature, you will say, by this proposed amendment, that the legislature shall make a general law, and when it is made, that those who conform to it, shall have the privileges and benefits of it. That is all we need say in regard to any business corporation, all that the legislature need do, and all that the people want. This will not destroy competition, nor check industry. The interest of the public consists in opening all business to competition, and that interest only wants to be guarded against fraud, and the injury which may arise from persons recklessly, unguardedly, or with fraudulent or speculative intention, engaging in those various combinations of business which come to the legislature for charters. Can anything be more simple than to say that general laws shall govern them in all cases? and then make the general law safe and practicable.

If you do this, the legislature, which has well been considered as a nuisance, because of this very kind of endless and conflicting special legislation, will cease to be such, and you will be able to confine its sessions not only to one hundred days, but much within the hundred days. Take, for illustration, the action of the last legislature—and I do not mean to censure that legislature, because I believe that whatever fault is connected with it, was, to some extent, the fault of our system, rather than the fault of the individuals which composed it—I say, if you look over the whole course of proceeding of that legislature, you will find there never was a body that labored harder than they did; but they were working upon the miserable issues brought before them, and they were working upon a false system, namely: that the legislature is assembled every year to legislate upon every man's particular business, instead of framing general laws, and then leaving every man to take care of his own affairs. Unless we strike down this sort of special legislation, the legislature, because of the increasing business and enterprise of the community, which is constantly accumulating, must go on, not only during the one hundred days, but from day to day, and become not only a general court, but an everlasting and unadjourning court, the mere

makers, managers, and agents of special incorporations.

Now, as to the practical operation of this principle. Is this sort of legislation wholesome or necessary? I think there are some business men here, within the sound of my voice, who know the practical operation of business interests of this sort, and who begin to perceive that Massachusetts has gone too far in special legislation. Take, as an illustration of the practicability of general laws, one interest, to which the attention of men of science and business, having large commercial views, has been recently directed. I mean the great copper interest of the West, which is growing up in this country. Why, Sir, in a very little while, the copper of the United States, by reason of its great superiority and productiveness, will supersede that of all other parts of the world. In all the great manufacturing marts of the world, the copper of America will become as common, and as much in demand, as the best staple cotton of the United States. But all the resources of this material, which lie all around the northern lakes, are being developed under one simple general law of the State of Michigan, which does not occupy more than a page or two upon the statute book; and there is now invested, under that general law, millions of capital and industry; and I undertake to say, invested with as much security and profit as it could be under any special act of incorporation upon the statute book of Massachusetts; and invested, too, with as much safety and security, not only to the companies, but to the public. One general law has done all this, and nobody has complained of any fraud, or any danger of fraud, from it, except the tendencies of all business to speculation; and the stocks of these companies are just as good in our market, as are the shares of the Lowell Railroad, or the State Street banks. Now, if all this has been done by this young State of Michigan, having these rich resources within her bosom, why cannot the same thing be done by the old, experienced, and intelligent State of Massachusetts?

I say, Mr. President, there cannot an argument be fairly raised against the proposition that general laws should be made, to enable persons to associate together for the purpose of performing all business transactions which can be performed under general laws. What gentleman contradicts that proposition? No one can.

What do you need to provide for in these general laws? You want simply to give corporations the power of succession, that vital principle that will never let them die out; you want to alter the mode of administration, in regard to the real estate which may belong to them, so that when one member of the corporation dies, it shall not work the dissolution of the corporation. These are fundamentally the whole principles which you need to insert into these general laws, with, of course, proper guards and securities to the public, and especially to labor. Now, in regard to this last point of absorbing real estate into these incorporations, I want to say a word, for I am a practical man, and when propositions are presented to me, they do not strike my mind very favorably, unless I see something practical in them. Hence, when I have heard in this discussion of women's rights, very learned gentlemen elaborating themselves upon it, I have wondered why they could not think of one practical fact, by turning their attention to which, they could do

more good to the women than they can by talking this enthusiastic nonsense all their lives. I refer to the subject of woman's dower. That is a practical subject, but this discussion as to whether women shall participate in politics, or whether she shall have the exclusive monopoly of a certain branch of medicine, is all without point, use, or meaning. But when we talk about a woman's dower, and her right to have it secured to her, in all cases, we are talking of something which affects her directly.

Well, Sir, how stands this matter here in Massachusetts. There lies upon your table a report from the Secretary of State, showing that four hundred millions of the property of Massachusetts is invested in corporations! Many of them land corporations, which trade in real estate. I believe that the whole valuation of the State is only about six hundred millions of dollars. Four hundred millions out of six hundred millions—two-thirds of the property in the whole State—are already invested in incorporations! Well, if we have indeed come to that, then let us form a corporation of the whole Commonwealth in a lump, and be done with it. Let us have a joint stock corporation of Massachusetts, for we have almost come to that. I did not think it was as bad as that, until I saw that report from the secretary. I did not suppose that quite one-half of the valuation of Massachusetts had gone into incorporations. But it seems that in fact two-thirds of the whole of the property of the State is put into *mortmain* in these corporations—for this is the modern mode of locking up property in *mortmain*. Now, of this four hundred millions of dollars, put into this kind of *mortmain*, what proportion of it is real estate? I presume at least one-half of it is. And what is the result upon the women of the Commonwealth? The men have cheated every woman in this Commonwealth out of her dower in two hundred millions of dollars of real estate! That is the way men have plundered women by special legislation. And that is the subject to which I should like to see the gentleman in the gallery, (Mr. Whitney, of Boylston,) and other gentlemen who believe with him, direct their reforms. Here is a practical question, affecting the rights of women more deeply than any other upon which you can touch in this Commonwealth, for you have got two hundred millions of dollars of real estate of the Commonwealth put into corporations, and what do you provide in relation to it? You say that this two hundred millions of dollars of real estate shall be considered as personal estate, without the women having the right to say whether they will sign off their dower or not, and when the husband who owns in it, dies, it goes into the hands of the administrator, as personal estate, and is applied first, to pay the corporate debts, and then to pay his individual debts, and the widow can have no right of dower in it. There the widow and the orphan stand helpless.

I say that is legislative robbery, and you cannot defend it by any principle. You have herein violated that great principle of law which declares that laws are made, and communities are governed, by the consent of the governed; and you have violated another principle of common law, which provides that when a right of property is vested in an individual, you cannot by any law, divest him of that right, without compensation. Gentlemen get up here and argue earnestly upon the ques-

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tion of a change in respect to the government of Harvard College, and they cite the decision protecting charter rights, in the case of Dartmouth College, but when the question comes up as to the rights of the women of the land, when these landed and special corporations are granted to steal their dower, who says a word for them? You have gone on taking this landed property from women, and invested it in corporations, and deprived them of their right of dower in it, against the fundamental principle that you cannot deprive individuals of their private rights, without an equivalent.

Now, whether it is in the power of the legislature to redress this state of things, I do not undertake to say. That is a very great and important question. It is much easier, as we have already heard, to descend into the lower regions, than it is to get back, when once down in the abyss. I do not know what we can do as to the past, but I do know what we can do as to the future. Grant no more incorporations, special or general, that shall deprive woman of her dower! We are here as the representatives of women, and does any man mean to deprive his wife and children, his daughters who are growing up, and who, in the progress of life and society, are liable to become widows, of their right of dower? No, Sir, there is not one capable of saying or meaning such a thing as that, directly, and yet, the people have sent legislatures here for seventy years, that have taken away from her in that period of special legislation, her thirds of almost one-third of the real estate of the Commonwealth of Massachusetts, and thus violated that great principle of the common law of England, that under no circumstances shall a woman be deprived of her right of dower. That is, of itself, reason enough for requiring general laws as to corporations, and for guarding against their operation in depriving woman of her dower in lands incorporated, or held in copartnership concerns.

[Here the President's hammer fell, under the order of the Convention limiting speeches to one half hour.]

Mr. SARGENT, of Cambridge. I suppose, Sir, that in this case, as in all others, we are first to consider and ascertain whether any evil has arisen under the present Constitution, and, having ascertained that fact, if we find such evil has arisen, we are then to determine what is the proper remedy.

The gentleman from Oxford, (Mr. De Witt,) this morning, if I understood his argument rightly, stated that a very large portion of the taxable property of the State, was now in the hands of corporate companies, and that, in 1840, it amounted to two-thirds the whole taxable property of the State. This, I understand that gentleman to assert, to be an evil. And he says it has grown up at the expense of the small towns. Sir, is that position correct? Is the position that this is an evil, burdensome upon the small towns, correct?

First, has it depreciated the property, or injuriously affected the interests of the inhabitants of the small towns? If it has not, then, in that point of view, the small towns have not suffered.

Again, when you apportion a tax throughout the Commonwealth, do you find that there is oppression of the small towns, growing out of this system? Do they not, on the other hand, find it a great relief? Is not their proportion of the taxes greatly diminished, by the increase in the

property of the Commonwealth, which has accumulated under this system of corporations? If the answer be yes, then I hold that the argument of the gentleman from Oxford, altogether falls in this respect.

The gentleman from Wilbraham, (Mr. Hallett,) adduces, as another evil growing out of the present system, that it deprives the widow of her right of dower. Now, is that an evil which ought to be remedied? It may be an evil, so far as those acts of incorporation cover real estate, and convert it into personal property.

The gentleman proposes a general law, as the proper remedy. Now, will a general law remedy that evil? or will it remedy the evil complained of by the gentleman from Oxford? If, under special charters already granted, one-half, or two-thirds of the property of the Commonwealth is already covered, and, in that is included a large portion of real estate in which the widow is deprived of her right of dower, I ask you, if the remedy proposed, either in the Report of the Committee, or by the amendment of the gentleman from Oxford, is calculated to remedy or lessen that evil, and restore to the widow her right of dower. Will it not have directly the contrary effect. Will it not, by adopting a general law, open the door through which every acre of land in the Commonwealth may be brought under acts of incorporation, and thus deprive every female in Massachusetts, of her right of dower. I do not understand that either the gentleman from Oxford, (Mr. De Witt,) or the gentleman from Wilbraham, (Mr. Hallett,) propose to limit this right of incorporation; but, on the other hand, they propose to enlarge and extend it. If, then, it is an evil, as now limited under the proposed Constitution, I ask if that evil will not be increased just in proportion as you enlarge and extend the power?

I believe, I have always believed, that the interest of Massachusetts, in all her acts of incorporation, and, indeed, the very success of those corporations themselves, has depended, in a great degree, upon the fact, that the legislature held a wise controlling power over every special act they granted. And, I believe that the moment you yield up that wise controlling power over these corporations, you will place the interest of the Commonwealth in jeopardy, and just so far as you place the interests of the Commonwealth itself in jeopardy, to that extent you place the interests of all its citizens in jeopardy. I hold, then, that the remedy proposed, instead of removing the evil complained of, will increase it.

First, it is alleged that too much property is already vested in; and under the control of corporations; but this proposition will open the door for a larger amount to be vested in them, than under the present Constitution.

Second, it is alleged, that under the present provisions of the Constitution and laws, the rights of the widow are taken away. Now, it seems to me, that by the proposition before us, the door is opened for every acre of land in Massachusetts, to be brought under acts of incorporation. I do not believe that such a thing would ever take place; but you will enlarge the amount of property vested in these corporations very much. I therefore think the measure which is here proposed, will not remedy the evil, but rather increase it, and I hope it will not be adopted by the Convention.

Mr. FROTHINGHAM, of Charlestown. I am in favor, Sir, of the resolution now before the Convention, but not for the precise reasons which have been adduced, however much force there may be in those reasons, but for others which appear to me to be conclusive. Before I proceed, however, I desire to ask the President if the whole subject is under consideration?

The PRESIDENT. The amendment of the gentleman from Oxford, (Mr. De Witt,) opens the whole subject for discussion.

Mr. FROTHINGHAM. I understand, then, that as the matter is now before the Convention, if this proposition be adopted by the Convention, and approved by the people, they will then say to their agents in the legislature, that, in reference to the principle of granting acts of incorporation, it shall be done under a system of general legislation, whenever it is practicable, and not by means of special charters given by the legislature, which has been the policy heretofore acted upon to such a great extent in Massachusetts. I am in favor of laying that down as sound policy.

Now, Sir, say what we will in favor of the advantages of individual enterprise, the corporate principle is valued highly by business men. That is the practical fact, and there is no denying it. It is seen in all the various operations of business. It is seen here in this State, where it has been carried to such great lengths, and it is seen in every other State. Wherever the progress of things carries American principles and American enterprise, there is seen a tendency to adopt this corporate principle, this custom of association and organization of effort. And why? Because, at the bottom, in itself considered, it is a democratic principle. It is a simple way of getting together the means of men of small capital, and thereby combining and accomplishing objects which they otherwise could not accomplish. That is the principle of association in business matters. The tendency is, to carry this to a great extent. Pushed to its extreme point, it is communism, socialism, or what is generally understood by those terms. But here, as we have it in Massachusetts, and in all the States of this Union, it is nothing more than a principle by which men with small means can combine and accomplish those objects which they could not otherwise accomplish, but which would have to be left to the heavy capitalist.

Now, Sir, I am in favor of laying down this as the general policy of Massachusetts. Then, instead of being used only by those who succeed in making out a case, as it is called, before a committee of the legislature, or before the legislature itself, and in this way of being obtained as a privilege, that it should be open to all, as of right, under a system of general laws. This will take from the practice its monopoly feature, and substitute for it the just feature of equality; giving to all equal chances. What now is distributed as patronage, as matter of favor, political or otherwise, will then be at the option of all, as matter of right.

Such a policy will have to commend it the consideration that it will be in accordance with that internal freedom of action which has done so much for Massachusetts, and for the country; and it will also be carrying out the legitimate functions of government. It is not the true province of the latter to meddle with, or control private interests, to act as their director and guardian, and exercise a paternal care over them. It has even proved

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itself a poor regulator of the pursuits of business. Interest is sharp enough to look out for itself, and all experience has shown, that when government travels out of its province to become the ruler instead of the agent of the people, it has mistaken its office.

Now, it has been this individual freedom of action, which has contributed so much to promote the material prosperity of Massachusetts, and of the country. If there is any one thing more than another which has contributed to build us up in this State, it is that large measure of internal freedom as to trade, as to manufactures, as to commerce, and as to all the industrial pursuits of life, which the people of Massachusetts have exercised to a very large extent. This remark will be found to be true, notwithstanding the restrictions which, in our early history, were placed upon business. It is said by legal gentlemen who have looked into the early laws of our colony, that the people here were at least one hundred and fifty years ahead of all the world besides, in relation to penal laws, and the same thing is true also in relation to business laws. Now, I know what may be said in answer to this. I know it may come up in the minds of many, as this remark is made, that there will be found upon the pages of our statute books ridiculous provisions of law for regulating business. But the true point is, not what there was in Massachusetts alone, but what elsewhere was customary at that day; what, for instance, there was in the old country, at the time our trade and commerce first begun. If the state of things over the other side of the Atlantic at that time, be examined, it will be seen what were the rules and regulations and restrictions imposed by the governments of the old world, upon all the trades and avocations of life. The paternal system then and there, was in full operation. It will be found that the great end and object almost, of those governments, in their assumptions, were to regulate, restrict, and control the business operations of individuals. It was assumed, with respect to the farmer, the mechanic, and the laborer, that they had not sufficient intelligence or business faculty to take care of themselves, but that they needed to be cared for, like so many children, as to all the minute relations of life. It was held, that such care was necessary for the common good, for the safety and even existence of society. This was, in brief, the doctrine of hereditary legislators and rulers, who claimed the divine right to rule the rest of mankind, and to extort monstrous sums for their services. And they exercised this right freely. There was not a business pursuit in the mother country at the time Massachusetts was settled, that was not absurdly and wantonly regulated. There was not an article that could be used on the table, or on the person, or on the farm, or in the workshop, that either was not the subject of some monstrous monopoly, or some absurd restriction, as to manufacture and sale, and all were fortified by penalties. And this was carried, too, into regulations as to laborers' meat, and drink, and wages.

Now, Mr. President, it was under such a state of circumstances, that the farmer, the mechanic, and the trader, commenced here in Massachusetts. It was when monopoly and restrictions on trade were in their carnival, and, to judge the early people of this State rightly, this should be borne in mind. Another thing may be worthy of remark. When legal gentlemen praise the early penal

legislation of Massachusetts, and when others, with equal justice, praise its business legislation, let the credit of the great and undoubted advance it all shows, be placed where it belongs. For two or three generations, the general court was composed solely of farmers, mechanics, traders, and laborers. Without intending to reflect on the great profession of the law, it may be well to remember, that for many years the people and laws too, would not allow a lawyer to be a member of the general court. Hence, it is to the common sense of these classes, that we owe the comparatively liberal legislation under which our infant manufactures thrived.

Very early in the history of our government, the general court, in the face of this old world restriction, passed one short act, if I remember rightly—and I think I remember the whole of it—saying exactly what it is now asked should be put into our Constitution. I cannot speak with precision, as to the exact words, for I have no brief or notes before me, not expecting to speak upon this subject; but it was about 1640, or thereabouts, the general court of Massachusetts passed an act, in which it was ordered that there shall no monopoly exist amongst us, except as to authors of inventions, and to them only for a short time. That was the whole of the act. And, from that day to this, there has been a constant tendency, upon the part of the business of Massachusetts, to relieve itself from those absurd restrictions, which were, from time to time, imposed upon it, and which were derived from the mother country.

Now, Sir, I am in favor of carrying out the idea, that here, in Massachusetts, there shall be no monopoly amongst us, in relation to corporate rights. I am in favor of saying, that, whatever advantages there may be in them, they shall not be confined to those who now enjoy them, but that they shall be enjoyed by all who choose to take advantage of them—thereby taking the matter out of the category of privilege, and putting it upon the ground of right.

But, Sir, we have tried the experiment, to some extent, here in Massachusetts. I think there are, upon your statute books, general laws in relation to the incorporation of lyceums, cemeteries, and other objects of association. I do not know in how many cases the system of general legislation has been applied. Take, for instance, one of the late acts passed by the legislature, by which any individual may go to a probate court and have his name changed, whereas, it used to be necessary for every individual who wanted to change his name, to apply to the legislature for that purpose.

Then there is another general law in relation to closing the concerns of corporations. I do not believe there is but one opinion about the wisdom, the safety, and the soundness of that law. It is a short act, but it provides that, when a corporation closes up its proceedings it shall pursue a certain course, by application to the supreme court. That is about the extent to which this system of legislation has been carried in Massachusetts. But, look at the neighboring State of Connecticut. Look at New York—look at Michigan—look at nearly all the Western States, and it will be found that general laws have been applied to nearly every kind of business concerns.

Now, if I understand the objections to this principle, they all centre in about this: that it is

the duty of the government to see that unworthy individuals do not receive from the legislature power to cheat other individuals. I believe that is the whole objection—the whole ground of hesitation—upon the part of those gentlemen who oppose the adoption of this resolution. They say, that if you allow any set of individuals, for any purpose whatever, to form themselves into corporations under general laws, that it will open the doors to enormous frauds and cheats, which it is the duty of the legislature to prevent. I admit it is the duty of the legislature to make these general laws so sound, so safe, and so secure, to the property that invests itself under them, that this fraud, as much as possible, may be prevented; and farther than that, it does not seem to me that it is the duty of the legislature to go. When it goes beyond that, it steps into that round of paternal legislation which has been the curse of commerce for ages. I undertake to say, that it is not the duty of the legislature to take care of the private interests of men, but only to furnish those sound, safe, and general rules, by which they may conduct their business. It is for this reason, therefore, and not for other good reasons that have been alleged, that I am in favor of extending this principle of legislation, and of inserting in our Constitution a short and simple rule or instruction to our agent, the legislature, to this effect: wherever it can be done, the legislature shall make those general laws, and cease granting special privileges.

Mr. SCHOULER, of Boston. I have only a few words to say in regard to this matter. This subject has been discussed in this hall, in days gone by, with great ability, but I have never become a convert to these general corporation acts. I am not quite so much a corporation man as to give every set of men who may combine together the right to form themselves into a corporation. I think it is the duty of the legislature, to investigate all applications for corporations; and, if the applicants make out a case, to give them their charter. But, to pass a general law whereby any persons may combine—Tom, Dick, and Harry—and form themselves into a corporation, and go into any kind of business, I think ought not to be tolerated. The gentleman from Wilbraham, (Mr. Hallett,) and the gentleman from Charlestown, (Mr. Frothingham,) have spoken against this idea of encouraging associated wealth. They are in favor of having everything done, that can be done, by individual corporations, and so am I. It is because I am in favor of individuals doing all the work that can be done, that I am opposed to passing a general corporation act, whereby any persons may form themselves into corporations. We have a certain kind of business in this State, that has never been transacted by corporations, and that is, the great trade of manufacturing shoes. The shoe and leather business in this State, has never been transacted by corporations, and I trust it never will be. The great work of building ships has never been in the hands of corporations, and, if persons should come up to the legislature and ask for an act of incorporation for that purpose, they would not get it, upon the principle that this business, as has been shown, can be done by private enterprise; and whenever this can be done, I say there let it remain. I ask the gentleman from Charlestown, (Mr. Frothingham,) and also the gentleman from Wilbraham, (Mr. Hallett,) supposing that men form themselves into

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corporations under this general corporation act, and it is found out afterwards that they do not transact their business properly, you cannot take away from them their charter. They are independent of the legislature and the people. You cannot stop them, unless you repeal the general act; and when you do that, you punish the innocent with the guilty, because there may be a hundred other corporations incorporated under this general corporation act. It may be said that we may pass a special law in regard to men associated together under general law, if they transcend the power of that general law. But, supposing we do, what is to hinder those men, the next day, from forming a corporation under this general law. Last year, we had an application here to the legislature, to form a company by the name of the Worcester Caloric Power Company. They were to have \$500,000 capital, and it appeared in the bill, if I recollect aright, that they were to hold real estate in the city of Worcester to the amount of \$400,000. It was well known that it was nothing but a land speculation, got up under this title, intended to create the impression that it was intended for mechanical purposes. This is what gentlemen might call mortmain, although this definition of mortmain is a little different from the original definition. But, when that came to be discussed before the House of Representatives, they killed it by a decisive vote. I do not know but what they may have forced themselves, under general laws, into the Worcester Caloric Company. What you can stop by legislative enactment and investigation, they can obtain under general laws. The gentleman for Wilbraham, (Mr. Hallett,) says the amount of property owned by corporations, amounts to four hundred millions, and yet he is the advocate of a system, by which you can put the whole mechanical, and other business of the Commonwealth, into corporations. He talks about corporations owning this great amount of property, and yet he advocates a law whereby they can hold the whole State, and the legislature cannot say no. And they will be independent of the people and the legislature. I am not such a corporation man as that.

Mr. HALLETT, for Wilbraham. Will the gentleman allow me to ask him one question. If four hundred millions of property have gone into corporations, I should like to ask him what right he has to exclude the other two millions from going into corporations also.

Mr. SCHOULER. If the gentleman comes before the legislature and makes out a good case for an act of incorporation, he will get it. I was reminded, while the gentleman was speaking about monopolies, that if there is anything like a monopoly, it is the profession which the gentleman himself follows. Why does not the gentleman go for incorporating into the Constitution a provision that every-body should be a lawyer, and that he shall not have to serve three years, and then be examined before a certain legal tribunal, to see if he is fit to exercise the duties of the profession.

Mr. HALLETT. If the gentleman will incorporate a provision into the Constitution that would make lawyers, I would be very willing to do it.

Mr. SCHOULER. I believe that lawyers can be made about as easily as anything else.

Mr. HALLETT. I wish barely to make one

statement. I wish to say, under a law in our Constitution, that that gentleman, or any citizen may be admitted for an examination to the bar to-morrow, if he possesses good moral character and general information.

Mr. SCHOULER. Suppose he should not be able to pass an examination. What would be the case then? But, to pass from this, I say that that profession is the only profession in this whole Commonwealth that approaches anything like monopoly; and I have noticed in the Revised Statutes, that they have a lien law whereby they can keep the money of their clients, and pay themselves, before they pay over to their clients the money which they may collect for them. I say, if you pass this general law, you make all the corporations in existence monopolies, and you are shutting down the gate in such a manner, that these corporations will stand without any rivals and without any competition. They have got their charters, there they will remain, and the Commonwealth will grant no more. I desire to know if this Convention is ready to assert and maintain such a doctrine. I desire to know if we are intending to pass a law which will give to the banks that have been incorporated within the last two years, and those which have had their charters renewed, the whole monopoly of banking in the Commonwealth for the next twenty-five years. The gentleman says that all the new banks can come under the general banking law. The people do not want it. It is well known, at least financiers tell me so, that the banks under the general banking law cannot compete with those under special charters. Last year, or the year before, the legislature amended the law, by saying, that those banks that went into operation under the general law, should not pay any taxes for it. They offered this as an inducement, but you cannot find any company in Massachusetts that would avail themselves of this advantage. So it was in regard to the general corporation act for manufacturing, which was passed two years ago. There are a very few, I believe, that have availed themselves of these privileges; merely enough to make exceptions to the rule. As a general thing, the people of Massachusetts are not in favor of that law. I judge so from the fact that persons have come up to the legislature to get their charters, entirely disregarding the general corporation act. These are the general reasons why I am opposed to placing in our Constitution this provision, although other States may have passed, as we all know, general corporation acts, still, I believe our system is better than any which has been adopted anywhere else; and, I think all the time expended in legislating upon and investigating this matter of incorporations, is time well spent. I would warn this Convention against incorporating a provision into our Constitution which will give to irresponsible persons the power of forming themselves into corporations, and in that way getting rid of individual responsibility for their debts. The gentleman from Charlestown (Mr. Frothingham) is an anti-corporation man. I recollect that, in 1844, when we had that long debate about the camels, down in Nantucket, that the gentleman from Charlestown was very earnest in his opposition to all kinds of corporations at that time, and particularly against those small corporations. He has changed his ground altogether. He is now in favor of every-body forming themselves into

corporations, and of throwing the whole business of the Commonwealth into the power of citizens who form themselves into corporations, and of placing them above the people, and the representatives of the people.

Mr. FROTHINGHAM. The gentleman very truly says, that in some year, before the legislature, I had the honor of making an argument against granting special acts of incorporation. I have now very feebly made an argument against such special acts. I am in favor of granting now to all, those privileges which so large a body of our fellow-citizens have.

Mr. SCHOULER. The gentleman's explanation amounts to this, that he was opposed to that camel corporation, because it was a special corporation. I understood his argument to be, and I believe it was always so argued on that side, that corporations of that kind were unnecessary, and I wish to know whether the gentleman would be in favor of the camel corporation, if it was incorporated under the general law. What difference is there in principle, between a special and general act? If a corporation is good, it is good by a special act. There are certain kinds of corporations that require a great deal of capital and associated wealth, in order to carry on their business, and it is necessary that they should have an act of incorporation; but, before that grant is given, I would have every one of them come up here before the representatives of the people, and make out a full and clear case, before an act of incorporation should be given them.

Mr. WALKER, of North Brookfield. This question is one of great interest in this Commonwealth; it is peculiarly a Massachusetts question, because no other State in the Union, and I suppose no other country in the world, has so many incorporated industrial institutions as the State of Massachusetts, or so much wealth embarked in enterprises of a corporate character; and, therefore, the question is one of very great importance. In most other states and countries, corporations are resorted to as a necessity; with us they are mostly used as a matter of convenience. No one will pretend that nine-tenths of all the projects now carried on by corporations, could not be carried on by individuals. I think the gentleman from Boston, the other day, told us that one private firm in England owned more spindles than there are in the city of Lowell. Probably the founders of that establishment were poor men in the beginning, and that they attracted to themselves, by a necessary law, all the capital they needed, because they were men of character and ability. Such persons always attract to themselves all the capital they require; because capital needs talent and skill, as much as talent and skill need capital. From the statistics contained in our document, No. 37, the best deductions we can make, I think, will show that something like \$250,000,000, or \$300,000,000 of capital in this Commonwealth, are locked up in corporations. That is about half of the wealth of the State.

I suppose it is a foregone conclusion, that Massachusetts is to try this experiment to its fullest extent, and that we are to illustrate what the advantages or disadvantages of corporations may be. Corporations now, with us, have the ascendancy. I ask any man to say, if he believes that any measure of legislation could be carried in this State, which was generally offensive to the corporations of the Commonwealth? It is very rarely

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the case that we do not have a majority in the legislature, who are either presidents, directors, or stockholders in incorporated companies. This is a fact of very grave importance.

Mr. SARGENT, of Cambridge. I would like, with permission, to ask the gentleman from North Brookfield, if the secret ballot law was carried by the influence of corporations in this Commonwealth.

Mr. WALKER. I have reason to think that the corporations did not have a chance to rally and combine their forces on that question, either for or against it.

Now, if it be a foregone conclusion—if this corporation principle is to be carried out to its full and legitimate result, as I fully believe it is in Massachusetts, then I am decidedly in favor of the resolution before us. I think that is a resolution which we ought to pass. I will give an anecdote, in illustration of the reason why I am in favor of it. In 1850, certain tailors of the city of Boston, I think to the number of twenty or thirty, came before the legislature, and asked to be incorporated, that they might have an opportunity to put their small capitals together, and unite in the manufacture and sale of clothing. They came before the legislature, and it was shown that they were honest, industrious, and deserving men. I think their united capital amounted to only fifteen thousand dollars. What answer did they receive to their application? They got a negative. "You cannot be incorporated," said the legislature. At that very moment, there was a project before the same body, to increase the capital of a corporation, already amounting to two millions, to three millions. That was granted; that was worthy the attention of the law-makers of Massachusetts. That petition came from great capitalists. Laborers came forward and asked to be incorporated, and it could not be done. They were men of no influence, comparatively, and they could not have the privilege of uniting their capital together, so as to increase the benefits of their own industry, and obtain a profit on the sale of their own products.

Now, Sir, for one, I must, before voting on this subject, say, that if this policy is to be pursued, if this grand corporation system is to be continued, I think it should be extended to all, so that all may participate in it equally, and the privilege of incorporation should not be a matter of favor, but of general right. I have great doubts as to the expediency of creating these business corporations, either by general or special laws. I do not believe in the utility or rightfulness of the system itself; I do not believe in the necessity for it, as suggested by the gentleman from Charlestown, (Mr. Frothingham). I think there is no force in his argument, because we have had, for many years, an act for general copartnership, by which all persons of small means may unite together, and carry on business, and that without endangering anything more than the amount they put in. That law is neglected, because the whole attention is turned towards corporations. Yet the law was a good one. It was amended in 1851, and made still better, so that now men may unite in carrying on business, with all the facilities they would derive from incorporations. Under our present law, business men have the advantages which result from the combination of capital, and of acting with others without endangering anything more than they invest in the

concern. Besides, for the largest manufacturing operations, it is evident corporations are not necessary; for in the neighboring State of Rhode Island, where manufacturing industry has been more profitable, in proportion to its extent, even than in Massachusetts, they have, as a general fact, no corporations.

Sufficient capital can always be obtained, without the aid of corporate powers and privileges, for all useful and profitable undertakings.

I have said that I object to the whole experiment. I do not believe that the final result of it will be beneficial. I wish it understood, however, that when I speak of corporations in this connection, I mean those of a business character. Corporations for other purposes—for railroads, banks, and insurance companies, public charities, and the like—are, if not in all cases a matter of necessity, are at least a great public convenience, and do not interfere with the general business and ordinary pursuits of the people of the Commonwealth; but, for all other purposes, I do object to them.

The first reason is, that corporations change the relation of man to wealth. When a man has his property in his own hands, and manages it himself, he is responsible for the manner in which he does it. He does not delegate his power over it to anybody else. But when the management of property is put into the hands of corporations, the many delegate the power of managing it to the few; and that is an important consideration, when we reflect that nearly half of the wealth in this State has passed from the hands of individuals into the hands of incorporated companies. It aggregates power, of course, and necessarily, all the property of the Commonwealth, included in these corporations, must be put into the hands of a very few men, having absolute power over it for the time being. Hence, the agent of a factory, or a corporation of any kind, has absolute control over all persons connected with that corporation. This, I hold, to be one of the bad consequences of incorporated wealth.

Another objection I have to this system is, that it changes the moral responsibility of capital. When a man is managing his own property, he is held morally responsible for the manner in which he conducts his business, and for the manner in which he treats the persons whom he employs. If he is unjust, or cruel, he will feel the rebuke of an indignant public sentiment, under which he will quail. But it is not so in corporations. All this moral responsibility is removed. I will illustrate my meaning in this manner: Suppose one of the employees, a young woman, in one of the factories, should feel that she was injured or wronged, by some of the arrangements of one of the mills, and she should seek redress. Suppose she goes to the overseer of the room and applies to him. What does he say? "I am not responsible; you must look to the superintendent of the mill." And what does the latter say? "I am not responsible for this; you must look to the agent of the factory." Suppose she should venture to go to the agent. What does he say? If he deigns to say anything, he will tell her that "the board of directors are responsible for all this matter." The board! and so the poor girl has, at least, run her head against "a board." "We act," says the agent, "under general rules. These rules are established by the board of directors, and the agent has no responsibility in the

case." Then what is her redress? If she goes to the directors, what answer does she get? Why, that they "act for the stockholders, and are bound to consult their interests, and those interests require them to run the factory thirteen or fourteen hours per day. They must act for the interest of the corporation." Suppose, farther, that an application for redress were made to individual stockholders, what would be their reply. Very certainly they would say: "We have no personal responsibility in the matter; we submit the entire management of the factory to our directors and those they employ." This is a fair illustration of the matter, and it clearly shows that the moral responsibility of wealth is destroyed by being aggregated into corporations, of which it is said, with terrible truthfulness, that "they have no souls."

In the next place, corporations destroy the natural relation between capital and labor. The moment we incorporate capital, and refuse to incorporate labor, that moment we change the relative position of the two. And what is the consequence? We give capital greatly the advantage. We never incorporate laborers. Such a thing is unheard of, and such a thing would not be tolerated. And, since we do not do that, it is quite clear that we should not incorporate capital, if we would leave the two parties on an equal footing. Capital and labor are, in all cases, natural copartners in production, and natural competitors for profits. The relation between capital and labor we cannot destroy, but that competition we may interfere with, and we do so if we incorporate capital and do not give an equal advantage to labor.

Again, by this system we reduce the number of freeholders, and that, I maintain, is a great evil. When persons carry on their own business, they will live, generally, in their own houses. When they are employed by corporations, almost universally, they are tenants at will. I submit, that in this Commonwealth, this has become a matter of great importance. Thousands, and tens of thousands, who are now mere tenants, would be freeholders, were it not for corporations. For instance, take one of our manufacturing cities, where the business is carried on by corporations, and what a large proportion of all the dwellings are owned by these great companies, and what a large part of all the inhabitants hold their tenements at the will of a factory agent. On the other hand, by way of contrast, take the city of Worcester; it has not a single corporation there for any industrial purpose, and yet it is the most flourishing city in this Commonwealth, altogether.

Mr. SCHOULER. I would like to ask the gentleman from North Brookfield, if the city of Worcester has not been built up by corporations, and what it would be to-day, if it had not been for railroad corporations?

Mr. WALKER. I have not objected to railroad corporations.

Mr. SCHOULER. The gentleman spoke of corporations.

Mr. WALKER. But I have not objected to railroad companies, banking, or insurance companies. The only point of which I am speaking, and the only thing to which I object is, the establishment of corporations for carrying on the common industrial business of the country. Now, take the city of Worcester, and, as I have said, it is far the most flourishing city in the Common-

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wealth; and the great cause of their success and prosperity is, that they have mechanics who do business on their own account, and who, when they acquire wealth, buy a piece of land and build a house upon it. They are independent men, and act, as they choose, and vote as they please.

On the other hand, take a city whose industry is carried on by corporations, and how different is the position and characteristics of its population. I will make no invidious comparisons, for the facts are well known to all intelligent persons.

Again, Sir, this system has concentrated our manufacturing business, to a wonderful extent, in the cities, and I insist that that is a great evil. I maintain that, if it had not been for this corporation system, our manufactures would not have been concentrated to the extent they have, in cities, but would have been scattered all over the State, wherever there was a waterfall to be put to use; and that would have been much better for the Commonwealth, than the present state of things. One great object of bringing these great corporations together in a large city, is this: In the first place, when one of these cities is to be built, the land is all bought up, and monopolized. One single corporation in this Commonwealth, purchased 1,400 acres of land to start with, and now, if that land is sold at only ten cents a foot—and much of it will be sold for a dollar a foot—it will bring more than six millions of dollars. Now, Sir, all the rise of that land, instead of going to the benefit of the workmen, as it should, goes to build up the property of the corporation. That, I maintain, is a serious objection, and one that does not exist where manufactories grow up naturally under private enterprise.

And, I object, again, that this system necessarily destroys private enterprise, by monopolizing the money and business of the country. Every-body knows, that the moment there is a great pressure in the money market, these corporations can control a great part of all the capital of both city and country, and I have been rejoiced, when passing through Pearl and State Streets, in this city, in a time of pressure in the money market, to find that the business men were beginning to wake up to the fact that they are being crushed under this tremendous system of monopoly.

Ordinary business men cannot command money, when corporations can. For, in the first place, the men who enter into these corporations are men of great capital, and have great personal influence in the money market; and, in the second place, as they can create the influence of great manufacturing and banking corporations, they can and do, readily absorb a great part of all the circulating medium of the State. Business men begin to understand all this, and to see that private enterprise is greatly crippled and impeded by this corporation system. Public sentiment, among that class of men, is becoming adverse to it, and will demand, ere long, its overthrow. They will not, and ought not, to be willing always to compete with these vast aggregations of wealth.

Another objection is, that this system involves, to some extent, the evils of absenteeism, of which we have heard so much in other countries. Is it not, to a wonderful extent, the case that those who own the wealth in the manufacturing towns, do not live in these towns? Are there not millions, and tens of millions—I do not know but

that I may say hundreds of millions of property—owned in towns in which the owners do not live. This is certainly the case; and what is the consequence?

Mr. HALE, of Bridgewater. I wish to inquire if there is any injury resulting to these towns, because persons who do not live there, have invested their money there?

Mr. WALKER. It operates greatly to the injury of these towns, that the profits of capital are all expended out of them, just as it does in Ireland. The great curse in Ireland is, that those who make their money out of the industry of that country, spend it in England, on the continent, or wherever else they please; and consequently Ireland does not improve and prosper, as it should. That is the effect in these towns, they do not have their legitimate growth and development; it is so everywhere. I do not think this is so strong an objection as some that may be urged, but still it is an objection, and it is one that will be felt more, years hence, than it is now. I will remark, Sir, that the effects of our corporate system are not very fully developed, as yet—we are only on the threshold—we have only the poetry of it now, but we shall have the prose—we shall have sad results from this system ultimately.

This system of corporations is nothing more nor less than a moneyed feudalism; it has an effect on our civilization analogous to that which feudalism had in past ages. It concentrates vast masses of wealth, it places immense power in a few hands, and gives to both a permanent existence. Corporations never die. The individual manufacturer dies, his great property is divided. If he has been a bad man, there is a chance for hope that somebody else of a better character will take possession of his wealth, and that it will find investment in various channels of enterprise; but it is not so with corporations. What is sealed up there, is sealed up forever, like an hereditary entail.

But, Sir, time is precious, and I will not extend my remarks. This system will eventually work out its results; it will eventually fail—I have no doubt about it. I hope gentlemen will not feel any unnecessary alarm on account of my prediction, for I do not expect that it will be fulfilled in the present generation. But I am just as certain of it ultimately, as that I am now standing in this hall. The system must eventually break down, because, according to a simple law of political economy, individual enterprise will outstrip corporations. It is more economical, more vigilant, more shrewd. We have, by State legislation, built up very successfully a great system of corporations, and national legislation has fostered their interests, but, the time is coming when these institutions will be brought into a full and fair competition with unrestricted commercial and manufacturing industry, throughout the world, and that competition these corporations cannot stand. They conduct their transactions in such an expensive manner, that it more than counteracts all the advantages of their special privileges.

There is a gentleman on this floor who could bear witness to the truth of this; he knows full well how enormous are the salaries of the various officers of these corporations, and how large a share of all the profits is swallowed up by them. In one case, he has stated that the salaries of a certain corpo-

ration in this neighborhood, and that in no wise a peculiar one, are equal, in the aggregate, to one cent per pound on all the cotton spun. The salary charges are immense. Five thousand dollars, perhaps, for the president, a corresponding salary for treasurer, agent, &c., &c., down through a long catalogue of officials; higher salaries than the Commonwealth can, or does afford to pay. These are the reasons why corporations cannot eventually compete with private industry. Their expenses are enormous, and the manner in which their business is conducted, is necessarily wasteful.

Although they are carried with us to the greatest possible perfection, still, even here, they are cumbrous and expensive in their employment of capital, and they will find it out before long, and then the stockholders will sell out to individuals; there will be no property destroyed—there will be no violent revolution—everything will gradually settle down quietly into its legitimate channel, into the hands of private individuals. I will end, as I begun, by saying that it seems to me that we had better make a general law that will provide for the case, as matters now stand in this Commonwealth.

Mr. GRAY, of Boston. I cannot see any necessity or propriety in inserting either the resolve in its original shape, or as it is proposed to be amended, into the Constitution. Yesterday—and I refer to the decision by the way of illustration, for I have no disposition to reflect upon it, and it would not be in order for me to do so—yesterday, in judging whether the legislature should be prohibited from loaning the credit of the State, the Convention decided that it was certainly a very high power to give to the legislature, being no less than the control of the whole property of every man in the State. But, after all, it should be intrusted to the hands of the agents or servants of the people, and without restrictions; but I will say, Sir, that I was against the restriction proposed yesterday, and I wished that the resolve could have arrived to its third reading, chiefly, though not solely, with the hope that some amendment might be proposed, which should forbid towns to exercise a like control; but that is not exactly to the point here. It is unnecessary for me to say whether I think that the plan of a general framework established by a general law, is the best plan, or not the best plan; it is unnecessary for me, either to take issue with my colleague, or to agree with him as to that matter, because, Sir, I go behind all that. Why, Sir, admitting, if you please, that the plan of granting special acts of incorporation is wrong, and that we should make a general law by which people could come in and make corporations for themselves, why not leave it in the hands of the legislature? The legislature have shown themselves, entitled to the confidence of some gentlemen who have spoken before me, in establishing that system; and why should we not be willing to let things stand as they do? Why should we tie up their hands while the experiment is in process? Now, Sir, as to granting special acts for corporations, we are told that millions of property is in the hands of corporations, and of its effect upon the labor of the community, and the personal relations of men. Whatever results from corporations, results from anything that is a corporation, whether individuals make it themselves, under a general law, or the general court makes it for them, by a special act. I will take

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occasion here, to say, that I have always acted upon one rule—and I humbly think it is a good one, after much reflection, and some opportunities of observation—and that is, to be very liberal in granting charters of incorporation, but very careful in reserving control over those charters; and that has been the policy of the legislature of late years. The 44th chapter of the Revised Statutes gave the legislature power over all charters. I do not wish to disturb that, for my part; and if gentlemen wish to stereotype it in the Constitution, I do not think that I should have any objection—certainly, none strikes me now. I think more especially should some such provision be made in reference to municipal corporations; for, a little while ago, the charter of the city of Lynn came very near slipping through, without any such effectual provision, and upon a different footing from all the other city charters in the Commonwealth.

I come back, after all, to a repetition of my first reason, that the matter had better be left to the general court. One or two years since, they thought it would be best to pass general acts. The legislature have done this, and they will persevere in it, unless the wants and interests of the people require otherwise. I am by no means prepared to say, that general acts—everything, of course, depends upon what their provisions are—will be the best, the most convenient, and the most proper way of proceeding, in regard to this matter. I have full confidence in the wisdom of the legislature, that they will be quite as good judges as I am. As to the general effect of corporations, all that I have to say is, that if the property of the State is locked up in their hands, the legislature keeps the key, and I presume always will keep it; and I have no objection that it should be so; but, I think that we may safely leave the matter as it stands in the Constitution. We should probably have no greater evils than we have had; and, if any new evils should appear from leaving the legislature its present license, I think the people will do what is necessary to restrict them. If that should be so, and if some future exigency should arise so as to require their action, I would not tie up their hands either way upon the subject irrevocably.

Mr. WHITNEY, of Conway. I know, Sir, that the Convention are impatient to take the question. I am fully aware that there is running through this Convention a strong desire upon the part of many members, to limit our discussions, so that we may act, as soon as possible, upon the questions which yet remain to be acted upon by this body; but I desire to say a few words, and I think that I have special claims in this particular case for a few moments of your time, before final action is taken upon this question. I had the honor to be upon the Committee who reported the original resolution, out of which the amendment, now under discussion, has grown, and I regard this subject as one of the most important subjects that can come before this Convention. I do not agree with those gentlemen who say that our system in Massachusetts, hitherto, has been a perfect system, although it has produced some very good results. The gentleman from Boston, on my right, (Mr. Schouler,) and the one before me, (Mr. Gray,) say that the legislature, in granting special acts of incorporation, has been careful to investigate the cases, and to keep the control of these companies. I grant that; but would it have

been otherwise under a general law? The gentleman on my right says, that under a general law, any special breach of that general act by a particular corporation, would necessitate a repeal of the general law. If that gentleman had reflected with his usual sagacity and judgment, he has too much good sense not to know better than to have made such an allegation here. The gentleman knows, full well, that the legislature can pass a general remedial or penal law, applicable to corporations as well as to individuals. A general law can be passed, by which, if companies violate their charters in any single particular, either by working more hours in a day than your law provides for, or in any other way,—by any breach of right, justice, or law,—the corporation can be made indictable, and punished, by taking away their charter; or, by punishment of their directors and stockholders, they can be made amenable. If the gentleman had reflected for a moment, he would have seen that his objection was groundless. I would ask gentlemen here, to bring this matter home, and see what we have here in hand. The gentleman from North Brookfield, (Mr. Walker,) has argued the general doctrine of corporations. I will agree with him in the main; but that is not the question here, before the Convention. I take it for granted, that the advantages growing out of associations under the form of corporations, are such, that the system is to be continued, to some extent, in this Commonwealth, under one form and mode of making laws, or another; and now, the question is, to what extent it shall be continued, and how? whether by a system of special acts, or by general laws? not whether you will apply all the principles of corporate action, by a general law, to mechanics, and tavern-keepers; but, in what manner shall it be applied, in all cases, where its application is proper? Shall the legislature assume to deal out these acts to a few of our citizens, as special favors, when they belong, according to all the principles of your original Constitution, and according to all the principles of justice, to the whole people of the Commonwealth, as a right? I undertake to say, that gentlemen have not met the issue here. It is not what the general law shall be; but, whether there shall be a general law, open and accessible to every citizen of the Commonwealth alike?—whether it shall be, in the language of the declaration of your Constitution, in article ten, of the Bill of Rights, which says that, “each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to *standing laws*?” Now, Sir, this is a property question. The question is, whether all the citizens of the Commonwealth shall have the same rights and privileges to associate together for the purpose of acquiring property? And I undertake to say that you violate the principles of equality, and right, and justice, and the declaration of the present Constitution, as much in denying me the right to associate with my fellow, under a general law for the advantages of corporate action, as though in a case where my life, or my liberty, was concerned. You should not deny me the same right of trial which you give to other citizens. I claim, that whatever right you grant to any other man to acquire property, either by a special charter or by a general law, you should grant me a like privilege, and a like opportunity. That, Mr. President, is the question before us.

I took down some of the remarks of the gentleman this morning, with a view to reply to them, and if the Convention will indulge me for a moment, I will briefly refer to them. The gentleman from Boston who first spoke, says that this proposition favors corporations. That may, or may not be so. It depends upon the general law that you may make. If it favors corporations, with proper and suitable restrictions, I am in favor of it; for I take issue with gentlemen who say that corporations are necessarily monopolies. They are only monopolies inasmuch as you make them exclusive. They are monopolies under your system of special charters; but, open them to every citizen, and they cease to be monopolies. A monopoly is to give to a man the control of the manufacture of any particular article, or to give to him exclusively a market for the sale of any particular thing; which privilege you deny to other men. In this exclusive privilege consists the monopoly. Now, if this leads to the increase of corporations, properly constituted and guarded, and so created that they shall not interfere with individual rights, or the rights of towns of this Commonwealth, then I go for the creation of such corporations. Every gentleman is aware, that in the neighboring States, the people are engaged in diversified and prospering manufactures, built up under a self-associating system of general corporation laws, which have greatly promoted the wealth of the citizens of those States, individually, and in contributing to their individual wealth, has contributed to the aggregate wealth of these several States; while in Massachusetts, we have trampled down enterprise, by the delays and fluctuations of our legislation, sometimes denying charters, and sometimes granting them with great liberality, while other States have left their citizens free to incorporate themselves. Look at the State of Connecticut, for example; and, notwithstanding our Lowell, and Salem, and other large manufacturing towns, the fact appears that they manufacture more on the head, in regard to population, than we do, with all our privileged corporations—I believe largely more. Sir, they have gone into every kind of manufacture, from the very smallest pin, and hook and eye, to the fabrics themselves which these little articles are used to fasten. The State of Connecticut is dotted all over with manufactories, which have grown up under the general law of incorporations in that State, which has never worked any evil to anybody. Half a dozen men can make themselves into a corporation there, and go to work any day. But how is it here? If half a dozen men want to go to work to-morrow to manufacture pins and needles, they have to wait until next January, and then they have to come to this House and satisfy the legislature that they have a kind of claim to enter into this sort of business. Sir, who can truly and reasonably say, that the legislature, as a body, are better judges of what individuals can do for their own profit and advantage, than the individuals are themselves? Who would take the opinion of the legislature, in regard to a piece of paper which he wanted to get discounted at a bank? Such a system of law, Sir, is not founded either on equity or common sense. It is good for nothing. I know well enough how charters are obtained here. We all know that our legislative opinion and action is variable on this subject. Some legislatures are in favor of almost all incorporations, and freely grant special charters,

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while other legislatures withhold acts of incorporation altogether. But, let me go back a moment to the manufacture of needles. If I was in the State of Connecticut, or New York, or Ohio, or in two-thirds of the States of this Union, I could go to the capitalist, if I was a mechanic, and understood how to make these needles, and could associate with him, putting in my hundred dollars, and my skill, and he, perhaps, his thousand dollars, and we could start a manufacturing establishment to-morrow. How is it here? Why, Sir, as I before said, we must wait until January next, and then we must come up here by a lawyer, and go before a committee of the legislature. We must first satisfy them that it is a good enterprise. We must fee a lawyer at a nameless amount—sometimes more, and sometimes less—to present the case before your committee. If we happen to meet with a man desiring a like privilege, for the manufacture of some other article, why we may join him, and drive a bargain together, with some members of the legislature, the friends of one measure joining the friends of the other to insure the passage of both, and possibly by the end of next March, we may get our charter granted. But, Sir, if I was a party concerned, and knew the business, and wanted to make money speedily, I could slip into Connecticut and start a manufactory, and become well established, while other parties were hanging on here in the endeavor to obtain a charter.

Mr. SCHOULER. I would ask the gentleman from Conway, if he is not aware, that we have a general law in the State of Massachusetts, in regard to corporations.

Mr. WHITNEY. Yes, Sir, we have a law, and it is a general law, and the gentleman will find that there are nearly fifty corporations organized under that law; and, if you go into the interior towns of the Commonwealth, you will find that they are doing a successful business under that law. I grant that; but they come here, and ask for special charters, he says, notwithstanding, and for what purpose? Why, in order that they may dodge the wholesome provisions of that law. That law requires that the name of every stockholder in a corporation, shall be entered in the books of the town clerk, where the corporation exists, in order that it may be known whether the corporators are solid men, or men of straw. It is also necessary, that when any transfer of stock is made, such transfer should be entered in a similar manner, in order that the public may not be cheated. And now, Sir, that law is in successful operation, and nearly fifty small manufacturing establishments are in operation under it. Possibly some eight or ten of them, have since incorporated under special charters. A gentleman from Springfield, told me, a day or two ago, and he is a large holder in corporations, and knows pretty well how the thing works. He told me, that while he favored a general law, on the ground that it was better for all, and more equal yet, there were sometimes peculiar advantages in having a special charter. As an instance of this, he mentioned, that being desirous of forming a steam-boat company in Connecticut, instead of organizing it under the general law, he happened to find an old special charter, and had the company organized under it, simply because it was less restrictive, and attended with less trouble, and the charter was more liberal than the general law.

Nevertheless, said he, the general law would have answered all our purposes, and we should have organized under it, had we not found this old special charter.

The main objection I have to these special charters is, that they interfere with private enterprise, whereas, a general law places all upon the same level. There is no fear of getting a general law, that will interfere with private enterprise, half as much as your special laws will do, because, in passing a general law, it is brought to bear upon every member of the legislature. A general law affects the whole community; and, as it is good or bad, so each member must answer to his constituents, according to his vote. But, when a member gives his vote in favor of a special law, which is but of limited application, his constituents probably know nothing about it, and, if they did, they might not care about it, unless they were particularly interested themselves. In such case, a vote costs a member nothing; and, as the gentleman from Taunton said, the other day, every-body knows that there is a predisposition in the human heart to accommodate a neighbor, when a man can do it so easily and cheaply as by giving a vote that will not bring himself into conflict with others. But, in case of a general law, applicable throughout the Commonwealth, and to bear upon all parties and all sections of the Commonwealth equally, it would be matter of general concernment, and men would bring their minds to bear upon it, and hence it would, in all probability, be the best law that could be framed.

The gentleman says, that those parties desiring charters, should come before the legislature and make out a case, before they should obtain one. I take issue with the gentleman there. There is in my town a cutlery establishment, which was founded last year under our general law, and it was formed by mechanics and artisans; men who were at work for a wealthy individual; and they came up here and petitioned to be incorporated in a town on the eastern side of the Connecticut River, but they failed to obtain their charter. Why did they fail? Because, they were poor mechanics, and could not reach those higher sources of influence. They did not obtain their special charter; but, since the general law was enacted, extending the right to individuals to self-incorporate, whether possessed of much or little property, these men came together and put in the little money which they had, and became stockholders in that corporation, and are now doing a good business, manufacturing, so far as I can learn, the best cutlery that is made in the State of Massachusetts. Now, Sir, I undertake to say, that these men should have that right; that you should not grant to the wealthy capitalist a special privilege of corporate action, and deny to the laborer the right to associate with his fellow laborer, under a general law.

Something has been said, in the course of this debate, by gentlemen who spoke when the subject was under consideration the other day, about the danger of arraying corporate wealth against your amended Constitution. I wish to allude to this, in passing, as I thought it possible that it might have a little influence upon some reformers in this Convention. For myself, I do not believe that that intimation is entitled to any weight whatever. I do not think that we sit here legislating under the fear of corporate wealth. I do not believe that we will admit it to ourselves, for

a moment. And, if it were true—which I trust it is not—I believe that corporations, managed by sound and judicious men, will prefer a sound and safe general law for the creation of corporations, rather than a system of special enactment. I believe that corporators generally are in favor of it. I do not believe that they will array themselves as a class, against your principle of general law; but even if they should so array themselves, who doubts where the victory would rest? Possibly these corporations may have their influence in this hall; but, let them once array themselves as a class, against the individual rights of the citizens of Massachusetts, and these corporations will soon go to the wall. I say that there is no fear here; corporators may be too strong for your legislatures, they may be strong in this Convention, but they are not yet stronger than the masses of the people; and, farther, I hold that this was one of the main reasons why this Convention was called. We have talked about matters here that are small in importance, when compared with this; and, if you will refer to the document which has been so often referred to—I have not examined it myself until this morning, and I regret that I have not had time to examine it better, and I must confess, also, that I was not aware, until now, that it had taken such decided ground upon this subject. I refer to the report of the committee upon the subject of this Convention, written by the able gentleman for Erving, (Mr. Griswold). I say if gentlemen will refer to this document, which is the report of the joint special committee of the Senate and House of Representatives, to whom was referred so much of the governor's message as related to a revision of the Constitution of the State, they will find that this was distinctly put forth as one of the issues before the people, in calling this Convention. I will ask your attention for a moment, to what is herein assigned as one of the reasons for bringing this Convention together:—

"The Committee submit, that the Constitution should provide for general instead of special laws. How far this principle shall be made to apply to specific subjects, will remain, of course, for the Convention to settle; but we have no hesitation in saying, that banks, railroads, manufactures, and insurance companies, may be safely subjected to general laws; and, probably, on more thorough examination, the principle may be extended much farther. But the principle, even to this extent, once settled, and incorporated into the Constitution of the State, will effect an entire change in our legislation. Our laws will then be more simple, plain, and better understood; their benefits will not be confined to a few, or to certain classes; but will be equal in their operations, diffusing their benefits among all alike, whether high or low, rich or poor. A large portion of the time now occupied by each session, in passing and amending special acts, will be saved; thus furnishing, as we have already suggested, a strong reason for limiting the sessions of the legislature to a period much shorter than is now usually occupied.

"This important provision should be incorporated into the Constitution; it should become a part of the organic law of the State, a fundamental principle in the government, that it may be placed beyond the reach of private and personal interests, or party action, or the fluctuating opinions of successive legislatures."

Now, Sir, let me ask if we can take any issue more distinctly than we took this issue there? Is

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there any dodging there? Is there any equivocation there? Did we not put this issue into the canvass, when we appealed to the people for a call of the Convention? Why, Sir, we put it everywhere. It was in the Democratic State Address, and in the Free Soil State Address; and, to-day, it is the most popular question in the Commonwealth, in reference to all that we have talked about in regard to this Constitution? Men of no party have ever raised their voices, in a tangible shape, against the great principle that all your laws creating corporations shall be equal laws. No, Sir; they do not meet the principle; they dodge it; they go round it, and come up here, year after year, and evade it, until nearly one-half of the capital of the State is incorporated capital. Now, Sir, in all conscience, let the industry of the men of small means be incorporated also. Let them have like privileges. I do not go for levelling all down to one level, but I go for raising all up to one principle—for placing all upon the same platform. "Right" is what I go for. I do believe that there are advantages occasionally to be gained by incorporations. I do not believe that the time will ever come—as some suppose—when this corporation system will give way entirely. Corporations may sometimes come into conflict with individual capital and enterprise, but, if they are formed under a general law, then the same law is open to all; and the poor man, with his small means, can combine with others, just as the men can do who are worth their millions. A general law, I hold to be democratic, in every sense of the word.

The gentleman from Natick, (Mr. Wilson,) told us the other day, that he had known gentlemen come here, year after year, and make their thousand dollars during the session of the legislature, in lobbying through acts granting special privileges. And the gentleman from Boston, (Mr. Giles,)—whose depth of thought, and of research into the great principles upon which our constitutional law is founded, is, to my mind, equal to that of any Democrat, or Free Soiler, or man of any other party in the Convention—told us, yesterday, that there was danger that corporate wealth would become too strong for the Commonwealth. I agree to all that. But how is it to become so? Simply, by confining your corporations to a few men, and thereby give them special advantages to accumulate and swallow up the wealth of the Commonwealth, at the same time that you deny to the poor man the right of self-association for similar objects. Now, a poor man can hardly undertake to get a charter through the legislature. There was a small company of mechanics in my town, who wanted an act of association, to manufacture joiners' tools. They presented their matter to the legislature, and sent an able man before the committee, who made out a case, as the gentleman from Boston, (Mr. Schouler,) would say. The legislative committee reported in favor of it. The bill was a long time discussed in the House of Representatives, but it finally failed of being passed, by one or two votes. The second year they applied again, and, after an expenditure of almost six hundred dollars, the act was passed, by the casting vote of the president, and it became a law. Now, why did these poor men fail, in the first instance? They could not reach the sources of influence in the legislature; they could not go to A, to B, and to C, and say, this is an institution which will favor your particular views, and

therefore ought to be chartered. If they could have done that, there would have been no trouble. But they came before the legislature with industry and small means, and endeavored to make out a case for a charter. But such appliances had but little influence the first year, and they failed, though the second year, by unremitting exertions, they succeeded. Well, they obtained the charter, and went to work. They were prospered, until overtaken by a calamity of which they had no control. A fire burnt them out clean, and, unfortunately, they were but slightly insured.

Now, what was the advantage of your general law, in this case? They had not themselves means to rebuild, but there was a general law which allowed these men to seek capital wherever they could find it. Conway being a small town, the capital could not be obtained there. They went over to Greenfield, and showed, to the capitalists of that place the state of their business, the amount of work they had performed, and the profits they had made, and the result was, that those capitalists immediately put into the concern \$20,000. The establishment was put into operation there, and they are now doing a flourishing business. What would have been the result, had there been no general law? They would have scattered, or have gone off into Connecticut, and commenced their works there, and Massachusetts would have lost the benefit of their skill and knowledge in that particular branch of business; and would have lost the advantages arising from the industry and capital employed in it.

Now, in this instance, we see an advantage which should be retained under a general law, and who is there that wants to continue the present system, of passing acts of incorporations? The gentleman from Boston says we are liberal in granting charters. We are sometimes. We granted a great number in 1852, amounting, according to some gentlemen, to \$14,000,000.

In the general law, we had restricted the formation of companies having a capital of over \$200,000. At the time of the passage of that law, the legislature was conservative—and the gentleman from Natick, (Mr. Wilson,) was one of them—and, doubting whether a law that did not limit the amount of capital in each case, could be carried through the legislature, the law was limited as it should not have been; but, remembering the principles laid down by our fathers, that all laws should be equal, they said we will begin to return to an equality in law—from which, by special acts we have departed—by allowing small corporations to be formed first, and we will limit the capital to two hundred thousand dollars. Well, it was probably wisdom so to direct that measure at that time, for it would have failed in the legislature in any other shape.

Now, I desire to put the question to gentlemen in this House, whether, as individual men, forming the organic law of the Commonwealth of Massachusetts; whether, as honest and fair minded men, you want to continue in Massachusetts a system by which individuals can make their thousand dollars a year by lobbying through special charters? Whether you wish to turn your legislative halls into a body of men who can and may be influenced to favor the rights of the few, at the expense of the rest? Where is the man who wants to continue this system? I do not know one.

I gathered an idea or two from the gentleman

from Taunton, (Mr. Morton,) the other day, though he was speaking upon another subject, which cover the entire question. The gentleman said, "adopt principles of right and justice, and they never will mislead an individual, or a party, of the Commonwealth. You never can have liberty, unless it is based upon principles of equality, and the most sacred exercise of the principle of equality, is in the enactment of laws which shall bear upon, and privilege alike, all citizens."

Now, gentlemen know what a privilege is. It is a peculiar advantage enjoyed by one man, and not enjoyed by all men; and if you grant a special charter, giving to a few individuals special rights and advantages, you are granting special privileges; and, so far as they are special, they are wrong and unjust, and ought to be unconstitutional. I say it is a matter of right, which has come down to us as an inheritance from our fathers, that every citizen in the Commonwealth has a right to equal advantages and privileges, and you have not the right, according to the principles upon which you based your Constitution, to trespass upon individual rights, or to make one man rich by giving him special privileges, and deny riches to another man, by a refusal of the same privileges.

Now, the gentleman from Cambridge, (Mr. Sargent,) this morning, in saying something upon this subject, asked if we have not done well heretofore? I think we have done well in this Commonwealth, and as a Commonwealth, in spite of the disadvantages growing out of the system of special legislation. But our prosperity has not been owing to that system, but has come in spite of it. We are indebted for it to other things—to our common schools, our industry, our capacity of acquiring wealth, our manufacturing, our ingenuity, our Yankee enterprise, and things like these. The gentleman from Cambridge will not say our prosperity is owing to the granting of special charters. He is too practical a man for that. I contend that we should have had more wealth and enterprise, more diversity of manufactures, more advantages every way, if we had adopted a system of general laws years ago.

This is no experiment in other States. The State of New York, great in all that pertains to business enterprise—unsurpassed, and unparalleled in her business achievements—is worthy of being referred to and copied. She may truly be called the Empire State, and we may well look to her for example. She began in this matter of passing general laws, as far back as 1838, and, in that year, passed a general law in relation to the matter of banking, the most difficult department of all. She continued to increase her number of general laws, one after another, down to 1846, when her new Constitution was formed. In that Constitution a provision was inserted, that no special charter should be granted. And this provision was not rashly adopted. She had had such a system partially in operation for twelve years, and even longer,—but I only go back to the time of the passage of the general banking law,—and the people of that State considered the matter of so much importance, that they incorporated it into their Constitution.

So the people of the great agricultural State of Ohio, after suffering many years from special legislation, and special grants, got together, and called a Convention mainly in reference to that

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matter. I was in Ohio at the time, and the principal question in the canvass, was that in reference to altering the Constitution with regard to the creation of corporations, and of the right of the legislature to pass special laws for them. The people carried the principle that corporations should be created under general laws, and they adopted the Constitution, embodying that provision, by a large majority.

I am yet to hear of, or find a man in any State in this Union, where general laws have been established, who finds fault with such laws, unless it be that man who is wanting special privileges under special law, for himself. That general law of Massachusetts passed in this State, which has been called a "corporation-ridden State"—though I do not believe it true—that law has never been attacked. Her legislature has passed from the hands of one party to the other, but they dare not touch it. The principle is so in accordance with the principle of right and justice, which resides in the breast of every one of our citizens, that no man has dared to rise and attack it, or move to repeal it.

And, in reference to the banking law, which has been referred to, they have not repealed that law. Why have they not done it? Gentlemen say the law is not used. I say it will be used. And I say that the law in relation to banking would have been used, ere this, extensively, had it not been for the idea running through the minds of many, who wanted special privileges, that by waiting, they would be able to obtain from the legislature a special charter, with those special privileges. As it is now, a bank is soon to be put into operation, by some shrewd financiers of the city of Boston, under that law. A man who was formerly a member of the legislature from the city of Boston, and who went for general manufacturing and banking laws,—as upright and intelligent a legislator, in all that pertains to manufacturing and banking, as the city of Boston ever sent to the House of Representatives—now connected with the Merchants' Bank of Boston, said to me, a day or two since, that they were about to organize their immense capital under that law.

Connecticut passed a general banking law, a year ago, and six or eight flourishing banks have been incorporated under it; and they consider the system a good one. It allows men to loan money, who have it to loan, and men who have not got it, should not be allowed to bank upon the mere credit which they can obtain from their promises to pay. No mere bank charter should ever be considered a basis for bank issues, however carefully and fully a case might have been made out before your legislature.

I say the principle should be applied to banking. If you retain your present system of banking, open the business to all, and let all be bankers who choose to be, and then the thing will regulate itself. Serve us all alike. That is what I contend for. I do not mean to say in what particular form you should have your banking laws, but whatever it is, you should have it under general laws. I prefer the system of a deposit, pledged for the redemption of issues, for the safety of the bill holders. I do not, however, attack any system of banking; but, I only wish the law, whatever it is, to be general.

I say, too, that this is no experiment in this State. We have general laws, and they have been framed to meet some of the evils experienced un-

der the system of special laws. It would require the legislature to sit the year out and the year in, if they were required to pass special laws for every religious society, or lyceum, and the like, that is formed in the Commonwealth. But we have general laws for the incorporation of religious societies, libraries, wharf companies, joint stock companies, banking companies, and for many other things. Now, who has ever found any fault with these general laws? We have general laws upon these things, and why not have them upon all others, and allow to individuals the right of self-association, and stop this system of special legislation.

The gentleman from Boston said, that we yesterday said that it was safe to leave to the legislature a thing of as much moment as this is. I take issue with the gentleman. Enactment of a law by the legislature, for loaning the State credit, would be, in its nature, a general law, bearing equally upon all the citizens of Massachusetts; equally upon the constituents of every member of the legislature. It would, possibly, be a general law intended for the benefit of a special corporation. But the grant of a loan is a general law, and is within the principle which I advocate. Well, Sir, is not the experience of other States—is not our own concurrent experience—sufficient to satisfy us of the importance of this principle? Is it not enough to satisfy us that it ought to be incorporated into our Constitution? As I have before said, we may well learn wisdom from the experience of other States, especially when we have so fully proved a system, as we have in relation to this matter. We have to oppose the competition of the great State of New York, our great commercial rival. New York allows all her citizens freely to enter into corporations under general rules and regulations. And why should we not unyoke our own citizens? Why should we not take off the trammels from their necks, and give them a fair opportunity to compete with those of New York? Why should they not have every advantage which general and wise laws can give them? I tell gentlemen that, but for these trammels, our manufactures would have been much farther advanced than now. We should have been much farther advanced in many things. Let us, then, incorporate this provision into our Constitution, as a principle of right and justice, where it never can be shaken and evaded. But upon this point, I have said enough.

In the next place, I think this resolve should be incorporated into the Constitution, for the reason given by the gentleman for Wilbraham, (Mr. Hallett,) that it will save the time of the legislature. All the legislatures of the State of Massachusetts, for many years past, have spent more than half, many of them more than two-thirds their time, in granting special charters to corporations, which might all have been saved by a general statute that would have occupied but a single page upon your statute book.

Here I will take occasion to say, that there is no ground for apprehension upon the part of the members of the Convention that should deter us, or make us hesitate to adopt this resolve, on account of any supposed interference with the right of eminent domain, which has been referred to in the course of this debate. I appeal to the judgment of the legal gentlemen of the Convention, to whose judgment I would certainly defer in these matters, whether you cannot as

well provide by general law that the right of eminent domain shall be secured to the citizens, as by special law. You can provide, as they have done in Ohio—although I think the restrictions are unnecessarily severe—that the property of a man shall not be taken for a railroad, until he has been settled with, and until it is paid for. In New York, the railroad companies are authorized to settle with the individuals for their land, if possible; but in case an individual cannot be traded with, they have the right to appeal to the legislature. But I understand that since this law has been in operation in New York, no appeal has been made to the legislature, for the right of way through the lands of any individual. The railroad companies have always managed to compromise with them in some way. So that you not only can protect your citizens in the right of eminent domain, by general laws as well as by special, but you can do it all the better; for, in drawing up a general law, you will be more careful so to frame it as not to infringe upon the right of any individual, half as much as you will be likely to by special law; and this furnishes an additional argument for putting this provision into our Constitution.

I have said that such a provision will promote the business interests of the community generally; but I will not take up the time of the Convention in dwelling longer upon this point, for I do not desire to weary the patience of the Convention.

I pass on, then, to my next argument in favor of this provision, which is, that it will give us uniform laws in reference to corporations. Now, if any gentleman will take the pains to examine our statute books with reference to this matter, he will find a great diversity in these special laws. You will find that privileges are granted to one corporation which are denied to another; and you will find that, when compared with each other, they are very unequal and unjust. In looking over these laws, the other day, I noticed that one corporation in the county of Worcester was granted the right to sell liquor, while another was restricted from selling it about the premises. Now, I do not believe you could get such disagreements in point of privilege, granted or incorporated into any general law. No legislature would think of framing such a law. But, whatever might be the privileges granted, all would be entitled to the same. But some favored corporation will start such dissimilar charters, under special legislation. They will go before the legislature with all the appliances which they well know how to use, and, in some manner, before they give up, they will manage to get what they want. But this system of general laws will give us uniform regulations and privileges, for all corporations to be created in future. They will afford a reference which all persons can, at any time, examine, to ascertain the liability of stockholders, or for any purpose. They will be in the hands of the laborer and the creditor, in one single act, which he can examine at any time, and through which he can ascertain whether the proprietors are liable for the last six months of his service. He may find out the entire provisions of law, relative to the corporation by which he is employed, as he cannot find out now. Under the existing laws, he may go from one corporation to another, through the hundred towns in which they are located, and he will find different pro-

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GENERAL LAWS FOR CORPORATIONS.—WHITNEY—SCHOULER—FROTHINGHAM—FRENCH.

[July 16th.]

visions of law applying to each of the different companies.

But, Sir, these laws are unequal, not only as regards manufacturing companies, but also as regards insurance companies. I belong to an insurance company which petitioned the last legislature to be allowed to raise a guarantee capital, to guarantee the policies issued by that company. It was only such a privilege as had been given to other companies. Precisely the same as had been granted to an insurance company in Worcester, precisely the same as had been granted to another in Springfield, but it was denied to our company, and for what reason? We are, to-day, raising policies of insurance without guarantee, for that right has not been given us. All we asked was, that the association might raise \$100,000, by the payment of stock on the part of individuals, and that we might be allowed to guarantee policies upon the strength of this capital, and we were denied this right. It could not be granted to us by the legislature, and why? Because, possibly—I do not say this was the reason—sundry influential men happened to be placed upon the committee having the subject in charge, who were connected with other insurance companies, and by various appliances upon the part of the agents of other companies which have this privilege, that committee was induced to report against our petition. I say possibly these were the reasons—perhaps others existed, if so, I do not know what they were, as we did not come before the committee at all, supposing that the request, being the same as had been granted to other companies, and, being so reasonable in its nature, would be acceded to without a question being raised; and I was never more surprised in my life, than when the committee reported that it was inexpedient to grant the prayer of the petition, or, to use their form, that the petitioners have leave to withdraw. Now, Sir, I want to know by what right or justice, you give to a company in Worcester, and to another in Springfield, the authority to raise a guarantee capital for their insurance policies, and deny that privilege to me? What have I done here in the good old Commonwealth of Massachusetts, to forfeit my rights of citizenship, and to entitle me to less advantages in the acquirement of property, than are accorded to others? I know of no act of mine that ought thus to disfranchise me, nor do I know of any act of yours that should entitle you to privileges above me.

Now, Sir, I have no manner of doubt that the incorporation of this provision into the Constitution, will do away forever this system of injustice and inequality, and that every honest man in Massachusetts will thereafter enjoy equal privileges with every other man in the Commonwealth. I do not believe that when you come to have a system of general laws, you will find any man to rise up and advocate the reestablishment of our existing system of special laws. Never, never.

It will have the effect, as I before remarked, to shorten the length of the sessions of the legislature nearly one-half, and it will destroy the principle of monopoly. That is the chief feature of which complaint is made, and it is one of the principal objections, to my mind, to the continuance of the present system. Privileges are given to certain associations, against the rights of the whole. They are granted to a few, and denied

to the rest. Therein consists the idea of monopoly, and nowhere else.

Now, Sir, I wish to say a single word farther upon this point, and I will close. A fear is entertained, in the minds of some gentlemen, that, by the adoption of this provision into your amended Constitution, you will, to a certain extent, render it unpopular among the people, when they come to vote upon its adoption. Now, I verily believe, that you can incorporate no one provision into your Constitution, that will so much aid you in securing the adoption of the whole, as this simple declaration, that hereafter special legislation shall cease. Why, Sir, it has been a cardinal doctrine of one party in the Commonwealth, ever since the days of our boyhood. Ever since I knew anything about politics, this has been a prominent object sought to be attained by one of the parties of the Commonwealth. The gentleman from Taunton, (Mr. Morton,) in his message in 1839, ably recommended that we should abolish this system of special legislation. Early in our history as a government, such a thing as special privileges was advocated by no one. It has grown upon us by degrees, and I think it is time that it should be stopped. But we never can stop it unless we do it in the Constitution. Your recent history, to which the gentleman from Boston (Mr. Schouler) has alluded, proves that whenever the legislature has enacted a general law, it has worked well. Let us, then, take off restrictions from general enterprise, and cease to be partial in our laws, by adopting this restriction. Let us so amend our organic law, that there shall be no more special legislation; hereafter, whatever enactments you make, let them belong to every man alike, then they cannot be complained of.

[Here the hammer fell, the hour to which the speaker, as chairman of the Committee, was entitled, by the order of the Convention, having expired.]

MR. DENTON, of Chelsea. I think this subject has been amply and fairly discussed, upon both sides. I think it has been discussed with great ability, and I therefore feel it my duty to move the previous question.

MR. SCHOULER, of Boston. I hope the previous question will not be sustained at the present time. If the question has been discussed, it has been all on one side. We have had a speech from the gentleman for Wilbraham, (Mr. Hallett,) half an hour in length. The gentleman from North Brookfield, (Mr. Walker,) spoke half an hour. We have had a speech from the gentleman from Charlestown, (Mr. Frothingham,) and an hour's speech from the gentleman from Conway, (Mr. Whitney,) in favor of the adoption of this proposition, while scarcely anything has been said upon the other side. I should like ten minutes to set myself right upon this question. It seems to me, that the question is by no means exhausted. There are many points which have not been touched upon at all. The gentleman from Cambridge, (Mr. Sargent,) my colleague from Boston, and myself, have not spoken three quarters of an hour altogether; while the gentlemen upon the other side have spoken two hours and a half. The gentleman from Conway, (Mr. Whitney,) directed nearly his entire speech against the few remarks which I had the honor to make, and I desire ten minutes to say something in reply.

MR. BIRD, of Walpole. I only want to say that I hope the motion for the previous question will not be withdrawn, and that it will be sustained by the Convention. The gentleman from Boston, (Mr. Schouler,) has had the floor once, upon this subject.

MR. SCHOULER. I am aware that I have had the floor once, but only for a very few minutes, and the gentleman from Conway, (Mr. Whitney,) has directed his whole argument against the ground which I took. In the usual course of debate, the chairman of a Committee opens the debate upon the subject over which he has had charge, but, in this instance, he has closed the debate.

MR. WHITNEY, of Conway. I would suggest to the gentleman from Chelsea, (Mr. Denton,) who moved the previous question, that he withdraw his motion. I desire to treat the gentleman from Boston with courtesy. I did not finish the remarks I had intended to make before the hammer fell, and I always want the privilege of the last word, when I can have it, but I nevertheless desire that the gentleman from Boston should have an opportunity to reply, if he desires it; and I therefore suggest to the gentleman from Chelsea that he withdraw his motion for the previous question, and move that the question be taken at twenty minutes past 12 o'clock. That will give the gentleman from Boston ten minutes to reply.

MR. FROTHINGHAM, of Charlestown. I rose to make a suggestion somewhat similar to that of the gentleman from Conway, (Mr. Whitney.) I have myself occupied not more than fifteen minutes in this discussion, and I should like an opportunity of saying something in reference to what has been said by the gentleman from Boston. I dare say there are many others who would also like to say something. I know, however, that the time of the Convention is precious, and, for one, I would be willing to forego the pleasure of answering the gentleman from Boston. I would, nevertheless, suggest to the gentleman from Chelsea, that the time for taking the question be fixed at half past 12 o'clock. This is a very important subject, and one which has occupied but very little of the time of the Convention. It seems to me but just, that the gentleman from Boston, (Mr. Schouler,) should be allowed time to answer the gentleman from Conway, and I think that to allow a little farther time for the discussion of the subject, would not be objectionable. I will, therefore, venture to suggest that the time for taking the question be fixed at half past 12 o'clock.

MR. WHITNEY, of Boylston. I have been waiting for some time for an opportunity to say a word upon this subject, but I see there are many others who are also waiting to say a word, if the previous question is withdrawn. If our friends are willing to waive their rights, I am willing to waive mine, and let the question be taken now. I hope the previous question will not be withdrawn.

MR. FRENCH, of Berkley. I hope the gentleman from Chelsea will withdraw his call for the previous question. I have not said a word upon this subject, and the Convention very well know that I shall detain them but a short time in what I have to say. If I could have obtained the floor at a proper time, I wanted to say a word in reply to the gentleman on my left, (Mr. Schouler.) But what I wanted to say at the time, I have now

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[July 16th.

nearly forgotten, [a laugh,] and I shall therefore be content with still less time than I should then have occupied. If the Convention will give me five minutes, it will be all I ask.

Mr. President: I shall be sorry to get into deep water, but if I do, it will not be the first time I have been off my soundings.

Mr. BATES, of Plymouth. I rise to a question of order. I believe the gentleman is discussing the question, and replying to the member from Boston, (Mr. Schouler).

Mr. FRENCH. I have not come to him yet. [Laughter.]

The PRESIDENT. The Chair does not understand that the gentleman from Berkley is replying to the gentleman from Boston.

Mr. FRENCH. This is a question in relation to corporations, or whether we are to have a general or special law as to corporations. What object do associations of persons have in view in being incorporated. They have some object or other—

The PRESIDENT. It is not in order for the gentleman to discuss the merits of the question.

Mr. BIGELOW, of Grafton. I hope the previous question will be sustained.

Mr. DENTON, of Chelsea. I wish the gentleman from Boston, (Mr. Schouler,) to understand that it was not my intention to cut him off from replying to the gentleman from Conway, (Mr. Whitney). I listened to his speech with a great deal of pleasure, and I think he went over the whole ground, and I really think that he would not have anything more to say, except in reply to the gentleman from Conway, which would lead to still farther discussion, and therefore I insist upon the previous question.

The PRESIDENT. The Chair desires to remark, in relation to the suggestion of the gentleman from Boston, (Mr. Schouler,) that, with the exception of the mover of the amendment, the floor has been given alternately to the friends and opponents of the resolves.

The previous question was seconded and the main question ordered.

The PRESIDENT. The question first in order is, upon the amendment moved by the gentleman from Oxford, (Mr. De Witt).

Mr. De WITT. I withdraw the amendment.

The PRESIDENT. The question now recurs upon the motion made by the gentleman from Worcester, (Mr. Davis,) to strike out all after the word "resolved," and insert the following, as a substitute:—

Resolved, That it is expedient to incorporate into the Constitution a provision, that corporations shall not be created by special act when the object of the incorporation shall be attainable under general laws.

The question was then taken upon Mr. Davis's amendment, and it was agreed to.

The PRESIDENT. The question now recurs upon ordering the resolve to a second reading, as amended.

Mr. STETSON, of Braintree, demanded the yeas and nays upon that question.

They were ordered.

The yeas and nays were then taken, and there were—yeas, 188; nays, 52—as follows:—

YEAS.

Adams, Shubael P. Allen, James B.
Aldrich, P. Emory Alley, John B.

Alvord, D. W.
Andrews, Robert
Austin, George
Baker, Hillel
Ballard, Alvah
Barrett, Marcus
Bates, Moses, Jr.
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Booth, William S.
Boutwell, Geo. S.
Boutwell, Sewell
Bradford, William J. A.
Breed, Hiram N.
Bronson, Asa
Brown, Artemas
Brown, Hiram C.
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Burlingame, Anson
Cady, Henry
Caruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Daniel E.
Childs, Josiah
Churchill, J. McKeen
Clark, Ransom
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Cole, Sumner
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Ebenezer
Dean, Silas
Denison, Hiram S.
Denton, Augustus
DeWitt, Alexander
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Edwards, Elisha
Edwards, Samuel
Fay, Sullivan
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Samuel
Frothingham, Rich'd, Jr.
Gale, Luther
Gardner, Johnson
Gates, Elbridge
Giles, Charles G.
Giles, Joel
Gooch, Daniel W.
Gooding, Leonard
Green, Jabez
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Harmon, Phineas
Haskins, William
Hathaway, Elnathan P.
Hawkes, Stephen E.
Hayden, Isaac
Heath, Ezra 2d.
Hewes, James
Hewes, William H.
Hobart, Aaron
Hobart, Henry
Hobbs, Edwin
Hood, George
Hooper Foster

Howard, Martin
Hoyt, Henry K.
Hunt, Charles E.
Hurlbut, Moses C.
Jacobs, John
Johnson, John
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Kuhn, George, H.
Ladd, Gardner P.
Lawrence, Luther
Leland, Alden
Lincoln, Abishai
Littlefield, Tristram
Marble, William P.
Merritt, Simeon
Mixter, Samuel
Morton, Elbridge G.
Morton, Marcus
Morton, William S.
Nayson, Jonathan
Newman, Charles
Nichols, William
Norton, Alfred
Ober, Joseph E.
Orne, Benjamin S.
Osgood, Charles
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Parsons, Samuel C.
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
PHELPS, Charles
Pemroy, Jeremiah
Pool, James M.
Putnam, John A.
Rantoul, Robert
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Rockwood, Joseph M.
Rogers, John
Ross, David, S.
Royce, James C.
Sanderson, Chester
Sherril, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Smith, Matthew
Souther, John
Sprague, Melzar
Spoonier, Samuel W.
Stacy, Eben H.
Stetson, Caleb
Stevens, Joseph L., Jr.
Stiles, Gideon
Talbot, Thomas
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Horatio W.
Turner, David
Turner, David P.
Tyler, William
Viles, Joel
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Waters, Asa H.
Weston, Gershom B.
White, Benjamin
White, George
Whitney, Daniel S.

Whitney, James S.
Wilbur, Daniel
Wilbur, Joseph
Wilson, Henry
Wilson, Willard

Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wood, William H.

NAYS.

Appleton, William
Aspinwall, William
Atwood, David C.
Barrows, Joseph
Beebe, James M.
Bennett, William, Jr.
Bigelow, Jacob
Bradbury, Ebenezer
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Bumpus, Cephas C.
Chapin, Henry
Cogswell, Nathaniel
Copeland, Benjamin F.
Crowninshield, F. B.
Gardner, Henry J.
Gilbert, Wanton C.
Gould, Robert
Hale, Artemas
Hale, Nathan
Heard, Charles
Hersey, Henry
Hindsdale, William
Hubbard, William J.
Hunt, William

Hurlburt, Samuel A.
Jackson, Samuel
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kendall, Isaac
Lincoln, Frederic W., Jr.
Livermore, Isaac
Loud, Samuel P.
Miller, Seth, Jr.
Orcutt, Nathan
Paige, James W.
Park, John G.
Read, James
Reed, Sampson
Sargent, John
Schouler, William
Tileston, Edmund P.
Tower, Ephraim
Tyler, John S.
Upham, Charles W.
Walkcott, Samuel B.
Walker, Samuel
Weeks, Cyrus
Wheeler, William F.
Wilson, Milo

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Adams, Benjamin P.
Allen, Charles
Allen, Joel C.
Allen, Parsons
Allis, Josiah
Ayres, Samuel
Ball, George S.
Bancroft, Alpheus
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bartlett, Sidney
Bates, Eliakin A.
Beach, Erasmus D.
Beal, John
Bell, Luther V.
Bennett, Zephaniah
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Briggs, George N.
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Hammond
Brownell, Frederick
Bullen, Amos H.
Bullock, Rufus
Butler, Benjamin F.
Carter, Timothy W.
Chapin, Chester W.
Choate, Rufus
Clark, Henry
Clark, Salah
Coggin, Jacob
Cole, Lansing J.
Conkey, Ithamar
Cook, Charles E.
Coolidge, Henry F.
Crockett, George W.
Crosby, Leander
Cross, Joseph W.
Crowell, Seth
Cummings, Joseph
Curtis, Wilber
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Isaac
Davis, John
Davis, Robert T.
Davis, Solomon

Daves, Henry L.
Day, Gilman
Dehon, William
Deming, Elijah S.
Doane, James C.
Dorman, Moses
Easton, James, 2d
Eaton, Calvin D.
Eaton, Lilley
Ely, Joseph M.
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fellows, James K.
Fiske, Emery
Foster, Aaron
Fowler, Samuel P.
French, Charles H.
French, Rodney
Gilbert, Washington
Goulding, Dalton
Goulding, Jason
Graves, John W.
Gray, John C.
Greene, William B.
Greenleaf, Simon
Hall, Charles B.
Hammond, A. B.
Hapgood, Lyman W.
Hapgood, Seth
Haskell, George
Hayward, George
Henry, Samuel
Heywood, Levi
Hillard, George S.
Holder, Nathaniel
Hopkinson, Thomas
Houghton, Samuel
Howland, Abraham H.
Huntington, Asahel
Huntington, Charles P.
Huntington, George H.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
James, William
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kinsman, Henry W.
Knight, Joseph
Knowlton, Charles L.

Saturday,]

UNIVERSITY AT CAMBRIDGE, &c.—BOUTWELL—HUBBARD—GARDNER—WILSON—BIRD.

[July 16th.]

Ladd, John S.
 Langdon, Wilber C.
 Lawton, Job G., Jr.
 Little, Otis
 Loomis, E. Justin
 Lord, Otis P.
 Lothrop, Samuel K.
 Lowell, John A.
 Marcy, Laban
 Marvin, Abijah P.
 Marvin, Theophilus R.
 Mason, Charles
 Meader, Reuben
 Monroe, James L.
 Moore, James M.
 Morey, George
 Morss, Joseph B.
 Morton, Marcus, Jr.
 Nash, Hiram
 Noyes, Daniel
 Nute, Andrew T.
 Oliver, Henry K.
 Packer, E. Wing
 Parker, Adolphus G.
 Parker, Joel
 Parker, Samuel D.
 Parsons, Thomas A.
 Payson, Thomas E.
 Peabody, George
 Perkins, Jonathan C.
 Phinney, Silvanus B.
 Pierce, Henry
 Plunkett, William C.
 Powers, Peter
 Preston, Jonathan
 Prince, F. O.
 Putnam, George
 Richardson, Samuel H.
 Ring, Elkanah, Jr.
 Rockwell, Julius
 Sampson, George R.
 Sanderson, Amasa
 Sheldon, Luther
 Sherman, Charles
 Sleeper, John S.
 Stevens, Charles G.
 Stevens, William
 Stevenson, J. Thomas
 Storror, Charles S.
 Strong, Alfred L.
 Stutson, William
 Sumner, Charles
 Sumner, Increase
 Swain, Alanson
 Taber, Isaac C.
 Taft, Arnold
 Taylor, Ralph
 Thayer, Joseph
 Tilton, Abraham
 Train, Charles R.
 Underwood, Orison
 Upton, George B.
 Vinton, George A.
 Wales, Bradford L.
 Wallace, Frederick T.
 Warner, Samuel, Jr.
 Wetmore, Thomas
 Wilder, Joel
 Wilkins, John H.
 Wilkinson, Ezra
 Williams, Henry
 Williams, J. B.
 Wood, Nathaniel
 Woods, Josiah B.
 Wright, Ezekiel

Absent and not voting, 178.

So the resolve was ordered to a second reading.

University at Cambridge.

The PRESIDENT. The next matter in order, is No. 2 of the calendar, being the resolve to amend section 2, chapter 5, of the Constitution, by striking out the words "University at Cambridge." The resolve has been read twice, and the question now is upon the final passage. The resolve is as follows:—

Resolved, That it is expedient to amend the second section of the fifth chapter of the Constitution, by striking out therefrom the words "University at Cambridge."

Mr. BOUTWELL, for Berlin. I am opposed to the passage of this resolution. If gentlemen will turn to page ninety-seventh of the rules and orders of the Convention, they will find in section 2d, chapter 5th, of the Constitution, the following:—

"It shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the University at Cambridge, public schools and grammar schools, in the towns," &c.

If gentlemen will observe the peculiar phraseology of this provision of the Constitution, they will see that it has divided institutions of learning into three classes: the university at Cambridge, public schools, and grammar schools. The proposition reported to us by the Committee is, that the words "University at Cambridge" be stricken out, so that the paragraph shall read: "It shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them, especially the

public schools and grammar schools in the towns," &c. The effect of this proposition is, to place the university at Cambridge where, as we believe, it ought not to stand, with those institutions of the State that rest upon private foundation, and are not supported by general taxation. I believe the friends of the university, at Cambridge desire to have that institution stand just exactly where, by the Constitution, it has been placed, with the public and grammar schools, preserving to it its original character as a public institution. Therefore, I am in favor of having the Constitution, in this respect, remain just as it is, and am opposed to the resolve, for the reason that it takes the university at Cambridge out of the class of public institutions, and makes it a private institution.

Mr. STETSON, of Braintree. I should like to ask the gentleman for Berlin, why the university at Cambridge should be especially distinguished from the other institutions, in this respect.

Mr. BOUTWELL. The reason for this is, that the university at Cambridge was established by act of the legislature, and endowed with the property of the people of all the Commonwealth, while neither of the other colleges has been so endowed. That is a very good reason why the university at Cambridge should stand with the grammar and public schools of the State, as an institution of the State, resting upon the foundation laid by the State. The other institutions are private institutions, while this is a public one.

Mr. HUBBARD, of Boston. From the discussion which took place yesterday, I suppose it is a mooted question, whether the university at Cambridge is to be regarded as a public institution, over which the State has entire control, or whether it is a private institution, which the legislature cannot touch. It seems to me, it is assuming the question at issue, to assert that it is a public institution, standing upon the same foundation with our public schools, supported at the public expense. It is said, that the provision in relation to this institution was originally so inserted, when the Constitution was framed in 1780, but I suppose the reason for that was, because there was no other college or university in the State. It seems to me, that a similar provision for all the other colleges of the State, should be inserted with as much reason as this. If they all come under the provision in the antecedent clause, then the university at Cambridge will occupy the same position as the other colleges, and will have no right to claim preëminence over them in this respect. I hope the resolve, as reported by the Committee, will be adopted.

Mr. GARDNER, of Boston. This resolve has been reported to the Convention by the unanimous voice of the Committee who had the subject in charge, and we are bound to suppose that they have given it sufficient attention to understand the bearings of the case. We must come to the conclusion that they were unanimous, because there is no Minority Report, or any other Report, but the one emanating from their chairman, recommending that the Convention should make this change. I supposed the object of this Convention was, to create a Constitution for the people of the State which should be adapted to all parts of the State, and uniform in its application to all the individuals and institutions of the State. This exception of Harvard University, as contended for by gentlemen here, acts in one of two

ways, either as an obstruction to the interests of the university, and upon that ground I should oppose it, and I trust that the Convention will oppose it also, or else it acts as a benefit, as a special privilege to that university, and upon that ground I should oppose it. This institution is individually signalized in the original Constitution, simply, as I understand it, for the reason just given by my colleague, (Mr. Hubbard,)—and I have given the subject some little attention—that when the Constitution was first established, this was the only institution of the kind in the Commonwealth. We are called upon now, either to place this institution upon a footing with all the other institutions of the Commonwealth, or else give it special privileges. I am in favor of sustaining the Report of the Committee, and am in favor of adopting this resolve, irrespective of the action of the Committee, because I believe it is right, just, and democratic.

Mr. WILSON, of Natick. The chairman of the Committee, to whom reference has been made, and who is now absent, moved, the other day, to lay this matter over. Upon that occasion I understood him to say, that he made the motion to see what the Convention would do with the resolution acted upon yesterday. The gentleman from Boston says that the Committee made an unanimous Report, and that we are bound to suppose they had good reasons for making that Report. All we are bound to know about Committees, is this: that they report, and our duty is to examine their reports, and act according to our own views in regard to them. Of course, I would treat the report of any Committee of this Convention with great deference and respect, but we are not, by any means, compelled to follow the advice of those Committees. I agree with the delegate for Berlin, (Mr. Boutwell,) that we ought not to pass this resolution. Harvard College was founded by the Commonwealth of Massachusetts, in the year 1636. The Constitution so declares it, and, by its provisions, we actually pledge ourselves in the legislature to foster and cherish that institution. I regard it as standing altogether different from Amherst and Williams College. All the State did in relation to those institutions was to incorporate them, and it did not found them, as it founded Harvard College. I wish to maintain this in the Constitution as it is, as the university of Massachusetts, and I wish it to maintain that position, now and hereafter. I trust that in the future, that right will be fully and clearly established and vindicated, and therefore I hope the resolution now before us will not be adopted, and that we shall leave that portion of the Constitution precisely as it stands to-day.

Mr. BIRD, of Walpole. The gentlemen from Boston, have said that this matter in relation to Harvard College was put into the Constitution of 1780, because there was no other college in the State at that time. But, I may inquire, how it happens that it was kept in the Constitution of 1820? I say there was good reason for it. It was not retained by accident; and, admitting that it may have been introduced in the Constitution of 1780 for that reason, which, as a matter of fact, I do not admit, yet it was retained in the Constitution of 1820, and for the reason that the relation between the Commonwealth and Harvard College is entirely different from the relation between it and any other institution in the State. It is not only the relation which exists between a

founder and the institution which is founded; but beyond that, there is a peculiar relation, growing out of the fact, that the Commonwealth has had the entire control of the college from 1780 to 1810, without any exception.

From 1636 to 1810, the Commonwealth of Massachusetts had as much control of Harvard College as of anything which it undertook to manage, and the right of the Commonwealth to this control, was never questioned up to 1810. There were collisions frequently between the board of overseers and the corporation; but, without going into the history of the matter fully, I am prepared to stand upon that statement, that up to 1810, the corporation of Harvard College never questioned the right of the Commonwealth to an absolute and entire control of the institution, in every particular. That fact, as a matter of contemporaneous history, is perfectly conclusive, and it establishes a right of the legislature to control that college, which nobody claims that the legislature has over any other institution, or it establishes a relation between that institution and the Commonwealth, which exists between no other institution and the State. The very existence of this special relation under the Constitution, implies that the Commonwealth has a right to control it, and we do not mean, by striking out that clause, to admit that the relation between Harvard College and the Commonwealth, is the same as that between any other institution and the Commonwealth. I have no doubt, that when gentlemen see the bearing of this matter, it will be retained.

In relation to the Report of the Committee, I suppose it is not improper for me to say, that the chairman of the Committee that made this Report, (Mr. Briggs,) was, at the time that he made it—for, being on the Committee on Harvard College, he expressed that opinion to that Committee—in favor, as a matter of personal preference, of dissolving the connection between the Commonwealth and Harvard College. But, gentlemen will remember that he yesterday assented to the resolution adopted by the Convention in relation to Harvard College, thus abandoning the ground he had previously taken, that as a matter of policy, it was better to abandon all connection with the college. The striking out of this phrase, is a part of the policy of severing the connection. The chairman of the Committee may have been in favor of that policy, but we all understood him yesterday, to have changed his opinion upon that matter; and, therefore, we are at liberty now to assume that he would be opposed to striking out this clause. I trust the motion will not prevail.

Mr. GILES, of Boston. The gentleman from Walpole, who has just taken his seat, has alluded to a subject which I suppose he has correctly stated. The chairman of the Committee to which this subject was referred, was also a member of a Committee to which the first section was referred. I cannot speak for that Committee, nor do I know whether any member of that Committee is present; but my impression is, that this Report was made in the expectation that the Committee to which the other subject was referred, would strike out everything relating to Harvard College, and the Report of the Committee to which the first section was referred being adopted, this resolution was expected to fall, as a matter of course. I may be mistaken, but whether it be so or not, I think it is better to let this stand, without going to the mooted ques-

tion, whether this be a public institution in the sense of the common law, thereby giving the State power over it. I think there is another reason for retaining it, which is this: that this beautiful section, which I so greatly admire, after making it the duty of the legislature to cherish "all seminaries of them," to wit, of science and literature, then specifies such seminaries as the State then had, and such as she always means to have, and always ought to have, to wit: a university, and "public schools, and grammar schools in the towns."

That system of common school education, beginning now, I believe, with the primary school for almost infants, in fact, as well as in law, and terminating in your university, is that which it was designed that the legislature should cherish. I wish it to stand, for that reason, that it may always be known that we have a university, and public schools and grammar schools in towns, as making up a part of the seminaries of learning which we are to cherish in all time to come, tracing back their origin to that short and pithy clause which has been the admiration of the whole world, and deservedly so. I am, therefore, in favor of retaining that section as it stands.

The question was then taken on the final passage of the resolve, and there were, on a division, ayes, 19; noes, 108.

So the resolution was rejected.

On motion by Mr. WILSON, of Natick, the Orders of the Day were laid on the table.

Incorporation of New Towns.

Mr. WILSON. I now move that the Committee of the Whole be discharged from the farther consideration of the resolution in relation to the incorporation of new towns.

The motion was agreed to.

Mr. WILSON. I now move that the rules of the Convention be suspended, in order that that resolution may be considered at the present time.

The motion was agreed to, and the Convention proceeded to its consideration.

The resolution is as follows:—

Resolved, That the Constitution be so amended, that hereafter no town shall be incorporated with less than fifteen hundred inhabitants.

Mr. HOOPER, of Fall River. I would inquire if we have not already passed upon that question, when we acted upon the resolves relating to the House of Representatives?

Mr. WILSON. I do not so understand it. It may be necessary that the legislature should incorporate a town with less than fifteen hundred inhabitants, although that town may not be entitled to a representation in the House of Representatives. It has been necessary, heretofore, and although we have provided that a new town with less than fifteen hundred inhabitants shall not be represented, yet, if a town wishes to be incorporated without the right of representation, and it is for their interest to be incorporated, I see no objection to it. I therefore move, that the farther consideration of the resolution be indefinitely postponed.

Mr. GARDNER, of Seekonk. I have only a single word to say, with regard to this question. I am very desirous that the resolution should pass, in some form, and, if it were admissible, I should like to move an amendment that no town should be incorporated hereafter, with less than one

thousand inhabitants. If the provision stands as it is, with regard to representation, and no town can be incorporated with less than fifteen hundred inhabitants, it may deprive some towns of privileges which they ought to possess. I hope the motion of the gentleman from Natick will not prevail, and that there will be an opportunity offered to amend the resolution, and that it may then be passed. I think it will deprive certain towns in the Commonwealth of privileges which they ought to possess, and which I can conceive no reason why they should not enjoy. The gentleman from Natick lives in a very flourishing town, which is growing up and becoming wealthy; and, I suppose, he does not care so much for the interests of the smaller towns adjoining, which wish to be incorporated; at least, he is not solicitous that they should be incorporated, and have the right of representation on the floor of the House of Representatives. I know that when the basis of representation was fixed, it was provided that fifteen hundred inhabitants should be required, to entitle a new town to a representative, and I am opposed to that also. I wish, if the gentleman from Natick has no objection—and I can see no reason why he should have any—he would withdraw his motion, that this resolution may be modified.

Mr. BIGELOW, of Grafton. I do not see why, if this motion to postpone the resolution indefinitely prevails, we are not left in a position that we may incorporate a town with any number of inhabitants we please. Why do we need to put this provision in the Constitution? Why shall we say that any town with six hundred inhabitants, shall not be incorporated, if they please? It seems to me it is very proper to postpone this subject indefinitely.

Mr. HOOPER, of Fall River. I see that this resolution is somewhat different from the one in relation to the basis of representation, but it does not seem to me to embrace all that it ought to. That provides that no town shall be incorporated, with the right of representation, with less than fifteen hundred inhabitants; but there is no declaration that the town shall not be divided in a manner so as to leave less than fifteen hundred in the old town. So that I do not see, but that with this provision, a town might be divided so as to leave only one thousand, and create a new town with fifteen hundred, which would be evading the object of the provision on the basis of representation. I would suggest to the gentleman from Natick, that he withdraw his motion, and allow the resolution to be amended so as to read: that no town shall be incorporated when, by the division of a town, there are less than fifteen hundred inhabitants left in the town from which the new town shall be taken.

Mr. RANTOUL, of Beverly. It appears to me that this subject had best be left with the legislature. I think we should not impose any restrictions. Circumstances may occur, when it may be necessary to incorporate a town with a less number, and it may be exceedingly desirable to persons that the town shall be incorporated, and it may be for their convenience, and for the public interest, that it should be done. It seems to me there can be no necessity or advantage in imposing such a restriction upon the legislature that they cannot make such laws as are desirable from time to time.

Mr. FROTHINGHAM, of Charlestown. I

Monday,]

NEW TOWNS, &c.—FROTHINGHAM—LELAND—HOOPER—GARDNER—BROWN.

[July 18th.

agree with the gentleman from Beverly, who has just spoken. I hope the resolution will be postponed. It seems to me, it is entirely inexpedient and wrong in principle. If there has been any policy which has distinguished Massachusetts, and made us what we are, it has been the policy of incorporating towns. I should like to know if a community, living on contiguous territory, wishes to enjoy town privileges, and comes up to the legislature,—be it five hundred, or fifteen hundred inhabitants,—and asks the benefits of a town incorporation, what argument can be adduced to show that they should not enjoy those privileges. The question in relation to town representation, is another thing entirely, and ought not to be connected with it; that is, the principle of local self-government is one thing, and the principle of representation, is another, and the latter is always provided for. But, as to the question of the policy and the propriety of incorporating towns, there can be naturally but one answer given to it, and but one true view of it, and that is, to incorporate them whenever good and sufficient reasons can be shown for doing it.

The more towns we have, and the more power is subdivided in Massachusetts, or anywhere else, the sounder will be our republicanism. That is my view of this matter.

It has been the policy of Massachusetts, from the earliest times, to multiply towns; and it has been the object also, of those who have endeavored to restrict Massachusetts, to restrict the incorporation of towns. Long before the Revolution, there was an order sent over here from the British administration, prohibiting our governors from assenting to the incorporation of towns; and we took the ground here, that it was a natural right which the people had, to enjoy self-government, and so, when they could not get at the name of towns, they incorporated themselves under the name of precincts, parishes, or something else, in order to get as much of the value of this self-government as possible.

As long as I am up, I will take occasion to make a few remarks respecting one other point, in relation to the origin of our towns. I have heard it stated by the venerable gentleman before me, (Mr. Morton,)—and some others have said the same thing,—that our towns came from the custom of making forts, and perhaps out of some other institutions, such as the church. Indeed, this is a very common opinion. I am not going into a long speech about this matter, but merely to state a fact or two, or a view that has grown up out of facts in relation to this subject. Let any one go back and trace out how it was that Boston, and Lynn, and Salem, and all the earlier towns, came to be incorporated, came to be towns, not how they came by their territory, but more precisely how they came to have their form of town government. Did they obtain this right from the first charter? did they come by it from a law of the British Parliament? Did they copy the example of England, in relation to towns, and follow on in an old custom, as to electing town officers? No! not at all! They had no warrant for what they did, neither in the charter, the statute, nor usage. When Sir Edmund Andros came over here, and saw the beautiful operation of the towns, their democratic feature, their republicanism, their great popular privileges, he was jealous of the spread of Commonwealth notions, and saw that these towns

were nurturing a principle anything but in harmony with the British Constitution. But there was no British law to justify this system,—nothing to justify a town, in the New England sense of the term,—and when selectmen, in resisting his arbitrary laws, pleaded town action, he snapped his fingers at them, and told them there was no such thing as a town in all New England. And Sir Edmund Andros was right. He took his idea of towns from Old England; and there was no comparison at all, as to government, between the towns of New England and the towns of Old England. That is, the governments of the towns of Old England were close corporations, self-elected councils, little oligarchies, without a single valuable popular right. There was no such thing as this in New England. How came we by our town government? This is a short story of the matter: When our people came over here, they acted, at first, in town meeting, all together; they were so many little democracies. But they soon found that this mode of determining town affairs was too inconvenient; it took up too much time; and what did they do next? Their object was to remedy an evil, and to provide for a necessary want. I can point gentlemen to the original constitution of a board of selectmen. The inhabitants of the towns came together, before there was any law of the general court in regard to the matter—years before—and signed an instrument, to the effect that, inasmuch as the trouble of these frequent town meetings was so very great, they would agree to be bound by what seven of their number should do, as though it were done by them. Then followed the election of those officers, and other officers; and this was done in Charlestown, and it was done in other towns, before there was any law to regulate elections. Such was the origin of the towns, and of town government. The people brought with them the great idea of popular sovereignty, and all through it was a struggle to apply this to their condition. They applied it to a town or local form of government, assuming the right to do it, before there was any law or practice to authorize or to justify it. In a few years the general court reorganized the towns, and made laws to regulate their proceedings, and so it has gone on from that time to this, to the immense advantage of the country.

Now, I am in favor of allowing this great idea to be established, viz.: That the people have a right to be incorporated into new towns when the growth of the community and the increase of population and change of interests in certain localities leads individuals to apply for town privileges. I see nothing in the whole system but benefits to the communities concerned, from allowing them to divide, and granting to them the right and privilege of self-government. I have been here upon this floor when large towns and old towns have been divided, when the progress of business and population have created in certain localities large interests,—commercial or manufacturing interests, it may be,—distinct from the ancient agricultural interests, where such new communities claimed the right to manage their own local concerns in their own way; or it has been the other way, that is: the agricultural interest has claimed that it ought not to be taxed to support the commercial interest, as in the case of Somerville and Charlestown. Now, what argument can be brought against such claims? There is no argument; nor is there evil in creating towns for such

reasons; and I am in favor of keeping this where it is—that is, of leaving the whole matter with the legislature.

Mr. LELAND, of Holliston. I think this matter ought not to be indefinitely postponed at this time; for I think, with the gentleman from Fall River, that there is a necessity for amending this resolve. Suppose it should pass in its present form, and hereafter a town with twenty-five hundred inhabitants should wish to be divided so as to get additional representation. We do not know what may happen, and it is wise to provide for it. Well, Sir, fifteen hundred of the inhabitants can be set off and incorporated into a new town, and the thousand who are left will also be entitled to their town rights. I think this is something which we ought to provide for, and, therefore, I hope that the resolution will be amended accordingly.

Mr. HOOPER, of Fall River. I move to amend this resolve by striking out all after the word "incorporated," and inserting the words "by a division of a town, leaving less than fifteen hundred inhabitants in the town from which the new town shall be taken," so that the resolve, as amended, will read as follows:—

Resolved, That the Constitution be so amended that hereafter no town shall be incorporated, by a division of a town, leaving less than fifteen hundred inhabitants in the town from which the new town shall be taken.

I fully agree with the remarks of the gentleman, and see no necessity for putting any barrier in the way of an unlimited incorporation of towns, that is not necessary to guard it in relation to representation; it has already been guarded in one respect, and it seems to me to be necessary that it should also be guarded in the other.

Mr. GARDNER, of Boston. Mr. President: It is the first time that I have made the motion which I now make, in this Convention, and it will probably be the last; but, Sir, I am not in favor of sitting here and doing business in the absence of a legal quorum of this body. I am of the opinion that there is not a quorum now present, and I therefore make the motion that the Convention do now adjourn.

Mr. SCHOULER. For the purpose of determining whether there is a quorum or not, I ask for a division.

The question being taken, on a division, there were—ayes, 38; noes, 59—no quorum voting.

Mr. WILSON, of Natick, moved that the Convention adjourn.

The motion was agreed to; and accordingly, at twenty minutes before two o'clock, the Convention adjourned.

MONDAY, July 18, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President, at nine o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read.

Limitation of Speeches.

Mr. BROWN, of Medway, submitted an order that hereafter all speeches, except those of the chairmen of Committees, be limited to fifteen minutes each.

Monday,]

NEW TOWNS.—SARGENT—EARLE—HOYT—CHURCHILL—HALLETT.

[July 18th.

The order was laid over for consideration to-morrow.

Orders of the Day.

On motion of Mr. WILSON, of Natick, the Convention proceeded to the consideration of the Orders of the Day, the first subject being the resolve on the subject of the

Incorporation of New Towns,

Which is as follows:—

Resolved, That the Constitution be so amended that hereafter, no town shall be incorporated with less than fifteen hundred inhabitants.

To this resolve an amendment had been moved by the gentleman from Fall River, (Mr. Hooper,) and Mr. Wilson, of Natick, had moved its indefinite postponement.

Mr. SARGENT, of Cambridge. I am opposed to the amendment, and in favor of the motion of the gentleman from Natick. I believe we are attempting to establish a false principle in the Constitution. I do not believe that the question of the incorporation of new towns can be settled upon mere numbers; it must be settled upon the circumstances which surround each particular case. There may be a case where it would be of the utmost importance that a new town should be incorporated, where there were not more than five or six hundred inhabitants; and in other cases it might neither be proper or just to incorporate a town, although there were more than fifteen hundred. I presume that the object of this amendment is to remedy an evil which it is feared may grow out of our basis of representation. If that be the case, to my mind it affords no argument in favor of adopting another wrong principle, because two wrongs can never make a right. The amendment is proposed for the purpose of preventing the legislature from so dividing a town that the original town shall be deprived of its annual representation. Now, Sir, this matter of dividing towns, or creating new towns, is a mere matter of profit and loss. The legislature have always required, and I believe, always will require, that the petitioners for a new town should make out a clear and undeniable case, that the benefits to be derived from the incorporation of that town were greater than the evils to be inflicted; and whenever such a case is made out, irrespective of numbers, then I hold that the power should be vested in the legislature to grant the prayer of the petitioners. Suppose that a petition comes before the legislature for a division of a town in this Commonwealth in such a manner that the original town will have less than one thousand inhabitants, and will thereby be deprived of a portion of its representation. That is an element, and it is one of great weight for the legislature to consider. It is one of the elements of law, and unless they can show that benefits are to be derived which will more than counterbalance the evils, the legislature will never so disserve a town. I hold, therefore, that the adoption of this resolution, either as it was originally reported, or as it is proposed to be amended, would be ingrafting a false principle in the Constitution; it would be fettering the legislature upon an important subject, and one which, it is altogether safer to leave in their hands, so that each case may be decided upon its real merits, instead of being decided upon mere numbers.

I hope, therefore, that the amendment will be rejected, and that the motion of the gentleman from Natick will prevail.

Mr. EARLE, of Worcester. I am opposed to the amendment, which is offered, because, it appears to me, that it creates just as great an evil as it attempts to remedy. It proposes to strike out the provision by which no new town shall be incorporated with less than fifteen hundred inhabitants, and to provide that no old town shall be left, by the incorporation of a new one, with less than fifteen hundred inhabitants. It permits, in fact, that a new town may be incorporated with only five hundred inhabitants; but it says, that by so doing, you shall not leave an old town with less than fifteen hundred. Now, Sir, I am opposed to any provision of this kind. I think that these town corporations are intended for the benefit of the inhabitants. They have little to do with territorial arrangements, except so far as they tend to the convenience of the inhabitants for their municipal concerns; and wherever the convenience of the people requires a municipal corporation of this kind, although there may not be more than a thousand or twelve hundred, I see no reason why they should not have it. I am, therefore, opposed to having any provision inserted into the Constitution in relation to this matter. I think that the provision, which has already been agreed to, that no town shall be incorporated, with a right to representation, as such, which had less than fifteen hundred inhabitants, is all that we need to do, and all the restriction that we need to impose. If a population of a thousand, or twelve hundred, suppose they will be better accommodated by a town corporation, without the right to representation, except as connected with the town from which they are to be set off, and choose to take an act of incorporation under such circumstances, I see no reason why they should not have it. They would then be placed in the situation of corporations formerly made, where districts were established, having all the rights of towns except that of representation. I see no reason why that right should not be still given, and therefore I am opposed both to the amendment and to the original proposition, and I hope that neither of them will pass.

Mr. HOYT, of Deerfield. I must confess that the form of the proposition, as proposed to be amended, does not meet my view; but yet I do think that it is important that some provision should be inserted into the Constitution, to regulate the creation of new towns. As was remarked by the gentleman from Cambridge, (Mr. Sargent,) this subject is intimately connected with the system of representation which this Convention have adopted; but, if I understood him, he seemed to assume that that system was wrong, and that we could not make a provision to secure a thing which was wrong, that would not itself be wrong. But to those who consider that the system of representation is right, of course, his reasoning would not apply. I think that this is a matter which should not be left entirely to the control and direction of the legislature; but, that the towns themselves should have a voice in this matter; and I should like a provision that new towns should not be incorporated without the consent of a majority of the voters of the town from which the territory was to be created. As towns are incorporated for the convenience of the inhabitants, I regard those inhabitants as the best judges of the importance,

or the necessity, or propriety, in every case, of making a new town, or of making a very material change in the limits of a town, especially if the system of representation which has been adopted by this Convention, should be ratified by the people.

Mr. EARLE. There is one objection, which has suggested itself to my mind, against having any provision of this kind, and that is this: There are cases—very strong cases sometimes—which require the incorporation of new towns where there may not be this number of inhabitants; and there will be a very great tendency, if a provision of this kind is ingrafted into the Constitution, to include inhabitants who would not choose to go to the new towns, to enlarge the limits, and thereby inflict an injury upon those who are thus taken in. It appears to me that we gain nothing by this proposition. I do not see any advantage in it. I regard the legislature as the proper judge, whether there is a good cause or not, for the incorporation of a town, because they will have all the facts before them; they can better judge whether a town ought to be incorporated, with twelve or thirteen hundred inhabitants, than we, sitting here without any facts before us, possibly can do. I think, therefore, that if we leave the Constitution as it is, we shall do the best thing that we can do.

Mr. CHURCHILL, of Milton. I am certainly in favor of some restriction of this sort, and shall vote for the amendment proposed by the gentleman from Wilbraham, (Mr. Hallett). I think it is essentially necessary that a restriction should be placed upon the creation of additional towns, for this reason: It strikes me, that one of the evils which may grow out of the basis of representation for the lower House, which we shall probably adopt, is a large increase in the size of that body. That evil, every gentleman must see, is liable to be increased by the cutting up of large towns into one, two, or three additional towns, having between one and four thousand inhabitants, which are now entitled to send one representative to the legislature. In that way, your House of Representatives may be, by political parties, and influenced by political motives, increased, year after year, to a size which every one will regret to see. For that reason, I shall vote for some restriction.

Mr. HALLETT, for Wilbraham. I wish to suggest, for the consideration of the Convention, whether the gentleman's amendment ought not to go farther, so as to prevent the possibility of one town dividing itself into two or three towns, and thus multiply its representation? It is proposed, in the basis of representation, that no new town shall be created, with a right of representation, having a population of less than fifteen hundred inhabitants. Now, if this provision should pass, or if there be no limitation in that respect, will not this state of cases arise all over the Commonwealth? For example: Here is a town with two thousand five hundred inhabitants, which is now entitled to send one representative, and, remaining a town, intact and undivided, by no process under the basis of representation could it be entitled to more than one representative, until it had nearly doubled its population. Yet, that town of twenty-five hundred inhabitants, by taking off fifteen hundred, may make a new town, and, in such case, the new town at once acquires the right of representation; be-

Monday,]

NEW TOWNS.—GRAY—WILSON—KINSMAN—EARLE—HOYT—FROTHINGHAM.

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cause, according to the proposed Constitution, the new town, with fifteen hundred inhabitants, will be entitled to a representative, while you cannot possibly take away the representation from the old town, with one thousand inhabitants; and thus, by this division, such town with twenty-five hundred inhabitants, will obtain two representatives. Now carry this rule to a town having forty-five hundred inhabitants, and, by taking out twice fifteen hundred inhabitants you will enable the town, so divided, to send three representatives instead of two.

It seems to me that by such a course you place the House of Representatives somewhat in the position the British Constitution places the increase of the House of Lords, by which the crown, whenever it is desirable to carry any measure in the House of Lords, and the lords being refractory and opposed to it, may create a sufficient number of additional peers, so as to obtain a majority. Even the threat to make new peers, carried the Reform Bill. And, Sir, may not any party in this House that desires to carry a particular measure at a future election, manufacture new towns out of old ones, and go on in this way and send forty or fifty additional representatives? I want therefore to guard against this, by a provision that new towns shall not add to the representation of the old towns, or one similar to that existing in the Constitution of the United States, which provides that no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the jurisdiction of two or more States, or parts of States, without the consent of the legislatures of the States concerned. I want a provision of some kind here, so far as to say that no new town shall be created within the limits of an existing town so as to increase the representation of the old and new towns, put together—so that if the legislature makes a new town with fifteen hundred inhabitants, out of an old town, leaving one thousand, they shall not do it so as to multiply its particular representation within that territory; because I regard the basis we propose, and which always has prevailed, (and that is the only principle upon which I can stand,) as a representation of *communities*, in the town or towns, and in that capacity as all copartners entering into an arrangement in regard to their representation in this House; and I do not want any new partner to come in until I know on what terms, and with what capital he is to be admitted. Although there may be cases in which it will be necessary to incorporate new towns for convenience, with fifteen hundred inhabitants or under that number, I am convinced that there ought to be a provision incorporated into the Constitution, determining that these towns, thus divided, should not multiply their representation, because, as we have seen, it would be the easiest thing in the world for any town, with over 2,600 inhabitants, to divide itself into two towns, and have more representatives than its just proportion, and which could not be done by the smaller towns or larger cities. The city of Boston, perhaps, could not do it very conveniently—but, upon the same principle, she might divide her twelve wards into one hundred towns, of fifteen hundred inhabitants each, and thus multiply her representation indefinitely. I wish to guard against any such objection to the proposed basis.

Mr. GRAY, of Boston. I do not think that we can adopt this restriction without injustice to

the people of the Commonwealth. The gentleman for Wilbraham, (Mr. Hallett,) will not suspect me of being very much in favor of a large House of Representatives, or of thinking that the House the Convention has already provided for, is not large enough; but I do think that to insert a provision preventing towns from being formed for fear of having too large a House, is inflicting upon them an evil which ought to be guarded against in some other way—that is by some provision as to representation. I do not hold—and I suppose that no gentleman holds—that the sole purpose of the creation of towns is, that they may be represented as towns in the legislature. I had supposed that the greater part of the benefits which result from town government, result, so to speak, from what may be called their operation downwards from the people of the town, and not from their operation upwards in this House of the legislature. In this, I believe, is the greater part of the benefits which accrue to the towns from their particular organization as such. It is enough, I think, to say that many benefits result from the operations of these town governments in their internal structure, and I agree with the gentleman from Worcester, that we may deprive them of great advantages, and inflict upon them many positive evils by a provision of this kind. I think the whole matter can be safely left where it has always been—in the hands of the legislature.

Mr. HALLETT. Is it in order to offer an amendment to the amendment?

Mr. PRESIDENT. It is in order.

Mr. HALLETT. Then I move to amend the amendment by adding to it the following:—

"But the incorporation of any new town shall not thereby increase the whole number of representatives."

Mr. EARLE. I wish to hear the amendment read as it is proposed to be amended.

It was accordingly read, as follows:—

Resolved, That the Constitution be so amended, that no town hereafter shall be incorporated with less than fifteen hundred inhabitants, but the incorporation of any new town shall not thereby increase the whole number of representatives.

Mr. WILSON, of Shelburne. It seems to me that such a provision as that involved in the amendment of the gentleman for Wilbraham, (Mr. Hallett,) will amount almost to an entire prohibition in regard to the formation of any new towns. As I understand the matter, it would, in some instances, operate very hardly. Let me suppose a case. Suppose, for instance, that just upon the border of any town having fifteen hundred inhabitants, some manufacturing establishment shall be originated, forming a nucleus for a new population. Suppose, farther, that the manufacture flourishes, and the people gather together in that vicinity in sufficient numbers to warrant them—taking a very small portion from the old town—in applying for a town organization, their convenience and prosperity being thereby greatly promoted. Will anybody say that it shall be refused? On what grounds? It may be all very right and proper, but I must confess that I do not see it so. To say that there shall be no new corporation granted unless the population of the town from which the new one is to be taken amounts to fifteen hundred, I think is unreasonable, and that no such provision should

be adopted. I think it would be unsatisfactory to the people. There are large sections of the country and various interests which are anxious to have new towns; and, with such a provision as this in your Constitution, I think they will be very likely to vote against it, when the question of adoption or rejection comes to be tried.

Mr. KINSMAN, of Newburyport. The proposition of the gentleman for Wilbraham, is one which I cannot but regard as unequal and unjust, and it will be found, that if we once commence this course of injustice, it will follow throughout. It appears to me that nothing can be more unjust than the proposition now before the Convention. I have, in my mind's eye, a town about ten miles in length and three in breadth, a portion of which is largely engaged in manufacturing, and there is very little doubt that it is soon destined to be a city. Now such being the case—this establishment being in the centre of the town—neither extremity will have population sufficient to make a town of fifteen hundred inhabitants, and consequently, after the city is set off, neither of them will have a town organization. What then is to become of these extremities? The farming part of that town do not want to pay for gas, and other matters appertaining to a city; they do not want to pay for that class of schools from which they receive no benefit. These appear to me to be reasons why the matter had better be left to the legislature to arrange, as circumstances from time to time may require. I shall, therefore, vote against the amendment.

Mr. EARLE, of Worcester. It will be recollected that we have already adopted a provision, that towns shall not be incorporated with less than fifteen hundred inhabitants with the right of representation, and that is also naturally a provision against the incorporation of any town which shall leave another town with less than fifteen hundred inhabitants. It appears to me that that is going quite as far as we ought to go in regard to the restriction. The case which has been stated by the gentleman from Newburyport, is much in point, showing that cases of great hardship may arise, by any provision of a kind like that which it is now proposed to insert. From my own observation, I know that there would be many similar cases.

The question was then taken on the amendment to the amendment, and it was rejected.

The question next recurring on the amendment offered to the Report of the Committee, by the gentleman from Fall River, it was decided in the negative, and the amendment was rejected.

The PRESIDENT. The question now recurs on the motion of the gentleman from Natick, (Mr. Wilson,) that the farther consideration of this subject be indefinitely postponed.

Mr. HOYT, of Deerfield. Before the question is taken on that motion, I wish to offer an amendment. It is as follows:—

Strike out all after the word "incorporated," and insert "without the consent of the town or towns, from which the territory shall be taken."

So as to make the proposition read as follows:

Resolved, That the Constitution be so amended, that hereafter no town shall be incorporated without the consent of the town or towns, from which the territory shall be taken.

Mr. FROTHINGHAM, of Charlestown. I do not know that it is necessary to say a word about

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NEW TOWNS, &c.—SCHOULER—HOYT—UPTON—BRADBURY—LIVERMORE.

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the amendment. I am strongly opposed to the principle that no new towns shall be incorporated unless the old ones consent to it. Why, Mr. President, the strongest reasons for the incorporation of new towns, are often the very reasons which the old towns allege against it. The reason is, that the new town has grown up with an interest about it which is distinct and separate from the interest of the old town, and, in view of those interests, it comes to the legislature, and asks as a right, that this new collection of people shall enjoy town privileges—that is to say, that they shall not be taxed for things which they do not use. You can find a great many instances, in the history of even a few years past, of this kind. Take the instance of the town of Charlestown and Somerville, in which we of Charlestown were much opposed to being divided, and nevertheless there was in Charlestown a commercial interest, and in Somerville an agricultural interest, and it was not right, upon any principle of justice, that the people of Charlestown should tax the agricultural interest of Somerville for those things which the commercial interest wished to enjoy, but which the agricultural interest stood in no need of. But I will not enlarge upon this point. It must strike every one that the principle is radically unjust, and I hope the amendment will not prevail.

Mr. SCHOULER, of Boston. I move to amend the amendment by striking out the words "town or towns," and insert the word "legislature."

The PRESIDENT stated, that if the amendment was adopted, the resolve would stand as follows:—

Resolved, That the Constitution be so amended that hereafter no town shall be incorporated without the consent of the *legislature*, from which the territory shall be taken." [Laughter.]

Mr. ADAMS, of Lowell, moved the previous question.

Mr. SCHOULER withdrew his amendment.

Mr. HOYT, of Deerfield. I am not in the habit of troubling the Convention, and I ask their indulgence a single moment.

Mr. ADAMS. I withdraw my call for the previous question.

Mr. HOYT, of Deerfield. In reply to the remarks of the gentleman from Charlestown, (Mr. Frothingham,) I would say that I have no doubt there may be cases of injustice under this provision,—instances in which the old town will object to setting off the new town, in cases where it is perfectly proper that the new town should be set off. All agree that the multiplication of new towns is an evil; and that it may affect the system of representation which this Convention has adopted, any one may see with half an eye. But neither will the legislature, if it is left to them, always do justice in every case. The real evil is the multiplication of small towns, and there must be some limit upon it. I do not believe that the inhabitants of the towns themselves will always judge rightly and justly; but if it is true, as has been said and reiterated, again and again, in this Convention, that the people will decide more correctly and justly, in regard to matters concerning themselves, than any other body can, then the people, who are more directly interested in this particular question, will be likely to decide justly upon questions of this nature. I do not believe, if there should arise a case of this nature, which should operate with great injustice

upon a particular body, that the people will sanction it. I do not believe that the people will be actuated by such motives as will lead them to the commission of such injustice. I hope the Convention will adopt the amendment—no, I do not *hope* that, for I think the sense of the Convention is not in favor of it—but I *wish* they would adopt it.

Mr. UPTON, of Boston. I propose to make but one single remark upon this proposition. I think that the suggestion of the gentleman for Wilbraham is worthy of consideration, and entitled to weight before this Convention. There are eighty-five towns in the Commonwealth now entitled to one representative, and if the Convention propose to leave the basis of representation as it is now, and to make no modification in the Constitution, restricting the incorporation of towns, at the very next session of the legislature, after the next census shall have been taken in 1855, you will have eighty-five more representatives from those towns than you now have. A state of things which will allow this, ought not to exist; but it is not for me, as one of the minority of this Convention, to point out how the evil should be remedied. Yet I suggest that after your basis is changed, under the census of 1855, these eighty-five towns may be divided, and there will come up here, from these towns, eighty-five representatives more than they are now entitled to send. I state this in order to bring the attention of the Convention to the consideration of its effect.

The question was then taken upon the amendment offered by the gentleman from Deerfield, (Mr. Hoyt,) and it was decided in the negative.

So the amendment was rejected.

The question then recurred upon the motion of the gentleman from Natick, (Mr. Wilson,) that the consideration of the subject be indefinitely postponed.

Mr. BRADBURY, of Newton. I understand, then, if this subject is indefinitely postponed, it will be in the power of the legislature to increase the number of the towns in the Commonwealth at pleasure, and that every town, according to the present basis of representation, that shall hereafter be created, having one thousand inhabitants, will have the right of constant representation.

Mr. EARLE. I would remark that we have already restricted that right to towns having fifteen hundred inhabitants.

Mr. BRADBURY, of Newton. Then every town which shall be created, and having fifteen hundred inhabitants, will be entitled to constant representation.

If I understand the basis which the House has established, in 1860, every town, whatever may be its present rights, which shall not contain fifty-five hundred inhabitants, will have but one representative; and in 1870, every town in the Commonwealth not possessing eighty-three hundred inhabitants, will have but one representative. As I understand it, the town of Nantucket is now entitled to three representatives, and by the rate of increase in the basis, which we have adopted, she will have but two representatives in 1860, and but one in 1870. There are towns in the Commonwealth that will have about 16,000 inhabitants in 1870. Such is the town which you represent, Mr. President, and the adjoining town which I have the honor to represent, and they

will be entitled then to two representatives, whereas they now have two representatives upon four thousand of population.

That being the basis established by a majority of this House, it affects very materially the question before this Convention, at the present time; and to postpone, indefinitely, action upon it, is equivalent to a rejection of it, and will leave it in the power of the legislature to increase this difficulty, and to increase the disproportion which now exists.

Another thing, it most manifestly increases the political motives which have ever existed for the creation of new towns. There is a political motive, every-body knows,—and parties here have been charged with being governed by such considerations,—for the increase of the number of towns, and so far as political considerations have had any weight heretofore, they have been increased by the decision of this Convention, most manifestly.

I think the consideration of the question ought not to be indefinitely postponed, but that some action should be had in reference to it. An indefinite postponement is equivalent to a rejection of all action.

The question was then taken upon the motion submitted by the gentleman from Natick, (Mr. Wilson,) and it was decided in the affirmative—ayes, 133; noes, 46.

So the subject was indefinitely postponed.

Payment of Officers of the Convention.

Mr. LIVERMORE, of Cambridge, from the Committee on the Pay Roll, submitted the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 18, 1853.

The Committee on the Pay Roll, who were instructed by an order, adopted on the 27th of June last, to report "a resolve for the payment of the chaplain and other officers of the Convention," have duly considered the subject, and report the accompanying resolve.

For the Committee,

ISAAC LIVERMORE, *Chairman*.

Resolved, That there be paid out of the treasury of the Commonwealth, to the several persons whose names are borne on the accompanying list, for each and every day's service, as follows: to the two secretaries, ten dollars each; to the chaplain, three dollars; to the messenger, five dollars; to the two assistant messengers, three dollars each; to the door-keeper and three assistant door-keepers, three dollars each; to the postmaster three dollars; to the four pages, two dollars each; and the governor, by and with the advice and consent of the council, is hereby requested to draw his warrant on the treasurer for the same, on an order of this Convention.

List of officers embraced in the above resolve:

William S. Robinson, James T. Robinson, *Secretaries*; Warren Burton, *Chaplain*; Benjamin Stevens, *Messenger*; Issachar Fuller, Tilson Fuller, *Assistant Messengers*; Alexis Poole, *Door-keeper*; David Murphy, William M. Wise, John A. Sargent, *Assistant Door-keepers*; William Sayward, *Postmaster*; Joseph P. Dexter, Jr., Charles A. Murphy, James N. Tolman, Jr., Thaddeus Page, *Pages*.

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ELECTIONS BY PLURALITY, &c. — HALLETT — BUTLER — WHEELER — STEVENSON.

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Negligence of Railroad Corporations.

Mr. HALLETT, for Wilbraham, from the Committee appointed to consider the subject, made the following Report :—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 18, 1853.

The Committee to whom was referred the order relating to remedies to the representatives of persons killed by the negligence or misconduct of railroad corporations, have considered the same, and report, that there should be added to the eleventh article of the Bill of Rights, the following clause :—

Where death is caused through negligence or misconduct, by means of railroads, steamboats, or public conveyances for hire, the same remedies shall be open in a suit at law, as for like injuries to the person resulting in disability and not in death.

B. F. HALLETT, *Chairman.*

The Report was referred to the Committee of the Whole, and ordered to be printed.

The Late Member for Concord.

On motion by Mr. BUTLER, of Lowell, it was

Ordered, That the Committee on the Pay Roll, make up the *per diem* of the late delegate from Concord, including the entire session.

Judiciary.

The next subject on the Orders of the Day, being the resolves in relation to the Judiciary, on motion by Mr. BUTLER, of Lowell, said resolves were laid upon the table for the present, for the purpose of going into Committee of the Whole, on the subject of Elections by Plurality.

On motion by Mr. BUTLER, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Hillard, of Boston, in the chair, and proceeded to consider the resolves on the subject of

Elections by Plurality and Majority.

They were read, as follows :—

1. *Resolved*, That it is expedient to provide in the Constitution that a majority of all the votes given shall be necessary to the election of a governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general, of the Commonwealth, until otherwise provided by law; but no such law providing that the governor, lieutenant-governor, secretary, treasurer, auditor, attorney-general, and representatives to the general court, or either of them, shall be elected by plurality, instead of a majority of votes given in, shall take effect until one year after its passage; and, if at any time after the enactment of any such law, and the same shall have taken effect, such law shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in default of any such law, if at any election of either of the above-named officers, except the representatives to the general court, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be governor.

4. *Resolved*, That in the election of all city or town officers, such rule of election shall govern as the legislature may by law prescribe.

Mr. BUTLER, of Lowell. I wish to make a farther amendment to the first resolve, which amendment, I take it, will pass without comment, and then I will explain the views of the Committee, in reporting the resolves they have. It will be observed, that in copying the resolves, an error has crept in. The resolve provides now, that in case of the election of governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general of the Commonwealth, there shall be no election for want of a majority vote, then the House of Representatives shall send up to the Senate, two out of the three persons who have the highest number of votes, if so many shall have been voted for, and then the Senate, shall, by *viva voce* vote, elect one who shall be governor; and there it stops. To make the resolve perfect, I propose to add to the end of the resolve the words, "or other officers to be thus elected."

Mr. WHEELER, of Lincoln. I should like to inquire of somebody, who knows better than I do, whether this Convention has not passed a resolution, that in case of a failure of an election of governor, he shall be chosen by the Senate and House of Representatives assembled in one House. If so, I cannot conceive of any necessity of this provision.

Mr. BUTLER, of Lowell. I would suggest, Mr. Chairman, that if the gentleman will allow this amendment to pass, the whole matter will be then open to discussion. My amendment is simply designed to perfect the resolve, and make it such as it was intended to be. It corrects verbal errors and grammatical inaccuracies which have crept in.

The question was taken upon Mr. Butler's amendment, and it was agreed to.

Mr. BUTLER. I propose another amendment, which is to change the word, "which," where it last occurs in the first resolve, into the word "whom." The error is a grammatical one. The amendment was adopted.

Mr. BUTLER. The Committee which reported these resolves, have stated briefly, in the report accompanying the resolves, the reasons which induced them to come to the conclusion to which they arrived. They believed that all those officers who are elected by general ticket, and who represent the whole people of the Commonwealth, either in the executive or other department of the Commonwealth, should be elected by a majority of the people—if it were possible to get such a vote. If it is not possible, that then a course as near that as can be, should be adopted, to wit: that the House should select, from a very limited number, which in practice, must be those who have very nearly an equal number of votes, two out of three of those, and send their names to the Senate. The Convention having put the Senate upon the basis of population, the Senate shall then, by a *viva voce* vote, select one of those persons to be governor, &c. They will then, in fact be elected by the representatives of the whole people, under a full sense of their responsibility.

[The copy for the remainder of Mr. Butler's speech was handed to the author for revision, and was not returned in season to be inserted in its proper place.]

Mr. WHEELER, of Lincoln. Some minutes ago, I called the attention of the Convention to the fact that they had already passed a resolve directing that the governor should be elected by

joint ballot of the Senate and House of Representatives. I find in your official report that on May 9th, the following resolution was adopted:

Resolved, That it is expedient so to amend the Constitution as to provide that in case of a failure in the election of governor by the people, he shall be elected by the Senate and House of Representatives, by joint ballot.

Now, I am not able to see the propriety or expediency of adopting this resolve, providing that the governor shall be elected in the manner laid down in the first resolution reported by the Committee, when the Convention have already settled the question, so far as the governor is concerned, by a previous resolution.

My only object was to call the attention of the Convention to the fact. If gentlemen will take pains to look at the official report, they will find that this resolution passed on the 9th of May.

Mr. STEVENSON, of Boston. It is true, as has been stated by the chairman of the select Committee, (Mr. Butler,) that the question, whether the plurality or the majority rule shall determine the result in our elections, has already occupied a great deal of the time of this Convention, and has been somewhat elaborately discussed; and it may be presumption in me to suppose that any suggestions which I could make, would be the source of any additional light upon it. Still, having been, by the indulgence of the President, a member of the Committee to which this matter was referred, after that discussion; having participated in the deliberations of that Committee, and not being able to give my assent to the conclusions to which they have come, I feel it my duty to ask the indulgence of the Committee, while I briefly state the reasons for my dissent.

It certainly, Mr. Chairman, would be unnecessary, in an assembly like this, convened for the purposes for which we are convened, to ask gentlemen not to allow their opinions to be warped, or their votes to be affected here, in any manner, by the light of the last election returns, or by the glimmer of what they may anticipate as the next. Still, it is not to be denied by any one, that, from the very fact that the subject which we are treating of, viz.: that of the election of the officers of the government, is one upon which party organizations are but too apt to expend their efforts. There is danger that we may find ourselves asking ourselves—although we might blush to ask another the question—what effect this or that rule would have upon the party with which we are associated? That is a danger against which every fair and high-minded gentleman is bound to arm himself. It is a danger, which, if not heeded, will mislead us in the very pursuit which it prompts; for parties are evanescent, while the rule, which we shall establish, is intended to be permanent.

If we will appreciate that danger, and arm ourselves against it, avoid it, or crush it, the Convention will not assent to the Report of this Committee as it stands. I supposed the purpose was to recommit this matter, after discussion, to see if some middle ground could not be found in reference to a matter, about which there was so much difference of opinion; although I cannot understand how it can be made to appear that, if the plurality rule be in derogation of the principles of democracy, when applied to one office, it can

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be shown to be consistent with the principles of democracy when applied to another office. Still, the Committee have undertaken to meet that difficulty, and have recommended a complex system of different rules for different offices; and the question with us is, is it wise to establish different rules for different cases. The other question that comes after that, if it should be answered in the affirmative, is, have the Committee made a proper application of these different rules to the different cases in this Report. It is proposed here, that a majority shall be insisted upon in the cases of all officers who are to be voted for by the whole people; in the case of county officers, and officers voted for in districts, that they shall be elected by plurality, and in the case of representatives, and town or city officers, that a majority shall be required on the first ballot, and that a plurality shall be sufficient on the second ballot. The first question that is to be answered by our vote in regard to this Report, is, is it wise to make a complex system? Is there any reason why the rule should not be the same in the one case, as in the other? And if we come to the conclusion that there are reasons for making this difference, still, the chairman of the Committee is bound to answer the other question, whether he has made a proper application of the rule in this Report. I should give a negative answer to both of these propositions. In regard to the question, whether it is wise to establish a complex system here in Massachusetts, I would beg gentlemen to remember that the whole argument which was advanced here in Committee when the subject was before us upon a previous occasion, against the establishment of the plurality system, was, that it was in derogation of the principles of democracy, and in violation of the principle that the majority should rule. Changes were rung upon that proposition, until it appeared as if it would drown every suggestion of convenience and expediency. The convenience of the people must not be consulted by this body, for the reason that that principle must not be invaded. I would ask the chairman of the Committee; I would ask all the other members of the majority of the Committee, and all those who are influenced by the arguments which they present, whether, when they are constituting a legislature to consist of three branches, each having a negative upon the other two, it is not just as wrong to violate the asserted principle in regard to one of them, as it would be in regard to another of them, or to all of them? If it be a principle, what has become of it? Where has it gone? It is not here in this Report. How is it, that the principles of democracy are violated, when one of these three branches is filled by the votes of a plurality of the electors, and not violated when the other two branches of the same department of the government are filled by precisely the same means? How is it, that the asserted principle is *not* violated when the senators and representatives, who must enact or repeal, as the case may be, each law, before the governor will have the power to assent to or to veto it, are elected by a plurality, but *is* violated, when the branch possessing only a partial negative upon the other two, is elected in the same way?

I appeal to gentlemen, to know, upon the argument which has been presented here, over and over again, and the only argument which has been urged against the establishment of the plurality system here in Massachusetts,

whether this Report is not based, either upon an utter repudiation of that argument, or else upon a willingness to sacrifice the asserted principle to what is deemed to be the present condition of parties. Anti-democratic to elect a governor by a plurality of the votes of the people? Why not, then, anti-democratic to elect senators and representatives in the same way! Anti-republican to elect a secretary or treasurer of your Commonwealth by a plurality of votes cast? Why not, then, anti-republican to elect your selectmen, overseers of the poor, mayor and aldermen, in the same way! I cannot understand this.

Mr. BUTLER, of Lowell. I desire to call the gentleman's attention to the fact, that we elect both the secretary, treasurer, and chairman of the board of selectmen, by a majority.

Mr. STEVENSON. That is just exactly what I said. I say that the gentleman puts forward the proposition that it is contrary to the principles of republicanism and democracy, that the treasurer and secretary of the Commonwealth should be elected by a plurality of the people, and therefore insists upon requiring a majority; and yet, in the same paper, emanating from the same source, he proposes that your senators and representatives, your town officers, your city officers, your selectmen, mayor and aldermen, shall be elected by a vote of the plurality. I desire to know whether the time has arrived when it is unnecessary that senators, representatives, and town officers shall have their elections determined upon the principles of democracy or of republicanism, so long, only, as the governor of the Commonwealth has his election either determined upon those principles, or by an appeal to another tribunal, and that tribunal another branch of the government. I believe there are real and serious objections, which will present themselves to gentlemen here, against adopting this complex system, other than the fact, that it is in violation of the principle which has been asserted here, in regard to all the other officers, excepting state officers. We have not a case here, where we can make a partial experiment by applying the rule to some officers, with the intention of making it general, if we find it works well and gives satisfaction to the people. If we were a legislature, with annual sessions, that would be a course which we might adopt, and perhaps it would be a wise one. I hope that we shall not adopt a complex system here, but, that we shall establish the same rule for all the officers whose election we deem to be important. If it is to be determined otherwise, and we are bent upon an arrangement by which some officers are to have their elections determined by one rule, and other officers by another, I ask the chairman of the Committee to answer the question, whether he has made a proper application of these different rules? Granting, then, that you may make a difference in different cases, is it wise, still to insist upon a majority in relation to those officers who are to be voted for by the whole people, and to consent to the plurality, in cases where the constituency is smaller? What are the considerations which ought to determine the offices concerning which you should insist upon one or the other rule? Shall it depend upon the number of persons who constitute the constituency? Shall it depend upon the importance of the office to be filled? Shall it depend upon the degree of inconvenience and expense attending repeated trials? Shall it depend upon

the opportunities which the electors may be supposed to have, of knowing each others' views, and so of reconciling differences of opinion as to candidates? Or are they to be determined upon by lot, and the result to be called a compromise? I submit, if any one of these considerations ought to weigh, that they have been utterly disregarded by the Committee to whom this matter was referred, and from whom this Report comes. If these considerations ought to have any influence, and if you are determined to insist on a majority in some cases, and to be satisfied with a plurality in other cases, I submit, that it is the duty of this Committee to shift this Report, end for end, and to make your governor, and the other officers, for whom the whole people are to vote, eligible by a plurality, and to insist still, upon a majority in your local elections and smaller constituencies. If we are going to make a difference, let us be able to give a reason for it which cannot be traced by any lines to party considerations. If we desire to make a difference, let us be able to give such reasons as the Convention ought to give when it makes propositions concerning the Constitution. Of all the officers who should be elected by a plurality, those who are to be voted for by the whole people, on a general ticket, are the ones. There is a palpable distinction, which might have been drawn in that direction; and he who should have drawn it, might have been moved by some regard for the will of the people. That distinction might have been justified, on the ground that it admitted the plurality in those cases in which repeated trials could not be had; and insisted upon a majority in those cases in which repeated trials could be had; thus leaving the result, in both cases, in the power of the people. This is a desirable object; and, therefore, I say, change this Report, end for end. It is exactly wrong, now. The right and left boots are put each upon the wrong foot. Do not gentlemen see, that while they are crying out that they desire to give the election of officers to the people, they are consenting to a scheme here which will take these elections out of their hands, and give them to the legislature? In every conceivable case where it will, in practice, make any difference whether the Constitution shall provide a majority rule or a plurality rule, do not gentlemen see, that the majority rule is nothing but a requirement of that which cannot be insisted on?

Take your governor, for instance. The largeness of the constituency—the greater inconvenience and expense of repeated trials to the people—the necessity that the office should be filled—the lesser opportunities, which the electors have, of comparing opinions, and reconciling differences of opinion as to candidates, all point to the same conclusion; and yet the proposition of the Committee is to leave these officers to be elected by a majority only, after they have abandoned the whole principle upon which they oppose plurality. These evils are so obvious in regard to general elections by the people, as the matter now stands, that in cases of general elections, where the whole people are to vote, nobody proposes repeated trials; and so, holding on to a majority rule, we are driven to a greater evil than them all, and that is, to an appeal from the people to a single branch of the government; and that is called democracy! I do not desire to appeal from the people to a branch of the govern-

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ment, and he is a queer democrat who does. I do not desire to run the risk of seeing, at a future day, high offices of the government offset, one against another, and traded for. I do not desire to see the judgment of the governor of this Commonwealth hampered, when any bill is presented to him, by the fact, that it has received the assent and favor of those to whom he is indebted for his place. I do not desire to see the appointing power obtained, perhaps, by previous promises as to the exercise of it in individual cases. I do desire to see the highest officer of your government holding his commission from the people, in the best form in which it can be given, and not from any other branch of the government. The more independent you shall make such officers of your government, the better will the government be administered. I do not understand how it is, that gentlemen who think it would be anti-republican and anti-democratic to permit the governor to be elected by a plurality of the votes cast, are quite willing to transfer all power from the people to a body, a majority of which shall have been elected by a minority of the people, and to confer upon them the power to elect as governor that individual, who, perhaps, received less than a plurality of the votes at the last election. I think it was the gentleman from North Brookfield, (Mr. Walker,) whom I do not now see in his seat, who said, that the only question involved was, "Where shall the sovereignty reside?" Be it so. Those who ask you to establish a system of elections by plurality, propose that it shall reside in the people, and in the people alone; while those who insist upon a majority, and make no provision for repeated trials, propose that it shall reside in the people conditionally, up to a certain point, and then that it shall be transferred from the people to the legislature. That, I understand, to be the difference between the two in regard to the question, where the sovereignty is to reside. I may be excused for referring to the remarks of the gentleman from North Brookfield, in his absence, because his is the only argument, which I was fortunate enough to hear on that side of the question. That gentleman told us that the establishment of the plurality system here, in the election of officers under a general ticket, would "debar the people from the right of deciding by a majority." That single proposition, stated and considered, will expose the fallacy which runs through, and is the only life-blood of the whole of this argument. Debar the people from the right of deciding by a majority. Try it, and establish your plurality system; and does not the right remain then, just as much as it exists now? Let the majority vote for any candidate whom they desire to elect, and will he not be elected, although you may have ten thousand plurality systems? How can the gentleman argue that you debar the people from a right, when you leave in their hands, intact, the power to exercise that right, in every conceivable case. Gentlemen have all along spoken as if the proposition were to give to the minority power over an existing majority. Gentlemen have argued this question, just as if the proposition were that the lesser number of votes should prevail over the greater number of votes. And there is the whole difficulty in this matter. Now, using the words plurality, majority, and minority, in the sense in which they are generally received, a minority and a majority can exist in the same

body at the same time; and the majority ought to govern, and the majority will govern. But a majority and a plurality cannot be at the same time. If a majority exist, it is an enhanced plurality; and therefore, whenever, under the proposed change, a plurality shall prevail, it will be because no majority exists.

And therefore, whenever you shall establish this rule, and it shall prevail at an election, there will be no invasion of the principle that the majority should rule. Shall not a majority rule? Yes, Sir. But the difficulty is, that gentlemen, when they are discussing this, and when they say that we propose to give to a plurality the power over a majority, are comparing things, both of which cannot exist, at the same time, in the same body. One is an enhancement of the other, and they cannot both be there at the same time, to be put in opposition, one to the other. Shall not the majority rule? Yes, certainly, when a majority exists. But the great American principle I take to be this, when properly stated: the majority shall have the power to rule. And, Sir, the establishment of the plurality system does no violence to that principle; for it leaves the power to rule still with the majority, as certainly as it is there now.

The gentlemen who insist upon a majority at an election, ought to remember that they have no power of compelling the existence of a majority. They seem to forget that political rights are individual concerns; that political powers are individual rights, the whole value of which depends upon their effect upon the individual himself; the security of his person, the promotion of his happiness, the protection of his property—these are the purposes of government itself. The great difficulty comes from the inconsistency between individual freedom in the exercise of the elective franchise, and the existence of power anywhere to compel a majority; the existence of power anywhere to compel more than half of those who vote for candidates, to vote for one candidate. Now, Sir, a duty is to be performed, an office is to be filled, an officer is to be elected; you hold on to the majority rule with no provision for repeated trials, on the part of the people; and as long as you leave uninvaded the individual's right of exercising the elective franchise, you have no power to compel the existence of a majority, and therefore you have got to do one of two things: You must either consent that the duty shall remain unperformed, and the office shall not be filled, or you must provide some other mode of electing an officer in this Commonwealth than by the votes of the people. Some other mode, if you insist upon a majority to elect an officer, than by the votes of the people, you must provide. And the question,—and the whole question is, in that contingency, a majority failing to exist—which mode is the preferable one, an appeal from the people to the legislature, or to leave the power still in the hands of the people, to be exerted by means of the plurality of the votes which shall be cast at one time? and that is the whole of it. The question here is not whether you prefer that your governor should be chosen by a plurality or by a majority; but whether, a majority not existing, you prefer that he should be elected by a plurality of the people, or by the legislature? I prefer the former, because it will make it absolutely certain that the election of governor and all general officers of the State, shall be as nearly

in accordance with the public will, as the condition of things will permit, consistently with the right in each individual to cast his vote as he himself may see fit, independently of the government, or of any party. Whereas, if you adopt the Report of the Committee as it stands, cases will arise, as cases already have arisen, where, through the instrumentality of mere party arrangements, he who received the lesser number of votes from the people, is put into the executive chair to the exclusion of him who received the greater number of the votes of the people.

The basis of representation which has been almost agreed upon by this Convention, furnishes a new reason why it is our duty to give to the people of Massachusetts an opportunity of saying whether or not they will insist upon holding in their own hands, without giving it up to a legislature, the election of him who shall fill the executive chair. The main, and the real objection to that basis, which we have agreed upon, is the inequality of influence over the legislation of the State, which is to reside in different citizens in different parts of this Commonwealth. That inequality is acknowledged. But we are told that we must submit to it, because town lines must not be disregarded in Massachusetts. Such a reason as that cannot be given why the same inequality of the power, held by different men in different parts of Massachusetts, should exist in relation to him who shall fill the executive chair. But, if you adopt this Report of the Committee, you carry that same injustice into the council-chamber, without the same palliation, in all cases, where your constitutional provision will operate at all. You give to an assembly, established upon an unequal basis, the power of choosing the governor, whose concurrence with them (and it ought to be an independent concurrence) is essential to their own exercise of power.

You make the same unequal division of political power, in regard to the executive, without a reason for it, which you make in regard to the House of Representatives, with a reason for it, which reason alone affords any justification of it. But, it is said that in regard to governor, we must preserve the principle that the majority shall rule. Look at it, and see what kind of a preservation of that principle is proposed here by the Committee. You are to appeal from the people to a tribunal, the majority of the members of which, are the representatives of an acknowledged minority of the people. Farther than this, your provision compels that tribunal to make its selection from persons who have just failed to secure to themselves a majority of the votes of the people; and this is called preserving the majority principle!

The first resolve embodies the Committee's mode of electing governor, and other officers in accordance with this majority principle, as it is called. See how. The people vote once. There are three candidates—one has half of the votes, one a third of the votes, and one a sixth of the votes. One of the three must be governor; but, inasmuch as the majority principle must be preserved, he, whom half of the people desire, must be no nearer to the chair than he whom one-sixth of the people desire; there the people's power ends. In its exercise, one-sixth of the votes have had exactly the same force and effect as one-half of the votes. Then the selection of two out of the three is given to the representa-

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tives of one-third of the people, themselves elected by a plurality of their own constituents; and then, as a finishing touch in the process of preserving the principle that the majority of the people should elect the governor of the Commonwealth, the Senate, a body, of which no one member may have been chosen by a majority, is to determine the election. And so, with no single agency to which a majority has given its assent, the governor is to be elected in accordance with the rule, that the majority alone shall have the power to decide who he shall be! *Lucus a non lucendo!* It is nothing more nor less than this: It is putting it into the power of the House of Representatives to substitute, not a plurality rule for a majority rule, but a minority rule for a plurality rule, and that is the whole of it. The whole power conferred upon the House of Representatives, their choice being limited to three persons, is this, and nothing more than this: to determine that he who shall have received the highest number of the votes of the people, shall not be governor, but that he who shall have a lesser number of those votes shall be governor.

I know it is said, that those who favor the plurality rule in elections, and opposed the basis which has been agreed upon, on the ground that it put power into the hands of a minority of the people, expose themselves to a charge of inconsistency. But it is not so. There are clear distinctions between the two; as palpable as those between midnight and noonday. In the two things to be acted on, viz.: the election of officers, or the constitution of the body which shall enact the laws, the citizen occupies very different positions; answers, by his vote, very different questions; exercises, by that vote, very different powers. In the first, the election of officers, he votes for whom he chooses—the Constitution knows no candidates—the question which is propounded to him, and which he answers by his vote, is not, “shall or shall not A B fill the office?” but the question is, “who shall fill the office?” The power, which he exercises, is not necessarily exerted, either in aid of, or in direct opposition to, the power exercised at the same time by each other voter; but it may operate as a mere disturbing force, absolutely impeding, and perhaps disarming the power of all others. So that a factious spirit, indulged in by a few, tends to preventing the many from being represented in the government under which they live. I, for one, desire to take out of the hands of the few, this power over the many. But, in the enactment of laws, the questions propounded, and which are to be answered by votes, admit of no response, excepting an absolutely affirmative, or an absolutely negative, one. Shall this law be enacted—yes or no? Shall this law be repealed—yes or no? So that the power which each exercises by his vote, must, (unlike votes at an election,) necessarily be exerted, either in the same direction with, or in direct opposition to, the power exerted at the same time by each other vote, and cannot be made to operate as a mere disturbing force.

I am willing that, at each election, a plurality should elect the officer; I am unwilling to confer upon a minority of the people, the power of making the laws, in opposition to the will of a majority of the people; and some gentlemen think that to be an inconsistency. To reach that conclusion, they must leap a chasm broader than

logic can build a bridge for. When you provide that a plurality may elect, do you thereby provide that a majority shall not elect? Will not a majority elect, wherever a majority shall see fit to elect? Do you confer upon the minority the power to govern the majority? Do you take power from the majority of your people, and confer it upon a minority of your people? Far from it and otherwise. You leave the power with the majority, as certainly as it is there now, and you take from the minority the power of preventing elections.

Now, Sir, how is it with the basis for the House of Representatives? Ask yourself the same questions concerning the two, and see if you will not be constrained to give exactly opposite answers. Do you provide that the majority shall not have the power to govern? By the basis, yes. By the plurality, no.

Do you confer upon different citizens, different degrees of political power? By the basis, yes. By the plurality, no. Do you give to each man's vote an equal weight, in the ballot-box? By the plurality, yes. By the basis, no.

I cannot think that he who votes for one proposition, and against another proposition to which such adverse answers can be truly given to the same questions, need feel much embarrassed by any whispers of inconsistency. In the one you take power from the majority, and confer it upon the minority; therefore I oppose it. In the other you do no such thing, and so I assent to it.

What is the exact measure of power which each citizen ought to possess, either in an election, or in deciding what the laws shall be, under which he is to live? Exactly that which each other citizen possesses. No more and no less. He who asks for more, is no democrat, though he may have worn the word threadbare by the use of it with his tongue. He who will consent to less, is not fit for a republican, however much he may congratulate himself that he lives under no other form of government. Each citizen's proper measure of power is exactly that which each other citizen possesses. What is the instrumentality through which that power is to be exercised? The vote. The individual's power by the individual's vote. And, in determining the mode in which that power shall be exerted, if we determine that each vote cast shall carry with it the same force, which each other vote carries with it, we shall determine justly. If otherwise, we shall determine unjustly. Let us listen to the clear voice of justice; that most god-like capability of man; that central light of the moral universe; that sun, which all the other virtues revolve around, and are illumined by—whose central force is necessary to keep each other virtue from wandering into the orbit of its kindred vice.

No system can be just which will not square with this rule, equal power in each vote. Now, when you change to a plurality, do you invade this rule? Does it not leave each individual's power exactly equal to each other individual's power? Each vote, the silent expression of the will of him who casts it, tends with exactly equal force to the accomplishment of his wishes; carries with it exactly the same weight, not varying by the pressure of a single particle of impalpable dust; while in the other case, the basis of representation is an absolute negation of the same rule. It fails to recognize the existence of individual

power, looking only to the power of associations; constructing foundations so varying, that the few, standing on one, may defy the many, standing on another; putting into different men's hands different instrumentalities; calling each a vote, but endowing different votes with different degrees of power. That is injustice. Because whatever of excess it confers upon one citizen, it takes from another, and men in Massachusetts cease to be equal.

[The time allowed by the rule adopted by the Convention, having expired, Mr. Stevenson did not finish his argument.]

Mr. DAVIS, of Plymouth. I rise to make an inquiry whether the resolves, as reported by the Committee, are all under consideration, or whether only the first is now before the Committee?

The CHAIRMAN. The Chair understands that they are all under consideration, so far as to allow of general debate upon them.

Mr. DAVIS. If it is in order, I will move to amend the third resolution by striking out all after the word “election,” in the third line.

The CHAIRMAN. The resolve will then read as follows:—

Resolved, That in the election of representatives to the general court, a majority of all the votes given in, shall be necessary to an election.

Mr. DAVIS. I do not propose to argue, at any length, the amendment I have proposed, or to give the reasons why I advocate it; but it seems to me, that in one remark, at least, of the gentleman from Boston, (Mr. Stevenson,) I can agree with him, and that is with regard to the town elections. I differ from him in believing that we should, as far as possible, retain the doctrine, and, as I maintain it, the principle of the majority system. If I have understood correctly the position of many gentlemen on this floor, who are in favor of town representation, I understood them to base their arguments in favor of town representation, to a very great extent, and almost solely, upon the ground that it was necessary in order to preserve these small democracies and municipalities intact. It was said that they were the only pure democracies in the world. I have only to say, that I, for one, am in favor of keeping these democracies pure in the small towns; and I therefore propose this amendment. It seems to me; that if we are to retain the majority system anywhere, we should do it in these small towns, these “pure democracies,” as they are termed, and then we shall, to that extent, preserve, and teach, the principles upon which a popular government is founded.

There is another reason why we should not make the election of a representative to the general court final, upon a second trial, and why we should preserve the majority system, so far as that election is concerned; and that is, that in the smaller towns the people are better able, from their knowledge of their neighbors, and of the candidate who is selected, to agree upon some one, after one or two trials have been had. There does not, in this case, seem to be the necessity for the plurality rule, which may exist in other cases; and the Committee, in giving the reasons for their Report, expressly declare, that there is not the same necessity for preserving the plurality system, in the election of a representative, that there is in the election of officers from a more extended territory. Since this Report was made by the

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Committee, the Convention have decided upon a system of town representation; and, therefore, there is not that same necessity for adopting the plurality system, with regard to the election of representatives, that their might have been if the district system had been adopted. If the members of the Committee will turn to the second page of the Report of the Committee who offered this series of resolutions, they will find, that when the Committee speak of the election of representatives in towns, by plurality, they are obliged to resort to an entirely different reason from that which they give in the case of the election of other officers. They say:—

“To prevent a too frequent recurrence of elections, and the necessity of trials on subsequent days, when bodies as large as counties and districts fail to elect, for all county and district officers, a plurality rule is provided. From a desire that the government may be in fact, what it is in theory, a government of a majority, and to give an opportunity for the exercise of the ‘sober second thought,’ by the electors, that rule is proposed upon the first ballot, in the election of representatives to the general court.”

And here they bring in a new reason:—

“Still, that differences of political or other opinions may not operate, either to hinder a full representation, or to protract town meetings to such extent as to subject them to extraneous influences, a plurality is permitted to elect on the second ballot.”

Gentlemen will find, that when an election of an officer who is to represent a large extent of territory is proposed, the reason for resorting to a plurality is, that it is not easy to meet for a second election; and then, when they come to the election of those who are to represent a smaller territory, they give another reason; and I suggest, that I think that the other reason is not entitled to very much weight, for a majority may always elect, upon a second trial, if they *desire* to prevent a failure of representation.

MR. EDWARDS, of Southampton. Having been placed on the first Committee to which this subject was originally referred, I have given it some attention. I do not mean to speak long on the subject, for I would not make a long speech if I could. But as I felt this to be a somewhat important subject, when the proposition for calling a Convention was first agitated, and having turned my attention to it, I wish to say, that for many years I have been in favor of the plurality system in all our elections. I was in favor of it in the Committee of which the gentleman from Fall River, (Mr. Hooper,) is chairman, and eleven out of thirteen members of that Committee appeared to be decidedly in favor of the plurality system. I have seen in the elections in our towns and counties, great evils resulting from the majority principle. It has caused our town meetings to be subjects of ridicule, so frequently have they been called.

It seems that a large proportion of this Convention are not ready to adopt the plurality system in its fullest extent; and therefore, in this age of compromises, a compromise has been presented, and, in the language of the gentleman from Boston, upon another subject, I am ready and willing to take the best project presented, if it is not fully up to my views. Why did we, in past years, adopt the plurality system in the second trial for an election of members of congress?

Because the people did not appear to be ready to adopt it upon the first trial. We have, heretofore, in many districts, been called upon from three to nineteen times to elect members of congress. The people of Massachusetts are slow to adopt any innovation; and that may be a credit to them; we do not like to give up our town representation; we do not like to come at once to the adoption of the plurality system in elections. We are attached to these principles, which have been long established and acted upon. I am entirely opposed to the amendment which is proposed. I wish to elect our representatives on the first day that we meet. It is, in many towns, extremely difficult to elect at all, and an unequal representation has consequently been the order of the day in Massachusetts.

I should regret, extremely, to be unable to elect a representative on the second ballot, as is proposed by the Committee; if the majority principle is to be the guide in the first ballot, the plurality system should be in the second. For my own part, I am ready to take it upon the first ballot; but as it seems that we must compromise the matter, I am willing to vote for the proposition of the Committee. Those who are conversant with the management of town affairs, and the election of town officers, &c., know that three or four days is often required for the election of a board of selectmen; this has been the case in many of the small towns, and they have been wishing, for a long time, that the plurality principle could be introduced into these elections. I do not regard this matter as affecting party. When I came here, it was not with the idea of doing anything for the benefit of any particular party, and to acquire any party advantage whatever; and, to my surprise, I found myself surrounded by friends of the plurality principle, whom I did not expect to find on that side. For years past, in the legislature, I have sustained the plurality principle by my vote; and I now found myself surrounded by new friends. I do not stop to inquire what is to be the effect of this on party; I do not look to the present good of Massachusetts merely. I have arrived at that age when I desire the permanent good of the Commonwealth, and not the present success of any party. I desire that those who are to follow me, should have as good a Constitution as we can possibly provide for them. I do not expect or desire anything for myself, but I want to present to the people as perfect a system as we can, upon this, as well as all other subjects that come before us. For these reasons, I shall vote against the amendment to the third resolution, and hope that it will not be adopted.

MR. FROTHINGHAM, of Charlestown. I hope that the amendment of the gentleman opposite will not prevail, for I desire that we should, at least, retain the plurality principle for our representatives. For one, Sir, I shall go for it, and for as much of it as I can get; and for the reason that has been urged so often, and so elaborately, and so well, upon this floor. I concur almost entirely in what has been said by the gentleman who last spoke; and I will say, that the particular reason why I wish the amendment not to prevail is, that the evil of the majority principle, or the inconvenience of it—for I will not say that it is a bad principle in theory—has been most sensibly felt in the city which I have, in part, the honor to represent here. For the last ten years, we have

hardly been able to get our representation upon the floor of the legislature. I think there has been but once, in the whole round of ten years, when we have had a full delegation. That is the way in which the majority principle has worked in Charlestown; and this being the case, I appeal to the gentleman who offered the last amendment, whether it is not reasonable to expect that the people of that city, are strongly in favor of the plurality principle, in order to secure what all parties want, and what they all ought to strive for—a representation of that city upon the floor of the legislature. Sir, it is this evil of non-representation which lies at the bottom of the whole matter; it goes deeper than all party considerations. When you take a representative away from the legislature, you deprive the people whom he represents of their legitimate voice; and a system which works so as to deprive a city or a town, for so large a portion of their time, of their full voice in the legislature, is not the best system that we can obtain. I believe that when you go over the history of our legislature for the last ten, fifteen, or twenty years, you will find that this evil of non-representation has prevailed, to a greater or less extent, over the whole of the Commonwealth. Therefore, in advocating the plurality principle for the city of Charlestown, I advocate it for every town, and for every city in the Commonwealth. While I am up, and not wishing to go into a speech upon this matter, I will venture to make a suggestion which occurs to me in relation to the wording of the resolution, and ask the chairman of the Committee whether it would not be well to alter the phraseology, so that the towns, if they chose it, could elect their representatives on the first ballot, by the plurality principle, instead of waiting until the second. Of course, as relates to the cities, it will make no difference; but this suggestion is made in accordance with the idea of a friend near me, that it may be more convenient for the towns, and more desirable, to have the resolution worded in that way. I do not, myself, propose any amendment to carry out that object; but I will conclude by expressing my hope that the amendment which was offered by the gentleman from Plymouth, will not prevail.

MR. SCHOULER moved to amend the first resolution by striking out all after the word “resolved,” and inserting, in lieu thereof, the following:—

That it is expedient to provide, in the Constitution, that in the election of a governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general of the Commonwealth, the person having the largest number of votes shall be deemed and taken to be elected.

THE CHAIRMAN. The Chair can receive and announce the amendment; but there is an amendment to the third resolution now pending before the Committee.

MR. SCHOULER. As this is an amendment to the first resolution, I suppose it will be first in order. I do not intend to occupy any time in discussing this amendment, but taking the Report of the Committee now under consideration, and the Report of the Committee in relation to the calling of this Convention, it seems to me that there is a tremendous clashing between them. I will read the seventh reason assigned for the calling of this Convention, which will be better

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than anything that I could say upon the subject. That is as follows:—

"7. The present cumbersome, formal mode of organizing the government, we submit, should be abolished. Eight or ten days are now usually occupied in this organization, which is nothing less than an annual waste of six or eight thousand dollars of the people's money. The election of secretary of the Commonwealth, treasurer and receiver-general, auditor of accounts, and executive councillors, by the people, with an application of the plurality principle to these officers, as well as to the governor, lieutenant-governor, and state senators, would do much to remedy this evil. These changes, with a few other slight modifications of the Constitution, in the same direction, especially the establishment of a board of men to count the votes, declare the result, and notify the persons elected, would enable the legislature to organize the government, and be ready to proceed with the business of the session, in two, or, at the longest, in three days. This change alone, would, in the course of ten years, nearly, or quite defray the whole expense of the Convention."

Now, Sir, if we adopt the Report of the Committee, now under consideration, we shall be leaving this present cumbersome, formal, and expensive mode, exactly where it stands in the Constitution. — It seems to me, Sir, as was said by my colleague, this morning, that those officers who are made elective, and for whom the whole people of the Commonwealth are called upon to vote, should be elected by pluralities, so as to do away with all this trouble. If we elect them by majorities, we shall be keeping up this formal and cumbersome mode, which, as this document tells us, is a waste of some six or eight thousand dollars of the people's money, annually.

Mr. HALLETT. I understand, that there are two propositions now before the Committee: one is to adopt an amendment to the first resolution, by applying the plurality rule to it; and the other, is to amend the third resolution, so as to require a majority to elect the representatives from the towns. I understand, that these two amendments are now pending. I propose to say a very few words, in order that I may stand consistently upon the record. When that question was under discussion, by this body, on a former occasion, I took the opportunity to express my opinion, that the majority principle was the only true rule—that I knew of no other sound, republican rule—but that, if it was a question of expediency, we might submit to the people the question upon the plurality and the majority, so that they could have an opportunity to decide upon this question, and that the plurality principle might be applied to certain officers, while we should require a majority, as applicable to other officers; and I went so far as to say—and I stand upon the same position now—that it is an exception to the principle that keeps the government in the hands of the majority. Nevertheless, I should be willing to submit some proposition to the people, in order that they might pass upon this question of plurality. But, Sir, as regards the amendment proposed by the gentleman from Plymouth, I feel bound to say, that that is the last fortress of the majority principle which I am willing to surrender. While I do not propose to make a point of issue, in regard to the other portion of the Report—taking the majority principle, in certain cases, and the plurality rule, in other cases—I want to present to this Committee the single con-

sideration, that we ought not, in our Constitution, make any change in the present mode of electing representatives. The legislature has no power in the Constitution to touch it. The Constitution, Sir, says nothing about it. For two hundred years, in this Commonwealth, we have never heard in its history, that a representative in general court, was ever chosen by less than a majority of the community voting for him. There has not been a word put into any Constitution about it. It was not put in by the framers of the Constitution, in 1780; it was not put in by the amendments of 1820, and the legislature have never acted upon it. Now I should greatly prefer one of two things: either to leave it out of our amendments to the Constitution altogether, by striking out the whole of that provision which relates to representatives, or give authority to the legislature to pass a plurality law, if the towns want it, or else to amend it, so as to require a majority, by the terms of the Constitution. I am content to go so far as to leave the subject to the legislature; but I am not content to go so far as to say, as a fundamental law of this Commonwealth, unchangeable, except in the mode of changing the fundamental law, that the towns of this Commonwealth may elect representatives by minorities. That is precisely the same thing; for to say that they may elect by the plurality system, is to say that a minority may elect. I go upon principle, in regard to this matter. I want the towns to reflect, whether we can take this step, and hereafter preserve our principles, in regard to town representation. If there is any principle in town representation, it is this: that towns are distinct communities in the Commonwealth, which communities are entitled to representation—not merely, that individuals as parts of the whole population, are entitled to representation—but that town communities are entitled to be represented, through the individuals who compose these respective communities. That is the only principle upon which I can act, in advocating town representation; and there I can stand. Now, if you give to these communities the right to be represented in one branch of the general court, is it safe to say, that these communities may be represented here by a minority? I have great doubts upon this matter, because, then it comes to this point: you may put your House of Representatives in the hands, in the first place, of a minority of the whole people, by the mode of a representation of communities, instead of that based upon the aggregate population; and then, you go one step farther, and put these communities into the hands of a minority of the communities, so that it is a minority of a minority that will elect your representatives, for a term of years, until the Constitution is changed, and control this branch of the legislature. It is true—and therefore our town representation principle is sound—that the House of Representatives, so apportioned, does not control the government, and if you preserve the other departments of the government in the hands of a majority, that may so far balance it, and the government will be only of a majority. But, I think that we should preserve, at least, the great principle in regard to the election of representatives, that they should be chosen by a majority, and nothing less. That renders this portion of the Report of the Committee especially important, as a matter of principle.

Now, as it regards the question of expediency in town representation, if I am right in this principle of government, that we must have a majority in government to be republican, the practicability of electing by majorities is very different in town elections from what it is in elections at large. In the first place, the towns may continue to try to elect representatives, and they may be allowed to try as they did under the old law. At all events, they continue to have trials for the election of representatives. But, Sir, a town has a right to be represented, or not represented, as it pleases. That is an ancient town right; and I hold that if the people cannot agree as to a representation by a majority, it is just as much a vote determining not be represented, as if it were placed upon the record not to send. But herein you propose that a town, by the operation of the plurality, in effect, shall be represented, whether it will or not. I very much question if that is not introducing a principle more restrictive of town rights than if we limited their representation, because you allow a minority to compel a town to be represented, when a majority of the people of that town are opposed to being represented by the person who is chosen. A few voters will go into the town meeting, who get there first, and vote to send, or begin to ballot, when three-fourths of the voters will not be represented in the general vote, or in the choice. So a minority may dissolve the meeting. You may, nevertheless, call a meeting by the selectmen, at the proper period in November, and then have an election, by a minority vote; and if you have four or five parties in the field, a plurality, consisting of a minority of one-fourth, may elect a representative and send him to the general court, against the majority who vote, and against the corporate will of the town, not to be represented. I do not wish to place the towns in that attitude. If I were going to vote in this matter merely as a politician, so as to cull a plurality party out of all the three parties in the Commonwealth, I would go for this; and it is a strong temptation to do so, because I confess I want to get rid of that third party. I believe that they will do much better for themselves and for their country, by being fused into the other two parties, according to their individualities, than by undertaking any longer to keep house themselves as a party; and I will say, that those who carry this plurality doctrine out, in the choice of all officers, must not blame us who opposed it, if we hold the knife which they have whetted, to their throats. But I stand here, upon the general principle, that I consider these communities of towns as the elements of House Representation, and being the elements of that representation, I cannot consistently vote for sending their representatives here by a minority. I hope, therefore, as it was only my purpose to set myself right on this question, that this amendment, as regards the third resolve, will be adopted, so that it will read, "that in the election of representatives to the general court, a majority of all the votes given in shall be necessary for an election," and if that does not prevail, then, at least, let the amendment which has been suggested, be adopted. You ought to have an election by plurality at the first trial, at all events, otherwise you say that those who are to elect your representatives shall be men who can afford to ride to the polls, and not those who have to walk, and cannot well lose a day's work; for that

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is all the difference, a difference between men of property in the villages, and a sparse population of farmers and laborers, scattered in the rural sections. Almost every man can and will go to the polls on the first day, when a trial is to be made; but the laboring man cannot afford to lose his dollar each day, for four or five times, unless it should happen to be on some great and exciting occasion. If you will have a plurality, therefore, in town representation, let it apply to the first, and not to the second trial. My judgment is that you had better not put this provision in at all, but keep the majority as it now stands, and leave it to the legislature to decide whether the towns want the plurality rule, and if they really do, let them have it.

Mr. FOSTER, of Charlemont. I am in favor of the amendment of the gentleman from Plymouth. My constituents have been unrepresented for the last two years because they could not agree upon the man to be sent, and when I was at home the other day I told them that I should still sustain the majority principle on the subject, and they consented still to be without representation; for they considered the majority principle a safe one. I told them that there was a special reason why I should support this principle, and that is: that we are likely to have a large House of Representatives and I would be very willing to have the House thinned out a little by these very failures to elect, and that that was one of the strong motives why I am so much in favor of the majority system.

Mr. STETSON, of Braintree. I do not intend to detain the Convention. When I hear my friend oppose what I consider a democratic principle, and a democratic rule, I am induced to address the Convention. I believe, Sir, that the majority principle, as it now exists in the State, is, in fact, a rule by which the very smallest minority rules the majority. That is the fact; and I think that some provision should be made in the Constitution by which this may be overcome, or set aside, in some way or other; and I know of no way unless we adopt what is called the plurality system. I believe that the system of plurality is the most just and equal to the majority of all parties, and that the rule itself, nine times out of ten, results in giving a fair majority of the people in favor of such candidates as are brought forward for election. And is it not a fact that under the majority rule, you find the little party will govern in almost all cases? Where there are two parties, the Whig and the Democratic,—or the Free Democratic and the Democratic,—where the two parties are nearly balanced, and we say that the majority shall rule, one or the other of these parties are bound to coalesce if they wish to choose. And what is the result? By a coalition one party will succeed; but if each party stands upon his own right, independently of the others, no person can be chosen. Now that is the rule. I hope the Convention will adopt the Report of the Committee. I am willing to go farther, and think the plurality rule should go as far as it can be made to go; that we should elect all officers under the State government by a plurality vote. That is the true doctrine, and I can well conceive why my friend for Wilbraham, (Mr. Hallett,) is so loath to concede that even a majority should rule; because I do not know but he is one of the fathers of the two-thirds rule, contending that two-thirds of a party should be

brought to bear upon a single object, or else no one can be chosen.

Now the two-thirds rule is one of the most destructive inventions that ever existed; and I would appeal to gentlemen, whether that rule does not throw out all the men who are the most deserving of office? I say, that by this iron rule, the most valuable men are thrown aside. I can conceive no other reason why my friend is so loath to adopt the Report of the Committee, except that he wants that iron rule to continue. Now, I am sorry to say, we had some long speeches made, on a former occasion, upon the subject; that those who have always supported the democratic principles, have come out and said, here upon this floor—and I believe my friend on the right is among the number—that the plurality principle tends to destroy the very foundation of the government.

Sir, I am sometimes called radical; but if this plurality rule is a radical measure, then I am a radical. I do not believe but that the principle itself produces the effect which we all desire; that it develops the true principles of the majority. I will venture to say, Sir, that two-thirds of all the legal voters in the State of Massachusetts are among the working classes. One of the principles of democracy, I believe, is to relieve the masses from the oppressions of wealth; and I contend that the majority rule, as it operates under present circumstances, is one of an oppressive character. The men upon whom the burdens of taxation fall most heavily, are the working men—men who are often compelled to meet, from time to time, and from day to day, at the polls to vote, or relinquish their right of being represented. And I would appeal to every member of the Convention if he does not know, in every election, after the first or second day, who are the parties who do not appear at the polls? Is it not the laboring classes, the rank and file of the party? The consequence is, that we cannot get even a fair plurality of the voters of the towns when an election takes place. Persons are thus voted into office by a very small number of voters. I have myself been voted into the House of Representatives, on a majority vote, by a less number than would have constituted a plurality vote on the first day of election. And why is it that we suffer this thing to remain on the statute book, year after year, without bringing the matter forward, and putting it to the people what they desire; that is what the laboring classes want, that we should adopt this plurality question. Sir, during the sittings of this Convention, I have not seen a Democrat among my constituency, or among any other, who does not believe that the people desire, and want this principle of plurality adopted. They desire it for the best of all reasons in the world—that they may relieve themselves from the oppressive burden which this majority rule inflicts upon them.

I contend, Sir, that this principle is one of Democratic birth; that it has received the support of Democrats in all the States of the Union, and that it has been advocated in an address to the people of the Commonwealth. But enough has been said upon that point. The people know it; they understand it; and they expect to have the question put to them upon this plurality mode of election. They ask for it; and, I believe, that in the present state of parties, as that principle has operated, it has developed itself in the best possi-

ble manner. It entirely does away with that oppressive burden which is thrown upon the working classes. It is right and just that we should adopt it; and therefore I am in favor of the Report of the Committee being sustained, as far as it goes. I admit that it does not go far enough for me; but I shall sustain the Report of the Committee.

On motion by Mr. CRESSY, of Hamilton, the Committee rose, and, the President having resumed the chair of

THE CONVENTION,

The chairman of the Committee of the Whole reported progress, and asked leave to sit again.

Leave was granted.

Reports from a Committee.

Mr. HALLETT, for Wilbraham, presented the following Reports from the Committee on the Bill of Rights, which were referred to the Committee of the Whole, and ordered to be printed.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 18, 1853.

The undersigned, a minority of the Committee on so much of the Constitution as is contained in the Preamble and Bill of Rights, report that the second Article of the Bill of Rights ought to be so altered as to change the words "for his religious profession or sentiments," to the words "for his profession or sentiments concerning religion."

So that it will read, if so amended: "And no subject shall be hurt, molested, or restrained in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his profession or sentiments concerning religion."

B. F. HALLETT.
ANSON BURLINGAME.
CHARLES SUMNER.
HENRY WILLIAMS.
GEO. S. HILLARD.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 18, 1853.

The undersigned, a minority of the same Committee, also report.

To strike out from the 28th Article of the Bill of Rights the words "but by the authority of the legislature."

So it will read, if amended: "No person can, in any case, be subjected to *law-martial*, or to any penalties or pains by virtue of that law, except those employed in the army or navy, and except the militia in actual service."

B. F. HALLETT.
L. MARCY.
H. WILLIAMS.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 18, 1853.

The undersigned, a minority of the same Committee, also report.

That there should be added to the 15th Article of the Bill of Rights the following clause:—

In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict of guilty or not

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guilty, to determine the law and the facts of the case.

B. F. HALLETT.
ANSON BURLINGAME.
CHARLES SUMNER.
L. MARCY.
CHARLES ALLEN.
H. WILLIAMS.

On motion by Mr. HALE, of Bridgewater, the Convention adjourned, until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

Specie Payments.

Mr. FROTHINGHAM, of Charlestown, from the Committee on the subject of Banking, submitted the following Report, which was referred to the Committee of the Whole, and ordered to be printed.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 18, 1853.

The Committee on the subject of Banking, to whom was referred an order, to consider the expediency of providing that the legislature shall have no power to authorize, or pass any law sanctioning the suspension of specie payments by any corporations issuing bank notes, have considered the same, and report, that it is inexpedient to take any action on this subject.

RICHARD FROTHINGHAM, JR., *Chairman.*

Final Adjournment.

Mr. EARLE, of Worcester, from the Committee on the subject of the Final Adjournment of the Convention, reported, that in the opinion of the Committee, the Convention may finish up its business, and adjourn on Saturday, the twenty-third instant.

The Report was laid upon the table.

The Pay Roll.

Mr. WILSON, of Natick, submitted the following order, which lies over for consideration to-morrow:—

Ordered, That the Committee on the Pay Roll be instructed to make up the same, including the day of adjournment, and that no member receive pay except for the days of actual attendance.

Limitation of Debate.

Mr. ADAMS, of Lowell. I move now, Mr. President, that debate in Committee of the Whole, upon the subject of Elections by Plurality, cease in one hour after the Committee shall again resume the consideration of the same.

Mr. BRADBURY, of Newton. It will be remembered, by the Convention, that this subject has been under consideration heretofore, in the Committee of the Whole, and that we found ourselves, at the close of that discussion, with some eight or nine entirely new and distinct questions to settle, after the hour had arrived at which debate had been ordered to be closed, by an imperative vote of the Convention. There is little time now allowed, very little, and there are a number of questions before the Committee of the Whole, and they may be varied, by new motions constantly offered; and I submit, whether it is proper or fair, to the members of the Convention, to put

it in the power of a member of the Committee of the Whole, to bring a member to a vote upon a question instantan, without any opportunity for discussion?

The proceedings in this Convention, in this respect, have been very unlike the usual deliberative proceedings in this capitol, and I have heard members of different views unite in condemning them. Under a procedure similar to that now recommended by the gentleman from Lowell, (Mr. Adams,) the basis of the House, which had been for many days under discussion, and had been deliberately modified, was at once, without debate, essentially transformed, on a motion which, for want of time, could be neither discussed nor examined.

And I am fully of opinion that, exclusive of those who had had the privilege of previous examination, there was not one man in ten that knew the effect of the proposition to which I refer, of the gentleman from Lowell, (Mr. Abbott,) which constitutes the vital part of the adopted basis of the House of Representatives.

I will say no more, because I have spoken three or four times upon this subject, but I have been brought to vote upon propositions entirely new to me, and upon which, not one word of explanation was allowed, *pro* or *con*. On the previous occasion, after having consumed a great deal of time in the discussion of the general question of plurality, we were brought to vote *instantan* upon eight or nine distinct issues; and now I submit, whether it is right to place ourselves in a position where we cannot fairly and fully understand the questions which may be presented? I submit, as the Convention has full control over the Committee of the Whole, whether it would not be better for the Convention to instruct the Committee of the Whole to report at a certain time, so that the right to submit new propositions, and the right to debate, may be coextensive?

Mr. WOOD, of Fitchburg. This Convention has already been in session a month longer than it was expected to be, and this subject now under discussion; has heretofore had one full discussion, and at the time it was recommitted, it was said, as an objection to its recommitment, that we should have to go over the whole matter, *de novo*, its origin, its history, and all, at as great length as at first. But we were assured by many members of the Convention that it should not be so, for as most of us understood all the bearings and all the suggestions in relation to the matter, though we should not precisely approve of the Report of the Committee, we could proceed to vote without much discussion; indeed, without there being any necessity for much discussion. I was surprised, under these circumstances, to see, this forenoon, with what ardor certain gentlemen made an attack upon the Report of the Committee, and to see them proceed to argue it as a new question before us. If this course is to be pursued, I seriously ask, when are we to get through? The question has been asked by our constituents many times, and as often we have been compelled to say we do not know, and cannot tell; that many of our debates are spun out to an unreasonable length, and that things which were fairly understood by all of us, have been talked about over and over again, until we were disgusted by them. Now, the question is, whether we shall go on talking over these matters, or whether we will come to a

decision upon them, and thus be able to meet our constituents with honest faces?

It seems to me that it is about time, that now, the latter part of July, we should seriously think about adjournment, and that we should expedite business by working seriously, and talking less. Here is a fit subject for us to begin upon; and will we keep talking about the matter? The gentleman from Newton, (Mr. Bradbury,) thinks that we are unable to understand the matter, as though we were fools. It is not so. I am somewhat surprised to see how well the members of this Convention understand subjects brought before them—most of them much better than I do. Without saying anything more—because I wish to exemplify my theory by practice—I hope the motion will prevail.

Mr. BRADBURY, of Newton. I move to amend the motion of the gentleman from Lowell, (Mr. Adams,) by striking out the word "one," and inserting in lieu thereof, the word "three," so as to provide that the question shall be taken in three hours after the Committee of the Whole shall resume the consideration of the subject.

The question was taken on the latter amendment, and it was not agreed to.

Mr. BRADBURY. I now move to strike out "one," and substitute "two."

The question was taken on the latter motion, and the amendment was not agreed to.

The question recurring on the original motion of Mr. Adams—

Mr. BUTLER, of Lowell, moved to strike out the word "one," and substitute "three-quarters of an hour."

Mr. ADAMS accepted the amendment.

The question was then taken, on the motion offered by Mr. Adams, as modified, and it was decided in the affirmative—ayes, 107; noes, 73.

So the motion was agreed to.

Elections by Plurality.

Mr. UNDERWOOD, of Milford. I move that the Convention resolve itself into Committee of the Whole, upon the unfinished business of the morning, to wit: the subject of Elections by Plurality.

The motion was agreed to.

The Convention accordingly resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Hillard, of Boston, in the chair.

The CHAIRMAN stated the question to be first, upon the amendment submitted by the gentleman from Plymouth, (Mr. Davis,) and then upon the motion of the gentleman from Boston, (Mr. Schouler,) heretofore inserted.

Mr. LADD, of Cambridge. I confess that I do not fully understand the object sought to be accomplished by the third resolve, to which the amendment of the gentleman from Plymouth, (Mr. Davis,) applies, nor have the Committee which reported them, thrown much light upon the subject. I find that it is reported here, that, upon the first trial for the election of representatives, the majority principle shall obtain. But if no one shall obtain a majority, then that the candidate having the highest number of votes upon a second, or any subsequent ballot, shall be declared elected. I can very well understand what the majority rule itself is, and the force of the arguments which are brought to sustain it and show why it should be applied. I can very well

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understand what the plurality system is, and can appreciate the force of the arguments which are advanced in support of that rule. But when it is proposed, that a majority of all the votes cast, shall be required upon the first balloting, to elect a member of the legislature, and a plurality only of votes cast upon a second, or any subsequent ballot, it seems to me that, in the first place, an unnecessary amount of machinery is introduced, to accomplish precisely the same purpose. If there is an election upon the first balloting, the majority rule prevails. If there is a plurality only of votes, why precisely the same thing is accomplished as is proposed to be accomplished by a plurality upon the second balloting. It appears to me that, as the first trial is ordinarily held, and will be held, when a choice of officers for the Commonwealth is to be made, that there will, in ninety-nine cases out of one hundred, be a much fuller expression of public opinion, than there will be upon the second trial; and I should like to be informed of the object to be accomplished by this resolve, that there shall be an election by a plurality vote upon a second trial. I can see no purpose to be accomplished. I suppose, in point of fact, that in the large towns of the Commonwealth, if there should be no choice upon the first balloting, there would be none at all, except by an adjournment to the next day, or to some subsequent day. Undoubtedly in the small towns, where it is customary to ballot more than once upon the same day, a result might be obtained. But I do not see how anything is to be accomplished, by any reasoning which has been presented to this Convention, and it can only give force to other considerations which are not worthy of being presented as arguments before this Convention. I can see how it gives an opportunity of success to the minority of the electors on the second trial, and, by an arrangement, or some other mode, to defeat the will of the majority; but for all practical purposes, it seems to me, that the second provision is useless, and I think we ought to adhere to the majority principle in the election of representatives, or to the plurality system; and, at the proper period, I shall offer the following amendment:—

Resolved, That in all elections of representatives to the general court, the person having the highest number of votes shall be elected.

Mr. MOREY, of Boston. The question now under consideration, is one of the most important that has been brought before the Convention. It is one in which the people feel a deep interest, probably a deeper interest than in any other that has been discussed here. This matter came before the Committee of the Whole some weeks ago, and was then discussed at much length, but it was found that there was nearly an equal division of sentiment upon the subject, and it was deemed of so much importance, that it was referred to a new Special Committee. That Committee had the matter under consideration some four or five weeks before they made their Report. During this whole interval, the policy of adopting the plurality principle must have been discussed in private circles, and I am sure many members have bestowed upon it much attention. It certainly has been expected that when this Report should be called up, there would be a full discussion upon it, and that we should obtain the

views of many gentlemen, enlarged and matured by conversations, not only with their associates here, but with other persons, in various parts of the Commonwealth. But when this Report came in order, and members rose to express their opinions, they found themselves embarrassed, and liable to be cut off in the midst of their speeches, by a miserable half-hour rule, and now they are put under the restriction of an order just adopted, declaring that all discussion upon this great subject shall cease in the Committee of the Whole, in three-quarters of an hour. It may be said that the question will come up again in the Convention; but when it does, a similar summary process may be adopted, and an end be put to all discussion. I do not complain of this on my own account. I have no desire to express my views in relation to the plurality principle, for I happen to belong to that class of old fogies who have preferred that a majority should be required in our elections. I have at all times, *heretofore*, been opposed to the plurality rule. Under present circumstances, however, I feel constrained to vote in favor of framing an amendment, establishing this rule, and of sending it out to the people for their consideration and action; and my reasons are mainly founded on the history of this Convention, to which I will now call the attention of the Committee. In the legislature of 1851, the senator from Franklin, (Mr. Griswold,) now the delegate for Erving, brought forward a proposition to alter the Constitution in relation to the system of representation in the House. He introduced two or three resolves, drawn up in proper form, for the purpose of accomplishing this object. These resolves passed the Senate, but failed to obtain the requisite number of votes in the House. Afterwards, an attempt was made to *district* the cities and large towns, and a bill, designed to effect that object, was carried through the Senate and was sent to the House, where it was referred to the Judiciary Committee, of which the gentleman who is at the present time attorney-general of the United States, was chairman. It was understood that he was of opinion that the legislature had no constitutional power to enact such a law, and the bill was not, I believe, ever reported to the House, but died in the hands of the Committee.

The next movement of the indefatigable and persevering senator from Franklin, was to offer an order for calling a convention to revise the Constitution, and a bill was, in due time, reported by a committee of which he was chairman, providing that the question whether such a Convention should be held, should be submitted to the people.

The committee, however, made no formal written report, and of course did not set forth their reasons for this measure; but as the movement grew out of a failure to alter the Constitution, touching the basis of representation in the House, it was understood that the great object of the Convention was to effect an important change of that basis. It went before the people with this aspect, and the result was, that the measure failed by about five thousand majority against it, many of the small towns even voting against it. At the next session of the legislature, the project was revived. The senator from Franklin, determined, if possible, to accomplish his favorite scheme, again brought forward a proposition for calling a Convention. On his motion, a large

committee of both branches was appointed, of which he was placed at the head.

The sagacious chairman was satisfied, from the result of the former trial, that in order to insure success the next time, a formal and direct appeal must be made to the people, by presenting to them some more powerful reasons for calling a Convention than such as related to the system of representation in the House. It fortunately so happened for the chairman, that a strong feeling had grown up throughout the Commonwealth, in favor of the plurality principle in our elections. Several congressional districts had, for a long time, been unrepresented. In the fourth district fourteen trials had taken place without securing an election. A majority of the Senate had rarely been elected for a long period, and sometimes not even a quorum. There had been no election of governor and lieutenant-governor for a series of years. From these causes, a strong and general desire had arisen for the establishment of the plurality rule. The subject had been much discussed everywhere—in newspapers, at conventions, and other public meetings.

Under these circumstances, the Franklin senator resolved to avail himself of this manifest popular feeling, and drew up an elaborate report, setting forth the reasons for holding a Convention, amongst which the necessity and expediency of adopting the plurality rule, were strongly and pointedly set forth. That report, after stating that the proposed new system would save expense, and prevent much party animosity, which is now engendered by repeated trials, proceeded to say: "That the practical operation of our Constitution for the last ten years, has been, in very many instances, to place in the most important offices in the State, men who have received, not a majority, but only a plurality of the popular vote. Indeed, this result seems to be fast becoming the general rule, and not the exception. And, in some instances, these offices have been filled by men who have received not even a plurality of the popular vote."

The report goes on to state what officers should especially be elected by a plurality, as follows: "The election of secretary of the Commonwealth, treasurer and receiver-general, auditor of accounts, and executive councillors, by the people, with an application of the plurality principle to these officers, as well as to the governor, lieutenant-governor, and state senators, would do much to remedy this evil."

Thus the report specifies what officers the plurality principle should be applied to; and what are they? Why, the very ones who it is now proposed must have a majority to secure their election; that is the proposition now before us, is just the reverse of what was recommended by the legislative committee.

Mr. GRISWOLD, for Erving. Will the gentleman yield to me for a moment.

Mr. MOREY. For a moment.

Mr. GRISWOLD. As this subject has been so often alluded to, in justice to the other members of the committee who signed that report, I desire to make a single remark, for I think they have been somewhat misapprehended in relation to this subject. For myself, I care little about the matter, for I believe my sentiments upon the subject of plurality are well enough understood; I should prefer that these officers should be elected by plurality, if I could get it, but it is evident

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that is not the feeling of the Convention. But, Sir, if this seventh section of the report is quoted, it should be done in connection with the sixth. I will read the beginning of that article.

Mr. MOREY. I can hardly afford to lose my time for the gentleman to read from his report.

Mr. GRISWOLD. Just a line or two.

Mr. MOREY. I will read the whole two sections, if the gentleman desires it. Here they are:

"6. In the sixth place, we recommend the adoption of the plurality system, in more of our elections. To what extent the Constitution should be revised on this subject, and how far the system shall be carried, will of course remain for the Convention to settle. Nor do we now express any opinion as to which would be the most expedient, if the system is to be adopted, to apply it to the first, or only to the second, or some subsequent election. But the time and money which is now expended, and the party animosity which is engendered, by the numerous and unsuccessful attempts to elect the various state, county, and town or city officers, have become grounds of repeated and loud complaints in all portions of the Commonwealth. This part of the Constitution should undergo a thorough revision; it should be done not rashly, but with great care and deliberation. We are aware that the majority principle has long been considered the conservative element of our Constitution; and many sound and well-balanced minds may take alarm at a proposition of this kind; but we think that a moment's reflection will satisfy the most fastidious, that their fears are groundless. The practical operation of our Constitution, for the last ten years, has been in very many instances, to place in the most important offices in the State, men who have received, not a majority, but only a plurality, of the popular vote. Indeed, this result seems to be fast becoming the general rule, and not the exception. And in some instances, these offices have been filled by men who have received not even a plurality of the popular vote.

"No one has a right to complain of these results, so long as the Constitution remains as it is; and we only allude to them, for the purpose of showing that the Constitution itself, in its practical operation, has partially destroyed a principle, which by many has long been considered essential to the stability and perpetuity of our government. This subject was thoroughly discussed, in all its bearings, in the popular branch of the legislature, during the sessions of 1849, and 1850, and although the most disastrous results were then predicted, should the plurality principle to any extent become a law, yet we believe that the act of last session, providing for the election of members of congress by plurality on the second trial, is not only a just, and safe, but very popular law.

"7. The present cumbersome, formal mode of organizing the government, we submit, should be abolished. Eight or ten days are now usually occupied in this organization, which is nothing less than an annual waste of six or eight thousand dollars of the people's money. The election of secretary of the Commonwealth, treasurer and receiver-general, auditor of accounts, and executive councillors, by the people, with an application of the plurality principle to these officers, as well as to the governor, lieutenant-governor, and state senators, would do much to remedy this evil. These changes, with a few other slight modifications of the Constitution in the same direction, especially the establishment of a board of men to count the votes, declare the result, and notify the persons elected, would enable the legislature to organize the government, and be ready to proceed with the business of the session, in two, or at the longest, in three days. This change alone, would, in the course of ten years, nearly or quite defray the whole expense of the Convention."

Now, Sir, if the gentleman had desired to use language more strong and specific, he could not

have done it. That document was regarded as an able and elaborate report, as it is. It was praised and quoted from in all the newspapers, except the Whig newspapers, and I believe in some of them. It certainly was extolled, not only in all the Democratic newspapers, but in most of the Free Soil journals. Several thousand extra copies were ordered to be printed by the Senate, and I think an extra number was ordered in the House. It was regarded by the friends and advocates of the Convention as the great campaign document, and it was so advertised in the newspapers. It was reprinted, and a multitude of copies sent broadcast over the Commonwealth. I heard of it in every direction. It was thrown into every house, put into every man's hands, and was read everywhere.

And what was more, some of the gentlemen who signed the document, being the most popular orators of their parties, went forth and took the stump in favor of the Convention. By looking into the *Commonwealth*, and other newspapers of that date, you will find appointments for these gentlemen to speak, in different portions of the State, for almost every day in the week, for many weeks prior to the time of voting upon this subject. Well, Sir, when they thus went forth, they surely supported the calling of a Convention, and, I presume they used the same arguments as were employed in the report which they signed.

Being anxious to learn how things were going on, I made inquiries of some gentlemen, belonging to the party with which I was associated, who had been out and addressed the people with reference to the approaching election, and occasionally with regard to the Convention. When I asked what the prospect was, as to the Convention, the reply was, that the plurality doctrine was carrying all before it; that many of the Whigs were coming out in favor of it, and that the other parties were to a man, advocates for it.

In consequence of this state of things, the Whig speakers pretty much gave up the idea of interposing any obstacle in the way of calling of the Convention. They seemed inclined to let the thing take its course. This was acquiesced in, inasmuch as many of those speakers were in favor of the plurality doctrine, and that doctrine was put forth with so much prominence and effect by its particular advocates.

Under these circumstances, it was not for me, old foggy or not, to stand out against this feeling, which was prevailing amongst the people, especially when it appeared that so many of the party with which I was acting, were disposed to support this principle. My colleague, (Mr. Schouler,) was, and had for a long time, been earnestly in favor of the plurality. All the speeches that were made during the campaign by advocates of the Convention, contained more or less arguments in favor of the plurality principle; and I undertook to say that it was the expectation of securing this reform, more than anything else, that carried the proposition for a Convention with the people. I am very confident that if the people had not supposed they were sure of having the plurality system adopted, there would have been a decided majority against a Convention.* If the reformers in this body, who took the field last autumn, and addressed the people on this subject, had have then made the same speeches which we have heard from them here, against the plurality rule, the whole project of a Convention

would have been defeated by an overwhelming vote. You had tried it once before with reference to the basis of representation in the House, and the scheme signally failed.

Yet, these very gentlemen, who put forth the reasons I have stated, for calling a Convention, and who induced the people to act upon them, now virtually say to the people: "We have got the Convention out of you, but as to this plurality system, you shall not have it. We not only will not give it to you, but we will not so much as frame an article of amendment, submitting the question to you. We will not allow you to pass upon the subject."

Now, Sir, notwithstanding the fact that I have heretofore been opposed to the introduction of this principle, yet, for one, have too much regard, too much respect for the people, to take the course which is pursued by members of this Convention in relation to this matter. I think these gentlemen indicate the most utter contempt for the people by withholding this proposition from them. I therefore say, that I am in favor of framing an article of amendment, establishing the principle, such as is contained in the proposition of my colleague, (Mr. Schouler,) making those officers eligible by a plurality, who are specified in the report and programme of the Convention, drawn up by the gentleman for Erving, (Mr. Griswold).

I would send out such a proposition, and let the people decide upon it for themselves. Not to do as much as this, is, as I said before, treating the people with perfect contempt. It will be not much better than obtaining goods by false pretences. It will be perpetrating a fraud upon the people. They were called upon particularly to vote for a Convention, in order that the plurality principle might be fully established in our elections, and now, when they have called the Convention, they are to be denied the privilege of voting upon this measure, to secure which, this Convention was advocated and called. Sir, I repeat it. I shall vote in favor of submitting this question to the people. I regard the members of the Convention as more pointedly, specifically, and emphatically instructed upon this subject than upon any other; and I think that by incorporating with the amendments, to be submitted to the people, an article containing this provision, we shall more directly and certainly carry out their wishes, than by any other proposition we can adopt.

The low murmur of dissatisfaction with this fraudulent suppression of the very amendment which the people have expected, and most of all desired, has already reached us from the hills and valleys of Massachusetts. Ere long, we shall see the leaders of the majority in this Convention begin to quake and tremble; and I venture to predict, that before the close of the session, some one of these Constitution-menders will be directed to bring forward propositions to amend and qualify certain important resolutions which have been adopted, and to insert a shred here and a patch there, in order to relieve, if possible, the most obvious defects of their work, and to avert, or moderate, in some degree, the censure of their constituents. I warn gentlemen not to flatter themselves with the hope of escaping the indignation of the people by any miserable apology, or even half-way substitute, for the adoption of a plain, distinct, and extensive plurality system. I

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say, let this principle be introduced in the election not only of senators, executive councillors, county and district officers, but of governor, lieutenant-governor, secretary of state, treasurer, auditor and attorney-general, and on the second trial, if not on the first, of representatives to the general court. Let this whole subject be submitted at once, directly to the people, and to the people alone. Nothing else can, will, or ought to satisfy them.

Mr. GOOCH, of Melrose. Mr. Chairman: I never knew exactly what an old fogey was, until I came into the Convention this afternoon. But if we may take the definition of the gentleman from Boston, (Mr. Morey,) he is a man who thinks one way, and votes another. The gentleman says he believes in the majority principle, and yet, intends to vote to submit to the people a proposition in favor of the plurality principle; and he claims to be an old fogey.

Now, Sir, the gentleman has very different ideas of our duty as members of this Convention, from those which I entertain, if he thinks that by such a course of conduct we shall discharge that duty. I believe we were sent here to recommend to the people such alterations in the Constitution as we believe should be made, and no others. I believe the people have a right to expect that every man here will act conscientiously; that when he votes he will vote his honest sentiments, without regard to what other people think, and without regard to what other people may do. It seems to me that every man who fails to vote and act in this manner, fails to discharge his duty.

Now, Sir, in relation to the resolves before us, I am sorry, as well as surprised, to see them reported in the form in which they appear before us, coming, as they do, from the Select Committee upon this subject. When this subject was before us, upon a former occasion, I recollect a certain distinction was made, or proposed to be made, with regard to the election of certain officers by a majority, and certain others by plurality. If I recollect rightly, the proposition was introduced by the gentleman from Worcester. It was, in substance, that the law-making power should be elected by a majority, and that the other ministerial officers should be elected by a plurality. I thought then, that there was good reason for the distinction, and I think so still. I, for one, am perfectly willing to live in a Commonwealth, and to abide by the laws which are enacted by a majority of the people of the Commonwealth, and I am willing to yield my private judgment to no other authority. And should I be called upon to yield my private judgment, to yield my property, my liberty, or my life, under the authority of the laws of this Commonwealth, I desire that the laws which make this requisition upon me should be the laws of the majority of the people of the Commonwealth, and not the laws of a minority. That is my doctrine, and I had always supposed that to be the doctrine of the people of Massachusetts.

I care not what documents certain gentlemen have sent out to the people, to influence them in calling this Convention. Those documents are worth just as much as the opinions and sentiments of those gentlemen expressed in any other way, and no more. They have their weight as the opinions of those individuals, and no other. But I do not care how many men may have recommended, or sent out this document recom-

mending the establishment of the plurality principle; it has no weight with me, except so far as the opinions of those men who signed this document are concerned, and so far as the reasons it contains are entitled to weight; nothing farther. I have been a little surprised, that such arguments and such influence, as have been used by the gentleman from Boston, should have been brought in here, and pressed upon gentlemen as if they were binding upon them. Sir, I know nothing about any such document as the gentleman has referred to, and I care nothing about it. I care not which party put forth this document; it can have no influence upon my vote. And I believe it will have no influence upon the vote of any honest man in this Convention.

I said I was surprised to see these resolutions reported in the shape in which they now come before us, because I did believe the Committee would recognize the distinction made by the gentleman from Worcester, viz.: that the law-making power of the Commonwealth should be chosen by a majority, and that the mere ministerial officers should be chosen by plurality. I supposed the Committee might be willing to sacrifice this much of the true principle, for the sake of convenience and accommodation—for the sake of saving time, expense, and trouble. But I did not believe they would go farther than that. But what have we before us, in these resolves?

In the first place, the governor is to be elected by a majority of the people, provided he obtains a majority upon the first trial, and if not, he is not to be elected by the people at all; but he is to be elected by the agents of the people. He is to be elected by those whom the people have delegated, or whom they may delegate, for that purpose, in case of a non-election by a majority of the people. Well, Sir, I suppose the reasons for that provision are these: I suppose they intended to provide, in the first place, that the governor should be elected by a majority of the people, but that, in case no one received a majority of the votes of the people, the majority principle should still be maintained, and that he should be elected by the House of Representatives and by the Senate, who were also elected by a majority of the people; and this provision of the first resolution I should like, if the other resolutions provide for the election of the House and Senate by a majority. Well, Sir, what do those resolutions do? What do they provide? They provide that the governor shall not be elected by the people at all, unless he is elected by a majority at their first trial. And then they provide that your House of Representatives shall be elected by a plurality, or that a portion of its members may be elected by a plurality, and your Senate by a plurality, and that your governor shall be elected by your Senate and House of Representatives. You thus strike out the majority principle from your law-making power, from beginning to end. Now, Sir, although I have always been opposed to the plurality principle as applied to the law-making power; yet, rather than vote for these resolutions as they stand, I will vote for the plurality principle, carried out to its full extent.

We provide, if we adopt these resolutions, that every department of the government may be chosen by plurality, without a single feature of the majority principle entering into the system, from beginning to end, and yet refuse to say that a plurality of the people shall elect. As I said in

the outset, I care not for the majority principle, except so far as the law-making power of the Commonwealth is concerned. I would like to see the offices mentioned in the first resolution stricken out altogether, except the offices of governor and lieutenant-governor, and a provision made, that, in all elections of senators and members of the House of Representatives, a majority of votes shall be necessary, in all cases, to constitute an election. Then, if we fail to elect our governor by the people, we have a House of Representatives and Senate elected by a majority of the people, and they elect a governor. Then, what do we establish? If we cannot elect our governor directly by our votes, we provide that those persons whom we have elected by a majority of the votes of the people to represent us in the legislature, shall elect our governor for us. If there is an election by a majority of the people, the matter is settled; but if there is no election by a majority of the people, then the people have said that they could not agree upon the election of a governor. And in such a case, what do we do? As we cannot meet again, and decide this question for ourselves, we pass it over to our agents, elected by a majority of the people, and let them settle this matter for us. And, if our agents cannot secure for us our first choice, they can take our second choice. That is the advantage we gain from this system. But, certain gentlemen assert, that by the adoption of such a system, certain towns must go unrepresented. Why must they go unrepresented? Simply, because they do not desire to be represented; because they had rather not be represented at all, than be misrepresented. I grant you, that non-representation is an evil; but it is not so great an evil as misrepresentation. I say, if my town cannot have a man to represent it, who can represent a majority of its citizens, then no man has any right to represent it. If my town wishes to be represented in the legislature, then the wishes of a majority of its citizens should be represented, and not the wishes of a minority. The evil of non-representation is one which the town can cure, and will cure, just as soon as it is for its interest to do so. The very moment it is for the interest of the town to have a representation upon the floor of the House of Representatives, then it will have such representation. There is nothing in the way. They have nothing to do but select and vote for a man, and send him here. If, in some instances, certain towns do not send a representative, it is because the condition and sentiments of the people of these towns are such, that they cannot find men who will truly and properly represent them here. The House of Representatives, by the plan proposed, is to be larger hereafter than it has been in times past, but we have never known the time when there has not been on the floor of the House a sufficiently large number of representatives to transact the business of the Commonwealth. I think an instance can scarcely be found, when any town has suffered one iota from the evil of non-representation. I hope that the resolution, as it now stands, will not be adopted by the Committee. Gentlemen ask me how we will fill vacancies in the Senate. I would provide for a second election, in the case of the non-election of senators; and I would see to it, that a man should be sent who would truly represent the majority of the district, or else send no man at all.

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Mr. BUTLER, of Lowell. In the few minutes given me I will endeavor to say a word upon a given subject, not proposing to enter upon an argument of this question, for the time for argument has passed. I wish to say a word about that immortal "document" upon this subject of plurality, which has now been read five times. It was a very good argument, and it did its office well, which was, to beat the old fogies, as their chief admits; but I do not see why it could not have been suffered to rest in peace. The gentleman from Boston, (Mr. Schouler,) read it; then the gentleman from Brookline (Mr. Aspinwall) threw it at the head of the gentleman from Worcester, (Mr. Davis,) then, the gentleman from Worcester not being here, I read another portion of it; then the gentleman from Boston, (Mr. Schouler,) read it again, and when another gentleman from Boston, (Mr. Morey,) so happily edified the Committee by quoting from the same able document, I was inclined to say, *et tu Brute*. I should like to ask the gentleman from Boston, (Mr. Morey,) if he could make up his mind to elect a Whig representative "who is worth his weight in gold" to the gentleman, by plurality, without trying to get a majority? Would he wish to elect even "a Hunker Democrat seventy-five years old?" Would he not, after all, rather have a majority? I was very much surprised to find that the gentleman from Melrose was going against the Report because there was nothing of the majority principle in it. I am surprised that my younger friend from Melrose, (Mr. Gooch,) should say that rather than have this, he would have the plurality all through. There is some of the majority principle in this Report. This proposition, as I said upon a former occasion, is a compromise, or an agreement to go upon one side as far as we could towards a plurality system, and at the same time to save the majority rule as far as we could upon the other. We endeavored to bring this matter to a close, and labored as earnestly as we could to present a system which should have little complexity, and which should meet the opinions of all. Whatever we may do, I do not see how we are to be accused of endeavoring to get the votes of the people by false pretences, because that document said originally that this plurality question was to be settled in such a way as the Convention thought best. That is what we are doing to-day. I say to gentlemen who make such strong objection to the adoption of this system, if they will have the kindness to take my place and go into the committee-room along with the other gentlemen who compose the Committee that presented this plan, and make a better system, one that will better bring together all these various views, I shall be most happy to vote for their report; but until they can do that, I must stand by the Report which I have presented. I have no particular pride of opinion about it. The only wish I have is, that the matter may be settled, and that, too, without delay.

The hour at which it was ordered that debate should cease, in Committee of the Whole, on the subject of elections by plurality, having arrived, the Committee proceeded to vote upon the pending question, being the motion of the gentleman from Plymouth, (Mr. Davis,) to amend the third resolve, relative to the election of representatives, so as to provide that they shall, in all cases, be elected by a majority instead of on second trial by

plurality. A count being demanded, there were—ayes, 70; noes, 164.

So the amendment was rejected.

The question recurred on the amendment of the gentleman from Cambridge, to strike out all after the word "Resolved," and insert the following:—

That in all elections of representatives to the general court, the person having the highest number of votes shall be elected.

The question was taken, and it was, upon a division—ayes, 82; noes, 163—decided in the negative.

So the amendment was rejected.

The question recurred on the motion of the gentleman from Boston, (Mr. Schouler,) to strike out all after the word "Resolved," and insert the following:—

That it is expedient to provide in the Constitution that in all elections for governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general of the Commonwealth, the person having the highest number of votes shall be deemed and taken to be elected.

Mr. HUBBARD, of Boston, proposed to amend the pending amendment by inserting after the words "lieutenant-governor" the word "councillors."

Mr. SCHOULER accepted the amendment, as a modification of his own.

Mr. GRAY. I will take the liberty of suggesting to my colleague, that councillors are provided for in the next resolve.

Mr. HUBBARD. My object was to have two chances to secure this provision.

The question was taken upon the amendment of the gentleman from Boston, (Mr. Schouler,) as modified, and, upon a division—ayes, 85; noes, 156—it was decided in the negative.

So the amendment was rejected.

Mr. HATHAWAY moved to strike out all after the words "general court," and to insert the following: "All county, district, city, and town officers, shall be elected as shall by law be provided." That, Mr. Hathaway remarked, will leave the matter, so far as the election of these officers is concerned, precisely as it now stands under the present Constitution.

The amendment did not prevail.

Mr. CHURCHILL, of Milton, proposed to amend the last resolve by striking out the word "legislature," and inserting the words "governor, by and with the advice and consent of the council."

The amendment did not prevail.

Mr. GARDNER, of Seekonk, moved a reconsideration of the vote by which the Committee rejected the amendment offered by the gentleman from Plymouth.

Mr. DENTON, of Chelsea. I confess, Sir, that I did not quite understand the amendment of the gentleman from Plymouth. The gentleman from Plymouth, in his explanation, did not satisfy me that it would include—

The CHAIRMAN. The Chair must remind the gentleman that debate is not in order.

The motion to reconsider was rejected.

Mr. ADAMS, of Lowell, moved that the Committee rise, and report the resolves to the Convention, with the amendments proposed by the Com-

mittee, with a recommendation that they be adopted.

The motion was agreed to, and the Committee accordingly rose, and the President having resumed the chair of

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The chairman of the Committee of the Whole reported the resolves and amendments, with a recommendation that they do pass.

The question being on concurring in the amendments proposed by the Committee of the Whole.

Mr. WALKER, of North Brookfield. It is a very unpleasant task to undertake to oppose what has been settled in Committee of the Whole. We have voted to report these resolves to the Convention, but I cannot allow the question to be taken without saying that I hope—that is, that I desire—that the Report of the Committee will not be accepted. The third resolve provides that the representatives—

The PRESIDENT. With the leave of the gentleman, the Chair would suggest that the first question is on concurring in the amendments reported by the Committee, which are merely verbal.

The amendments reported by the Committee of the Whole, were concurred in.

Mr. SCHOULER moved the adoption of the amendment which he had proposed in Committee of the Whole.

Mr. SCHOULER, of Boston. I intend to take up but very little time in the discussion of this question, although it is one upon which I have bestowed a great deal of thought, and one in which I feel a great deal of interest. It appears to me, notwithstanding the remarks of the gentleman from Fitchburgh, (Mr. Wood,) that this matter has not been discussed at that length which its merits deserve. We did have, in the early part of the session, a proposition about plurality in elections. The gentleman from Fall River, (Mr. Hooper,) the chairman of the Committee upon that subject, made a Report, which was, as I understand, the unanimous Report of the Committee, in favor of adopting the plurality system in our elections. That question was discussed in Committee of the Whole, but the vote was so close that one moment we would carry it one way, by one or two votes, and the next moment a reconsideration would be moved, and then it would go the other way. When the whole matter was reported to the Convention, before we could get to a vote upon it here, and before we could call the yeas and nays, to see what was the true state of feeling of the members of the Convention in regard to the subject, it was taken from our hands and sent to one of the committee-rooms. We have got another proposition, reported by the gentleman from Lowell, (Mr. Butler,) and what is it? It gives up the whole principle contended for by gentlemen who oppose the plurality system. I do not like to go into matters outside of the particular subject now before us; but no one can look at that resolution, and who knows the history of this Commonwealth, and fail to see, that there is something behind all this thing, which is not explained in the Report. What is the proposition? It was stated by the gentleman from Melrose, (Mr. Gooch,) that we should elect our Senate and House of Representatives by a plurality, but should not elect any of the general officers by

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that rule, and that they must be elected by a majority. What is the effect of it? It is to throw the election of all these officers into the legislature, where there would be finesse and caucusing employed, and there would be this man to be weighed against the other, this office against the other, and then comes the matter into the legislature, and they are to vote upon it. How are these officers to be elected? By men who are chosen by a plurality vote. You will not allow the people to decide it in the first place; you get the election into the State House, where the legislature are to decide it for them. I think there is no sense in this. The gentleman from Lowell, (Mr. Butler,) speaks about this proposition being a compromise; but it is the most singular compromise that I ever heard of in my life. It does not compromise anything but principle, and it does compromise the principle of the majority, and gives no satisfaction whatever to those who are in favor of the plurality system. I should like to have an explanation of this compromise—where it begins, and where it ends. It leaves all the difficulty with which we have so often found fault, precisely where we found it, and it leaves us in this predicament: that we cannot organize the legislature for seven, eight, or ten days, after coming together, at an expense of seven or eight thousand dollars every year. I ask the members of this Convention, whether seven or eight thousand dollars a year are not worth saving? and we can save it by saying that the people shall decide, instead of leaving it to a plurality legislature to decide. I think this matter deserves some consideration.

If we are to elect at all by plurality, I go for electing everything by plurality. We may elect by a majority, if we have a mind so to do, but what advantage are we to gain by it? Where are we to make any reform here, by which we are to save one single cent of the people's money? History shows in the progress of commonwealths and nations, that corruption does creep in, and it seems to me, that this is a plan for the corruption of officers, or rather for the corruption of those who hold office. This is an entering wedge which will bring about such a state of things. We may just as well have no election by the people, and give the legislature the right of electing in the first instance, instead of going through this mere sham, and having a vote taken which amounts to nothing. As long as this majority principle for the general officers is kept up, just so long there will be no election by the people. In the state of parties of this Commonwealth, as they now exist, there will be no election by the people so long as the majority principle is retained in the Constitution; but when you take that out of the Constitution, then, in my judgment, there will be elections by the majority of the people. It does seem to me—I do not make the charge, but I cannot dismiss it from my mind—that this proposition is presented for the very purpose of getting the election of these officers into the legislature, where the offices might be sold and doled out, and where men could make bargains in regard to them. I say that the people demand no such thing, but quite a different thing. It may be denied, but it appears upon the face of the proposition. If I stood upon the other side of the House, where I could address the eastern gallery, which seems to vote down all these propositions, I might, perhaps, be able to effect

more than I now shall do. I recollect a few years ago, in this House, that there was a gentleman from one of the western towns, who, although he had the right in his case, always had the majority against him. He stood right here, and when they took the vote, he carried the fifth and sixth divisions unanimously, while the other side of the House went against him. He thought he would change his position, so he went to the other side of the House, spoke there once, and then spoke in the centre of the House, so that when they came to take the question the next time, he carried his point by the unanimous vote of the whole House. [Laughter.] I do not say that we want to send missionaries into either side of the House, but it seems to me, when the gentleman from Lowell speaks of this proposition being a compromise, that it is time we should require some missionaries to look into it and see whether it is a compromise or not.

But, I do not wish to occupy the time of the Convention. I suppose it is all settled; and I feel, and I have no doubt the minority feel all the time, that there are certain measures which are put in here, that, however much argument may be presented on the one side, or the other, we are always voted down. Perhaps it is on account of strength, and perhaps it is on account of caucusing. But, I stand here on the Report made by the majority of the legislature last year, calling this Convention; I stand here as a humble advocate of the plurality system; and it was my hope, that this Convention, when it came together, would put that principle into the Constitution, or at least, that they would take the majority principle out of the Constitution, and leave the legislature to decide as the wishes of the people should direct. As it is now, we get nothing. We violate the principle of the gentleman from North Brookfield, and others who have advocated the majority principle; and those who have advocated the plurality principle, get nothing. While we asked bread, we got a stone. It amounts to the same thing; it may be a brick. [Laughter.] But, as the gentleman from Lowell may want a little time to explain this compromise, I will conclude, by asking for the yeas and nays, so that those who have stood up for principle against expediency, and contended for the right all along, may stand on the imperishable record, as having sustained the plurality system.

The yeas and nays were ordered.

Mr. WALKER, of North Brookfield. On a previous occasion, I have given my views with regard to the general principle in relation to the plurality system, and I gave my views as entirely adverse to that principle, believing it to be wrong, and consequently that it could only be productive of evil. When I saw the Report of this Committee, I looked at it with great interest; and, supposing it was a compromise, I was disposed to do everything I could, consistently, to meet the exigency of the case. But, when I saw that the third resolution provided that representatives should be chosen by plurality after the first trial, I was obliged to dissent from it entirely. It seems to me there is no sound policy in this Report. Our towns are democracies. They meet together, and they may try several times in a day, for the election of a representative; they may even have forty trials, perhaps, between the time when the meeting is called to elect representatives, and the meeting of the legislature. So

that there seems to be no excuse that the power to elect by a majority shall not be preserved to the towns. Shall we take it away? The idea of making one trial by majority, and then, if an election is not made, to allow a plurality to elect, I discard altogether. There is no statesmanship and no principle in the thing. If we are to have the plurality principle at all, let us have it at once. Then the question will be met promptly. By the present proposition, the several parties would have to put up their respective candidates, which some party would have at last, to withdraw; and hence, if we adopt a plurality system at all, I would much rather apply it in the first place than in the second.

Sir, since I last spoke on this subject, I have met a very intelligent gentleman from the State of Ohio, who has resided there many years, and he asked me the question, what we were going to do with regard to the plurality principle in this Commonwealth. I told him that it was proposed to adopt it. He says: "Do not take that course, if you do you will have the same results that we have had, namely: a general demoralization in political action." That is the consequence with us, and we deplore it. In all our elections we find it difficult to get a good man to stand as a candidate. For the moment we put up a good man, there are a half a dozen other men put up, some of whom are of disreputable character," and, to use his own phrase, "the meanest scamp is the most likely to be successful. Hence, intelligent and respectable men are not willing to be put up, for the greater number of men you have as candidates, the less is the chance of the election of a good man." Such is the operation of the system everywhere.

I saw, also, a few days since, a gentleman from Alabama, who expressed great anxiety about our abandoning the majority principle. "If you do it," said he, "you will rue the day; you will cause a general demoralization in politics, as has been the case in Alabama. We are always troubled to get the first and best men to stand for any office, for the reason that when they have to run against many men, of indifferent character—and they know, that as a general rule, the man of the most indifferent character is quite as likely to be elected as any other—they feel that it is a disgrace to stand, and they will not do it. That is the general result."

As to the election of officers in large cities, there may be some reason for adopting this rule, but when you come to towns, there is no excuse for it at all. It must be merely on the ground that we are unwilling to take the trouble. But there is no difficulty in that; the towns have only to repeat their trials as long as they choose. It has been said, and cannot be repeated too often, that this is the great question of misrepresentation, or non-representation, and there is a great choice between them; for it is much better not to be represented than to be misrepresented.

We are about to provide a Constitution, which will give a House of some four hundred members, and that will be an objection against our Constitution; and if we adopt this plurality system, it is certain that that House will consist of nearly the full number; and that will make an additional argument against the adoption of our Constitution. On the other hand, if we provide that a majority shall elect, then it will happen that many towns will choose not to be misrepresented,

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and they will adhere to their candidates and their principles, and will not be represented in the House. What will be the consequence? The House will be reduced, perhaps, some fifty or a hundred members. Now, I maintain, that it is vastly more desirable to have such a result, than to adopt the plurality rule and have the House filled every year; because the people will not be any more represented under the plurality rule than under the majority rule, even if many towns are not represented.

Then there is another consideration with regard to the basis of representation. By the plan which we have adopted, if I understand it, eighteen thousand less than one-third of the population of the State, may choose a majority of seven in the House of Representatives. Now, shall we reduce that constituency still more by adopting the plurality system? We know that if the plurality system is adopted, it is more than probable that one-quarter of the population of the Commonwealth will choose a majority of the House of Representatives. I would like to know if it is right, if it is desirable; I would like to know if gentlemen suppose that it will be agreeable to the people of Massachusetts. I do not believe it will. Hence, it will be a strong argument against the adoption of the Constitution.

Sir, if you could have the majority principle retained, with regard to members of the legislature, I would not make any opposition to this Report. I do not say I would be content with it, for I would not be content with anything that I do not think right; but I would submit to it.

If it be in order, before taking my seat, I would move to strike out from the third resolution all after the word "election," in the third line. I do not wish to detain the Convention by farther remarks, having discussed the plurality principle at length on a previous occasion.

The PRESIDENT. It is not in order at this time, as an amendment is pending to the first resolve.

Mr. LORD, of Salem. If I understand the argument of the gentleman from North Brookfield, it is this: That in consequence of what he has heard from a gentleman from Ohio, and from another gentleman from Alabama, if the plurality system is adopted, the same result will follow here that has followed there. In Ohio, the meanest rascals get chosen; and in Alabama the most indifferent people. Now, if I had such a judgment of the people of Massachusetts, that there were more of them who would vote for the meanest rascals that could be thought of, than would vote for a good man, I would try some method to curtail their power; and I am not surprised that the gentleman from North Brookfield wants to do so. He cannot trust these people, because more of them will be willing to vote for the meanest rascal, than for a good man. But, differing from him, I believe the people are capable of self-government, capable of selecting good men, and that they will not pick out the meanest rascals. I believe that they will not be demoralized; that the adoption of the plurality rule will not cause a general demoralization; but that those men will be chosen whom the most of the people are in favor of. I am quite as unwilling to say that the people will select the most indifferent persons, as to say they will select the meanest rascals. I do not think they will take either course. I am rather inclined to adopt the opinion of the gen-

tleman who now represents Wilbraham, (Mr. Hallett,) that the adoption of the plurality system will destroy the third party, and having destroyed the third party, and made but two parties, I do not exactly understand how a person will be elected without a majority. When you get down to two parties, as the plurality principle brings it down, it is simply a process for concentrating the public mind upon an individual. Whoever supposed that the public mind uniformly fell upon the particular person who was to be elected to the office? We know, Sir, that in the primary meetings, where a candidate is to be selected, there is generally a great diversity of opinion; and that diversity of opinion is reconciled, and one person is selected and agreed upon. The same thing happens in all parties, and the number of candidates gets reduced, out of which the people are to select. It is not the selection of an individual by a majority of the people, because we know that a majority of the people are in favor, individually, of a particular individual; but because, by the political economy and political arrangement, there has been a concentration upon certain members who represent certain interests; and out of those numbers, one is to be selected. The plurality principle simply reduces the number of candidates, so that the public will be obliged to select one of two, instead of selecting from three or four; and generally speaking,—I put it as a matter of historical fact,—where the plurality rule prevails, there the candidate is elected by a majority of voters.

As a general proposition, that is true. I think there was an exception or two, perhaps, in the case of an election of representatives to congress, but they were merely exceptions. Take the country through, and you will find that where the plurality system prevails, no men get into office so frequently without receiving a majority of votes, as they do in Massachusetts where the majority rule has prevailed. Then why talk about this being an abandonment of the majority principle? It is one of the instrumentalities by which the majority principle can be concentrated upon an individual. It is developing, and bringing out, and enforcing, the majority principle. Gentlemen say here, with a flaunt, that we have got into new company. Well, I want to know if, because men have become convinced that they are wrong, and have joined them, they must desert their old ground. We have had gentlemen get up here and say, this plurality system was always a good democratic doctrine, and we were always in favor of it. Do not these gentlemen know that democracy is progressive, and that among other things, they have compelled us, poor Whigs, to abandon some of our views as obsolete ideas? And I am sorry, that so soon as the Whigs are obliged to change their condition, that there is another party that whips around and feels it glory enough if they can be in opposition to these poor Whigs. I have not heard any reason given by those gentlemen who have all along advocated the plurality system, why they should change now. When we all seem to be coming to agree that it is the true ground, all at once some gentlemen say, because we have got new allies, we will, therefore, abandon our old notions. That seems to be all the argument there is.

Now, Sir, I desire to express only a very few words upon this subject, having already developed the principal thoughts which I rose to sug-

gest, that the people of this Commonwealth will be gratified at the device of such an instrumentality as shall concentrate the votes upon the smallest number of candidates. There is not a voter in this Commonwealth, who cannot see clear through this proposition.

We may involve it in diplomacy here, if we will, but every voter in the Commonwealth will see and understand what these six large offices are put into the legislature for. There is no gentleman in this House who cannot tell what it is done for. I am a little at a loss to understand, I confess, how we are to manage this matter. There is a little inconvenience about the manner of choosing our governor. We have already almost unanimously voted, that we would choose him by joint ballot, and here we say that we will choose him by a concurrent vote. Sometime ago—so long ago that we have, perhaps, almost forgotten it—some time in month before last, the Convention determined, that, whenever the people did not choose a governor, he should be chosen by the legislature on joint ballot; and now we are to have it done by concurrent vote. I have no objection to the two propositions; I am willing to have them both put there; but, Sir, I desire to have those gentlemen who charge me with not confiding in the people, and who themselves do confide in the people, I desire to have them explain to me how it is that, under this system, the people cannot be deprived of their choice. For example, in this matter of governor, we change from four to three; one man has eighty thousand votes, another has seventy thousand, and another fifteen thousand, and there is no election. Now a majority of your House of Representatives are chosen by one-third part of the people, and you pretend that your governor is a representative of the whole people. Well, Sir, this majority of the House of Representatives, thus chosen by one-third part of the people, can exclude the individual who had eighty thousand votes, and send up to the Senate the one with seventy thousand, and the one who had fifteen thousand. This is giving the governor to the people, and taking the House of Representatives from the towns—doing it with a vengeance! I remember to have heard the argument in favor of the distribution of power, that, inasmuch as the people have the governor, the towns ought to have the House; but one-third of the people of these towns voting thus, through a majority of the House, say that the man who has eighty thousand votes, shall not be governor, no matter even if the Senate, who do represent the people, want him. The popular majority may send to the Senate a majority in favor of the individual who has eighty thousand votes; but the towns send to the House a majority who are in favor of the individual who has only fifteen thousand votes; and of these three candidates, the House sends up to the Senate the seventy thousand man and the fifteen thousand man, to let them take their pick between them. I say, therefore, upon this hypothesis, you have no popular representation in the governor, you have no popular branch in the government. Your House is from towns—your Senate is from districts, chosen by pluralities; and, as gentlemen say here, pluralities are the same as minorities. Here the governor is forced upon the Senate, by the House chosen by the towns; and yet you say that there are two branches that represent the people, while the

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House represents the towns. Sir, the poor people, in this arrangement, fail of having any representation anywhere, except as it comes from the Senate. In this respect, as relates to the Senate, I address my remarks to those gentlemen who say that a plurality does not represent the people. I am of the opinion that a plurality does represent the people; and therefore, the argument relating to the Senate has no force in my mind, but it has and must have force with those gentlemen who say that the Senate is a representative of a minority.

If, Sir, it is desirable to establish any rule as a constitutional rule, it appears to me that the principle that the rule should be uniform, is so obvious to every mind, that it gains no force from argument or reasoning. We propose to say here, that certain officers shall be chosen by a majority, and certain other officers by a plurality. Has any gentleman told why that line is drawn in that way? I have heard no reason given for it—I can see the reason for it—every-body can see the reason; but has anybody avowed that reason? Has any gentleman told us why it is that the line should be drawn as it is drawn? why the governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general of the Commonwealth, should be chosen by majorities, and all other officers by a plurality? Now, if we were about to make a rule on the subject, and have some officers elected by a majority and others by a plurality, what rule would seem reasonable and proper? I believe that the universal opinion would be in favor of a rule of this kind: that, in proportion as it is difficult to obtain a second expression of opinion from the same constituency, just in such proportion is the necessity for the adoption of the plurality principle. I would like to hear anybody undertake to controvert that proposition. I agree with the gentleman from North Brookfield, (Mr. Walker), that it is not half so important for the town of Hull, which can vote forty times, and perhaps four hundred times a day—I am inclined to think that they could vote four hundred times between sunrise and sunset; but if they could not, Nahant could—it is not half so important for these little towns to choose their representatives by the plurality system, as it is that all the people of the Commonwealth should have a chance to choose their governor by the plurality system. The difficulty is nothing, in comparison—the inconvenience is nothing, in comparison; as the gentleman from Boston said this morning, the whole Report is in inverted order, and ought to be reversed or shifted end for end. I am glad that I had the concurrence of the gentleman from North Brookfield in that respect; the thing is exactly reversed, for in those constituencies which cannot be called together twice, you insist upon applying the majority principle; but in those constituencies which can be called together twice, without any considerable difficulty, you allow the election to take place by the plurality principle. Why is this so? It is nothing in the name of State officers, because one is a State and the others are local officers. I repeat, Sir, that there is no individual in this assembly who does not see why it is so, and yet there is no gentleman in this assembly who will tell why it is so. Every-body knows what it is for, and yet nobody will tell us what it is for. The gentleman from Lowell, who reported this resolution, knows why the Committee made these

officers at large, through the State, to be elected by majorities, in preference to local officers, and yet I do not hear anybody say why. There is a reason, Sir, and it is a reason that has no force whatever with me in making fundamental law. We know something about what the popular will is—those of us who are willing to confide in the people—and we know that the popular mind has been for years demanding that the legislature should so alter the law that a plurality should elect. And we know, too, that the legislature has gone a great ways, almost to the very verge of constitutional right, in altering the law upon this subject; and they have never made a single advance on this subject, which the people have not approved. They have made representatives to congress eligible by plurality on the second ballot; and has the first man in the Commonwealth sent up a petition to the legislature to change that law since? Not one. The people of the Commonwealth approved of it. I do not know a single individual who, this day, would wish to alter it. I say, also, that the majority principle has never been adopted by any people, or acted upon by any people, where the counter proposition received a respectable advocacy, for a single moment; or where the plurality principle has been carried into practice in a single election.

Are we then desirous of finding out what is the popular will? I do not care how much gentlemen charge me with change, or how much they charge those with whom I am accustomed to act, with change. The party that called this Convention, called it upon the open and avowed ground, that the plurality principle ought to be adopted—that we ought not to spend a week here in the organization of the government, and in managing and bargaining how the offices should be distributed. It was—I do not say the *known*—but it was the avowed object of those who called this Convention, to prevent that great evil of the organization of the government being delayed a whole week. I have heard it said, here or somewhere, that where there has been an abuse, that has lasted for fifteen or twenty years, and some particular individuals have got the benefit of that abuse, it will not do to stop it until every-body else has had a hand in it, and has had a chance to profit by it in the same manner; and then you can let the abuse be reformed. Well, Sir, here you have got a real abuse; but it seems that we must not touch it, until every-body has had the advantage of it. Here is a real evil; every-body knows and feels it to be an evil, that the organization of this government, where there is a distraction of sentiment in the public mind, must be delayed a week at the beginning of every year. It is an evil that has been acknowledged, and those gentlemen who reported in favor of calling this Convention, reported that it would be enough to pay all the expense of this Convention, if we could save the extraordinary spectacle, and the extraordinary cost of the non-organization of this government for an entire week every year. What has changed the minds of gentlemen upon this subject? If ever I was in favor of the majority principle—and, I cannot remember that I ever was—if I ever was in favor of that principle, these very delays, and difficulties, and abuses, have long ago disabused my mind of the idea that a majority was necessary. They say that a majority should rule; but who rules under the majority principle? Does a majority rule? No, Sir; never.

A little band, a factious minority, rule, and always have ruled. How came that most excellent presiding officer, and much lamented man, to occupy the chair which you now occupy in this House, in that political year when the House was so divided, that the candidate of one party received just exactly as many votes as the candidate of another, and a certain individual of my own county, received one vote, and one vote only? The other two great parties gave exactly an equal number, and that gentleman received one vote only; but he held that one vote until enough to make a majority came to him; and the majority ruled, did they? I say it is always so; there is a fallacy in this mode of argument that a majority should rule. It is putting it into the power of a small portion of the people, to defeat the whole great bulk of the people; that is the operation of the majority system. Thus a very small proportion of the voters of this Commonwealth, can throw these six offices, as articles of merchandise, into the House of Representatives. I want to keep them out of it. I do not believe in that philosophy at all, which we have heard here so many times, that the gentleman who receives the smallest number of the votes of the people, if he shall get a majority of the votes of the House, and of the Senate, will thus be a majority governor. That is the sublimation of political mathematics, which goes beyond my comprehension. A man who gets less than one-third part of the votes, somehow or other, comes up here, and goes, as they say, into a most unequal House—they always say it has been very unequal—which unequal House has filled up the Senate full. We have a House not representing the people at all; and the man who receives less than one-third part of the votes is passed from the House to the Senate, and is made, by some *hoccus pocus* which I never could exactly understand, a majority governor. I have heard it assumed here a great many times, that such a gentleman as that, is in reality elected by a majority of the people.

I cannot understand that. I think that if the majority of the people very particularly want a man, they will be very apt to vote for him. Now and then you may get a few voters, here and there, who will vote contrary to their own notions of what is right,—of course it is not to be wondered at that some few among the people should do so, when we find the same thing done by gentlemen in this Convention,—and others, again, vote as they are told to vote; but the great majority of the people vote as they please, with perfect independence; and when we introduce such a system as to bring the people to vote in such a manner as to get a majority vote upon any question, then we shall best advance the interests of our constituents, and promote that public good which we were sent here to accomplish. Anything to concentrate, as I said in the beginning—

[Here the hammer fell.]

Mr. FRENCH, of Berkley. I have always been in favor of the majority system, and I cannot, now, very well make up my mind to give it up. I have an amendment, which I desire to offer to the third resolution, which, I think, will make it stand a little better. It is this: after the word "ballot" insert the following:—

But in case of the failure of election on such ballot, then at a subsequent meeting, called for that purpose, the person having the highest num-

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ber of votes shall be deemed and declared to be elected.

The whole resolution, if thus amended, will then read—

The PRESIDENT. The amendment is not in order at this time, but the gentleman from Berkley will, no doubt, have an opportunity of offering his amendment.

Mr. FRENCH. Then, if my amendment is not in order, I suppose it is not in order to make any remarks.

The PRESIDENT. The whole question is open to debate on the first resolution.

Mr. WILSON, of Natick. It seems to me, Mr. President, that it is rather too late to go into a general discussion upon this question. Some weeks ago this subject was discussed with great ability for several days, and a vote was taken in the largest Committee of the Whole that we have yet had; we had a larger vote than we have had upon any question which has been taken during the session. The judgment of the Convention was: that for governor, lieutenant-governor, and the other State officers, a majority should be required; that for members of the House of Representatives, and town officers, a majority should be required. The judgment of the Convention then was: that for senators, and county and district officers, a plurality only should be required to elect.

Mr. SCHOULER. I wish to correct the gentleman. There has been no vote taken in the Convention upon this question.

Mr. WILSON. The gentleman from Boston is, I think, hypercritical. There was a vote taken in Committee of the Whole, which I apprehend is pretty much the same thing; and I say that a larger number of members were present, and voted on these questions, than have been present on any contested point during this session. I believe that the vote stood 187 to 188. The question was then recommitted to a Committee; and I understood that at that time it was generally conceded, that the judgment of the Committee was to stand as the judgment of the Convention, for the reasons which were then given.

Now, Sir, I am in favor of a majority, out and out. I adhere to that principle. I would accede, however, to the plurality system in the election of district and county officers, and senators, for they must be elected by the people. I would consent that it should stand as reported by the Committee; but, in regard to the election of representatives and town officers, I am opposed altogether to the Report of the Committee. I do not believe that it is expedient for the Committee to place a provision in the Constitution authorizing our town officers to be chosen by a plurality. I doubt very much whether the people themselves wish or desire it.

The gentleman from Boston, (Mr. Morey,) the old political war-chief of the Whig party of the State, came out to-day, and pressed upon us the necessity of going for the plurality system, although he says that he is in favor of a majority system. They put it on the ground that the address put forth by the gentleman for Erving, and other gentlemen of the legislature, in 1852, represented this plurality system as one great object to be achieved by the proposed Convention. Now, Sir, it is common for gentlemen, in advocating questions here, to say that the people are on their

side. I take it, that we do not know what the judgment of the people is upon this question. I can say that through the canvass of last year, the political friends who acted with me did not advocate the plurality system. The press which supported the political organization with which I act, did not advocate the plurality system in supporting the call for the Convention. On the contrary, the thirty-six thousand men who gave their votes for this Convention, in November last, were generally opposed to the plurality system, and are so to this day. I know the Democratic party generally goes for the plurality system. Some of them advocated it then, and many do so now. They, however, are here to speak for themselves. But as to the Whig party, all that we know of their opinions is, that they went into their State conventions, and denounced the Convention as an untried and hazardous experiment; got up at an expense of \$250,000, to break down the Constitution of the Commonwealth, and to change those great principles which had constituted the glory and strength of the State; that we were about to strike at the independence of the judiciary, and at everything which was great and glorious in our past history. And more, Sir. My friend from Boston, (Mr. Schouler,) who advocates the plurality system, was one of the gentlemen who signed the minority report denying the constitutionality of this Convention, although I will do him the justice to say, that, off the floor of the House of Representatives at the time, he said he did not concur in that doctrine.

Now, in relation to this matter, I hope that this Convention, if it is to take any portion of this plurality doctrine, is to apply it where it is absolutely necessary to apply it, and nowhere else; that we are to stand by the majority system where we can get along well with that system. It would be difficult to send back a State officer to the people for reelection, and therefore, we provide another mode of election. We provide for the election of county and district officers, and senators, by the plurality system. But, Sir, the people of the towns can elect their town officers and representatives; and if necessary to do so, they can meet from day to day in order to do it. If there be any necessity for their having representatives here, they can govern themselves by that necessity.

If I had my wish, I would like to strike out the third resolution, altogether, and substitute the following in place of it:—

Resolved, That the Constitution be so amended as to provide that in all elections of representatives to the general court, when no election is effected at the first trial, the meeting shall be adjourned from time to time until the meeting of the legislature for which the said representatives are to be chosen: *provided*, that no one adjournment shall be for a longer term than six days.

When it is in order, I propose to move that as a substitute for the third resolution, and to strike out the fourth resolution, altogether.

Mr. BRADBURY, of Newton. I do not propose, Mr. President, to trespass upon the time of the Convention, at any length. I have not done so in regard to any of the great questions which have been agitated before it; but I wish to say a word or two upon one point. The gentleman from Salem, (Mr. Lord,) has, in part, anticipated what I intended to say. Gentlemen who have looked through the whole history of

this question, will readily perceive what I mean, and the point which I wish them to consider.

The Report of the Committee on the basis for the House of Representatives was presented to this Convention, and defended by the chairman of the Committee, upon the principle of checks and balances, expressly and emphatically, basing his comments on a text from DeTocqueville, in which he proves that majorities are dangerous—that they might prove to be tyrannies, and therefore, he contended for municipal representation in order that they might be a check—upon what? Why, Sir, upon popular representation. So he then argued; and those who followed him have so argued throughout this whole debate, in favor of the representation of municipalities, because they say they want a check upon the masses in the cities, and the Convention has justified the arrangement on the ground of checks and balances. Yes, Sir, it has been said over and over again, that because the governor and Senate were chosen by the people directly, and on the municipal principle, that therefore you were justified in departing from that principle in regard to elections for the lower House. Sir, when was this argument presented? It was after you had discussed the question whether the supreme executive and the highest officers of the State should be chosen by a plurality or a majority, and had taken it away from before the Convention with a balance vote. And what is done in this Report? In case of the failure of the people to elect a governor, you have what you suppose to be a remedial process in the House of Representatives, and yet you have defended the basis of that House on the ground of a system of checks and balances. Sir, to have been consistent with the argument which has been taken as a groundwork of the basis of the House of Representatives, you should have given to the Senate jurisdiction in case of the failure to elect on the part of the people. Then you might have said that the House of Representatives must be submitted to, because it was an offset to the popular principle implied in the other two departments of the government.

If the Convention will allow me for a few moments, I will quote what was said upon this floor in defence of the town representation principle. The gentleman for Erving, in his remarks on this subject, read the following passage from DeTocqueville:—

“Unlimited power is in itself a bad and dangerous thing; human beings are not competent to exercise it with discretion, and God alone can be omnipotent, because His wisdom and His justice are always equal to His power. But no power upon earth is so worthy of honor for itself, or of reverential obedience to the rights which it represents, that I would consent to admit its uncontrolled, and all-predominant authority. When I see that the right, and the means of absolute command are conferred upon a people or upon a king, upon an aristocracy or a democracy, a monarchy or a republic, I recognize the germ of tyranny, and I journey onward to a land of more hopeful institutions.”

That is the text. Now we have the comment of the chairman of the Committee, which has been carried out and amplified in a number of lectures since. He proceeds:—

“This great writer, who seems to have reflected profoundly upon the workings of our institutions, says, that it is not safe to put power into the

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hands of an uncontrolled majority, in the sense in which it would be if the district system prevails. You must have a system of checks for this great majority of numbers. And this brings me to my last reason in favor of this system, which is the doctrine of checks and balances."

What is the proposition here? Why, we propose to elect the governor and council in single districts, directly by the people. We propose also to elect the Senate by the people, in single senatorial districts; and then we propose to elect the House of Representatives by towns, varying the system so far as towns are concerned, by basing it, to a certain extent, upon population; and these features, taken together, will, I apprehend, make the most perfect system of checks and balances that you can have. The people will be represented in the Senate of Massachusetts, and no measure can be passed or defeated in that body, which a majority of the people either dislike or approve. They will be potential in that branch of the legislature, and as they elect the governor directly, he will also represent the whole people. There is the security for the people of the Commonwealth. Then, if you base your House of Representatives upon towns, mixing with it the population basis, so far as it is practicable, you will have, in one representative from each town, a check upon centralization, and also a check upon the other branches of the government, so that it will be on the whole a very safe and practicable system of government.

Sir, this has been the doctrine, in various forms, advanced in this House, for the defence of the right of town corporate representation, and as justifying a departure from the popular principle.

And now we have here, a proposition before us, which is almost certain to transfer, in a majority of cases, the election of governor somewhere else. And what has been done? What was required to be done, in good faith, after this declaration of doctrine? What was the duty of a majority of this Convention, after holding forth this doctrine? Was it to send the election of governor to the House of Representatives in the first instance? No, Sir. In consistency with their principles, as declared here solemnly and repeatedly, it was their duty to place the remedy where the people would exert that remedy. But what are the facts? Why, we have, in the basis of the House of Representatives, as wide a departure from the numerical principle, as the one prepared and defended by the chairman of the Committee, (Mr. Griswold,) when his remarks were made, from which I have already quoted. We have a basis which gives, in the beginning, now, a majority of the House of Representatives to one-third of the people of Massachusetts. You have established, by adopting the proposition of the gentleman from Lowell thirty minutes before you were stopped from saying a word upon the subject, a principle which qualifies and moulds the basis of the House of Representatives—which moulds, and shapes, and transforms it more than any man in this Convention could tell, in the time allowed him, unless he is a mathematician beyond any precedent we have ever had. There are gentlemen who probably did know it, but I say to those who had not examined it, that no man can tell what effect the proposition will produce. What will it produce? It does not alter the House for the first ten years, but it allows one-third of the people to hold a majority in the

House of Representatives. In 1860, according to the ratio used in the pamphlet prepared by the ex-secretary of state, the member from North Brookfield, (Mr. Walker,) and which is a perfectly safe ratio to use—(I wish to say that here, because it has been often said that the future is all an uncertainty, but I do not so consider it, for Massachusetts is an exception to the general rule that ratios of increase diminish after a state reaches a certain number of inhabitants. Her ratio is an ascending one, and, therefore, the report to which I have alluded is perfectly safe upon which to base our calculations)—in 1860, I say, the growing towns will have more than their specified number, by these tables, because their increase will be by an increasing ratio. The rule is, that after a state has grown to a certain degree, its farther increase is by a descending ratio; but Massachusetts is an exception to that rule. If that conclusion is right, one-third part of the people of Massachusetts will make the governor, if the people fail to elect him now. In 1860, one-quarter part of the people of the Commonwealth will make the governor, if the people fail to elect him. In 1870, one-fifth part of the people will make him, if the people fail of an election.

Well, Sir, we had an implied, if not an express pledge, in the arguments of those who prepared this basis, that there should be, in good faith, a system of checks and balances; but instead of that, we have a system proposed which throws away the rightful expectations of all, and throws into the House of Representatives the power to make a governor when the people fail to elect him.

Mr. OLIVER, of Lawrence. I move that the Orders of the Day be laid upon the table.

The question was taken, and the motion was agreed to.

Amendments to the Constitution.

Mr. HALLETT. There is a subject upon the calendar which, I think, may be disposed of this evening. It stands in the list of unfinished business, and is document number seventy-five of the Convention, relating to the subject of Amendments to the Constitution. I move that the Convention resolve itself into a Committee of the Whole upon that subject.

The question was taken, and the motion was agreed to.

The Convention accordingly resolved itself into

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Mr. Wood, of Fitchburg, in the chair, and proceeded to the consideration of the matter referred to.

The CHAIRMAN stated the question which was pending at the time the Convention was last in Committee of the Whole upon the same subject, to be the motion of the gentleman from Bridgewater, (Mr. Hale,) to strike out the second resolve, which is as follows:—

Resolved, That it is expedient farther to provide in the Constitution, that, whenever the legislature shall fail to submit to the people, at the periods designated in the foregoing resolve, the question of calling a Convention for the purposes indicated therein, the qualified voters in State elections, in the several cities and towns, may, at the next general election thereafter, and upon notice of such failure by the Secretary of

the Commonwealth, whose duty it shall be to issue such notice, proceed to vote upon said question as though it had been propounded by the legislature; and if, upon a return to the governor and council, of the vote so given, it shall appear that a majority have voted in favor of the proposition, the governor shall forthwith issue his proclamation, calling upon the voters of said cities and towns, at meetings legally warned for that purpose, to elect delegates to such Convention; the time and place for holding its session, being expressed therein.

Mr. HALLETT, for Wilbraham, proposed to amend, by inserting the following as a substitute for all the resolves:—

Resolved, That it is expedient to provide in the Constitution, that a Convention to revise or amend this Constitution may be called and held in the following manner: At the general election which shall be in the year eighteen hundred and seventy three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes, to be received, counted, returned and declared, in the same manner as by law is provided in the choice of general officers at such election, upon the question: "Shall there be a Convention to revise the Constitution in conformity to the provisions of the Act of 1852, chapter 188, relating to the calling a Convention of Delegates of the people for the purpose of revising the Constitution?" and if it shall appear, by the returns made, that a majority of the qualified voters throughout the State, who shall assemble and vote thereon, are in favor of such revision, the same shall be deemed and taken to be the will of the people of the Commonwealth, that a Convention should meet accordingly; and thereupon delegates shall be chosen on the first Monday of March next succeeding, and such delegates shall meet in Convention in the State House on the first Wednesday of May succeeding, in the same manner and with the same authority as is provided in the second, third, and fourth sections of said Act.

The general court shall have power and authority in any year other than the year above specified, to submit to the people the same proposition, to be voted on in the same manner, at the next ensuing general election; and if it shall appear by the returns made, that a majority of the qualified voters throughout the State, who shall assemble and vote thereon, are in favor of such revision, the same shall be deemed and taken to be the will of the people of the Commonwealth, that a Convention should meet accordingly; and thereupon the same proceedings, with the same powers and authority, shall be had, as is provided in the foregoing clause of this Constitution.

The foregoing provisions, shall in no wise restrain or impair the reserved right of the people, in their sovereign capacity, at all times, to reform, alter, or totally change their Constitution and frame of government.

The CHAIRMAN. The Chair is of opinion that the motion of the gentleman from Bridgewater, (Mr. Hale,) has precedence of the amendment of the gentleman from Wilbraham, (Mr. Hallett,) and that the latter amendment will be in order after the question shall have been taken upon the first motion to strike out the second section of the resolves.

Mr. HALE, of Bridgewater. The object I desired to accomplish, when I made the motion to strike out the second resolve, was explained at the time. The motion made by the gentleman for Wilbraham seems to be an entire new proposition, and one which seems to me to require very grave consideration before it shall be adopted by this Convention. By simply hearing it read, it appears to me, that there are provisions there

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which we should be very cautious about adopting, and therefore, as the amendment proposed by the gentleman for Wilbraham has not been printed, and as the members of the Committee have had no time or opportunity to examine its details, I would suggest that the Committee now rise, report progress, and ask leave to sit again, in order that the proposition of the gentleman for Wilbraham may, in the meantime, be printed.

The CHAIRMAN. The Chair would suggest that if the gentleman from Bridgewater should withdraw my motion, until I know something more about the amendment of the gentleman for Wilbraham, and my object is to give the gentleman time to have his amendment printed.

Mr. HALE, of Bridgewater. I do not wish to withdraw my motion, until I know something more about the amendment of the gentleman for Wilbraham, and my object is to give the gentleman time to have his amendment printed.

The CHAIRMAN. Did the Chair understand the gentleman to move that the Committee rise, report progress, and ask leave to sit again?

Mr. HALE. I made that motion.

Mr. HALLETT. I think there is no difficulty in the Committee's understanding this proposition now. My proposition does not essentially vary the import of the Report of the Committee as contained in the second resolve. It is only intended to carry out the intention of that Report, as I think, more definitely and distinctly. I hope, therefore, as the gentleman from Bridgewater desires it, that the question will be taken upon his motion, and then we can proceed to the discussion of this amendment, and we have time to explain and understand it; and if I can have time for a brief explanation, there is no necessity for having it printed.

Mr. HALE. It seems to me that the proposition of the gentleman for Wilbraham is to incorporate into the Constitution the details of the Act of 1852, concerning which there is so much difference of opinion in this Convention, and out of it; and I, for one, am not willing, with so much haste, to incorporate it into the Constitution, and I think we had better take time to examine and look into it.

The question was then taken upon the motion of Mr. Hale, that the Committee rise, report progress, and ask leave to sit again; and it was decided in the negative—yeas, 28; noes, 76.

So the Committee refused to rise.

The question was then taken upon the motion of the gentleman from Bridgewater, (Mr. Hale,) to strike out the second resolve, and it was decided in the affirmative.

So the second resolve was stricken out.

Mr. HALLETT then renewed his motion to amend, by substituting the proposition which he had submitted for the resolves reported by the Committee.

Mr. HALLETT. I desire very briefly to explain the proposition I have just offered. In all its leading characteristics, it conforms to the Report of the Committee, except that it does not put the Convention in the power of the legislature. It provides with more caution, as I think, for carrying out the object designed by the Committee in their Report. That Report embraces three distinct propositions.

First, that periodical Conventions may be called for revising the Constitution every twentieth year. We desire that that shall be done by a law—a constitutional and fundamental law—which shall execute itself, so that the people hereafter shall

have no occasion to be dependent upon the legislature for its action, and so as to avoid the possibility of the people and the legislature coming in conflict with each other upon the subject.

The second provision is, that the legislature shall have power to submit a proposition for a Convention to the people at other times than at these stated periods. Many believe that under the present Constitution, the legislature has not that power. I believe it has not. We want now to place the provision in a form which cannot be mistaken; and farther than that, when the legislature submits such a proposition to the people, and it is adopted by the people, we want that it shall become the will of the people, requiring no subsequent action upon the part of the legislature, and subject to no repeal by another legislature of different party politics.

Thirdly, we desire, behind and beyond this, to reserve to the people the right to alter and amend their fundamental law, whenever they think proper, in the exercise of their sovereignty.

Now, Mr. Chairman, I believe there is no delegate to this Convention, holding the republican doctrine of the right of the people to control their own government, who will not say that these propositions are right. The only question for us to determine, then; is, does the proposed amendment carry them into practical effect? I have given the subject a good deal of examination; and more than that, I have consulted with many members of the Convention relative to this proposition, and I think it will meet the enlightened and deliberate judgment of a majority of the Convention; I am also happy to say that the proposition meets the concurrence of the chairman of the Committee (Mr. Nayson) which reported the resolutions now under consideration.

Now, then, I will briefly refer to the details of this proposition to see if it meets my object, and the object which we all have in view. It is substantially the same proposition as that embraced in the Constitution of 1780, which provided for calling a Convention in fifteen years after its adoption. The only difficulty in relation to that proposition was, that it required action upon the part of the legislature to call the Convention and prescribe its powers. It failed of its object because, when the fifteen years had expired, the legislature either took no action, or took such action that the Convention failed to be called. It required a two-thirds vote, which defeats it of course; and ever since that failure, the people have been taunted and told that when that Convention failed to be called, they lost their right to amend their Constitution in any other way except by such amendments as the legislature chose, from time to time, to submit to them. Hence, it is important, in the new Constitution, to avoid that difficulty which was met with in revising the Constitution of 1780. And what is the provision before us? It declares that the question "Shall there be a Convention?" shall, in 1875, and in every twentieth year thereafter, be voted upon by the people, at the annual election, at which time the qualified voters in State elections of the cities and towns of the Commonwealth shall give in their votes, to be received, returned, and declared in the same manner as is by law provided in the election of general officers.

By this provision, it follows, if there are any selectmen in towns, or any inspectors in cities, to return votes, in short, if there is any law by which

votes are to be received in general elections—by which they are to be returned, counted, and declared, then that law applies to this mode of voting upon the question, so that every citizen who has the right to vote in State elections, may go into the town meeting, in every one of these twentieth years and deposit a vote upon the question—yea or nay. Of course, these votes of "Convention," or "No Convention," will be provided, if there is any call for them, and every voter may give in his vote, yea or nay. If a majority of the votes in the Commonwealth are in favor of a Convention to revise the Constitution, after the manner of the act of 1852, then that shall be construed as the will of the people. The Act of 1852, has in fact, become the uniform mode of holding Conventions. It is the same as that of 1820, by which the Convention of 1820 was called. These acts embody all necessary details, and are generally understood and approved of, so far as the direct act of calling and holding a Convention is concerned. They are almost *verbatim* the same, and it has become almost a common law mode of proceeding, by which Conventions shall be called. Then, if the majority of the people say "Yes," what follows? Why, this Act shall be taken to be the will of the people, and the Convention shall be called accordingly. And thereupon the people will proceed, on the first Monday in March following, under the forms of law governing elections, in all the towns, to choose delegates to represent them in a Constitutional Convention. You require no action upon the part of the legislature, from first to last. You have got your law here, which, if accepted by the people, is to be the declared will of the people, and must be carried into effect accordingly. The selectmen in the towns, and the inspectors in the cities, must call the meetings, or be liable to penalties. They must receive the votes for delegates, who are to be chosen to meet at the State House, on the first Wednesday of May, following. Thus you will have the whole process and form of law for calling a Convention, provided for in the Constitution, so that no act of the legislature will be required to call it, and no alteration or repeal can be made by any subsequent legislature. I think, therefore, that this provision is complete, so far as the holding of a Convention every twenty years is concerned.

But, if the people do not desire to have a Convention, then the nays will have the majority when the vote is taken upon the question. That vote will be proclaimed, and that will be the end of it. I cannot see what other provisions are needed for holding these periodical elections. The Act of 1852 becomes a Convention law, just so far as it is applicable to the year the Convention is held.

The second proposition relates to the power of the legislature for submitting the question of calling a Convention at times other than at these specified periods. I want that the legislature should have express power to do it, and I want that power should be put in the Constitution; because, I trust that hereafter we shall have no powers exercised by the legislature which are not in the Constitution. And what is this provision? It is that the general court shall have power and authority in any year between these specified periods, to submit the same question to the people, to be voted on in the same manner, and the returns to be received and declared in the same manner as is provided for in the case of the pe-

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ridical elections. And if a majority of the people are in favor of calling a Convention, the same proceedings are to be had as are provided for in the first clause of this amendment.

Now, what is the effect of that? The legislature at any time, may vote to submit the question to the people: "Shall a Convention be called according to the Act of 1852?" The people vote upon that question in the several cities and towns—these votes are returned, counted and declared, and if there is a majority in favor of calling a Convention, then the people proceed on the first Monday in March to elect their delegates, who shall assemble in the State House on the first Wednesday of May following, in the same manner and with the same powers as is provided in the 2d, 3d and 4th sections of the Act of 1852. No subsequent act upon the part of the legislature is required, and no subsequent act can change or defeat the expressed will of the people. The legislature, simply by an act of theirs, submit the question to the people, and if the people vote, a majority of them, in favor of the Convention, the matter is then beyond the control of the legislature; and no action of theirs can affect it. I think these two propositions will cover, substantially, any case that may arise, because if a majority of the people want a Convention, they will have a majority of delegates in the legislature who will vote to submit the question to the people.

But, still, there may an extreme case arise, when the people will desire to call a Convention outside of any provision upon the part of the legislature. When more than the voters, the whole community may claim to act. And this third clause provides for that extremity. It is an extreme case, and I can hardly see how it could ever occur under our system of government. But still, if the legislature should come to represent the minority of the people, they might refuse to submit the question when a majority of the people desired it, or the whole people might demand a different basis for a Convention. But even in this case, if the people could have a Convention once in twenty years, I think they would sooner wait for the return of the regular period, when the question must, as a matter of necessity, be before them, than to take the matter into their own hands. But then, I want that they should have the right of amending their Constitution at all times, without a revolution; and therefore it is proper to make a provision which shall reserve to them that right, which the Bill of Rights declares they should have, to reform and alter their Constitution; and this is put in form, to prevent any construction of the courts against that great popular right.

The whole proposition, taken together, guards the process by which the people can act in enforcing that right without being dependent on the legislature to move first, and thus it carries out that view and enforces, in the most practical manner that can be done in the Constitution, the admirable doctrine which was laid down at a very early period in this excellent work which I hold in my hand, and from which I have read very often in this Convention. It is a very remarkable book. It was published in 1775, by Robert Bell, of Philadelphia, under the direct patronage of Washington, Franklin, Hancock, Jefferson, and all the great revolutionary statesmen of that day, for the purpose of imbuing the people of this

country with right opinions of constitutional liberty. It is the very book that was quoted from by Dr. John Warren when he delivered his oration on the fourth of July, 1783, that being the first fourth of July oration ever delivered in Boston. The book is entitled "BURGH'S POLITICAL DISQUISITIONS;" and I must again ask the attention of the Committee to one or two passages which I quoted on a former occasion. He says, p. 456, of vol. iii. :—

"As the people are the fountain of power, and object of government, so are they the last resource when governors betray their trust. And happy is that people, who have originally so principled their Constitution, they themselves can, without violence to it, lay hold of its power, wield it as they please, and turn it, when necessary, against those to whom it was intrusted, and who have exerted it to the prejudice of its original proprietors."

Again, he says :—

"In planning a government, by representation, the people ought to provide against their own annihilation. They ought to establish a regular and constitutional method of acting, by and from themselves, without, or even in opposition to their representatives, if necessary!"

Now, Sir, that is a lesson for us. It is precisely the point to which I think these resolutions should be carried, and embodied in the Constitution, so as to enable the people to alter and amend their Constitution without ever coming in conflict with their own government, under any circumstances. Such instances of conflict have occurred in other States; and it is known to this Convention, that during the early period of its session, we were told that the Convention was entirely at the mercy of the legislature, which could, at any moment, by repealing the Act under which it was called, render its session unlawful. I therefore hope we shall provide, in the new Constitution, against any such possible emergencies, or conflicts, and remove all the doubts and denials of the lawyers as to how we are to collect the will of the people without the consent of the legislature. And we should adopt this, not only as a great popular measure, but also as a conservative measure, a peaceful measure for reforms and changes in government, by the popular will, without danger, and without the necessity of resorting to physical revolution. That is my sole purpose, and if it can be secured in this mode, or in any other which shall be found adequate to the purpose, I, shall be satisfied that the great and inherent will of the people, which is now denied to them by courts and lawyers, has been affirmed.

Mr. GILES, of Boston. I do not rise for the purpose of opposing the amendment of the gentleman for Wilbraham, (Mr. Hallett,) because I said the other day that I agreed with him in reference to this subject. I have seen the amendment now before us, and the only objection I have to it is its length and complexity, which I fear will impede its adoption, if not defeat it entirely.

The difficulty in incorporating a Convention law into the Constitution is, that if it goes into specific provisions, it is too long; and more than that, it undertakes to settle details which should be left to posterity. I agree with the gentleman for Wilbraham, and I believe he agrees with me, that we do not wish to say in the Constitution

that it shall be constitutional to violate the Constitution; nor do we wish to say that it shall be legal to violate law. When a revolution comes, basing itself upon the right of revolution, it will declare itself, and needs no declaration from us beforehand. What we wish is, to secure to the people the right of amending their Constitution whenever they see proper; so that when they declare their will to that end, no hostile legislature shall ever have the power to come in and balk them in their purpose. And when I say the will of the people, I mean that will legally expressed. I mean the people in the legislature, otherwise the people in the towns at one end of the State might vote for one proposition, and those at the other end for another, and their votes would bind nobody. What I want is, the will of the people in the legal sense; that the popular voice, constitutionally expressed, shall be considered and recognized as obligatory. I want it to have "free course, to run and be glorified;" I speak it with deference.

Now, I should be content with this first resolution. In fact, I should prefer the first resolution, with an addition which I shall read for information, and which, at a proper time, I propose to offer. I shall be willing to strike out the second and third resolutions entirely. The language of the first is a little objectionable, but I take it the Committee on Revision, will take care of that. I say, then, that I should rather prefer the first resolution, with this addition :—

And the right of the people at all times to amend that constitution of government, by Convention or otherwise, according to their will, legally expressed, shall never be restrained or obstructed in this Commonwealth.

It seems to me that this will secure all that is necessary for us to secure in the Constitution. It will provide, that when the people have signified their will, the legislature shall not obstruct or restrain that will; but on the contrary, that they shall promote and assist in carrying it into execution. So that, if the people have willed a Convention, and in the mean time the State House should burn down, it would be the duty of the legislature, if in session, to provide another place for the meeting of the Convention. Or if any other unforeseen event should intervene to render legislation necessary, the legislature, if in session, should perform it with a view to carry out the will of the people. I will go any length to secure that object. If it should be thought advisable to go farther than that first resolution, with the addition I have indicated, and have a Convention Act incorporated into the Constitution, you must do one of two things: You must either adopt, as a part of your resolution, the Convention Act of 1852,—which is the same as that of 1819,—and entail that for substance and detail upon posterity, whether it will suit or not, or you must depend upon the intervention of the legislature.

I have drawn up a Convention Act, which I should prefer, if the Committee would go that length, as a substitute for the one offered by my friend for Wilbraham, (Mr. Hallett,) for the reason that, instead of calling upon the people to vote whether they want a Convention, and then to vote for delegates to that Convention, or depending upon future legislation, or incorporating existing law into the Constitution, it will secure

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a Convention once in twenty years. I will read it for the information of the Committee, and as a part of my remarks :—

Resolved, That the qualified voters in State elections, in the several cities and towns, shall, in the year eighteen hundred and seventy-three, and in each twentieth year thereafter, and as much oftener as shall be required by law, elect Convention Delegates, in conformity with the law then in force for the election of representatives; and the delegates so elected shall meet at the State House on the first Wednesday of May next after said election, and when organized, with not less than one hundred members as a quorum for the transaction of business, may consider, and adopt, and submit to the people for their ratification, such amendments of the Constitution, as shall be deemed best; and the right of the people, at all times, to amend their constitution of government, by Convention, or otherwise, according to their will legally expressed, shall never be restrained or obstructed in this Commonwealth.

Mr. CHURCHILL, of Milton. I am opposed to the proposition which has been submitted to us upon this subject, because I see no good reason or sense in it. It seems to me it is an attempt to foresee, for fifteen or twenty years, when the people of this Commonwealth will need and require a Convention to reform their Constitution, which we had better leave to the people themselves. I contend that we should leave the matter as it stands in the Bill of Rights, and upon the precedent set in calling this Convention. The Bill of Rights declares nearly all that the gentleman from Boston, (Mr. Giles,) who has just taken his seat, has embraced in his proposition, and the precedent cited for calling this Convention will enable the people hereafter, when they desire a Convention, to demand of the legislature that they shall pass an act for that purpose. It seems to me that such a proposition as this is nothing more or less than subjecting this subject of calling a Convention to the decision of political parties, and the party which is dissatisfied with the operation of the Constitution, will be perpetually submitting a proposition for calling a fresh Convention. I think the people hereafter will be able to settle better than we can, when they need a Convention; and when they need it, they have a precedent and Bill of Rights, to which they can resort.

I move that the subject be indefinitely postponed.

Mr. WILSON, of Natick. The proposition made by the delegate for Wilbraham, (Mr. Hallett,) is rather a lengthy one.

Mr. ASPINWALL, of Brookline. I rise to a question of order. I suggest that there is not a quorum present.

Mr. OTIS, of Sumner. I move that the Committee rise, report progress, and ask leave to sit again.

Mr. WILSON. I believe I have the floor.

The CHAIRMAN. The Chair understands that the gentleman from Natick has the floor. The gentleman from Brookline rises to a point of order, but the Chair cannot see how that can be properly made at the present time. Therefore, the gentleman from Natick will proceed.

Mr. ASPINWALL. Will the Chair allow me to suggest that the Committee cannot sit if there is no quorum present?

The CHAIRMAN. How are we to ascertain that fact?

Mr. ASPINWALL. By a count taken by the

moderators. That is the way it is done in the House of Commons, or any other legislative body.

The CHAIRMAN. The Chair is of the opinion, that while the gentleman from Natick is occupying the floor, that a motion for a count is not in order.

Mr. WILSON. It seems to me, Mr. Chairman, very strange, that gentlemen who are daily and hourly pressing upon the Convention the importance of closing our labors here, should find it convenient to themselves to be absent so much of the time. Some of us are left here, however. I suppose those who are here at this hour, are governed by a sense of public duty in remaining; and, therefore, we had better proceed to do the business before us. The proposition made by the delegate for Wilbraham, (Mr. Hallett,) is a lengthy one, and therefore we cannot fully comprehend it, unless it be printed, and we have an opportunity to examine it. The gentleman from Boston, (Mr. Giles,) has already presented another proposition. It seems to me, that a plain, clear, and distinct proposition, can be prepared, and incorporated into our amended Constitution, providing for future amendments. Some gentlemen of the Convention think it unnecessary to have any such proposition inserted in the Constitution. I do not agree with these gentlemen, in that respect. Some gentlemen think that such a provision would be a limitation of the power of the people. I do not so understand it. In the debate upon the Berlin case, the judgment of this Convention was, that the people have a right to amend their Constitution without going to the legislature for authority so to do. Now, gentlemen propose to leave the Constitution, in this respect, precisely and exactly where it is at present. We know that nearly all the eminent lawyers of Massachusetts, believe that we are sitting here without any constitutional authority—that this Convention is an unconstitutional body. My friend for Manchester, (Mr. Dana,) shakes his head, but does he not know that in the canvass of 1851, that, for party purposes, the judgment of the learned and distinguished gentleman from Cambridge, (Mr. Greenleaf,) and professor in the law school, who addressed the Convention the other day, was taken as an opinion, and that he declared the call for a Constitutional Convention was not constitutional? Another eminent lawyer of Boston, Mr. Charles G. Loring, a man whose opinions upon legal subjects are not surpassed by any other man, perhaps, in Massachusetts, gave it as his deliberate opinion, that the Act of the legislature calling this Convention, was an unconstitutional Act. The present governor of Massachusetts, in his address to the legislature, declared that Act to be of doubtful constitutionality. I know that some members of the existing supreme court, have expressed the opinion that the Act is unconstitutional. I know that Ex-Judge Wilde, who was for thirty years and upwards a member of the supreme court, has expressed that same opinion. And I say that four-fifths of the eminent Whig lawyers of Massachusetts, believe to-day, that we are sitting here in a body not called in accordance with the Constitution of Massachusetts. It was just so in 1820. The eminent legal gentlemen of that day denied the constitutionality of that Convention. I believe Judge Parker charged the grand jury upon the subject of that Convention. In the

Convention of New York, held in 1821, Mr. Tallmadge, a leading man of that day in that Convention, declared that body to be unconstitutional. This question of the sovereignty of the people of this country, of their right to call Constitutional Conventions, from the origin of the government to the present time, has been denied by many eminent lawyers who have been called statesmen. The right of the people to call Constitutional Conventions, whenever and wherever they please, without the intervention of legislative bodies, has never yet been fully accepted by many of the eminent men of the legal profession of this country—men who borrow their ideas of our institutions from England, instead of fully comprehending the scope, genius, and spirit of our institutions. I believe it to be the duty of this Convention, to insert a provision in the Constitution for calling future Conventions, so that the people shall not depend upon the will of the legislature, and so that no future professors of Harvard University, no future judges of the supreme court, no future governors of Massachusetts, no future attorney-generals of Massachusetts, shall ever doubt the constitutionality of a Convention of the people of Massachusetts. In my judgment, we should incorporate a provision of that character into the Constitution, to give the people an opportunity of holding Conventions hereafter, without coming to the legislature and asking leave to hold such Conventions. I maintain, that the people of this State have a right to order a Constitutional Convention, whether the legislature give them that power or not. That is the American doctrine upon this subject. When the present provisions of the Constitution are so interpreted, and interpreted too by learned men, and whose opinions, in my judgment, lost us the Convention in 1851,—for these opinions of Professor Greenleaf, and Charles G. Loring, and other eminent legal gentlemen, were spread broadcast over the State, as election documents,—I say it is our duty to incorporate such a provision into the Constitution, that hereafter the question of the constitutionality of a Convention for revising the Constitution, shall never be raised upon the soil of Massachusetts by any lawyer or public man. A provision of that character, can be framed and adopted by this body. It does not seem to me, that it should be a lengthy proposition, and it may be brief and comprehensive. Such a provision is incorporated in the Constitutions of nearly every State of the Union. Gentlemen tell us it is only a restriction upon the rights of the people. Theoretically it may be so, but practically it is not so. Therefore, I wish to see a provision of that character incorporated into the Constitution, and if this Convention adjourns without doing that, I believe we shall be false to our obligations here; and you must expect, when the question is hereafter raised, that you will have professors at Cambridge consulted, and you will have a committee of the Senate and House of Representatives following the example of the minority committee of 1852, who declared that it was unconstitutional to have such a Convention. I have not the report of that minority committee before me, but they reported that the Act calling such Convention was unconstitutional. Such was the judgment of the great mass of the Whig party of this State, declared before the people in public assemblies, and declared through the columns of the press. The *Daily Advertiser*,

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COMPENSATION OF MEMBERS, &c. — HOBBS — GRISWOLD — BRIGGS — WILSON — SCHOULER.

[July 19th.]

and other leading journals of this city, advocated the repeal of that Act, as an unconstitutional Act, after the legislature came together, and after the governor had declared it to be of doubtful constitutionality. The gentleman from Cambridge, (Mr. Parker,) came into this Convention and declared that he believed the Act was constitutional, but he thought that the legislature had a right to repeal it, and turn us all out of doors. I do not believe in this doctrine. I desire to see placed in the Constitution a plain and clear provision upon this subject. I do not wish to see the legislature of this State amending the Constitution; and I trust that that great work will be left hereafter to the agents of the people, chosen for that express purpose.

On motion of Mr. BREED, of Lynn, the Committee rose, and the President having resumed the chair of

THE CONVENTION,

The Committee, by their chairman, reported progress, and obtained leave to sit again.

On motion by Mr. WILSON, of Natick, the propositions submitted by Messrs. Hallett and Giles, as substitutes for the resolves reported by the Committee on future amendments to the Constitution, were ordered to be printed.

The Convention then, on motion, at seven o'clock, adjourned until to-morrow morning, at nine o'clock.

TUESDAY, July 19, 1853.

The Convention met pursuant to adjournment. Prayer by the Chaplain.

The Journal of yesterday was read.

Delegate from Concord.

Mr. HOBBS, of Weston, presented the credentials of Mr. CHARLES C. HAZEWELL, elected a delegate from Concord, in place of Mr. Gourgas, deceased, which were received, and the delegate took his seat.

Report from a Committee.

Mr. GRISWOLD, for Erving, from the Committee on the House of Representatives, reported that it was inexpedient to act upon the subject of an order of May 25th, concerning the expediency of providing that towns and districts may have the right to be represented by any citizens of the Commonwealth.

The Report was referred to the Committee of the Whole, and ordered to be printed.

Compensation of Members.

The order submitted yesterday by Mr. Wilson, of Natick, being the first item on the Orders of the Day, was taken up for consideration.

It was read, as follows:—

Ordered, That the Committee on the Pay Roll be instructed to make up the same, including the day of final adjournment, allowing to each member pay only for his actual attendance, except in cases of sickness.

The question being on the adoption of the order.

Mr. BRIGGS, of Pittsfield, said he would like

to be informed how the mover of this order intended that it should apply in the case of those members who were absent a part of Saturday and a part of Monday. He would like to hear the gentleman explain what he means by a day's attendance. I do not, continued Mr. Briggs, intend to take up any time in talking about this matter, but it does seem to me that the proposition should not be adopted.

There is necessarily a very great inequality in regard to the attendance of members here. The record shows that about one-half of the members of this Convention live at their own homes, and that they go home each evening and have some opportunity to attend to their business, while those who live farther have not that privilege. Some who live at a distance go home every Saturday and return on Monday. If, then, such a rule as this be stringently applied, it will cut off a large part of the compensation of those who are so situated. It appears to me there should be a little more liberality in matters of this kind. I speak in behalf of those members who live away from their homes as well as myself, and whose only opportunity to go home is to take a part of Saturday for that purpose, and a part of Monday to return. So far as I am concerned, I shall have no hesitation in putting down in my charge for attendance, every day in the week, although I have been absent on Saturday and Monday. I should have no compunctions of conscience whatever on that score, the more especially if those gentlemen who go home every day, leaving this hall long before the adjournment in the evening, are entitled, under this order, to make a charge for such days' attendance. I merely wish to be informed in regard to this order what is to be its construction in this respect.

Mr. WILSON, of Natick. I can only say, Mr. President, that it appears to me that the Convention ought to adopt some such rule as this. I think that honesty and sound policy alike demand its adoption. What are the facts? The record will show that from the commencement of the session to the present time there have been at least a hundred members absent each day; one-fourth of the members of this Convention have been daily absent. That is about the average. Now, Sir, we have voted ourselves three dollars a day. This is a large increase over the pay of members of the legislature, and if we are to draw our pay while we are not here attending to our duties, twenty-five or thirty thousand dollars will be taken out of the public treasury, that have not been fairly earned. The gentleman from Pittsfield may think it unnecessary to adopt a resolution of this character, but I confess I view the matter differently. There has been a similar rule in the legislature, but what has been the action of gentlemen of the legislature, during the past year? I hold in my hand the record of the pay of the members of the last legislature, taken from the books of the treasury office, which shows that the last legislature must have taken out of the public treasury twenty or twenty-five thousand dollars that did not belong to them. There were two hundred and eighty-seven members at least; and from the pay roll it would appear that there was an average attendance of two hundred and eighty-four and a half, although every one knows that there were eighty or ninety members absent every day. Our record shows that one-quarter and recently one-third of the

members of this Convention have not attended here daily.

Now I am one of those who believe, that the sense of public justice should be stronger than the instinct of public plunder. I am in favor of having our pay while we are here, attending to our duties; and, while we are at home, attending to our own private business, let us pay ourselves. I have not, myself, been absent from the Convention for a single hour, from the time of its first meeting until the present time. I have not been at home, because I cannot go home, while the Convention is in session, without absenting myself from some one or more of its sittings. And I feel it to be my duty to remain here, so long as the public business remains to be done. I think there is only one fair and honest way of dealing, in making up the pay roll. It is that members shall receive pay while attending to their duties, and not while absent. What I wish, is, that the Committee on the Pay Roll should see to it, that a proper reduction is made for absences, and that money be not paid where no service is rendered.

Mr. SCHOULER, of Boston. I have nothing to say in regard to this order, but I do wish to correct an erroneous impression that may go abroad, in regard to the last legislature taking twenty-five or thirty thousand dollars out of the public treasury which did not belong to them, as would appear to be the case, according to the testimony of the gentleman from Natick. It appears he has been down to the office of the Auditor, and found out that thirty thousand dollars have been taken out of the State treasury by the members of the last legislature, without any authority.

Mr. WILSON. Will the gentleman allow me to explain?

Mr. SCHOULER. Yes, Sir. I think it requires explanation.

Mr. WILSON. I wish to say to the gentleman from Boston, that when he undertakes to repeat a statement made by me, he ought at least to state it correctly. What I said was this: that in my judgment there were, as appeared by the record, eighty or ninety members of the last legislature absent daily; and, that being so, from twenty to twenty-five thousand dollars must have been drawn from the treasury by members of that legislature, that had not been earned by them. That is what I said, and I am ready to stand by it.

Mr. SCHOULER. That is exactly what I said, or intended to say, that according to the gentleman's statement, twenty or twenty-five thousand dollars were taken out of the State treasury wrongfully. Now I do not know how it may be. I presume the figures of the gentleman are right, in regard to the attendance of members of the legislature. Every-body knows that they have a rule in the legislature—and there is a similar rule here—that every member shall keep an account of his own time, and make returns of his attendance to the Committee on the Pay Roll. And the custom has been, from time immemorial, I believe, for members to return quite as much time as the rule permitted, and this practice has not been confined to members of the last legislature. If the gentleman had only pursued the investigation, he would have found, that all legislatures, heretofore, have pursued the same course. Members think they are entitled to pay, whether here or not. I will state for my-

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COMPENSATION OF MEMBERS. — WILSON — HYDE — LIVERMORE — RANTOUL — BRIGGS.

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self, that I never did take a day's pay for a day on which I did not attend; but I am aware that members who have been absent attending to their own private business, and who have not been in attendance in the legislature more than half the time, have drawn more pay for the session than I have, although I had been present every day with the exception of two or three. I merely rose to correct an erroneous impression, that might naturally be entertained in view of the representation of the gentleman from Natick, in reference to the last legislature being culpable in this matter, more than former ones. I do not think there is any good grounds for making the distinction.

Mr. WILSON. I did not mean, Sir, to speak of the last legislature as being at all different from those which preceded it. But I have only examined in reference to that, and in my opinion the legislatures of the last six years, have pursued about the same course.

Mr. SCHOULER. That is what I want to get at. I do not wish that the last legislature should bear all the blame to which others are equally liable. I think each member ought to keep an account of his own time, and render a correct account to the Committee. Therefore, I see no necessity for this resolution.

Mr. HYDE, of Sturbridge. I think this resolution altogether unnecessary. Members will see that the twenty-seventh rule prescribes that every member shall keep an account of his own attendance and travel, and deliver the same to the Committee appointed to make up the Pay Roll, and on his failure so to do, he shall be omitted from the pay roll; and no member shall receive pay for any weekday on which he has not actually attended, except in case of sickness. It seems to me, therefore, that this order is wholly unnecessary; and for the purpose of saving time, I move that it be laid upon the table.

Mr. LIVERMORE. I will ask the gentleman to withdraw his motion for a moment.

Mr. HYDE. To accommodate my friend from Cambridge, I will withdraw it.

Mr. LIVERMORE. I came in just as my friend from Natick was administering either some advice, or a rebuke, to the Committee on the Pay Roll. I do not know why. I heard only the conclusion of his remarks, wherein he said he hoped the Committee would see to it that no member was paid for any day that he is not in attendance. Now, I do not know how the Committee on the Pay Roll is to know when every member is here, and when not here. Are they to go round and find out who are absent, and keep a record of the absentees? The Committee on the Pay Roll have agreed to send to each member a certificate to be signed by him, stating the time of his attendance and travel, in accordance with the rule that has just been read. Now, I do not know what more the Committee can do; they are not the keepers of the consciences of members of the Convention; and if gentlemen see proper to send in a false certificate, it is a matter which rests wholly with themselves, though I trust no such imputation will be made. I will add, that the Committee have decided not to insert any name upon the pay roll, unless accompanied by a certificate, signed by the member. I believe this has always been the custom.

Mr. RANTOUL, of Beverly. The gentleman from Boston has stated that the custom has been,

from time immemorial, that members of the legislature charge for attendance when they are not actually in attendance. I must take the liberty of differing from the gentleman, and saying that within the memory of man, the custom has been different. I have had some experience in the legislature, upwards of twenty years ago, and I recollect very well that the custom then was, to make a deduction from the pay of a member when absent, attending to his own private business. The practice which the gentleman alludes to, as having prevailed from time immemorial, must certainly have grown up within the last twenty years.

Mr. WHEELER, of Lincoln. I will move to amend the proposition of the gentleman from Natick, so as to make it read, that members shall certify their attendance, agreeably to the twenty-seventh rule, under oath. I will remark, that I made a similar proposition in the last legislature, and I think it is one that it is very proper to adopt. Members ought not to be paid for attendance when not here attending to the public business.

Mr. BUTLER, of Lowell. I wish simply to say, Sir, that the gentleman from Lincoln states the fact correctly, that he offered this proposition in the last legislature; and, Sir, I will add what he omitted to inform us of, that we voted it down almost unanimously. [A laugh.]

Mr. EDWARDS, of Southampton. I should like to move to amend, so that every member shall be obliged to state how many hours he has been here on successive days. If the gentleman will adopt that modification, and make ten hours constitute a day's work, I shall be willing to go for it. I have attended, each day, until the close of the proceedings, but I have noticed that there are gentlemen who, after five o'clock, each day, absent themselves. We cannot equalize the matter. Some gentlemen have attended one hour, and others have attended closely to business until the close of the sessions each day.

Mr. WILSON. I wish to say, in regard to the amendment proposed by the gentleman from Lincoln, that I can see no necessity for its adoption; on the contrary, I do not see how it can be adopted, and carried out. I take it, that the gentlemen who have not attended the sittings of the Convention every day, will find it very difficult to make up a statement of their attendance, under oath. They ought not to be required to do anything of the kind. All that can be expected of members of this Convention, who have not been able to be here daily, is this: that in making up their account, they should endeavor to deal fairly and honestly with the Commonwealth, and to deduct those days on which they think, or have reason to know, that they have been unable to attend here. Now, the gentleman says we have a rule of that character; so we have, and have had during the last six or eight years, but we have not acted up to it. It has not been at all operative. I do not know that it will be of any avail if we pass this, but we had better adopt it, nevertheless, and act up to it, if we can. As to the rule in the legislature, it is a mere matter of form. No attention is paid to it. In 1841 and 1842, it was the practice to deduct the time when absent. Nearly all the members did it; but, during the last seven or eight years, it has grown into a practice to allow for attendance when members are not here. Now,

Sir, I hope that the Convention will set the example of dealing fairly and honestly with the Commonwealth in this matter, and that, after voting three dollars a day, to each member, we shall not take out of the public treasury any more funds than are required to remunerate members for actual attendance. Here is a simple proposition, ordering the Committee to make up the pay roll according to the rule we have adopted, and I see no reason why it should be opposed. If it should be opposed, and voted down, it will surely be taken as an indication that we mean to pay ourselves for all the time, whether we have been absent, or whether we have been in attendance.

Mr. LIVERMORE, of Cambridge, asked for the reading of the order.

It was accordingly read, by the Secretary.

Mr. LIVERMORE. It appears to me, Sir, that there is an incongruity in the phraseology of that order, for, as I understand it, it directs the Committee on the Pay Roll to make up the Committee on the Pay Roll. It strikes me, that that Committee has been made up for some time, and are ready to act.

Mr. BRIGGS. I do not see the necessity for any such order as this. At the beginning of this session, this Convention prescribed a rule by which members have been drawing their pay for attendance, and it seems to me, that it is only necessary that the order should instruct the Committee to make up the pay roll; they will understand how to do it. I should like to have the sense of the Convention as to what we are to do in this matter. I stated, when up before, that if I occasionally went home on Saturday night, and returned on Monday, I should feel authorized and perfectly justified in putting those two days into my account for attendance, and if it is not right to do so, I should like to be so informed. If those members of the Convention, from the country, who come here and sit from nine o'clock in the morning until the hour of adjournment, day after day, making a quorum, when other gentlemen see fit to absent themselves, receiving pay for full attendance, I want to know if, when others run home on Saturday night and return on Monday morning, they are to have their allowance for attendance on those two days stricken out, while other gentlemen go home every night, leaving the Convention long before the hour of adjournment, and are absent from the session of the body three times as long as those who go home on Saturday, and return on Monday? I say, I should like the instruction of the Convention in regard to this question.

As to the matter of swearing, I have not sworn as yet, and I hope I shall not be compelled, at this late period of the session, to swear as our army did in Flanders. I desire, in good faith, to know how I am to act in this matter.

Mr. WILSON. I supposed it would be a very plain case, and one to be easily comprehended, that every gentleman, under this rule, will be allowed to make up his accounts according to his own judgment, and what he thinks is fair, honest and proper; and that there would be no trouble in the matter. I see no necessity for any objection being made to the passage of the order by my friend, on that account.

Mr. BRIGGS. Well, as an experienced man in this matter, I should like to have my friend from Natick say, whether he thinks I would be doing right or wrong in claiming for attendance

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on those days. I ask him in good faith, as I know nothing about it from my own experience.

Mr. WILSON, of Natick. Mr. President: In reply to the inquiries made by the gentleman from Pittsfield, (Gov. Briggs,) I have to say, that the order is plain and simple in its language; that the gentleman from Pittsfield, and every other member of the Convention, can readily comprehend it. The member from Pittsfield, and other members, in making up the number of days' attendance, must be guided by their own sense of public duty.

It is true, Mr. President, that the rule explicitly declares, that "*No member shall receive pay for any weekday on which he has not actually attended, except in case of sickness.*" But, Sir, what does the rule amount to? It is practically a dead letter. It has been the rule of the House of Representatives for years, and it has been generally evaded—disregarded altogether. A few members have acted up to its requirements; but the members generally pay no regard to it, none whatever. Sir, I venture to say, that with that rule before them, the members of the last five legislatures, have taken more than \$100,000 out of the treasury—never earned. Here to-day, on the floor of this Convention, I make this declaration, and no man here or elsewhere, can or will deny it.

Sir, I have been to the treasury department, and I have procured a statement of the pay roll of the last House of Representatives. That House consisted of two hundred and eighty-seven members; two hundred and forty-three of those members drew pay for every day's attendance; leaving only forty-four members who made any deduction for absent days. The average attendance during the session—by the standard of the pay roll—was two hundred and eighty-four and one-half daily, making only two and one-half absences daily. Now, Sir, every man knows, who has any knowledge of the last House of Representatives, that the daily absences amounted, in that body of two hundred and eighty-seven members, to at least, eighty-seven members. I venture to say, that the daily average attendance of the House did not exceed two hundred members. Yet, if we are to take the pay roll as the evidence of attendance, the actual daily attendance averaged two hundred eighty-four and one-half. Is this right? Is it an evidence of public integrity? Not less than \$20,000 were taken out of the public treasury by the members of the last legislature, which were never earned; money taken out of the public treasury, in violation of the rules of the House; rules made by the members for their own government.

Mr. President: I wish to be distinctly understood. I do not mean to say, that the members of the last House of Representatives were more remiss in their attendance than were the members of the legislatures of the two preceding years. Neither do I wish to give the impression that they took more money from the public treasury—which they had never earned—than did the members of preceding legislatures. I have not taken time to examine the pay rolls of those legislatures. I take the last legislature as an example of the loose way the accounts of members are now made up. It is time to put a stop to this mode of settling accounts—to this manner of squandering the public money. It is bad enough for members to neglect the duties assigned them here, to attend to their own private affairs, without at the

same time drawing pay for services rendered—not to the public—but to themselves.

This Convention, Mr. President, owes it to its own reputation, to honesty, to a sense of public duty, to enforce its own rule, which declares that "*No member shall receive pay for any weekday on which he has not actually attended, except for sickness.*" This Convention, called here to revise the organic law of this old Puritan Commonwealth, should set to future legislatures, who are to assemble under the revised Constitution, an example of inflexible integrity. The members of this Convention should deduct the days they have been absent, unless those days were days of sickness.

Sir, the adoption of this order will be deemed, and taken, by the members, to be a declaration that the members are required to obey the rule, which requires them to deduct from their account the days they have not attended. If this order is not adopted, the members will take it to be the sense of the Convention, that the rule is to be considered in the Convention as it has been considered in the legislature, a dead letter. I have performed my duty, as a member of the Convention, by proposing this order, which if adopted and obeyed, will secure to the treasury, at least, \$25,000. There are four hundred and nineteen members of the Convention. The average daily attendance has not, I venture to say,—and I have some right to speak, for I have not been absent half an hour during the session,—exceeded three hundred, making about one hundred and twenty absences, daily. There should be deducted, at least, \$25,000 from the pay roll of the Convention, for non-attendance.

Mr. President: We have voted to pay ourselves three dollars per day. I gave my vote for that resolve with a great deal of hesitation and reluctance. Gentlemen were called here during the busiest portion of the year; called from their farms and business avocations; called here at a pecuniary sacrifice. Compelled to work here from six to nine hours, daily, in mid-summer, I felt that those gentlemen who were here, away from their homes, ought to have that sum, and I voted for it against my own personal wishes and feelings. Having voted for the liberal sum of three dollars per day, I hope we shall all of us join in an effort to require the pay roll to be made up so that members will not draw from the treasury three dollars per day to which they have no claim—which they are forbidden to touch by their own rule, if enforced, as I hope it will be.

Mr. LORD, of Salem. I desire to inquire as a question of order, whether this resolution can be entertained without a suspension of the rules. The twenty-seventh rule provides that members shall have pay for Sundays; this order excludes that and consequently is a violation of that standing rule. I desire to know if such an order can be entertained while the rule I have mentioned is in force.

The PRESIDENT. The question suggested by the gentleman from Salem is a question of consistency. The gentleman may object to this order as being inconsistent with the existing rule, which fact, it will be for the Convention to determine, and not for the Chair to decide. It is a matter wholly within the province of the Convention.

Mr. LORD. I had supposed that if it is proposed to do something that is contrary to what

our rules require, it would be the duty of the President to decide how far it is permissible. The rule requires members to certify their attendance, including Sundays; this order requires that that day shall be excepted. I do not believe it is of any consequence, however, and I move to lay the whole subject upon the table.

The question was taken on agreeing to the motion, and it was, upon a division—ayes, 137; noes, 44—decided in the affirmative.

Limitation of Debate.

The following order, submitted yesterday by the gentleman from Medway, (Mr. Brown,) was taken up for consideration:—

Ordered, That no member, except the chairmen of committees, shall speak upon any subject more than fifteen minutes, without leave.

Mr. KINSMAN, of Newburyport. I see no propriety, Mr. President, in passing such an order as this, and I can conceive of no reason why a distinction should be made between the chairmen of committees and others. As every one knows, there is a minority in this Convention, who have to content themselves merely with the right to speak and protest; and though it is a poor privilege, especially on a subject of importance, it is one they ought to enjoy, and which ought to be secured to them.

Now, what does this order do. It deprives them of the right of speaking more than fifteen minutes, and gives the prevailing party, in addition to the power they have already to control the whole action of the Convention by their votes, the right to occupy a whole hour in speaking, because the chairmen of the committees, according to parliamentary usage, are always of the predominant party. I do not make these remarks because I desire to speak, but it seems to me that the effect of the order will be to abridge the right which belongs to the minority to be heard, and to debate all subjects fully, and that therefore it ought not to pass.

Mr. ASPINWALL, of Brookline, moved to strike out the words "except the chairmen of committees."

Mr. STEVENSON, of Boston. I hope the amendment will prevail, if the Convention have any intention of passing such an order as this; but I am free to say that we shall hardly be able to determine, at present, how many matters there are on the Orders of the Day which will be affected by the adoption of an order like this, which puts it out of the power of those who are opposed to the propositions to discuss them fully. If there be, as I suppose, important questions to come before the Convention for consideration, before we can adjourn, it seems to me that it is highly improper that we should adopt a rule which will prevent them from being discussed, merely because they necessarily come up late in the session. The proposition is made, it is said, in accordance with the practice that prevails in the legislature. Now there is a clear and palpable distinction upon which the propriety of such a rule in the legislature may rest, but which can form no foundation for it here. In the legislature, where high party contests sometimes prevail, if an impression arises in the mind of the majority that the minority are endeavoring to create delay, the majority may be provoked to pass such a rule for their protection; and it would be justifiable, perhaps,

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because if it be a private matter, you can say to the individual interested, you should have come earlier; or if it be public matter, they may say we shall be here six months hence, and no great evil can result from the delay. But in an assembly constituted as this is, to recommend to the people changes in the Constitution, neither of these reasons can operate.

Then, in regard to giving an hour to chairmen of committees, and limiting other members to a less time, it appears to me that if such a rule is to be made, it ought to be made in another direction. The chairman of a committee has the advantage of the *prestige* of the report. He has the advantage of the views he has presented to the Committee, and the concurrence of the Committee, whereas those who come in opposition, stand upon a new ground, and their reasons are surely entitled to be heard. The rule ought, therefore, to be the other way; but I object to the adoption of any rule that shall prevent any question being debated; and let me say to this Convention, through you, that such a rule does not save one moment of time. The true way to insure a short debate on any subject, in Committee of the Whole, is to allow those who have examined the subject to discuss it thoroughly, otherwise each suggestion calls up members in every part of the House; and every suggestion which carries with it indications of justice and propriety costs absolutely more time in an assembly composed of over four hundred delegates than would be the case in the absence of such a rule. I hope the order will be rejected; but if it is to be adopted, I trust that the amendment proposed by the gentleman from Brookline will first be made.

Mr. ALLEN, of Worcester. I hope the amendment will not be adopted, for I like the exception better than the rule. If the Committee make a report recommending an amendment to the Constitution, it is necessary to make such explanation of the report as cannot be done in fifteen minutes; and I believe it is according to the practice of parliamentary bodies elsewhere to allow the chairman of the Committee an opportunity to explain the report; but I doubt the expediency of adopting the rule at all. I think the limitation to one hour, with a right on the part of the chairman to close the debate, is stringent enough. I therefore move that the order be laid upon the table.

The motion was agreed to, and the order was accordingly laid upon the table.

Sectarian Schools.

Mr. BRIGGS, of Pittsfield, moved to take from the table the Report of the Committee in relation to Sectarian Schools, with the view to its being placed upon the Orders of the Day.

The question being taken on agreeing to the motion, it was—by ayes, 73; noes, 85—decided in the negative.

Orders of the Day.

On motion of Mr. ADAMS, of Lowell, the Convention proceeded to the consideration of the Orders of the Day. The first matter on the Orders of the Day was the resolves on subject of

Elections by Plurality,

On their second reading, the question being on their final passage; pending this question the gentleman from Boston, (Mr. Schouler,) had moved

to amend the first resolution, by striking out all after the word "Resolved," and inserting the following:—

That it is expedient to provide in the Constitution that in the election of governor, lieutenant-governor, secretary, treasurer, auditor, attorney-general and councillors, the person having the largest number of votes shall be deemed to be elected.

Mr. UPTON, of Boston. Is an amendment still in order.

The PRESIDENT. It is in order.

Mr. UPTON. Then I move to strike out all after the word "the" in the sixth line, and insert the following: "individual having the highest number of votes shall be declared to be elected."

Mr. President: In offering the amendment, I had supposed that this Convention would agree to the principle laid down in the first part of this resolution, namely: "that it is expedient." I hope gentlemen of the Convention will mark and note the phraseology—"that it is expedient to provide in the Constitution that a majority of all the votes given shall be necessary" to elect certain officers. I agree to that *expediency*. It is well to provide in the Constitution that it is expedient that these individual officers shall be elected by a majority of the votes cast. But, Sir, it is also expedient to provide something beyond that, if the people do not see fit to elect these officers by a majority of votes, and to do the next best thing. Therefore, I propose to strike out the latter part of this resolution, and put in the next best thing, and that is: that the individual candidate having the highest number of votes shall be declared elected. It seems to me it is hardly worth while to go into an argument. It is not enough to declare the *expediency* of the principle, that the individual having the majority of votes shall be elected. But we must go beyond that, as these individuals voted for do not have a majority of the votes cast, perhaps; and therefore instead of leaving the question to the minority of the people, which most assuredly will be the case, when it comes to the legislature, I propose, in the amendment which I have offered, that the person having the highest number of votes shall be declared elected. I do not propose to go into a discussion of the question of the majority and the plurality; but simply to state the grounds of the amendment, and to express the hope that it may meet the approbation of the members of this Convention.

Mr. DURGIN, of Wilmington. When this subject was up before, I had the audacity to offer a few remarks, and I have some of the same sort left. I wish, on this occasion, to express freely my feelings and my views upon this subject. I have seen no good reason for changing them from that time to the present. In every age of the world, Sir, when republics and independent governments have arisen, great men have been there, and great men acted; and these republics came up, in despite and in defiance of monarchy of every kind. While those great men, those guardian spirits, those master spirits of the storm were there, those republics were safe. The same was true of our government. When this republic sprang up, there were great men and true there, men that feared God and regarded the interests of men—not like the unjust judge that feared not God nor regarded man—but men wil-

ling to sacrifice life, sacred honor, and fortune. Perhaps these great men have fallen.

Then, what has been the tendency of the ancient republics? There was, and there is, a tendency in republics towards monarchy. If you look for the ancient republics, where are they? They are not. They live only in history—only in song. And, if you look to modern republics even, look to Mexico, look to the South American republics, and what is the tendency to-day? Are they breathing, are they panting, are they striving, as the heart of one man, for liberty, or is there a tendency to monarchy? Look at France, with all her boasted liberty and her republicanism; that peaceful and bloodless conquest; that bloodless transit from monarchy to republicanism, and where is France now? Is it a republic? I say there is a tendency in republics to monarchy. How did it happen, and how does it happen? Is it because the people come out *en masse*, and assert their rights, and assert their liberties, and take the responsibility of the government upon their own shoulders—take the government into their own hands? No, Sir; but this tendency arises from the fact, that the people relinquish and yield, daily and unresistingly, that which, in duty, they are bound before God, to come out and to support. They yield it into the hands of a few, and that few hand it down to a still less number, and that less number may perhaps make the one man power in the nation. Thus the tendency is going on, and every man that has half an eye, that has half a thought, can comprehend this fact.

But, Sir, let me say, that there is no absolute and fatal necessity for this state of affairs. The first cause of this tendency, is the removal of the government from the people. While the people hold the government in their hands, and while they exercise its functions, this thing never can take place; but, when the government is removed from them, or when they surrender it, then this is the legitimate tendency. The cutting off of the participation of the people in the government, is the first, and one of the fundamental causes why this state of things ever exists in the world.

The second cause, is the want of knowledge on the part of the people, of the principles of a free government. You give to every individual citizen a knowledge of the great principles of a free government, and there is no danger of a republic's waning, or becoming a monarchy. How shall you give to the people a knowledge of the great principles of a free government? Throw the government upon their shoulders; throw it into their heads and hearts, and make the people responsible; make them understand their rights; school them; educate them in these principles. And how shall they be educated? By withdrawing the great principles of free government from them? No, Sir; but by holding them up before their understanding, and making the people feel that government is for the people.

Again. The more widely the government is diffused among the people, the farther it is from monarchy. Let the people of any nation, the whole mass of the people be responsible, and be actors in the great principles of a free government, and a monarch will die; he cannot breathe; there is no air which is congenial to his existence. There is no food on which a monarch can be sustained, none that shall give subsistence

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and vitality, and he fails and dies. He moves not; he thinks not; he feels not; he is not there.

Again, let me say, the fewer the people who participate in the government, the nearer that government approaches to a monarchy or an aristocracy. I want this principle clearly understood, that the fewer the people, the less the number of those who participate in the government, and have a voice in its concerns, the nearer that government approaches to a minority, and by so much it approaches to an aristocracy, both of which are opposed to the great principles of true republicanism, and true democracy.

Plurality, Sir, is something less than the people. Yes, I avow it. A mere plurality is not the people in any correct republican sense of the term, as used in a government like ours. I say, that a plurality is something less than the people; it is not the voice of the people, it is but a voice of a minority of the people. What are its tendencies? You may undertake to convince me that seven is not less than ten. Who will believe it? Who can admit it as a fact? No one, unless he is deprived of his senses. The legitimate, and the only tendency of a plurality system, no matter where it is adopted, or where it acts, whether in Massachusetts, or Rhode Island, or in every State in this federal republic, whether in America, or in Europe, is to contract and narrow down the powers of men, instead of extending them abroad and diffusing life and vitality; and the tendency is constantly towards monarchy; towards the one man power, in spite of the very fates. Sir, look at it. If you have a plurality to-day, you have a less number to-morrow, and a less number next year, and so on. Some good mathematician, some individual skilled in algebra, or well skilled in progression, perhaps, may tell if you give him the data, how long it would be, before the one man power would exist. Every man knows that this is the legitimate tendency, if there is any tendency at all.

Again. I say every man should be made to feel, as far as possible, his responsibility in relation to the government in such a country as ours. I am opposed, therefore, to anything that will lessen a man's responsibility in this government. I was very much pleased with an order introduced by the reverend gentleman from Boston, (Mr. Lothrop,) sometime since, making it penal to neglect the discharge of duties towards the government, and not to go out and vote and take a share of the responsibility in this great government. Why, Sir, I would no more neglect the government than I would neglect my God. It is the duty of every man in this republic to go up to the polls and there show, by his voice and his vote, that he feels his responsibility, and teach it to his sons, and his sons' sons, and teach it to the rising generation that they are to take the responsibility of this great government upon themselves. The individual who looks at the specific and legitimate tendencies of curtailing and checking this responsibility upon the rising generation, though he may not feel it in his heart, is virtually an enemy to his country, an enemy to his God. These are my convictions, and these are my views. The plurality system, Sir, is a departure, it is a daring, fearful departure from those high, world-wide principles which distinguish Americanism from monarchy. Is there no specific difference, is there no difference in the practical workings of Americanism, so-called republicanism, as enjoyed by

this great federal republic, and the government of a monarchy, or a monarchical form of government?

Now, Sir, I say that the plurality system is a daring, and I had almost said, a Heaven-daring departure from those principles. Tell it to some of those patriots of 1776, who have long slumbered in their graves, and I should not think it strange at all that they moved from their resting places.

What do the principles of monarchy do, Sir? When these principles are carried out, their legitimate tendency is to extort groans, and tears, and sighs. They not only clothe a people in rags in too many cases, but they spread hunger and death through the realm. Look at England, proud as she is, and see what has been the result of her system of government, with all the professions of liberty which they make—see what results have been produced there for the last quarter of a century in this respect. Why, Sir, there is Ireland, which contributes largely to the funds of that nation; and it presents the most frightful picture of distress, poverty and wretchedness—all owing to the working of that government, which is world-wide from that of a republic.

Let me say again, that the tendency of the plurality system, if carried out, will be to lull the mass of the people to sleep; for it does, and it will of necessity, deprive the great mass of the people from acting, or from seeing any results of their action. A man will stay at home because he cannot act conscientiously. We have had a question up here this morning about the pay roll, and the gentleman from Pittsfield avowed his wish to act conscientiously in relation to this matter; and that is the way it will be with a great many people throughout the Commonwealth. Men will not go and vote, if they cannot vote upon principle. They will say: "If you tie up my hands and my feet, how can I act? If you adopt the plurality system, what can I do? If I act at all, I want to act conscientiously." So you see, Mr. President, that the result of the plurality system will be to keep a great many men from the polls. A man will say to himself and to his boys: "Let us stay at home, for if we were to go and vote, we should vote so and so; and we know that we cannot have the privilege of expressing our opinions, or if they are expressed, it will do no good at all. Let us stay at home, and let the government go to rack and ruin." Men will feel thus, and they will talk thus. Every man can see, if he will reflect on it, that this will be the result of that system.

It is said that the plurality system will be more convenient. That seems to be the great bugbear that is brought up here against the majority system; but what have we got to do with convenience, in a government like this? It might have been more convenient for our fathers in 1776 to have remained at home quietly, and let the iron heel of tyranny and oppression tread out the last spark of life and liberty from these colonies—that might have been more convenient; but, Sir, they were not men who heeded the labor, and toil, and peril, of the cause in which they were engaged. They looked beyond all these considerations to the principle of right and justice, and upon these they acted; and Sir, they acted nobly, wisely, and victoriously. A government like ours, if it does not cost anything, would scarcely be worth anything; can we expect that such a government

as ours will be brought to us if we lie supinely upon our backs and make no effort? If it be a mere matter of convenience, I would rather take the noble principle of one anciently, when he said: "I will not sacrifice to God that which costs me nothing." It seems to be a mere matter of dollars and cents—a mere saving of a little time. I ask the members of this Convention, through you, Mr. President, must we sacrifice principles which are as high as eternal truth, at the shrine of sordid convenience? This is nothing more nor less than sordid convenience; it is a mere saving of dollars and cents; and I hope and pray that we shall do no such thing. Why shall we not have the plurality system in all things, if it is a good principle? I was pleased to hear the remarks of the gentleman from Boston, (Mr. Stevenson). When he made his remarks I said "Amen!" in spite of myself—it drew it right out of me—for he is a gentleman who speaks so eloquently, and more than that, he speaks only when he has something to say. Why not have the plurality in everything? Why not carry it into your juries? If they cannot decide, let the majority rule; or why not let even a plurality rule, if a case could arise, where there could be a plurality, why not let them decide the question? Would it be a departure from principle, and a sacrifice of principle? I tell you it would. Sir, no little fraction, no clique, no little squad of men ought to rule in the town, in the parish, in the county, in the state, or in the nation, and woe to this Union when the people allow such a state of affairs.

Sir, the adoption of this plurality system is not a tacit acknowledgment, but it is an open, unblushing avowal, that men are not capable of governing themselves.

Sir, that is just what Old England, just what Russia, just what Austria, just what every tyrannical government under heaven declares—they all agree in the opinion that men cannot govern themselves. Now, this is not a tacit acknowledgment of this doctrine, but it is a candid, open, unblushing avowal, that a majority of the people cannot govern themselves; and therefore you must place the government in the hands of somebody else. Now, Mr. President, I am not in favor of making this avowal to-day, or at any time. Far from it, Sir. As I have said before, this is the acknowledgment; for a plurality is not the people, but it is something less than the people. If you adopt this system, therefore, you declare, by a vote of this body, the conviction that the people cannot govern themselves. But, says one, other States have adopted it. So much the worse, say I. Suppose every State in this whole republic should adopt the plurality system, I say that only makes the matter so much the worse; it is only making the acknowledgment so much the more universal, that men cannot govern themselves, and it is consequently so much the more to be lamented and deplored. There is only one thing under Heaven that would induce me to go for the plurality system, and that is this: If we were likely to fail and not have any government at all, I would go for the plurality system, or almost anything else, in order to prevent such a result, upon the principle that almost any government is better than no government at all. But that is the only inducement that would operate upon me to make me favor that system.

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ELECTIONS BY PLURALITY. — HATHAWAY.

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[The hammer fell, the time allowed having expired.]

The question being taken on the amendment of Mr. Upton, it was not agreed to.

The question then recurred on the amendment of Mr. SCHOULER, and the question being taken by yeas and nays, the result was—yeas, 159; nays, 159—as follows:—

YEAS.

Adams, Benjamin P. Hobbs, Edwin
Aldrich, P. Emory Hooper, Foster
Andrews, Robert Hopkinson, Thomas
Aspinwall, William Hubbard, William J.
Atwood, David C. Hunt, William
Austin, George Huntington, Asahel
Ayres, Samuel Huntington, Charles P.
Barrows, Joseph Hurlburt, Samuel A.
Bell, Luther V. Hyde, Benjamin D.
Bishop, Henry W. Kellogg, Giles C.
Blagden, George W. Jacobs, John
Boutwell, George S. James, William
Bradbury, Ebenezer Jenkins, John
Braman, Milton P. Jenks, Samuel H.
Breed, Hiram N. Kellogg, Giles C.
Brewster, Osmyn Kingman, Joseph
Brinley, Francis Kinsman, Henry W.
Briggs, George N. Knight, Hiram
Brown, Adolphus F. Knight, Jefferson
Bullock, Rufus Knight, Joseph
Bumpus Cephas C. Knowlton, Charles L.
Burlingame, Anson Kuhn, George H.
Carter, Timothy W. Ladd, John S.
Chandler, Amariah Leland, Alden
Chapin, Chester W. Littlefield, Tristram
Childs, Josiah Livermore, Isaac
Clark, Henry Lord, Otis P.
Clarke, Alpheus B. Lothrop, Samuel K.
Clarke, Stillman Loud, Samuel P.
Coggin, Jacob Meader, Reuben
Cogswell, Nathaniel Miller, Seth, Jr.
Cole, Sumner Mixter, Samuel
Conkey, Ithamar Morey, George
Cook, Charles E. Morss, Joseph B.
Cooledge, Henry F. Morton, Marcus
Crittenden, Simeon Nayson, Jonathan
Crockett, George W. Noyes, Daniel
Crosby, Leander Oliver, Henry K.
Crowell, Seth Orcutt, Nathan
Cushman, Henry W. Osgood, Charles
Dana, Richard H., Jr. Park, John G.
Davis, Solomon Parker, Adolphus G.
Dawes, Henry L. Perkins, Jonathan C.
Dean, Silas Pomroy, Jeremiah
Doane, James C. Putnam, George
Easton, James, 2d Putnam, John A.
Eaton, Lilley Rantoul, Robert
Edwards, Elisha Read, James
Edwards, Samuel Sargent, John M.
Ely, Homer Schouler, William
Farwell, A. G. Sikes, Chester
Foster, Aaron Sleeper, John S.
French, Charles H. Southern, John
Frothingham, R., Jr. Stetson, Caleb
Gilbert, Wanton C. Stevens, Charles G.
Gould, Robert Stevens, Granville
Goulding, Dalton Stevens, Joseph L., Jr.
Gray, John C. Stevenson, J. Thomas
Green, Jabez Storrow, Charles S.
Griswold, Josiah W. Strong, Alfred L.
Griswold, Whiting Sumner, Increase
Hale, Artemas Talbot, Thomas
Hall, Charles B. Taylor, Ralph
Hammond, A. B. Train, Charles R.
Haskell, George Turner, David
Hawkes, Stephen E. Turner, David P.
Hayward, George Upham, Charles W.
Heard, Charles Upton, George B.
Henry, Samuel Viles, Joel
Hersey, Henry Walcott, Samuel B.
Hewes, James Wales, Bradford L.
Heywood, Levi Walker, Samuel
Hillard, George S. Warner, Samuel, Jr.
Hinsdale, William Weeks, Cyrus
Hobart, Aaron Wheeler, William F.

White, Benjamin
Wilbur, Daniel
Wildner, Joel
Wilkins, John H.
Wilkinson, Ezra

NAYS.

Abbott, Josiah G. Hoyt, Henry K.
Adams, Shubael P. Hurlbut, Moses C.
Allen, Charles Ide, Abijah M., Jr.
Allen, James B. Johnson, John
Allen, Joel C. Kendall, Isaac
Allen, Parsons Keyes, Edward L.
Alvord, D. W. Kimball, Joseph
Baker, Hillel Knowlton, J. S. C.
Banks, Nath'l P., Jr. Knowlton, William H.
Barrett, Marcus Knox, Albert
Bates, Eliakim A. Ladd, Gardner P.
Bates, Moses, Jr. Lawrence, Luther
Bennett, Zephaniah Lincoln, Abishai
Bigelow, Edward B. Little, Otis
Bird, Francis W. Marble, William P.
Booth, William S. Marcy, Laban
Boutwell, Sewell Marvin, Abijah P.
Bronson, Asa Mason, Charles
Brown, Alpheus R. Merritt, Simeon
Brown, Artemas Moore, James M.
Brown, Hammond Morton, Elbridge G.
Brownell, Joseph Morton, William S.
Bryant, Patrick Newman, Charles
Buck, Asahel Nichols, William
Butler, Benjamin F. Norton, Alfred
Carruthers, William Orne, Benjamin S.
Case, Isaac Packer, E. Wing
Chapin, Daniel E. Paine, Benjamin
Chapin, Henry Paine, Henry
Churchill, J. McKean Parris, Jonathan
Clark, Ransom Parsons, Samuel C.
Cleverly, William Partridge, John
Crane, George B. Peabody, Nathaniel
Cressy, Oliver S. Pease, Jeremiah, Jr.
Cross, Joseph W. Penniman, John
Cushman, Thomas Perkins, Jesse
Cutler, Simeon N. Perkins, Noah C.
Davis, Ebenezer Phelps, Charles
Davis, Isaac Phinney, Sylvanus B.
Day, Gilman Pool, James M.
Deming, Elijah S. Rawson, Silas
Denton, Augustus Rice, David
DeWitt, Alexander Richards, Luther
Duncan, Samuel Richardson, Daniel
Dunham, Bradish Richardson, Samuel H.
Durgin, John M. Rogers, John
Eames, Philip Ross, David S.
Earle, John M. Sanderson, Amasa
Easland, Peter Sanderson, Chester
Eaton, Calvin D. Sheldon, Luther
Fay, Sullivan Sherill, John
Fellows, James K. Simonds, John W.
Fiske, Emery Smith, Matthew
Fitch, Ezekiel W. Sprague, Melzar
Foster, Abram Spooner, Samuel W.
Fowle, Samuel Stevens, William
Fowler, Samuel P. Stiles, Gideon
Freeman, James M. Taft, Arnold
French, Rodney Thayer, Willard, 2d
French, Samuel Thompson, Charles
Gale, Luther Tilton, Abraham
Gates, Elbridge Tilton, Horatio W.
Gilbert, Washington Tyler, William
Giles, Charles G. Underwood, Orison
Giles, Joel Wallis, Freeland
Gooch, Daniel W. Walker, Amasa
Gooding, Leonard Ward, Andrew H.
Graves, John W. Warner, Marshal
Greene, William B. Waters, Asa H.
Hallett, B. F. Weston, Gershom, B.
Hapgood, Lyman W. Whitney, Daniel S.
Hapgood, Seth Whitney, James S.
Haskins, William Wilbur, Joseph
Hathaway, Elnathan P. Williams, Henry
Hayden, Isaac Wilson, Henry
Heath, Ezra, 2d Wilson, Willard
Hewes, William H. Winslow, Levi M.
Hobart, Henry Wood, Charles C.
Hood, George Wood, Otis
Howard, Martin Wright, Ezekiel

ABSENT.

Abbott, Alfred A. Kellogg, Martin R.
Alley, John B. Langdon, Wilber C.
Allis, Josiah Lawton, Job G., Jr.
Appleton, William Lincoln, F. W., Jr.
Ballard, Alvah Loomis, E. Justin
Ball, George S. Lowell, John A.
Bancroft, Alpheus Marvin, Theophilus R.
Bartlett, Russel Monroe, James L.
Bartlett, Sidney Morton, Marcus, Jr.
Beach, Erasmus D. Nash, Hiram
Beal, John Nute, Andrew T.
Beebe, James M. Ober, Joseph E.
Bennett, William, Jr. Paige, James W.
Bigelow, Jacob Parker, Joel
Bliss, Gad O. Parker, Samuel D.
Bliss, William C. Parsons, Thomas A.
Bradford, William J. A. Payson, Thomas E.
Brown, Hiram C. Peabody, George
Brownell, Fredrick Perkins, Daffiel A.
Bullen, Amos H. Pierce, Henry
Cady, Henry Plunkett, William C.
Choate, Rufus Powers, Peter
Clark, Salah Preston, Jonathan
Cole, Lansing J. Prince, F. O.
Copeland, Benjamin F. Reed, Sampson
Crowninshield, F. B. Richardson, Nathan
Cummings, Joseph Ring, Elkanah, Jr.
Curtis, Wilber Rockwell, Julius
Davis, Charles G. Rockwood, Joseph
Davis, John Royce, James C.
Davis, Robert T. Sampson, George R.
Dehon, William Sherman, Charles
Denison, Hiram S. Simmons, Perez
Dorman, Moses Stacy, Eben H.
Ely, Joseph M. Stutson, William
Eustis, William T. Sumner, Charles
Fisk, Lyman Swain, Alanson
French, Charles A. Taber, Isaac C.
Gardner, Henry J. Thayer, Joseph
Gardner, Johnson Thomas, John W.
Goulding, Jason Tileston, Edmund P.
Greenleaf, Simon Tower, Ephraim
Hadley, Samuel P. Tyler, John S.
Hale, Nathan Vinton, George A.
Harmon, Phineas Wallace, Frederick T.
Holder, Nathaniel Wetmore, Thomas
Houghton, Samuel White, George
Howland, Abraham H. Wood, William H.
Hunt, Charles E. Woods, Josiah B.
Huntington, George H.

Absent and not voting, 99.

The PRESIDENT. One hundred and fifty-nine gentlemen have voted in the affirmative, and one hundred and fifty-nine gentlemen in the negative. In the belief that it is inexpedient to submit to the people so radical a change in the Constitution upon a casting vote, the Chair votes in the negative, and the amendment is rejected.

Mr. HATHAWAY, of Freetown, moved to amend the third resolution, so that it would read as follows:—

Resolved, That representatives to the general court shall be elected as by law shall be provided.

Mr. HATHAWAY. It is with diffidence that I propose this amendment. I know the fate that befell the amendment which I proposed yesterday, when this Convention was in another situation, that of the Committee of the Whole. I suppose that I have a little, if not a full share, of the same feeling that it is said pervades most families: that the more sickly and rickety the bantling, the more the parent becomes attached to it, because of its weakness; while the healthy and strong one is left to care for itself. Sir, I recollect that this proposition, when offered to the Convention in another situation, fell almost lifeless. There is

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another reason, that oppresses me, upon this matter. I know very well the situation in which I stand here, in relation to certain gentlemen, and this Convention; but before proceeding to that, let me say to the gentleman from Salem, (Mr. Lord,) that what he yesterday said is not precisely true, as to myself. He yesterday said, if I understood him correctly, that no man *dared* give the reasons why this Report was made, and resolutions offered in their present form. Sir, let me say to him, that I “dare do all that becomes a man, and he who dares do more, is none.” But, Sir, there are certain reasons, I doubt not, for this Report, which the Committee itself do not like to give, and would not be judged to be exactly appropriate and parliamentary; and therefore it would be improper for me *here* to say, that such reasons controlled their action, and hence I shall not undertake to give them; but in giving reasons that are proper and appropriate, and from which no one would start back, I will assure the gentleman from Salem that he will find me by no means backward in giving, in defence of any measure I may propose; but I am not answerable for this Report and resolutions, and shall leave it to the Committee who reported them, to give their reasons therefor. I cannot refuse the temptation of saying, that I feel that a debt of gratitude is due from me to my constituents, for the generous confidence they have bestowed upon me,—aye, Sir, something more,—a debt, not only of gratitude, but of duty. I feel as though I should fail of performing my duty to them, did I not make the proposition which I have made to this Convention, in reference to this amendment. Permit me, Sir, to say, that I may be again, as I unjustly heretofore have been, subjected to the shafts of calumny, from a certain quarter, for the course which I am taking; but I have had, thus far, and trust that I shall continue hereafter to have, but one rule to guide me in this Convention. When I came into it, it was for the purpose of correcting our fundamental and organic law, wherever, in my judgment, it had operated badly with or upon the people; and wherever it had worked well, and we stood well upon it, there, I said, long since, that I was willing to stand, without a change; and where I thus stood, to “stand still.” I believe that such are the views of all my associates, in this Convention, from the county of Bristol; and although we may have sometimes voted differently, yet our difference was a manly one, and in good faith, all of us seeking for the best measures and greatest good; but others have levelled at some of us—because we choose thus to act, independent of their direction and bidding—the shafts of detraction and calumny. I presume that there is no one here, from the county of Bristol, who is not perfectly willing to stand up and meet these Partisan arrows of detraction, although they may fall as fast as hail from a summer’s cloud; but let me say, that they have been, thus far, *impotent*, because they were hurled at us by a puny arm, and came from a feeble hand. And let me say, farther, that time will soon heal the wounds which have been inflicted by that feeble hand and puny arm, and will soon allay the stings that calumny has attempted and intended.

Sir, to come to the matter in hand, I go for the amendment to the resolution, because the people do not demand the change which is contemplated by the resolution. Let me say, as the gentleman

for Erving, (Mr. Griswold,) said the other day, in reference to the loan of the State credit, that the object of this resolution was not a part of the programme of the campaign which preceded the call of this Convention. Will he, or anybody else, tell me where this amendment to the present Constitution, in reference to elections for representatives, town, or district officers, was put forth, or recommended, in that famous document that was drawn up by him, and sent out to the people? Sir, so far as I know, it made neither part nor parcel of that document. It was not one of those propositions which were there chalked out for us here to act upon. It may possibly be there, nevertheless; but if it is, it has escaped my observation.

But, Sir, I have a deeper and more solid objection than this; and I ask whether our present Constitution, thus far, in regard to this matter of choosing representatives and town officers, has worked well? Permit me to say, still farther, that I hope that your Constitution will remain precisely as it now stands, and has stood ever since 1780, as to the election of your representatives and town officers. Will gentlemen point to a single word in that Constitution that requires by which mode your representatives and town officers shall be elected, whether by a majority vote or a plurality vote? Sir, have there been any petitions from the people laid upon your table, showing that they desire a change of the Constitution in this matter? Again, Sir, I ask, has the table of any of your legislatures ever groaned under the weight of complaints, embodied in petitions from the people, in regard to this matter? No, Sir—No, Sir. Then, if there be no complaint, and has been none, in the community, why make this change? I put it to gentlemen seriously: Why should we make this change? The great complaint has been in reference to the election of your governor, and those officers who have been elected, not by towns, but by the people generally; that it was necessary to have a plurality vote as the test in such elections, because of the great difficulty of calling the whole people of the Commonwealth, or any great portion of them, out a second time. Gentlemen have said, and repeated it, and it has been handed from the lips of one to the other, that your towns were but little republics, and that you could go on and vote perhaps as many as three or four hundred times in a day, in some instances—that in town elections the people are all together; and it has been repeated here, again and again, that your nominations in town meetings for representatives, or town officers, are not made in caucus and in convention, as for State officers, where the nominations are taken from the towns, but that they are nominated upon the spot, and at the time of the election; that these nominations come from the people themselves, when they are all together; and, if this is so, I cannot see, for the life of me, why, in this matter, you should not allow the Constitution to remain as it is. This, as I said before, did not constitute any part of the reasons that were given why this Convention was called; neither has there been any complaint, to my knowledge, in reference to this matter, on the ground that the people did not choose, or had failed to choose, all the representatives to which they were entitled. Sir, whenever it is shown to me that the people demand this change, I shall go heart and hand for it; but, until I do see it, I

shall go, not for rebuking them because they have not complained—as you virtually would if this resolution shall pass—but, I am for retaining the good old rule which has thus far worked so well, and in regard to which no one has ever complained. I would leave it precisely as it is; and let me say to gentlemen, in reference to this matter; that if this resolution shall be adopted, then I would make not only the representatives and town officers elective, under a statute such as the legislature may hereafter make, but I would apply it to all your state and district officers. I cannot see any reason why the rule should not be a uniform one, and apply to the whole, as well as a part of them.

Sir, I am not inclined to discuss this matter at any great length; but it seems to me that, unless gentlemen show a substantial reason for making this change in the organic law as it now stands, no such change should be made. I know of no rule in the present Constitution, under, and by which, the legislature might, not, at any time, since 1780 down to the present time, have changed the law in an hour, and have adopted the plurality system in the election of representatives and town officers, if it had so pleased; and if there had been any great evils in this matter, arising from the requisition of a majority of the voters, and if the people had felt and suffered inconvenience and wrong, think you that the legislature would not have been called upon, again and again, to make a change? Assuredly, it would.

Sir, I have no great regard for the amendment to these resolutions, on any other ground than that I believe it to be right and a good one. It is not, however, such an amendment that I cherish so dearly as to induce me to vote against the whole of these resolutions, in case it should not be adopted; but it does seem to me, that the Constitution as it now stands, is altogether better than the change which is proposed. I do not believe that the people of the Commonwealth are ready for a change in this matter; and least of all, for such a change as this.

Mr. HOOPER, of Fall River. I shall vote for the gentleman’s proposition to amend, but not for the reasons which he has assigned for its adoption, but for reasons precisely the opposite of those which he has given. I shall vote for it because I am in favor of electing representatives by a plurality vote. I should prefer to have all elections decided on the first ballot; and if I cannot get that, then I would leave the matter to the legislature; and then the people can accommodate themselves, and have the plurality system whenever they choose to have it. I think it altogether preferable to leave it to the legislature to determine, than to put into the Constitution a provision providing for the plurality mode on the second ballot, and only on the second ballot. If that is done, the mode can never be changed until we change the Constitution itself.

I fully concur with the gentleman from Freetown, (Mr. Hathaway,) that as this thing has stood in the Constitution, the legislature might have changed the mode at any time, and have adopted the plurality system. They might have made this change in reference to representatives and all town officers, and therefore I am willing to leave it in that shape; for I believe that the people will see to it, that they will have their views carried out, and that the time is not distant

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when they will require all elections of town officers, to be conducted on the plurality system.

For these reasons, in brief, I hope that the amendment may be adopted.

Mr. KEYES, for Abington. Since this discussion took place, I have waited without saying a word; supposing that it was well understood that this plan was a compromise between the two parties here, in relation to the questions of plurality and majority. When the Committee reported to the Convention in favor of universal plurality, it was defeated, and it was found that there was a great difference of opinion, a majority of the members of the Convention being in favor of the majority system, and a new Committee was appointed, and a compromise plan was drafted, which, so far from being an unmeaning and imperfect system, was founded on reason in every part of it; and if there had been a disposition to concede anything on the part of either one side or the other, that system would have been adopted without farther strife, by a large majority of this body. I must confess, however, my surprise at the vote just taken; and while I am filled with surprise, I must also be allowed to express my gratification at the fact that this Convention has been saved from lasting disgrace by the casting vote of the Chairman; for, had we lost this question, what should we not have lost? Everything. The liberal party in the Convention would have been defeated in all the most important matters; the Whig party would have been triumphant, and in a fair way to hold the reins of power, for an indefinite period. Sir, had that amendment succeeded, I would have prayed Heaven that the people might have hissed the whole amended Constitution into oblivion.

Now, what is the system before us? It has been mainly adopted, and there was a reason why it should have been adopted. It was adopted as a compromise, on the ground that the Convention was about equally divided upon the subject to which it refers. We have proposed a plan of compromise, basing the elections in part upon the plurality system, and in part upon the majority system. The reason was this, viz.: certain officers elected on general ticket, were restricted to the majority rule on the ground that if the people should fail to elect, and the election should devolve on the legislature, they would still be elected by the immediate representatives of the whole people; and according to this the people would be allowed to nominate their own officers without trouble, or the intervention of others.

In regard to the Senate, the majority system has been objected to, under the present system, on the ground that the representatives of one locality or section, have elected the local representatives of other sections. To do away with that difficulty, it is provided that the Senate shall be elected by a plurality vote, so that each district may elect its own senators, and other district officers, without interference on the part of representatives of other districts.

We supposed that that would do away with every difficulty which existed in regard to the present system.

Those who go for the plurality system in reference to State officers, are at heart in favor of the majority principle for electing members of the House of Representatives. What is the reason that they now go for a plurality system? Why,

Sir, because they suppose that they are going to derive some advantage from it. Within the last ten years, the people of the country towns have been deprived of a thousand representatives, by the operation of the majority system. If there be any place where the plurality system is wanted, it is in the election of town representatives. If you want to establish the principle of equality, there is no case on earth, where plurality in voting is justifiable to so great an extent, as it is in the election of town representatives, that the towns may enjoy their own legal rights on the floor of this House. I want to see every town in the State of Massachusetts represented according to its legal rights, every year, in the legislature; because, let party ties be as strong as they may, they are looser in the country towns than they are anywhere else. In State conventions, the leaders of a party can obtain, and hold control, and the delegates *en masse*, in nine cases out of ten, are mere machines to register their edicts. By this term, I mean no disrespect, but simply to intimate that they usually follow their leaders, either for the reason that they have confidence in them, or because they see no practicable mode of doing otherwise. I have had some experience myself, in regard to this matter. The first time I was elected to the House of Representatives, although belonging to the dominant party; I was just on the extreme verge of it; and, on that account, was considered as being no better than an infidel. But with six of the leaders pitted against me, and without a single voice raised in my favor, I flogged them over and over again, by the aid of the country members. It was upon a party question, to be sure; but the country members are not trained altogether, and solely, to follow party lead; and when they come here, and see how the wires are pulled—which, towards the close of a session, they have generally pretty well learned—they are then able to act independently.

If you will have plurality, therefore, give it to the country towns, that they may always elect their representatives, and not be deprived of such a large fragment of their strength, as is exhibited in that long list which has been presented to us by the gentleman from Boston, (Mr. Giles). Now these are the reasons why a compromise was proposed; and it was supposed that, on these grounds, and with the proposition which the new Committee put forth, the Convention would be harmonized on the subject, if parties were disposed to harmonize at all. But this feeling, I am sorry to say, has not been met in what would seem to me, to be a proper spirit, on the part of members of this Convention; but gentlemen have stood up here, and opposed this compromise, not, as I believe, I may safely say, because they have changed their principles within the last two years, but because of some advantage, which they expect will accrue to their party, from the course they are pursuing. They have their own objects in view, and the men who desire the success of the Whig party, have voted that way, whether they are called Whigs, or by some other name. There is no use in trying to disguise that fact any longer.

Now, in respect to all these resolves but one, and I do not recollect indorsing that one which relates to municipal officers—in the Committee—I hope they will pass. I thought, at least, that in regard to the election of municipal and town officers, the mode was to be left to the legislature. We have comprehended the whole organization

of the legislature, and have prescribed the method by which that body shall be constituted; and if any change is to be made, wherein the plurality rule is to be made to apply, it should be, according to my view, to the election of town representatives; because we know that a state of things has existed, and will exist, hereafter, for the next four years at least, which renders it necessary; for there is an impassable barrier between the union of any two of the existing parties within that period; and therefore, I say, that in case of failure to elect, on the part of the country towns, by reason of the majority system, it would be equivalent to reducing their representation in proportion to the number of said failures.

Mr. HATHAWAY. Will the gentleman pardon me a moment. The gentleman entirely mistakes the proposition I made. The proposition which I made, was to leave it entirely within the power of the legislature to determine whether the mode of election should be by plurality, or majority, or any other mode.

Mr. KEYES. In order to have a system which shall embrace the three great branches of the government, so that all the people could understand it, and to place it beyond the possibility of change by the legislature, I should prefer to have the matter fixed and stationary in the Constitution. As regards town and municipal officers, I would leave it to the people themselves, to do as they please.

Now, Mr. President, it strikes me, that if the Convention itself had sat in Committee, and considered what the state of opinion was in this body, as indicated by the votes already taken, and if they had been willing to indulge the same liberal spirit which actuated the Committee, in order to harmonize the views, by conceding something on both sides; then I think that this plan would have been adopted by a triumphant majority.

I have looked at the Convention—perhaps I shall be out of order in saying so—from a hundred miles distance; and when I have seen the votes recorded on several important questions, it struck me that the Convention was not acting upon its own judgment, but that members were actuated by unwise fears of the people. They have seemed to desire to show that they were more economical, for example, than they actually are; they do not seem to me, to have acted as if they were elected to exercise their own judgment and sense of right, according to their ideas, but to take counsel of every bugbear and opinion in the community, so that their course might be shaped accordingly.

How these amendments are to be submitted to the people, I do not know; but so far as the action of the Convention is concerned, in my opinion, it has defeated, in many important cases, the very ends which a large majority of the people desired, especially in relation to the judiciary. The election of judges, by the people, would have been, in my opinion, a jewel in the Constitution, which the people would have rallied most strongly to support. Yes, Sir, the people all over the State, talk to-day about the Convention, as not daring to utter its sentiments, on various important matters, and especially on the question of loaning the credit of the State to private corporations, because a certain portion of the people threaten to rise in opposition to the new Constitution, should it contain any restrictions in regard to that policy. Now a Convention so controlled, is worthy of the hisses

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and scorn of the people, instead of its votes. How can we expect them to indicate *their* real sentiments, if we stand here cowering before them, afraid to declare our own?

But I will not detain the Convention with anything of that sort; I wish to say, in sincerity, that the Committee was appointed to take up and consider the various views of this Convention. They have given the subject their careful attention, and have brought in a compromise plan, which has reason and common sense as its basis, and I trust it may be adopted.

Reconsideration.

Mr. SUMNER, of Otis. I move to reconsider the vote by which the Convention rejected the amendment, offered by the gentleman from Boston, (Mr. Schouler,) if such a motion is in order.

Mr. HOOPER, of Fall River. I should like to inquire of the Chair, whether the motion of the gentleman from Freetown, (Mr. Hathaway,) is not the first motion under consideration?

The PRESIDENT. That amendment is to the third resolve, but the gentleman from Otis, (Mr. Sumner,) moves to reconsider a vote already taken in reference thereto, and it is the subject first in order, under the rules.

Mr. SUMNER, of Otis. I have but few words to say, in reference to this subject. Aware that the Convention must be, to a very considerable extent, wearied with the debate which has been had upon this most important matter; yet from the consideration that in relation to it I have kept silence heretofore, I trust that a few suggestions from me, in support of the motion which I have made, will be entertained.

I make the motion, among other reasons, for this: that it is very apparent from the vote which has been taken, that there is a very strong disposition in this Convention, and out of it, to sustain the plurality principle; and if the votes which have just been given in favor of the affirmative of the proposition were canvassed, I apprehend they will be found to rest upon a large majority of the people of Massachusetts. Sir, I have no doubt of the fact, radical as the proposition may appear in the minds of some, that there is in this Commonwealth a very great majority of the people in favor of a change. I, as one of the friends of this Convention, supposed, from the way in which it was called, and in which the delegates were elected to it, that one of the prominent objects which would be carried into effect by its action, would be the adoption of the plurality system; and no one could have been so deaf as not to have heard, from every section of this Commonwealth, one complete chorus of voices proclaiming that the old majority principle, like many other matters of policy which had been used in this Commonwealth in times past, had become worn out. Once, it was required that our governor, lieutenant-governor, senators, and representatives, should have a property qualification. That requisition answered their day and generation perfectly well. But that has long since been worn out, and others, newer and fresher, have been adopted. And such has been the difference of opinion, so to speak, that the majority rule is now worn out; and I submit, that if the people have demanded any change in the fundamental law of the State, they have demanded a change in respect to the majority rule.

Sir, I do not propose to go into a discussion of this question at length, but I have very great doubt whether, upon a fuller consideration of this subject, this Convention will be content with the limited proposition which is now offered to the people in regard to this matter. I think it is worthy of fuller consideration, and reconsideration, also; and therefore I have made my motion.

Mr. JAMES, of South Scituate. I hope the motion to reconsider will prevail.

Mr. BATES, of Plymouth. I rise to a question of order. I believe a motion to reconsider, must go into the Orders of the Day.

The PRESIDENT. Not upon a collateral question.

Mr. BATES. I also rise to a question of privilege. As appears by the yeas and nays called this morning, and recorded by the Secretary of the Convention, opposite the name of H. C. Brown is recorded the word "yes." To the call of that name the clerk says, there was an audible response, and he so recorded it. The gentleman says he was not in the hall, and did not vote upon the question. I should like to know how far that matter has been carried, and how many gentlemen have been recorded as voting who did not vote?

The PRESIDENT. It is competent for any member of the Convention who is recorded as having voted upon the question, to call the attention of the Convention to the subject, and have the record amended in that respect, if wrong.

Mr. H. C. BROWN, of Tolland. I was not present at the time the yeas and nays were called. Had I been present, I should have voted differently from what appears by the record.

The PRESIDENT. It is competent to have the record amended, inasmuch as the question immediately pending is on a reconsideration of the vote rejecting the amendment, and if it shall appear that the vote was improperly announced, then the action falls. By reference to the record, the Clerk informs the Chair that the word "yes" is placed opposite the name of H. C. Brown, and it is for the Convention to say, whether a deduction shall be made from the affirmative vote, and if the Chair hears no objection, the record will be amended according to the facts.

No objection was made, and the record was amended accordingly.

The PRESIDENT. The change does not affect the result, and therefore it is unnecessary for the Convention to pursue the matter farther.

Mr. ASPINWALL. It may be as well to suggest at this time, as there are several gentlemen in the Convention by the name of Brown, and a mistake has occurred, that some one of them may have answered to the wrong name. I therefore request that the record may be examined to ascertain whether all the gentlemen by that name are recorded as they answered.

The PRESIDENT. Any gentleman who thinks that his vote is improperly recorded, can examine the journal at his pleasure. The gentleman from Scituate is entitled to the floor.

Mr. JAMES, of South Scituate. I was about to say, when I was interrupted, that I hoped that the motion to reconsider would prevail, and the amendment adopted, and then the Convention will have done one thing which the community desire. I can speak for my own constituents, and for those in the neighboring towns, that they consider this one of the most important matters before the Convention, and are almost unanimously

of the opinion that the plurality system should be adopted. We have met with a great deal of difficulty, not only in our elections of members of congress, but in our elections of members of the legislature. For five years the town of Scituate went unrepresented, because trial after trial could affect nothing. I would ask if that is not an evil? That is a sufficient answer to the gentleman from Freetown, (Mr. Hathaway,) who asks if any evil exists in the Commonwealth? That is an evil, and ought not we to lay our hands upon it, and reform the evil? I should be glad to see this matter reconsidered, and to see the plurality system adopted throughout, and I hope the motion will prevail.

Mr. WHITNEY, of Conway. The immediate question, I believe, is upon the motion to reconsider the vote by which the amendment of the gentleman from Boston, (Mr. Schouler,) was rejected. I wish to say a word in reply to the arguments urged in favor of a reconsideration. They are based upon the idea that the people desire the plurality rule, in order to get rid of the inconvenience of a second election. Now, Sir, if gentlemen will examine the Report of this Committee—which is the second Committee upon this subject, and appointed in full view of the votes previously taken upon the subject,—it will be found that they have carefully matured the system they present, so as to avoid a second election by the people. They simply leave the Constitution, in reference to the officers for whom the whole people of the State vote, where the Constitution now leaves it. They provide that the House of Representatives shall send the names of two out of three—instead of two out of four—to the Senate, and that the Senate, from the two thus sent, shall select one. Now, here is the principle of the present Constitution retained, which, so far as I know, is satisfactory to the people. What the people complain of, is the trouble, expense, and ill-feeling growing out of second elections. Now, your Committee have provided against this. They have reported that in the election to be held by the people, when they shall vote for members of the House, and for senators—after they have adopted the amendment—they will vote for those representatives with a full knowledge that they delegate to them the right to vote in the legislature for State officers not elected by a majority vote. Now, I take it, as I have before said—and I must, to some extent, repeat—that the people have no attachment to the plurality rule, as an abstract question. They have no attachment to the idea, theoretically, that a less number than the majority should rule. It is a necessity forced upon them by a division of the Commonwealth into more parties than two, that makes them desire some expedient to rid themselves of the trouble and expense attending repeated elections. The resolutions, as they now stand, meet the desires of the people here, and they will prefer to delegate to their representatives the right to vote in the legislature in case of failure to make a choice, to being called upon a second time to ballot. They will choose to provide against this in the manner here proposed. I undertake to say, in every town in the Commonwealth of Massachusetts, when a representative is to be elected under your amended Constitution, he will be elected with a direct reference to some man standing before the people as candidate for governor. No candidate for election as a rep-

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representative could be elected, unless it were understood by the constituency which is to elect him, that he would vote for the candidate for governor, which a major part of that constituency favor, in this House, in case of a failure upon the part of the people to elect their governor, and the election is thrown into the House of Representatives. In case there are three parties, and two unite in their preference for a particular candidate for governor still it is expected that the representatives will carry out the will of a majority of the people in that respect, and the people will take care of this matter when they elect representatives and senators.

Now, Sir, the argument has been brought up, that our governors have been elected by a legislature in which all the people of the Commonwealth were not represented. It must be recollected that under the amended Constitution, if this compromise Report be adopted, we shall not assemble here with vacancies in half the towns in the Commonwealth. By the application of the plurality rule in your election of representatives, you will have filled your House, and there will stand here a representative for every town in the Commonwealth of Massachusetts. And those representatives will come here indoctrinated with the principles of the constituents they represent; they will bring with them the voice of a majority of the people in the towns from which they are elected, in reference to the man for whom they are to vote to fill the office of governor of the Commonwealth. They will come here, and vote, not by ballot, but vote *visa voce*, for there is to be no dodging hereafter in this matter. The men who are sent here must declare by the voice the will of their constituents; and I undertake to say, that men will come here virtually instructed by their constituents to vote one way, and there will be no danger that they will vote another, but they will meet the desires and will of the people who elected them.

Mr. President: I did not come here prepared to discuss this question; but in relation to this motion for a reconsideration, made by the gentleman for Otis, (Mr. Sumner,) I believe that any judicious mind who wishes for the adoption of the amendments which we shall recommend, by the people, would not think it wise or expedient to submit to the people an amendment making so important and radical a change as this makes, which was adopted in the Convention only by a bare majority of one or two votes; adopted by less than a majority of those who favored the calling of a Convention originally, who have the responsibility of calling the Convention, and who will have the responsibility of carrying these amendments before the people. I say, a majority of these men are against a reconsideration of this question, on the grounds proposed, to wit: in order to ingraft upon these resolutions an amendment to be carried by a bare majority. And, I repeat, it is these men who will have the responsibility of carrying the amended Constitution before the people, who object to the amendment proposed by the gentleman for Otis.

Now, Mr. President, I put it to you, I put it to the members of the Convention, whether it would be wise, expedient, or in any sense desirable, for us to go before the people upon any amendment to the Constitution, in relation to which we are about equally divided? There can be no doubt about it. The part of wisdom, then,

seems to be, to agree, as we have done, upon some medium ground upon this subject, and stand there. But, Sir, where is the necessity to alter the resolutions? As they now stand, we shall have filled our Senate by elections by the people, for a plurality elects there. We shall have filled the House of Representatives by plurality elections, so that there will be no vacancies there, and we shall thereby have, in the legislature, an expression of a majority-will of the people of the Commonwealth, elected with a direct reference to this question of State officers. A majority of the people will have delegated their power to their senators and representatives to elect their governor, in case they themselves fail in an election. So that, in the election of governor, and of your highest State officers, you will still recognize the great majority principle as the true principle. We shall still preserve that principle in the choice of our governor, lieutenant-governor, secretary, auditor, &c., and we shall keep embodied in our Constitution, permanently, the sacred principle, that, in the majority of the people alone, resides the sovereignty of this Commonwealth. We shall transmit that principle, sacred with our Constitution, to our posterity. Sir, let us not give up that principle. I would keep it in the Constitution, in some form. I would recognize that fundamental doctrine of all republican governments, somewhere in our amended Constitution.

Sir, gentlemen go for the plurality, not because it is right in principle, but because it is a political necessity, forced upon them by circumstances now existing in the Commonwealth. This is the only avowed reason. Now, Sir, the Report of the Committee has adopted that principle so far as that necessity exists, but it does not exist in the election of governor, lieutenant-governor, and your other State officers, elected by general ticket. I therefore hope, that we shall stand by the Report of the Committee, and that we shall not vote to reconsider, for the purpose of farther alterations in the amendment proposed by these resolutions. Let us stand upon this ground, and I fear not the people; they will sustain us. I believe we can then go triumphantly before the people with this amendment as it is; and I repeat, I hope the Report will be adopted as it now stands, without any alteration.

Mr. WHEELER, of Lincoln, demanded the yeas and nays upon the motion to reconsider.

The yeas and nays were ordered. (Cries of "question," "question.")

Mr. DANA, for Manchester. I am aware, by the call of "question," "question," which I have just heard, that the Convention wish to come to a vote upon this motion, and I will not, therefore, detain them but a moment. I had the privilege of addressing the Convention, on another occasion, upon the plurality side of this question. I then said all that I deemed it important to say; but, I now wish to call the attention of the Convention, for a moment, to the principles contained in the proposition before us, as it came from the Committee.

When this subject was before under consideration, the question was on the adoption of the plurality or the majority system absolutely; but it now comes before us in the form of a compromise, and to the merits of that compromise our attention is called. Now, Sir, the only distinction, which I can see, upon which a compromise of these two principles can properly be made, is this:

In deliberative assemblies, where there can be frequent ballotings taken without inconvenience, and where there is danger of being taken by surprise, the majority principle should be adopted. I would always require it in an assembly like this; I would always require it in your town affairs, and in the election of town officers. But where the people vote in large masses, where they cannot vote often, without very great inconvenience, and where, from the nature of the case, there is no danger of surprise, then, from the experience we have had for the last eight years, I would adopt the plurality rule. I can see no other distinction in principle, than that. It lies between deliberative assemblies which can vote often, and which are liable to be taken by some surprise, and between more large assemblies, which cannot resort to frequent voting without great inconvenience. I am willing to make that distinction. I am in favor of retaining the majority system in town meetings—in voting for town officers—in town affairs, and in the election of representatives to the general court. I would, at any rate, have that matter in the hands of the legislature; I would not tie the hands of the legislature, and if the towns found the majority principle to work too much inconvenience, I would allow the legislature to establish the plurality system for them.

Now, my objection to this compromise system is this: it proposes to retain the majority principle where the reasons are the strongest against it. It proposes to retain the majority in cases where there can be no danger of surprise, and where, from the nature of the case, a second election cannot be held without great inconvenience. You propose, if you cannot get a majority upon the popular vote, to throw the election of your governor and of your high State officers into the legislature. Now, this very system constitutes the strongest objection to the whole majority principle. The result of the plan submitted by the Committee, will be that in your great offices, the people will not elect at all; but these officers will be elected by assemblies which meet in this Hall, and which were not chosen for that purpose at all. I repeat it, your compromise proposes to retain the majority system where the strongest reasons exist for adopting the plurality system, and the result of it will be to place it in the power of the Senate and House of Representatives to elect all the great officers of the Commonwealth.

Now, Mr. President, let us ask gentlemen who advocate this plan, if the most objectionable feature of the present system of election is not that the great officers of the State are elected by the legislature? And will it not be still more objectionable under the system which you propose to adopt, when a larger number of these officers are made elective? There are more officers to be elected by the popular vote now, by the system you have provided, than there were under the former Constitution. It increases the patronage of the people, and in case they fail to elect, will increase the patronage of your legislature; that is to say, we shall increase the evil which already exists under the present system. There is now nearly double the necessity for taking the power from the legislature that there was under the former Constitution.

For this reason, if for no other, I cannot support the proposition reported by your Committee, and throw into the hands of your legislature the election of all these officers, which you propose to

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make elective. It is from this very system that this danger of corruption and perversion of the popular voice, from which we have suffered, has arisen. It seems to me that this proposition of compromise is not founded in principle, and that we ought not to support it. Let the people of the Commonwealth elect by one election, their governor, their lieutenant-governor, and all their State officers. I believe it is the will of the people of the State that they should be thus elected, and that the people should not be kept in suspense for four or five months after the election has taken place, before they can know who will be the officers of the State.

Mr. WHITNEY, of Conway, (interposing). I would suggest to the gentleman for Manchester, that the secretary of the Commonwealth, the treasurer, and those officers of which he speaks as having now been made elective, are now elected by the legislature under the present Constitution, so that in case of a failure to elect by the people, the legislature will have no more officers to elect than under the present Constitution.

Mr. DANA. The attorney-general is not.

Mr. WHITNEY. True, the attorney-general is not, but the secretary, treasurer, and auditor, are, and the evil of which the gentleman speaks, therefore, at least, cannot be increased by the system which the Committee propose.

Mr. DANA. Well, Sir, the adoption of the provision, making these officers elective by the people, shows one thing. It shows that it is better that all these officers should be elected by the people rather than by the legislature, so that the gentleman's remark certainly does not affect my argument. I want that the election of these officers shall be taken out of the hands of the legislature and put into the hands of the people. We have taken the appointment of the attorney-general away from the governor and given it to the people. We have taken the appointment of the secretary and auditor out of the hands of the legislature, and yet, with the experience of the last eight years before us, you propose to give this appointing power back to the legislature, for that will be the result of it. No gentleman can be blind to the result. If you adopt this majority principle, it is verbally saying that four out of five times—I am not certain about my arithmetic, but it is somewhere about that—these officers shall be elected upon this floor.

Now, Mr. President, that is the first aristocratic feature of this government, to say that a small body of men—some four hundred or five hundred in number—shall elect the great officers of the State, and to say, that they shall not be elected by the people. Sir, I am opposed to the establishment or continuance of any such principle. It is not a question of electing those officers by a majority of the people. Your compromise plan does not provide for that in its practical effect. You provide, that four out of five shall be elected upon this floor, instead of being elected by the people at all. But, gentlemen should recollect, that if they elect these officers by plurality, they do not vote against electing by a majority. If a majority of the people of the Commonwealth are in favor of any one candidate for governor, a majority will elect, whether the rule be established, that the plurality or the majority shall elect. But, if you cannot get a majority, then the plurality rule provides the nearest approach to a majority, that you can get. For these rea-

sons I cannot support that part of the first of the compromise resolutions.

The last portion of it, also seems to me to be somewhat objectionable. It says, that in the election of representatives to the legislature, a majority shall be required upon the first trial, but that a plurality shall prevail upon the second trial. Now, if the plurality is to prevail, why not adopt it at once? Why not let it prevail at the first trial? By your proposition, in many places, the first trial will be a mere tentative. The people will say, that the first trial will amount to nothing—that they will vote for anybody just to try their hands. Then, upon the second trial, comes the real contest—and it is not apt to be near so fair a contest—not so fair an expression of the public opinion, as if the people knew beforehand, that the first trial would settle the whole matter. Now, Sir, I submit it to the judgment of gentlemen better acquainted with town affairs than I am, although I am somewhat acquainted with them. It is not true, as the gentleman from Boston remarked, that I have never been in a town meeting in all my life. I lived in the town of Cambridge, and attended their town meetings, until Cambridge became a city, and they would not give me any more town meetings to attend. I say, I appeal to gentlemen who are conversant with the proceedings of town affairs, if it is not true, that if the people know beforehand, that the first vote is to be decisive, they would not give a fuller vote, and whether we should not have more fully an expression of the popular voice, than upon any second trial? Why, after the first vote is taken, a few of the leading politicians in the towns will settle the matter among themselves. When the moderator announces the vote, that there is no choice, a majority being required upon the first ballot, and another ballot is immediately opened, what is the consequence? The consequence must be, that a few of the leading men will put their heads together, agree upon some candidate, and he will go right in. Will not that be the result? The second trial will follow so closely upon the first, that the people will not have time to consult together at all; no time for deliberation; and so the whole matter will be settled by a few of the leading politicians. It seems to me, therefore, that as to the towns, we had better not tie the hands of the legislature. I think we had better allow them to remain as they are, for the present, but to leave the matter in the hands of the legislature, so that, if in the course of time, they get tired of their majority elections, they can come to the legislature, and the legislature can release them, and give them the plurality system. I am willing that they should have the plurality rule, if it should be found expedient for them; but I think it would not be a wise course for us to tie their hands, and the hands of the legislature, in relation to the matter, by declaring in the Constitution, that they shall elect by plurality.

Now, I submit to the Convention, whether it would not be the simplest thing after all, and whether it would not be better to adopt the plurality system for everything except town affairs, and leave that matter in the hands of the legislature. I had prepared an amendment to this effect, but of course it is not in order to offer it now. I hope, however, that the motion to reconsider will prevail, and that something like that result will be reached—that we shall adopt the plurality plan throughout, except in regard to

the town elections, and that they may be left to the legislature to provide.

Mr. TRAIN, of Framingham. I move the previous question.

Mr. KEYES, for Abington. I hope the previous question will not be sustained. It is very easy as we have just heard, for gentlemen to adopt a principle and then to suit their plans to it. There is another principle which should be illustrated, if we had an opportunity, and it is a principle which happens to be in accordance with the whole scheme, as I said before—

The PRESIDENT. The question is upon sustaining the previous question.

Mr. KEYES. I only want to say this, that this is not the time to take the vote; I think this is a very important question—

Mr. TRAIN. I rise to a question of order, that the gentleman is not discussing the previous question.

The PRESIDENT. The Chair does not understand the gentleman as yet to be debating the main question.

Mr. KEYES. I believe that this Convention thoroughly understand this question, and the principles upon which this plan was adopted in Committee.

The PRESIDENT. It is not in order for the gentleman to discuss the merits of the question.

Mr. KEYES. I am stating the reasons why discussion should be had, and why the previous question should not be sustained at this time. Drummers have been sent here to assist my friend for Manchester (Mr. Dana,) to help the Whig party to sustain its life; and the reason why I hope the previous question will not be sustained is, if the case was thoroughly understood, that the question would not be decided as it might be under other circumstances.

Mr. WILSON, of Natick. I wish to say a single word in relation to this motion for the previous question, which has been moved by my very adroit and skillful friend from Framingham, (Mr. Train). I wish to say nothing in regard to this matter which is not distinctly understood by the members of this Convention. The delegate for Abington has hinted at the matter. I wish to say that one of the reasons why the previous question should not be taken at this time, is this: we now see the advantage, to which allusion has so often been made, that the city of Boston has upon this floor. I wish simply—

The PRESIDENT. The Chair would suggest to the gentleman from Natick, that he is entering upon a wider field of discussion than the motion for the previous question would warrant.

Mr. WILSON. I wish simply to say in relation to this matter, drummers have been out, and gentlemen from sick beds are here; and we are to have the advantage of the votes of these gentlemen, at this particular time, for the first time in the session; and we are to be cut off from the discussion of this question. Debate is to be stopped, and the previous question forced upon us at a particular time to serve a particular purpose.

Mr. SCHOULER, of Boston. I hope the previous question will be sustained. This is a question simply upon a reconsideration. If we vote in favor of a reconsideration, the whole question is open for discussion, and as much discussion as the gentleman for Abington and the gentleman from Natick could desire. It is a mere

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matter of reconsideration, and I hope, therefore, that the motion will prevail.

Mr. ALLEN, of Worcester. I was gone out of the Convention a short time, and on returning, to my great surprise, I find this state of things existing. Before I went out, upon one side of the House there was an earnest desire that there might be free opportunity to discuss all important questions here, and that no limitation should be imposed upon debate. In accordance with the wish of gentlemen upon that side of the House, and expressed in various quarters by their leading men, I thought we were to have a free and full discussion. But, to my astonishment, I find those same gentlemen, pressing, at this moment, the demand for the previous question. If they insist upon it, I trust that they will not complain hereafter, if the majority should adopt rules, such as may suit them, upon the subjects discussed, and rigidly adhere to them. I think that if members of this Convention have occasion to look back to the changes of opinion which have been expressed on other occasions, and manifested from time to time by that same minority, they will see, in the sudden change which has taken place in all their views this very morning, and this very hour, upon the subject of free discussion, that some motive, not quite so apparent to all, may exist, for pressing the previous question at this time. I hope it will not be urged, because upon the right decision of the question now under consideration, —I will not say how it should be decided,—may depend the whole result of this Convention; for gentlemen may rely upon it, that this is a question of vital importance to the business we have before us, and the adoption or rejection of our labors may depend upon our harmonious action in this matter. In a Convention so equally divided in regard to this subject, it seems to me the most unfitting time that has occurred, from the commencement of our deliberations, for the adoption of any rule which shall put an end to all debate.

Mr. LORD, of Salem. There is one consideration which influences me very strongly to desire a vote upon this question. I wish to see how gentlemen feel under it. That is the only consideration which induces me to vote for the previous question. When debate has been stopped, over and over again, upon a subject which had not been half discussed, gentlemen felt remarkably well, and I desire to see how they feel now, when there is a proposition to stop debate upon a subject which has been debated more than all others put together. The principle I hold to, in regard to this matter, is, that debate, like trade, should regulate itself, and that when the subject is exhausted, debate will cease. That is the principle upon which I act. Now and then gentlemen will feel it necessary to talk a little against time. For example, if it should be deemed inexpedient to take the yeas and nays fifteen minutes before the hammer should come down for the hour of adjournment, it would be well enough to talk up to that time, because you cannot conveniently take the vote at that time. It has been suggested here that the House is fuller, and that there are more gentlemen to vote here now than there were before; but this fact, to my mind, is no argument against the previous question. If there were three hundred and twenty gentlemen present when the question was taken before, and there should happen to be three hundred and fifty

here now, I do not think that is any reason why we should not vote now in preference to voting in a thin House.

The PRESIDENT. The Chair would suggest to the gentleman from Salem, as he did to the gentleman from Natick, that he is entering upon a wider field of remark than the motion for the previous question would warrant.

Mr. LORD. I was not replying to what the gentleman from Natick said about drummers, but only speaking to what the gentleman said about there being more persons here now than there were before.

Mr. WHITNEY, of Conway. I think the previous question should not prevail at this time, because the main question is a reconsideration of the vote which we have just taken. We have had no time to review and reconsider the question, and we do need the time until to-morrow for the examination of this question. The previous question, if sustained, will precipitate this important question upon us now, at a time when we are unprepared for it. I think, after a tie vote upon this matter, and which has been decided by the vote of the President of the Convention, that we do need twenty-four hours for a consideration of the main question, and that gentlemen should not press a reconsideration of this matter upon the spur of the moment. I hope the previous question will not be sustained by the honest and fair-minded men of this Convention. I ask it as a privilege, so that I may reflect upon this question until to-morrow. I may change my vote upon this subject, upon farther consideration, and I do not know what I may do to-morrow. I hope gentlemen will give us all an opportunity of getting more light upon this matter, and for that reason I hope the previous question will not be sustained.

Mr. HILLARD, of Boston. It occurs to me, if I understand the operation of the motion to reconsider, that the delegate from Conway will gain the very advantage which he desires. If the motion to reconsider prevails, the whole subject is open for discussion and consideration as it was in the early part of the day. I would suggest, by way of meeting the wishes of all, that we shall agree to take the question to reconsider by yeas and nays, and if that motion should prevail, that we assign some hour to-morrow for taking the question upon the amendment, so that there may be no surprise; for I take it, the difficulty in this matter is, that there is an uneasy feeling in the minds of those who were absent, that they had not voted, and all parties, whatever may be their opinions, will be content with the result, if they have as full expression of the sentiment of the Convention as it is possible to get.

Mr. ALLEN, of Worcester. I move that when the vote is taken on the motion for the previous question, it be taken by yeas and nays.

Mr. TRAIN, of Framingham. I merely wish to set myself right upon this matter of the previous question. I am not aware that I ever moved the previous question before in my life, although I have had a little legislative experience, not enough, however, to acquire the reputation for adroitness which my friend from Natick, (Mr. Wilson,) would give to me; but then it is a habit in our country, to pat each other upon the shoulders, and call each other good fellows. [Laughter.] I rose to address the Convention amid cries

all over the House, for the question, and like an adroit lawyer, I covered my retreat by saying that I rose to move the previous question, which I thought would come from me with exceeding good grace under the circumstances. [Laughter.] Then my friend for Abington, (Mr. Keyes,) rose, under some degree of excitement, proper excitement I will admit, and desired to make a speech upon this question. With the utmost degree of fairness, I then offered to withdraw my motion, if, after he had made his speech, which I wanted to hear, he would renew the motion; but he would not do that. When you cannot suit others, it is the best way to suit yourself; and, therefore, although I have been interceded with to withdraw the motion, I shall persist in adhering to it, because I think the motion was made fairly and properly. If the Convention choose to reconsider, the whole discussion will be then opened, and those gentlemen who have not spoken, or who wish to repeat their old speeches, can have the opportunity of so doing. Having stated the reasons which induced me to make the motion I did, and having, I trust, set myself right before the Convention, and thanking the gentleman from Natick, (Mr. Wilson,) for the compliment which he has bestowed upon me, I have said all that I desire to say.

Mr. BRIGGS, of Pittsfield. I would like to know, if we commence calling the yeas and nays, we lose our dinner? [Laughter.] Mr. President: I shall most certainly vote against the previous question, whether the yeas and nays are taken upon it or not. I feel a little as my friend from Salem, (Mr. Lord,) does. Our friends must feel what it is to be skinned themselves. We have got used to it, so that it hardly makes us smart when the skin is peeled off. But I do not believe in the previous question except upon extraordinary occasions, and I do not think this is one. We have a full house now, and I hope we shall have a vote this afternoon. If we take the question now and should happen to succeed in it, it settles nothing. Sir, no snap judgment here, is worth anything, and it should not be sought by any party or the friends of any measure. On all important questions, I hold that we should let debate run its course. It is very important that it should, and more important that questions should be settled right, than it is that we should settle them before dinner, or to-day, or to-morrow. I wish we could agree upon some time to take this question, and then upon some time to take the main question, if it is reconsidered, and then see that our friends in the city are all here, for I do not think it would be unconstitutional to have them all here once to vote, and I do not think it would be an alarming concentration of power for them all to be here once during this Convention. I wish, for these reasons, and others which might be stated, that we might, by common consent, fix upon some time, either this afternoon or some other, when we will take the vote on this question on the motion, so that we may have a full Convention and a fair vote, and one which will settle the question satisfactorily.

Mr. GRAY, of Boston. I do not feel disposed to vote for the previous question, and I need not travel over the reasons which have been generally given by other gentlemen; Sir, I have been against limiting debate in any way, either by the previous question or by fixing an hour for taking the question, because I have yet to see a single in-

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stance in which there has been any speaking, to to any extent, against time. But I cannot agree with the suggestion of my colleague, to take the question without the yeas and nays, because he will recollect that if the motion for reconsideration succeeds, it is very well. The whole question will be open; but suppose, in taking the question upon the motion for reconsideration by yeas and nays, it is rejected; that vote is final. Now, what I suggest is this: that, under the circumstances, the motion for the previous question should be withdrawn. Then I am ready to go with my friend from Pittsfield and fix some time to take the question, which will give gentlemen an opportunity to debate it to the fullest extent; and when that time comes, if farther debate is really wished, I hope farther time will be given. I should be very glad to see every one of my colleagues, as well as both of the intelligent and respectable members from Pittsfield, and every member of this Convention, present, when the vote is taken; and if I knew of any drum to be beaten which would bring them all in, for the first time in my life, I would lend a hand at the work.

Mr. LORD, of Salem. It is my impression, that a motion for the previous question, cannot survive an adjournment. If I am right, inasmuch as we have ordered the yeas and nays on the motion to take the previous question, I will, for the first time in my life, move an adjournment. I ask, if the motion for the previous question lives over an adjournment?

The PRESIDENT. It does not.

Mr. LORD. Then I move that the Convention adjourn.

The motion was agreed to, and the Convention adjourned until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

Reconsideration.

Mr. HOOPER, of Fall River, moved a reconsideration of the vote, by which the resolves relating to the limitation of the incorporation of towns, was indefinitely postponed.

The motion was placed upon the Orders of the Day, to be considered to-morrow.

Mr. HOOPER. I move that the rule be suspended, so that the motion to reconsider may be considered at this time.

Mr. ASPINWALL, of Brookline. I hope that the rule will not be suspended, but that we shall go on with the unfinished business of the morning.

Mr. LORD, of Salem. I think it is hardly worth while to change the order of business, unless there be some special reason for doing so. If the order is to be changed, it ought to be known beforehand. I therefore ask, or shall, before I sit down, that the question be taken by yeas and nays.

The PRESIDENT. The motion to suspend the rule, is not debatable.

Mr. LORD. Then, inasmuch as we have, at present, rather a thin House, if the gentleman does not withdraw his motion, I must ask for the yeas and nays.

Mr. HOOPER. I supposed there would be no objection, and that the matter would not give

rise to debate; but, as objection is made, I will withdraw my motion.

The motion was accordingly withdrawn.

Perpetuation of the Records.

Mr. BIRD, of Walpole, from the Committee appointed under an order of May 5th, to consider and report what measures were necessary for the Convention to adopt, to continue and perpetuate its records, made the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 19, 1853.

The Committee appointed under the order of the Convention of May 5th, viz.: "Ordered, That a Committee of five be appointed, to consider and report what measures it is desirable for the Convention to adopt, to preserve and perpetuate its Records," have attended to that duty, and submit the following resolves.

For the Committee,

F. W. BIRD, Chairman.

Resolved, That at the close of the session, the Secretaries of the Convention deposit the original Journals, together with the papers of the Convention, in the office of the Secretary of State.

Resolved, That William S. Robinson prepare an Index to the Journal, and procure two thousand copies of the Journal and Index to be printed and bound, on such terms and in such manner as shall be approved by the Committee on the Preservation of the Records, and that he be paid four dollars a day for his services therein.

Resolved, That his Excellency the Governor be requested to draw his warrant on the treasury for such expenses incurred in the execution of the preceding Resolves, as shall be approved by the Committee on the Preservation of the Records.

Resolved, That the Secretary of the Commonwealth be requested to distribute copies of the Journal to each member of the Convention, and to all persons and public bodies mentioned in chapter 2, section 2, of the Revised Statutes, excepting members of the Legislature.

The Report having been read, Mr. BIRD moved that it be considered now.

The motion was agreed to.

The question being taken on the adoption of the Report of the Committee, it was decided in the affirmative.

Assignment of time for taking the Question.

Mr. WILSON, of Natick, moved that ten o'clock, to-morrow, be assigned for taking the question on the resolves on the subject of Elections by Plurality.

Pending which motion, Mr. LORD, of Salem, moved that the Convention proceed to the consideration of the Orders of the Day, which being a privileged motion, had precedence over the motion of the gentleman from Natick. And the question being taken, it was decided in the affirmative. And the Convention thereupon proceeded to consider the

Orders of the Day,

The first item being the resolves on the subject of

Elections by Plurality.

The pending question being on the motion of the gentleman from Otis, Mr. Sumner, to reconsider the vote by which the amendment offered by the gentleman from Boston, (Mr. Schouler,) had been rejected.

Upon this motion the yeas and nays, having been previously ordered, were taken, with the following result—yeas, 146; nays, 188:—

YEAS.

Adams, Benjamin P.	Jackson, Samuel
Aldrich, P. Emory	James, William
Andrews, Robert	Jenkins, John
Aspinwall, William	Jenks, Samuel H.
Atwood, David C.	Johnson, John
Ayres, Samuel	Kellogg, Giles C.
Barrows, Joseph	Kingman, Joseph
Beebe, James M.	Kinsman, Henry W.
Bigelow, Jacob	Knight, Hiram
Bliss, Gad O.	Knight, Jefferson
Bradbury, Ebenezer	Knight, Joseph
Braman, Milton P.	Kuhn, George, H.
Breed, Hiram N.	Ladd, John S.
Brewster, Osmyn	Leland, Alden
Brinley, Francis	Lincoln, Frederic W., Jr.
Briggs, George N.	Littlefield, Tristram
Bullock, Rufus	Livermore, Isaac
Bumpus, Cephas C.	Lord, Otis P.
Carter, Timothy W.	Lothrop, Samuel K.
Chandler, Amariah	Loud, Samuel P.
Chapin, Chester W.	Miller, Seth, Jr.
Choate, Rufus	Mixer, Samuel
Coggin, Jacob	Morey, George
Cogswell, Nathaniel	Morris, Joseph B.
Cole, Sumner	Morton, Marcus
Conkey, Ithamar	Morton, Marcus, Jr.
Coolidge, Henry F.	Noyes, Daniel
Crockett, George W.	Oliver, Henry K.
Crosby, Leander	Orcutt, Nathan
Crowell, Seth	Paige, James W.
Cummings, Joseph	Park, John G.
Dana, Richard H., Jr.	Parker, Adolphus G.
Davis, John	Peabody, George
Davis, Solomon	Pemroy, Jeremiah
Dawes, Henry L.	Powers, Peter
Deming, Elijah S.	Putnam, John A.
Denton, Augustus	Rantoul, Robert
Easton, James, 2d	Read, James
Eaton, Lilley	Reed, Sampson
Ely, Homer	Sargent, John
Eustis, William T.	Schouler, William
Farwell, A. G.	Sikes, Chester
Foster, Aaron	Sleeper, John S.
French, Charles H.	Souther, John
Frothingham, Rich'd, Jr.	Stetson, Caleb
Gardner, Henry J.	Stevens, Charles G.
Gilbert, Wanton C.	Stevens, Granville
Gould, Robert	Stevens, Joseph L., Jr.
Goulding, Dalton	Storror, Charles S.
Goulding, Jason	Sumner, Increase
Gray, John C.	Talbot, Thomas
Green, Jabez	Taylor, Ralph
Greenleaf, Simon	Thomas, John W.
Hale, Artemas	Tileston, Edmund P.
Hale, Nathan	Train, Charles R.
Hammond, A. B.	Tyler, John S.
Hawkes, Stephen E.	Upham, Charles W.
Hayward, George	Upton, George B.
Heard, Charles	Viles, Joel
Henry, Samuel	Walcott, Samuel B.
Hersey, Henry	Wales, Bradford L.
Hewes, James	Walker, Samuel
Heywood, Levi	Weeks, Cyrus
Hillard, George S.	Wetmore, Thomas
Hindsdale, William	Wheeler, William F.
Hobart, Aaron	White, Benjamin
Hopkinson, Thomas	Wilbur, Daniel
Hubbard, William J.	Wildor, Joel
Hunt, William	Wilkins, John H.
Huntington, Asahel	Wilkinson, Ezra
Huntington, Charles P.	Williams, J. B.
Hurlburt, Samuel A.	Wilson, Milo
Hyde, Benjamin D.	Wood, Nathaniel

NAYS.

Abbott, Josiah G.	Allen, Parsons
Adams, Shubael P.	Alley, John B.
Allen, Charles	Alvord, D. W.
Allen, James B.	Baker, Hillel
Allen, Joel C.	Ballard, Alvah

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Ball, George S.
 Barrett, Marcus
 Bates, Eliakim A.
 Bates, Moses, Jr.
 Bennett, William, Jr.
 Bennett, Zephaniah
 Bigelow, Edward B.
 Bird, Francis W.
 Boutwell, Geo. S.
 Booth, William S.
 Boutwell, Sewell
 Bradford, William J. A.
 Bronson, Asa
 Brown, Alpheus R.
 Brown, Artemas
 Brown, Hammond
 Brown, Hiram C.
 Brownell, Joseph
 Bryant, Patrick
 Buck, Asahel
 Cady, Henry
 Caruthers, William
 Case, Isaac
 Chapin, Daniel E.
 Chapin, Henry
 Churchill, J. McKean
 Clarke, Alpheus B.
 Clark, Henry
 Clark, Ransom
 Clarke, Stillman
 Cleverly, William
 Crane, George B.
 Cross, Joseph W.
 Cushman, Henry W.
 Cushman, Thomas
 Cutler, Simeon N.
 Davis, Charles G.
 Davis, Ebenezer
 Davis, Isaac
 Day, Gilman
 Dean, Silas
 Duncan, Samuel
 Dunham, Bradish
 Durgin, John M.
 Eames, Philip
 Earle, John M.
 Easland, Peter
 Eaton, Calvin D.
 Edwards, Elisha
 Edwards, Samuel
 Fay, Sullivan
 Fellows, James K.
 Fiske, Emery
 Fisk, Lyman
 Fitch, Ezekiel W.
 Foster, Abram
 Fowle, Samuel
 Fowler, Samuel P.
 Freeman, James M.
 French, Charles A.
 French, Samuel
 Gale, Luther
 Gardner, Johnson
 Gates, Elbridge
 Gilbert, Washington
 Giles, Charles G.
 Giles, Joel
 Gooding, Leonard
 Graves, John W.
 Griswold, Josiah W.
 Griswold, Whiting
 Hadley, Samuel P.
 Hallett, B. F.
 Haggood, Lyman W.
 Haggood, Seth
 Haskins, William
 Hathaway, Elnathan P.
 Hayden, Isaac
 Hazewell, Charles C.
 Heath, Ezra 2d.
 Hewes, William H.
 Hobart, Henry
 Hobbs, Edwin
 Hood, George
 Hooper, Foster
 Howland, Abraham H.
 Hoyt, Henry K.

Hunt, Charles E.
 Hurlbut, Moses C.
 Ide, Abijah M., Jr.
 Jacobs, John
 Kendall, Isaac
 Keyes, Edward L.
 Kimball, Joseph
 Knowlton, J. S. C.
 Knowlton, William H.
 Knox, Albert
 Ladd, Gardner P.
 Lawrence, Luther
 Lincoln, Abishai
 Little, Otis
 Loomis, E. Justin
 Marble, William P.
 Marcy, Laban
 Marvin, Abijah P.
 Mason, Charles
 Meader, Reuben
 Merritt, Simeon
 Monroe, James L.
 Moore, James M.
 Morton, Elbridge G.
 Morton, William S.
 Newman, Charles
 Nichols, William
 Nute, Andrew T.
 Ober, Joseph E.
 Orne, Benjamin S.
 Osgood, Charles
 Packer, E. Wing
 Paine, Benjamin
 Parris, Jonathan
 Parsons, Samuel C.
 Partridge, John
 Peabody, Nathaniel
 Pease, Jeremiah, Jr.
 Penniman, John
 Perkins, Jesse
 Perkins, Noah C.
 Phelps, Charles
 Phinney, Silvanus B.
 Pierce, Henry
 Pool, James M.
 Rawson, Silas
 Rice, David
 Richards, Luther
 Richardson, Daniel
 Richardson, Nathan
 Richardson, Samuel H.
 Rogers, John
 Ross, David, S.
 Royce, James C.
 Sanderson, Amasa
 Sanderson, Chester
 Sheldon, Luther
 Sherril, John
 Simonds, John W.
 Smith, Matthew
 Sprague, Melzar
 Spooner, Samuel W.
 Stacy, Eben H.
 Stevens, William
 Stiles, Gideon
 Strong, Alfred L.
 Taft, Arnold
 Thayer, Willard, 2d
 Thompson, Charles
 Tilton, Abraham
 Tilton, Horatio W.
 Turner, David
 Underwood, Orison
 Vinton, George A.
 Wallis, Freeland
 Walker, Amasa
 Ward, Andrew H.
 Warner, Marshal
 Waters, Asa H.
 Weston, Gershom B.
 Whitney, Daniel S.
 Whitney, James S.
 Wilbur, Joseph
 Williams, Henry
 Wilson, Henry
 Willard
 Winn, Jonathan B.

Winslow, Levi M.
 Wood, Charles C.

Wood, Otis
 Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
 Allis, Josiah
 Appleton, William
 Austin, George
 Bancroft, Alpheus
 Banks, Nathaniel P., Jr.
 Bartlett, Russel
 Bartlett, Sidney
 Beach, Erasmus D.
 Beal, John
 Bell, Luther V.
 Bishop, Henry W.
 Blagden, George W.
 Bliss, William C.
 Brown, Adolphus F.
 Brownell, Frederick
 Bullen, Amos H.
 Burlingame, Anson
 Butler, Benjamin F.
 Childs, Josiah
 Clark, Salah
 Cole, Lansing J.
 Cook, Charles E.
 Copeland, Benjamin F.
 Cressy, Oliver S.
 Crittenden, Simeon
 Crowninshield, F. B.
 Curtis, Wilber
 Davis, Robert T.
 Dehon, William
 Denison, Hiram S.
 DeWitt, Alexander
 Doane, James C.
 Dorman, Moses
 Ely, Joseph M.
 French, Rodney
 Gooch, Daniel W.
 Greene, William B.
 Hall, Charles B.
 Harmon, Phineas
 Haskell, George
 Holder, Nathaniel
 Houghton, Samuel

Absent and not voting, 85.

So the motion did not prevail.

The question recurred on the motion of the gentleman from Freetown, (Mr. Hathaway,) to amend the third resolve so as to provide that representatives in the general court be, hereafter, chosen as by law shall be established.

The question was taken, and the amendment was rejected.

Mr. WILSON, of Natick. I now move to amend the third resolve by substituting the following:—

Resolved, That the Constitution be so amended as to provide that in all elections of representatives to the general court, when no election is effected on the first trial, the meetings may be adjourned, from time to time, until the meeting of the legislature to which the said representatives are to be chosen, provided that no one adjournment shall be for a longer time than six days.

Mr. WILSON, of Natick. I will detain the Convention but a few moments on this question. I am willing, although I am in favor of adhering to the majority system, to depart from that system under the pressure of necessity. By the Report of the Committee, senators are to be chosen by the plurality rule, and county and district officers are also to be chosen by that rule. I see a necessity for this, and I am willing to acquiesce in it. But I see no necessity for making the representatives and town officers elected by the plurality rule; none whatever. Gentlemen may say that it is

necessary in order to secure a representation from all the towns in the Commonwealth. I say to gentlemen, you cannot secure a representation by the plurality system. It is competent for the towns of the Commonwealth, when the voters are assembled together, to vote not to send a representative; and if there be three or four political organizations in those towns, and if the plurality rule prevails, the minorities will unite and vote not to send, without any trial at all, or after trying once under the majority system, which the resolutions propose to retain. I say, therefore, to the friends of the plurality system, you certainly gain nothing by its application to the election of representatives; nothing, whatever. You may adopt that rule if you please; but you cannot force the minorities in any of the towns of this Commonwealth to elect a man under the plurality rule. Now, adhere to the majority principle in town elections, and in the election of representatives; take off all constitutional restraints; allow the towns to adjourn from day to day, or from one day to another, not exceeding six days; to call new meetings at their pleasure, from the time the annual meeting is held to the time of the meeting of the legislature, and then, if there be a necessity, there will be a union of men in those towns, and they will elect representatives; and in my judgment, under the majority system, you will secure as full a representation from the towns in this Commonwealth as you can get by the plurality rule, because you cannot take from the people the power to vote not to send, if they choose to do it, under the plurality rule. They will exercise that power. Then let this system stand as a compromise.

I understand that this was the position of affairs when the question was sent to the Committee the second time. A vote, and the largest vote taken during the Convention, was that upon the State officers, by which it was required that they should be chosen by a majority, and it was also agreed by the same vote that senators, county and district officers, should be elected by a plurality; but that in the election of representatives and town officers, a majority should be required. I am ready to stand by that vote, as a compromise. But I do not like this present Report. Gentlemen tell us this is a compromise. What kind of a compromise is it? Why, we agree that your Constitution shall say that the senators shall be elected by a plurality; we agree to elect representatives on the second trial, and all the town officers on the second trial by a plurality. Then we have abandoned the majority rule altogether, as far as the principle is concerned, and we have simply saved the principle so as to apply it to six officers, to be elected by the people of the whole State.

The gentleman from Salem, (Mr. Lord,) told us that he saw through this plan. That gentleman is very keen-sighted, and sees all that is to be seen. He sees, or thinks that he sees, the reason why this plan is made. It carries on the face of it something that looks very much like an arrangement for party ends. But, Sir, let us have the representatives and the town officers elected by the majority system. The election of these officers is a question of as much moment and importance as any other question that the people themselves can direct and control in their own primary meetings. And then we have adopted a system, a compromise system, and one which

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ELECTIONS BY PLURALITY. — HOOPER — FRENCH — ABBOTT — GARDNER.

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I am ready and willing to sustain. But if we are to adopt the Report of the Committee, if we are to elect representatives and town officers by a plurality rule, I say frankly and freely, for one, you may take the plurality system altogether;—take it, and let it have free course and be glorified.

Mr. HOOPER, of Fall River. I am exceedingly surprised at the remarks of the gentleman from Natick. I had supposed that this Report was a compromise, and had made up my mind to stand by it as such. It is well known, that in the first instance, I was in favor of the plurality system throughout. But I found that gentlemen differed; and I was willing, as I could not get the whole, to take half of it rather than have none. I supposed that the Committee thought this Report equitable, and I came to the conclusion to support it. I confess it has taken me altogether by surprise, that the gentleman has made the motion which he has. The class of officers to which he alludes, is that to which I wish to have the plurality principle apply. I prefer that it should be applied in the first instance; but if we cannot have it in the first instance, let us have it at the second trial, and let town officers be elected in the same manner. The greatest complaint in the town which I represent is, that we have not been able, for several years, to elect our town officers without great delay and inconvenience. Now, we want this remedy, so as to have an opportunity to elect them at the second trial, at least, if we cannot have it at the first. I was in hopes that we should take this Report as a compromise on which we could all stand; so that we should all feel that we have succeeded in obtaining what we wish, in part, at least. I hope that the gentleman from Natick will take this view of the matter, and that we shall adopt the Report without farther amendment, since the Amendment of the gentleman from Freetown, (Mr. Hathaway,) has been rejected. There seems to me a propriety in making this distinction, if you make any; that you should leave those officers who are to be voted for by the people of the State, so as to apply the majority rule to them. It has been said here that the judges are elected by the people, because they are appointed by a governor who is elected by the people. In the same way, we may say that these officers will be elected by the people, because they will be elected by a legislature which is elected by the people. If the argument is good in one case, it is just as good in the other. Now, in that view, as long as we can have the will of the people represented in the legislature, it is only at second hand that we elect these officers; and I think, that if we exclude any from this rule, these officers are the proper ones to be excluded. There was a strong reason why the senators should be elected by plurality; for if not elected at the first trial by the people, their election was transferred to another constituency, other than the one they represent. The people in the small towns are immediately interested to have this pass, because without it, many of them will fail to be represented. But the gentleman says, we shall not compel them to send representatives, because they may vote not to send, if they please. That is true; but it will seldom take place. The result will be, that when it is found there will be an election, men will take measures to see that the right candidates are put in nomination, and they will attend the polls to see that their election is made secure; conse-

quently, a better class of men will be elected than we have had under our majority system. I hope that the amendment of the gentleman will not prevail, but that the Report of the Committee will be adopted as it now stands.

Mr. FRENCH, of Berkley. Mr. President: I am rather astonished at the gentleman from Fall River. He appears to want a plurality to elect town officers, and I know that they have been embarrassed in that place on account of not being able to elect their town officers. But I cannot hardly understand what the gentleman wants. To this third resolution I had intended to have offered an amendment, if it had not been done by the gentleman from Natick; because I do not think it looks proper, as it now stands. At the first ballot a majority is to elect; and then it is provided that if a majority fails, an election shall be had by a plurality. Well, Sir, what do you want a second vote for? On the very first vote, you have a plurality, if you do not have a majority. But it seems to me to be proper that the people should not come together upon two bases for electing representatives and town officers; that they should try one at a time, and if that did not succeed, they could have another meeting and time to take breath, and take a sober second thought. Now this accomplishes all the gentleman asks for; for if they are not elected by a majority on the first ballot, they are sure to be elected by a plurality at the second meeting. All the difference is in two meetings. That is all; and I do not see but the gentleman may be accommodated under this amendment. I am in favor of this amendment, and I believe it to be right.

Mr. ABBOTT, of Lowell. I desire to say a single word on the amendment of the gentleman from Natick, and I am free to say that unless that amendment prevails, I, for one, am disposed to put myself on some sort of principle. I am disposed to go for the compromise, or else for the plurality, or else for the majority. [Laughter.] But as the matter is, at this present time, as it seems to me, I am going for neither the one or the other; or, to use a more common expression, the scheme presented by the Committee is "neither fish, flesh, nor good red herring." For my part, I do not wonder that my friend from Fall River is willing to go for what he calls a compromise; but I ask if he expects those who are in the position that I am, those who believe in the majority principle, that it is the true conservative power where the power is in the hands of the people, who believe that a man has a right to shelter himself, and his conscience, and will, behind the heart of the people; I ask if he believes gentleman who believe that, can go for this compromise? A compromise, indeed! It is a compromise which is all on one side. I want to know how much I, as a majority man, get here by this compromise?

I want a majority, or I want something like a majority in the law-making part of this government. I do not care so much whether it be a plurality or a majority in the little petty offices, or the great offices, if you please, where men are chosen every year merely to execute and carry out the laws which are made by the law-making part of the government; but I want a majority in the law-making part of the government, and when I am called upon to vote for the men who are to make the laws, before I have to give up my will

and my way, I want to know, and I think I have a right to know, that the majority of the people go for that particular thing. I want the right to call upon a majority, and not upon less than a majority, or upon every little faction that may come up and get so as to number one more than any other faction in the community. Well, Sir, how is it in this compromise, as they call it? You are to vote for your governor, attorney-general, and some other officers—how many I do not know, and do not care—once, and if you do not choose them by a majority, they are to be chosen by whom, I pray you, Sir? They are to be chosen by two bodies, who are to be elected upon the plurality system, and the worst kind of plurality that can be brought into this House, or anywhere else. It is something that gentlemen cannot wink out of sight, or keep out of sight, that you have provided here by your vote, that a majority of the House of Representatives may be chosen by one-third part of the people of this Commonwealth; and now you ask gentlemen to allow your governor and the other great officers to be elected by that House so chosen, and by the Senate, who are elected by pluralities. I do not regard the first trial by majority, as anything—that is merely tentative; it is merely a feeler, as my friend for Manchester, has told us. But, on the next election, you abandon the whole; and yet you talk to me about principle, when you have given up all principle, and all that you have got in exchange, is something to go into the legislature and trade upon. Somebody else besides the gentleman from Salem, will come to the same conclusion, and see the same thing; you have given up principle and got something that you can trade upon in the legislature. That is so apparent, that it sticks out in every direction; the lion's skin is not a quarter large enough to cover something that I will not give any name to. Now, Sir, gentlemen expect persons who believe as I believe, in the majority principle; who believe that it is the true conservative doctrine, that a democrat should put between him and harm; that the great will of the people, the great heart of the people, is seldom if ever wrong, when a majority are suffered to give expression to their views—they expect that we, believing all this, can go for this compromise where we give up everything, and gain nothing that will do us any good—gain nothing that in my humble judgment will not be a reproach to us forever after. I say, if the gentleman from Natick, would take the Report of the Committee as it is, I, for one, am prepared to go for it, and accept the plurality system to that extent. While this is not a fish, that would be, although I agree with him, that this smells mighty fishy.

Mr. GARDNER, of Seekonk. I have not detained the Convention at all upon this question, although I have listened with much interest to the remarks of other gentlemen who have spoken upon it; but, before the question is taken, I wish to express my views in short, in regard to it. I must say, that I am obliged to differ with my friend from Fall River, (Mr. Hooper,) and many other gentlemen of the Convention, who have stated here, that the people of the Commonwealth were dissatisfied with the present system, and in favor of the plurality system. I think that I know something myself of the views and feelings of the constituency which I represent here, and the people of that part of the State. To be sure, I am from the same county with my friend upon

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my right, (Mr. Hooper); but, Sir, I do not believe that a majority of the people of the county of Bristol, or of this Commonwealth, are at present prepared for the plurality system, even so far as we have already adopted it. I hope, therefore, that the amendment which has been offered by the gentleman from Natick, will be adopted. I think gentlemen may, perhaps, make up their minds for themselves, in some instances, better than they can for their constituents. I think they are mistaken in supposing that the people desire so many reforms in the Constitution. We have made some which are salutary and democratic in their tendency, which are well conceived, and which I have no doubt will be adopted by the people; but I doubt very much, whether we have made a judicious reform in the manner in which we have settled the basis of the Senate; I should have preferred that it had been based upon legal voters. In regard to the plurality question, I hope the amendment of the gentleman from Natick will prevail; and if it should not, I should like to move an amendment to the third resolution, which would be, to strike out all after the word "election." I should prefer that, but still I shall give my vote, with great pleasure, for the proposition which has been made by the gentleman from Natick. I have not, upon any occasion, detained the Convention with any very protracted remarks; nevertheless, there are some questions which have been taken here, in cases where the previous question has been unexpectedly ordered, or some motion has been made that the question should be taken at a specified time, so that the gentlemen, who, like me, happen to sit in the rear of the hall—though with my own position I am well pleased—have not had an opportunity to express their views. At any rate, I will take the liberty to say, that some questions have been passed upon, in a manner which, in my judgment, needs to be reviewed, before we adjourn. Although I am in favor of bringing the doings of the Convention to a close as speedily as possible, yet I hope, that what we do will be done for the public good; and I hope that this question will be discussed, if need be, until we shall vote down the propositions contained in these resolutions.

Mr. TRAIN, of Framingham. I am very happy, Mr. President, that the gentleman from Natick has moved this amendment; because, Sir, it has given me an opportunity to know that that gentleman, and my friend from Lowell, (Mr. Abbott,) have been brought to a realizing sense of their condition. [Laughter.] In other words, they have been brought to appreciate that the Report of this Committee is by no means such a proposition as this Convention should go for; that it is an attempt, either intentional or unintentional, to place the chief offices in the Commonwealth in the hands of a legislature who may be chosen by a majority or not, as political capital upon which to truck and dicker. Now I think, that, as a member of the minority of this Convention, in relation to the remarks of those gentlemen, I am entitled to speak right out, without keeping anything back. We have been told, by the member for Manchester, by the member from Natick, and by the member from Lowell, all leading minds in this Convention, that that is the result of this Report; and I think that I am assuming nothing, as a member of the Whig party in this Commonwealth, when I say "Amen" to their declaration. We are called

upon to vote here that senators and councillors should be chosen by plurality; that district and county officers should also be chosen by plurality; but that six of the highest officers in the Commonwealth should be chosen by a majority, and that failing, that they should be chosen by the legislature. Now I should like to have some gentleman who has astuteness enough, point out the principle upon which this distinction is made. I have been unable to see it. I agree now, as I always have done, to the general doctrine, that if you apply the plurality principle in one instance, you are bound to apply it in the whole. I need not recapitulate the arguments which have been gone over in the course of the debate upon this subject, because it is well understood, and I think it must be conceded that the argument of necessity alone—if it is an argument—should induce the people of this Commonwealth to adopt the plurality system; and I do not rise for the purpose of going into an argument generally upon the propriety of adopting either the plurality or the majority system, but for the purpose of addressing myself to the amendment of the gentleman from Natick; and, Sir, having been born and educated in one of the country towns of Massachusetts, I know of nothing that would be more oppressive, that would create more hardship, and would place the House and Senate more in the hands and in the power of the money of Massachusetts, than this amendment which has been offered by the gentleman from Natick. The proposition, as I understand it, is that if a majority fails to elect at the first ballot in any of the towns, they may adjourn from day to day for the purpose of election, provided, that that adjournment does not extend beyond six days. Now, Sir, I desire to know how many towns there are in this Commonwealth where a majority of the people can afford to go to town meeting from the first Monday in November until the snow flies? I do not know of any such towns. In my town we have seven hundred voters, and there may be one hundred and fifty out of the seven hundred who can afford to go to town meeting from the first Monday in November, until the legislature meets, but there are not more than that. At the first town meeting perhaps there will be five hundred voters out of the seven hundred, and you can get a large expression of the people of the town; but at the next election there would not be more than half of the whole number there, and after that there would be but a small fraction. These men find that it is a great expense of time and money to go to town meeting so often; and hence the oppression of the amendment of my friend from Natick. In my own town I have three hundred constituents who work by the day in the cotton factory, or who work at manufacturing boots and shoes; and every day that they go to town meeting causes them a loss of from one to two dollars each, which they need to appropriate to the support of their families; and are we to be told now that we should vote from day to day from the first of November, until the legislature meets, for the purpose of choosing a representative by majority? I put it to members from the country, as a matter of fairness and justice to those who are unable to go to town meetings from day to day, if they should be dragged into any measure, which will, in the end, put the power of administering political affairs into the hands of those few who can thus afford to go when the others cannot?

That is the whole of it. Those who have the most money, those who have the best wind—to use a race-course expression—and the most bottom, will choose their men at last; for they can attend the election after the poor man has been obliged to stay at home, to earn bread for his wife and children. That is what I understand the proposition to be.

Now, I do not know to which party I belong here—whether I am a conservative or a radical. I thought I was a conservative—I was always taught that I was a conservative—but since my friend from Lowell, whom I have known so long, claims to be a conservative, I think it is very possible that I have been driven to the other side. If a desire that my fellow-citizens should be allowed to exercise their rights and to be represented, is radical, then I am a radical. If being driven from the position that but a small part of the seven hundred voters in my town should be allowed to choose a representative is radical, then I am a radical as opposed to that position. Look at the last election in the district in which I live, or in any of the congressional districts in which there were elections last fall; and I say, Sir,—I believe that I cannot be mistaken,—that the representatives to congress who were chosen by pluralities at that election, were chosen by a smaller vote than the minority candidate had at the first election. I believe that to be true; I am not quite so sure how it was in my own district, where Mr. Sabine was chosen; but I am very sure that it was so in the adjoining district, where another gentleman was chosen whom I will not name. Gentlemen will find that just in proportion to the number of elections, just in that ratio does the number of voters diminish; because a majority of the people of the Commonwealth who exercise the right of suffrage cannot afford to go to the polls and vote day after day; and that is the reason why I oppose the amendment of my friend from Natick. I trust that no such amendment will pass. The same reason which he urges in favor of the amendment, as it seems to me, applies with double force against it. He says that if you adopt the plurality principle in these towns, there may be a desire to concentrate against the plurality candidate, and so they will vote not to send. I say it is better that they should have no representative, than that, because they are unable to send a man to represent them properly, they should be misrepresented by a representative upon this floor. These are, briefly, the views which I have entertained in regard to this matter. I did not propose to occupy the time of the Convention as I have done; but I have a very strong feeling and belief, that the principles which I have enunciated are the true principles which should govern the elections in this Commonwealth.

Mr. DAVIS, of Plymouth. I am very glad, Sir, that the gentleman from Natick has seen fit to move any amendment which will shape, or which will have the tendency to shape, the Report of the Committee. I agree with what has been said by the gentleman from Lowell, that I see no rule—I see no principle—I see no compromise in the Report of the Committee; and I have not yet seen that the chairman of the Committee which made that Report, has evinced any desire to recommend it farther than by thus offering it to this Convention. He has not defended it, nor is he present here

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to take charge of it; and certainly, if the Convention will read the preface to the Report, I think they will perceive that he has given no reasons there which will recommend it to this body. I am glad, Mr. President, that this amendment has been offered by the gentleman from Natick, because it is, in some degree, like that which was offered in Committee of the Whole, yesterday, by myself; and I certainly do not care which amendment prevails, if either of them has any tendency to prevent the election of town officers by plurality; because I regard them as substantially the same. I rise, at this time, to state one reason why the plurality system should not prevail in any election—more especially in town elections and in the elections of representatives—and it is a reason which I have not seen or heard stated. It is more particularly applicable to town and city elections. It seems to me that elections by plurality, for town officers and town representatives, would be the means of introducing a political demoralization here, which the experience of other States has shown us almost necessarily follows in town and municipal affairs. I ask gentlemen of this Convention whether they believe that if the majority system had prevailed in the city of New York, the country and the world would have seen that spectacle of corruption in the aldermen of the city of New York, which has now become a matter of history!

I believe that plurality in elections for representatives, as well as for town officers, tends directly to that end; and moreover, that if any local object is to be gained, if any particular private speculation is in view, in a town or city; if a street is to be out in a certain direction, or a new one laid out through some man's land, or any other particular object is to be attained, all that they have to do is to get a caucus; and while the more silent, honest, but careless voters are slumbering in security at home, or are divided upon other matters, this caucus nomination is brought out under the guise of party, and before the majority of the citizens are aware, by the vigilance and activity of men intent upon a private purpose, they carry their election under the plurality system. It was for that reason,—a reason I did not state before, because I supposed it was the sense of the Convention that, without debate, many parts of the Report of the Committee would be rejected,—that I offered this amendment.

Mr. BRIGGS, of Pittsfield. It has been said that politics makes strange bed-fellows, and I believe that Conventions do also. But a little while ago I found myself voting point blank against the gentleman from Natick, (Mr. Wilson,) and, I believe, the gentleman from Lowell, over the way. Now, Sir, I find myself in their ranks, an humble supporter of the proposition of the gentleman from Natick, although I could wish that he would modify it a little. I have made inquiry, a great many times, of gentlemen who, I suppose, would know something about it, how it happens that that provision came into the Constitution that the towns were obliged to elect their representatives in one of four days,—first on regular election day, then at two adjournments, and then on the fourth Monday in November,—and I must say that I have never yet had a sufficient reason assigned. The gentleman from Framingham has given, perhaps, as good a reason as can be given, which is, that it is not advisable

that the people should be called together too frequently for the purpose of voting. That, however, is not a satisfactory reason to me. I should prefer to adopt the system of permitting the people to hold meetings as long as they pleased for election purposes, even if they did not succeed, down to the very day of the adjournment of the legislature. I would carry out what we have carried out here. I see before me the respected gentleman who succeeds our lamented colleague, whom we last week put into the grave, who takes his seat on the second day of the week during which the Convention have declared that we should close our labors. Is there any objection to that? None whatever. Would there have been any objection to it if the people had seen fit to have voted on the matter ten times? None whatever. And, Sir, if you will not give the people such a Constitution as will permit them to elect their officers on the first ballot, what earthly reason can be assigned why they should not be allowed to try until they can come to a final determination, and elect a man according to their own mind? I would not provide that they should not adjourn for a longer period than six days. I see no necessity for any provision of that kind. Leave the matter to the people of the towns. Let them adjourn for as short a time, or as long a time, as they please. Leave it to them; and then I would adopt a provision in the Constitution to the effect that the towns which are entitled to representation, and which have not chosen a representative, may send a man to the legislature any day previous to the last day of the session. I shall, however, vote for the proposition as it is.

One word more, Mr. President. Gentlemen complain of the Report of the Committee. Why in the world should they? They say that it contains no principle. Why, Sir, does it not contain all principles? [Laughter.] Who is there that ought not to be satisfied with it? Do you want an election by a majority? Governor, lieutenant-governor, treasurer, attorney-general, and auditor, must be elected by the good old-fashioned method of a majority—of what? Why, Sir, they must come up here and be elected by representatives chosen by one-third of the people. [Laughter.] Can any majority man be dissatisfied with that? Do you want a plurality? Your plurality men—of whom I have the honor to be one—why, Sir, your senate is to be elected by a clean plurality, and so are your county officers. Do you want both principles? Look at your town representatives, and your municipal elections. Do you want a majority system? There you have it, and if you cannot elect upon that system, then you have the privilege of trying the plurality plan; and yet, here we are, grumbling at this Report—a Report which furnishes individuals everything they want in that line, as far as it goes. Now, it seems to me, that we are making a mistake. I say, with all respect to the Convention—I know we have no right to talk to them, but I know, also, that they are civil gentlemen, and they will bear with me—I say, I believe at this moment, that the great people of the State of Massachusetts, are looking up to this House for the adoption of the plurality system. I may be mistaken; if I am, I am mistaken; but that is my opinion. As to the majority system, have they not felt the inconvenience of it, year after year; and have not members of differ-

ent parties, on different occasions, advocated the plurality system? And are there not numbers of gentlemen,—I say it with all respect; I do not intend it, as my friend from Boston, (Mr. Hillard,) would say, as a "fling,"—are there not gentlemen, whose ears listen to me, that came here strong plurality men, who have abandoned that notion, and has it not been assigned by some, as a reason for abandoning it, that the Whigs have come up here in one solid phalanx in favor of it? And is that a sufficient reason? Mr. President: with some gentlemen I have no doubt that that reason is all-sufficient. If the people want it, is there any danger in adopting it? And, if they do not want it, no man ought to go for it; and, as far as I know, those who cooperate with me in political affairs out of the Convention, at home, and who have expressed their opinions honestly, have entertained this opinion, though they may have changed that opinion, as all honest men will do when they see sufficient reason for doing so.

I say, Sir, without occupying more of the time of the Convention, that I seriously wish gentlemen would attend to the arguments that have been presented to them, not on this side of the House, but from their own friends. I wish they would come forward and answer the arguments of my friend for Manchester, (Mr. Dana,) on this subject, or carry out those principles which but three hours ago were so strongly shown to be the sense of the Convention. This is certainly an important subject; one which strikes deeply at our political rights, and which will have an important effect upon those rights for years to come. I would wish that this question should be met and decided upon its merits, and that we should carry out fully and fairly, and clearly and plainly, what I believe to be the unmistakable indications of the public wish. But, Sir, if that cannot be done, for one individual, I am disposed to get as near to it as I can; and, with the present aspect of the proposition before the House, I shall support most cordially the proposition of the gentleman from Natick, (Mr. Wilson,) though I wish he would present it in a somewhat modified form.

Mr. KEYES, for Abington. I should not have risen to say another word to the Convention, on this subject, had it not been for the fact, that it has been mentioned, several times, that the chairman of the Committee which reported these resolutions, is absent, and that absence been construed as being intentional on his part. And, as I had as much to do with that Report as he had, and as it has been assailed as having no principle, and it having been asserted, again and again, that no good reasons can be assigned for the several points it embraces, I wish to say a word or two in its defence.

The gentleman from Plymouth (Mr. Davis) is opposed to it, because he regards it as a monster, without character, without principle, and without everything else that, in the remotest degree, could recommend it. But, Sir, I immediately saw the reason why he opposed it. He had offered an amendment, similar in its provisions to that which is now pending, as offered by the gentleman from Natick, (Mr. Wilson,) and which was rejected by the Committee of the Whole. That is a sufficient reason for his opposition.

Then, the gentleman from Lowell (Mr. Adams) is similarly situated. He made a very proper speech, in favor of the majority system—and I am

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sorry that we had not many speeches of the same kind—a long time ago. But it is too late to make them now. There has been a great deal said here about “principle;” but it strikes me, Mr. President, that there is very little principle in the whole matter. Now, Sir, here is a complete compromise; not like the compromises we hear of in some other parts of the country, which contain matter which nobody can adopt; and, Sir, I contend that there is a good reason for every one of these propositions. What were the complaints before? They were not made on the ground of principle, at all. There is not a man on the floor of this hall, who would wish to say, before the people, that the majority principle is not the only and the proper principle that ought to be adopted; and the moment you depart from it, you lessen the government, and degrade it, in every sense of the word. And, as I said before, the only principle about it is, on the ground of inconvenience, and its only effect to destroy one party and permit another party to rise into power.

Now, Sir, I say that we had evidently abandoned the idea of coming to any decision on the ground of any distinct and positive principle; and that was the reason why the Committee went out to see if we could not devise some plan on which we could harmonize. In the early part of the day, I explained briefly some of the reasons which had operated upon the Committee, and some of the advantages which would result from the adoption of the Report. In regard to the town system, every-body knows that it extends the privileges of the people to give them more than one ballot. Why do they wish it? It is for their own satisfaction and convenience. When they cannot agree upon the caucus nominations, they can have a second choice—a choice emphatically of their own, without the intervention of a caucus; and there is, therefore, no inconvenience in the arrangement, so far as it regards the towns. If they say: “Let us decide upon the matter to-day,” they will do so; and, after having voted once and come to no decision, they may have twenty candidates if they please. Here, then, in these propositions, there is a fair compromise on both sides.

Now, it was said by the gentleman from Natick, that if the people, at a town meeting, could not agree on a candidate, they could agree to adjourn; and that, therefore, the majority would rule. But, Sir, it is not so. The polls are open at nine o'clock, and there are no majorities there to adjourn on this system; and they will go on and take a vote, and after they have made a count, and decided that they will have no election, then the majority rules.

The gentleman from Lowell, said that the House of Representatives, by this plan, may be elected by a third party, in Massachusetts. Why, Sir, the moon may be made of green cheese, for anything I know. A great many things, may be; but may bees do not fly in July or August. We all know that all this talk about inequalities in representation, is humbug, from beginning to end. It is all absurdity, and reminds me of a conversation I had with a gentleman from Boston, the other day, who told me, with a long countenance, that this inequality was perfectly awful. I asked him if it had ever occurred to him, that during the last ten years, he had exercised sixty-six times more power in the legislature

than I had; and that while that was the case he had never thought there was any necessity for a change in the Constitution? I told him that I lived in a town having 4,500 inhabitants, electing one representative every year; that I voted for one representative every year, while he voted for forty-four representatives; that he elected one representative for every 3,100 of the population of Boston, and I one for 4,500; and that he had sixty-six times more power in the legislature, than I had; and yet he had lived under the system for ten long years, and said that all was equal enough, and answered every-body's purpose well enough. There was no ruin and destruction, under that system. The country towns, Sir, are to be opposed to each other always. Why, Sir, if you had a decent party, here in Boston, one half of the country towns would go for you. [Laughter.] Therefore, these towns are divided against each other, and this vast accumulation of power in the country is just as much for the benefit of cities, as for anybody else, and they can calculate upon it if they only behave themselves.

Now, as I said before, I felt in duty bound to go for the Report, because I thought it was made to meet the wishes of the members of this Convention, a wish expressed by a previous vote. It has not given everything to one side, and kept everything from the other, but has divided the spoils. But now that gentlemen see fit not to accept of it, the obligation I felt under to support it, is removed from me. I do not care whether any more of it be adopted, or not; and I will simply say, in defence of this Report, that it answers the purpose for which the Committee were sent out to make it. It answers that purpose as completely and as fully, as any report, made by anybody possibly could. It is a compromise, and a fair one, giving to each party what belongs to each, and there is good reason for each paragraph in it.

Mr. SCHOULER, of Boston. The gentleman from Pittsfield, (Mr. Briggs,) has said that politics make us acquainted with strange bed-fellows, but that is not half so strange as the speech just made by the gentleman who represents Abington, (Mr. Keyes,) for there is no man in this State, I might, perhaps, say there is no man in the United States, who has spoken more frequently, and more bitterly against all kinds of compromise than that gentleman; and yet he comes forward here in this Convention, finding that the chairman of the Committee shirks from the responsibility, and takes upon himself the responsibility of advocating this compromise Report.

Mr. WILSON, of Natick. Will the gentleman from Boston allow me a word of explanation?

Mr. SCHOULER. Most certainly I will.

Mr. WILSON. My friend from Boston has made a remark which I am sure is unjust, and which he will consider so, when he ascertains the facts. The gentleman from Lowell, (Mr. Butler,) to whom he referred as shirking the responsibility of this Report, was compelled, by death in his brother's family, to be absent this afternoon. Justice to him requires that I should make this explanation.

Mr. SCHOULER. That is a matter which I did not know. But the gentleman from Lowell was here yesterday all day, and also has been here to-day during the whole discussion until this afternoon, and he has not put forth any defence of this Report. But the gentleman from

Abington, (Mr. Keyes,) takes up the gauntlet; a gentleman who has been opposed to all kinds of compromises—who has stood upon the pinnacle of principle, has become the advocate, *par excellence*, of compromise. And what has he made out of it? He said it was the compromise for which this Committee was sent out of the Convention to make. Who ordered them to make it? Where was it made? In coffee-houses, and pot-houses.

Mr. KEYES. I desire to ask the gentleman whether, from his own experience in going to coffee-houses and pot-houses to make compromises, he judges that this Report came from the same place? [Laughter.]

Mr. SCHOULER. I did not mean anything personal by my remarks, and I am sorry that the gentleman should suppose I did. When I spoke of coffee-house and pot-houses, I did not intend any personal reflections upon the gentleman who represents Abington; but I have heard, and other people have heard, that the compromise for the basis of representation which was brought into this House, was concocted over a dinner-table down near a certain coffee-house. That the gentleman will not deny, because if he does, I can prove it. [Laughter.]

Mr. KEYES. I do not know how far my opinions may have accorded with others who have considered and talked over this matter, everywhere, almost; but, Sir, this entire Report of the Committee, with the exception of one single paragraph, was prepared by myself at home, and submitted by me to the Committee. I have not dined in any coffee-house, or any restaurant during the whole session, and have been at no dinner, or public display of any character, except once, and then I spent five minutes in a caucus, where I saw nothing but a lamp upon the table. [Laughter.]

Mr. SCHOULER. It was the remark of an English poet, “may not a man have a house in his own inn.” I supposed that the gentleman who signed the Report was the concoctor of it, and he is the gentleman who represents Lowell, (Mr. Butler).

Mr. KEYES. I will state that the principles of this Report were adopted mainly during the absence of that gentleman. Being afterwards submitted to him, he agreed to them, and signed his name to the Report.

Mr. SCHOULER. All I judged from, was the signature of the Report, and that is the signature of the gentleman from Lowell, and I presumed he was the chairman of the Committee, for he made the first speech to explain the Report; but now it appears that the gentleman from Abington, (Mr. Keyes,) is not only the defender of the compromise, but the author of the compromise. He has brought in an omnibus bill, and asks us to go for it. It is a bill which he cannot even get his own friends to support. I dislike omnibuses, any way. It was said yesterday, it has been said to-day, and it will be said hereafter, and it cannot be denied—and, as the gentleman from Lowell, (Mr. Abbott,) who spoke this afternoon, well put it, it cannot be winked out of sight, and it wont go if you do wink it out—that, by this basis of representation, one-third of the people of Massachusetts, can have a majority in this House. That is the point which the gentleman from Lowell, (Mr. Abbott,) put to the Convention this afternoon, and the fact cannot be gainsayed, however much we may talk about

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compromises, however much we may try to enlist the sympathies of this body by calling this a compromise.

I am opposed to the amendment proposed by the gentleman from Natick. I go for the representation of our towns, and of our cities; and I go for that, because I think every man, woman, and child in Massachusetts, should always be represented in the legislature; and that they should be the makers of the laws. If we adopt the amendment proposed by the gentleman from Natick, we will have the great difficulty and the great objection which lies against the present Constitution, for it leaves the Constitution, in that respect, precisely where it now is.

The gentleman from North Brookfield, (Mr. Walker,) in speaking yesterday, said it is no great inconvenience if a hundred towns are left out of the legislature. Now, Sir, I take issue with him upon that point. I say, there is an inconvenience and a wrong about it, which no compromise and no speech can overcome; because these people, not represented in the legislature, are still bound to obey the laws which other people make for them. It was to get rid of this town representation of small towns, and parts of the Commonwealth, which we came here principally, among other things, to perform; and, by the district system, we would have obviated the evils to which I refer.

The gentleman from Natick, and others who have discussed this question, have not looked at it outside of the small towns. He gives the small towns the right to vote two or three times every day, from the first Monday of November up to the time of the assembling of the legislature. Although we have cut down the representation of the cities unequally with that of the towns, still this makes the inequality still greater, because in the cities we cannot have elections every day. When we once get together for that purpose, we have to remain, for the mayor and aldermen cannot adjourn the meetings in the cities, as can be done in the towns. You may vote five or six times in the small towns, but you cannot do it in the cities; and, as the Constitution now stands, I do not see how we can obviate it at all. We can have but two elections—one, the annual election, and the other on the fourth Monday of November. I say this is not fair; because it gives to one part of the Commonwealth the right to try to elect a number of times, and allows the cities to try only twice.

But, the farther we go into the consideration of this matter, the more we see the difficulties. There are but two courses to pursue, and, as long as we keep to the principle of either, we keep in a straight line. I can see why some should travel in one line, and prefer the majority rule, and why others should pursue the other, and prefer the plurality principle. If gentlemen are in favor of the majority rule, say so, and stick to it. If they are in favor of the minority principle, stick to that, without compromise, and then we shall have a Constitution which is plain. If we adopt either the one course or the other, the people will know what it is, and it will operate equally throughout the State. The more we discuss this matter, the greater will be seen to be the difficulty of any attempt to compromise a principle; to attempt to put into the fundamental law of the Commonwealth, a provision which has no principle whatever in it, and never was intended to

have any principle in it. I trust, that as the representatives of the people, we shall see the necessity, when we are framing an organic law, of founding it upon principle. Unless we do so, it will not stand. All expediency, all compromise, seeks something beside principle, and will fall. I trust we will throw overboard this whole compromise platform, upset the omnibus, and adopt a principle, and stand by it through and through.

I do not wish to consume the time of the Convention. I rose merely for the purpose of showing the absurd position in which the gentleman for Abington (Mr. Keyes) places himself, and from which I do not see that he will be able to extricate himself.

Mr. HATHAWAY, of Freetown. I am always extremely anxious to know precisely what I am called to vote upon, and I ask the indulgence of the Convention for a moment, upon this matter. In this part of the House there are various opinions as to the provision of the amendment of the gentleman from Natick, (Mr. Wilson). My friend from Boston, (Mr. Schouler,) says it contains the majority principle, and so I understand the gentleman from Natick to say; but if I understand the proposition, it is this, and nothing more: That upon the failure of an election of representatives, town meetings may be adjourned, from time to time, until an election shall be had. I do not pretend to give the precise language of the amendment, but that is the substance of it. I ask the gentleman from Natick where, in his amendment, he finds the majority of all the voters in an election required to effect an election, and wherein does it differ from the provisions of our present Constitution? Where is there any provision in his amendment to prevent the legislature, the very first day of their session, in January next, from passing a law, providing that thereafter a plurality may or shall elect? What violation would there be in that, of any principle or provision which he has incorporated in his proposition? If I am wrong in reference to this matter, I should like to be now corrected.

In consequence of the Convention, the other day, refusing to have a proposition read so that the Convention might understand it, and believing that all the Convention did not understand the precise proposition contained in this amendment, a few moments since I went to the Chair, and reexamined it, and I found my impression true, that there was nothing in it to prevent the legislature from saying that a plurality may or shall elect. My friend from Worcester, (Mr. Allen,) suggests to me there is nothing in the present Constitution which requires that a majority of votes shall be required for an election of a representative. I agree with him, and I can find nothing in the Constitution which would have prevented, in times past—from 1780 up to the present moment—the legislature from providing, by law, that a plurality might elect; and the same difficulty, it seems to me, is involved in the proposition of the gentleman from Natick, if he intended to require a majority of all the electors to effect an election. In order that the Convention may understand the matter, and not be misled—which I do not believe the gentleman from Natick designed should be the case—I call for the reading of the amendment.

Mr. HILLARD, of Boston. I think this Report, when we take it in connection with its parents and its pedigree, is rather a singular docu-

ment. In this Convention, I, in common with the minority party, am only a passenger on board ship, not responsible for the course of navigation; but, from some symptoms that develop themselves, there seems to be a likelihood of a mutiny in the fore-castle, in which case, we may be able to get a look at the log-book, and learn where we are, and where we are going.

As to the majority and plurality rules, I assent, substantially, to the views of the delegate for Manchester, (Mr. Dana). The plurality rule, it seems to me, ought to be applied to the election of the governor and all officers chosen by the general action of the whole State, but not to the election of town officers, or representatives. This is just reversing the application of the Report before us. That document reminds me of the horse advertised for a show, that had his head where his tail ought to be. But we are told that as we cannot have the whole of the principle, we must be content with what we can get. The gentleman for Abington (Mr. Keyes) was, in my judgment, right, in the doctrines he just now laid down and defended, with his usual courage and frankness. He said the Report did not pretend to push one principle to its extreme, but that it was a compromise; a compromise of principles. So far, so good. But I never expected to live to see the day when the gentleman for Abington, (Mr. Keyes,) and the gentleman from Natick, (Mr. Wilson,) would talk so glibly of compromises. Especially should I have thought that the word would have stuck in the throat of the latter gentleman, like Macbeth's "Amen." Perhaps he has been denouncing compromises so long, that he has learned to speak the word easily. It is only on this supposition, that I can account for its having been spoken so trippingly on the tongue, as it was just now.

I am one of those unprincipled men who believe, and always have believed in the necessity of compromises. My household consists of two persons, and I find I cannot govern it without daily compromises; [laughter:] and as to undertaking to govern a community of a million of souls, without compromises, it is just as impracticable as it would be to pass from one point to another without passing through the intermediate points. I go for compromise in this matter; but, as I said before, I would have transposed the rules, adopting that of plurality for the governor and other State officers; but not extending it to town meetings.

I spoke a moment or two ago of symptoms of mutiny in the fore-castle. So far as we can learn from what we can hear through the bulkheads—

Mr. KEYES, for Abington, (interrupting). I am not very particular, generally, about what place is assigned me by gentlemen; but in this instance, I beg that the gentleman from Boston will say cabin, or quarter-deck, and not fore-castle.

Mr. HILLARD, (resuming). Well, Sir, from whatever part of the ship the voice comes, we learn from it that the Committee were moved by the wish to keep political power in the hands of the party which now enjoys it. The line of legitimate succession was not to be broken. This is a legitimate motive for political conduct, and I think the better of the gentleman for Abington for his frank avowal of it. We all feel this; we all act upon it; but we do not often speak it out so openly. There are but two houses in this world, Sancho Panza says, the house of Have, and

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the house of Want. Just now, it is my house that wants, and his house that has. I profess to be a party man; and I hold that the preservation of party organization and the maintenance of party ascendancy are motives upon which all party men must of necessity act, to a certain extent.

Now, as to the amendment of the gentleman from Natick, (Mr. Wilson,) so far as I understand it, I am ready to go for it. But I admit that I have no claim to speak upon this subject with any authority, for I have not been in a town meeting since I was twelve or fourteen years old. For this reason, I am ready to admit that the testimony of the gentleman from Framingham, (Mr. Train,) is much more important than any I, who have lived in a city all my life, am able to bring. But so far as I am able to judge, I hold, that in town meetings, the rule of the majority should always be applied strictly and exclusively. I would keep out of the town meetings the plurality principle, and under no circumstances, nor for any considerations, would I allow it to intrude here. The town meeting is a pure democracy; and as I hold to the government of the majority, so far as it is practicable, as an essentially democratic principle—as this is the very breath of the nostrils of democracy, I would not introduce any principle at variance with it into these primitive democracies. And, Sir, I do not believe that in the long run, the application of the majority principle here will occasion any serious inconvenience; because, the elements which make the application of the plurality rule necessary in many cases, cannot apply in small towns, or in towns of moderate size, because I assume that you cannot have three parties acting separately—and I wish to be understood as making the remark generally, without reference to the present state of things. I say, you cannot have three parties acting separately, unless there are prizes or objects of some considerable importance to be struggled for; and I do not think that any offices or favors that are to be distributed or given out in the town meeting, are of sufficient consequence to produce that result. The natural tendency in our communities is for men to arrange themselves under the banners of one of two parties. The worst that could happen would be, that a certain number of towns would go unrepresented. This would be no public or general misfortune. It would be an inconvenience to the particular constituency not represented, and no more. In plain English, it would be nobody's business but theirs.

Mr. WHITNEY, of Conway. I have a strong desire to say a few words, before a final vote is had upon this subject. Gentlemen from different sides of the House have attacked this Report, it seems to me, without a reasonable consideration of its merits. Some gentlemen tell us there is no principle involved in this whole matter; that we are only discussing the adoption of a rule for governmental action. Others urge that the embodiment of true republican principle lies in the plurality rule alone; while others claim that any departure from a positive majority, is a departure from the true democratic faith. Now, Sir, from what I heard in our previous discussions upon this subject, I had been led to believe that every member of this Convention concurred in the opinion, that the first principle upon which all our civil institutions were established, was, that a majority of the people were only entitled to rule; that sovereignty was acknowledged to

reside only in the expressed will of a majority of the whole people. I did suppose that upon this, as a principle, we were all agreed; that we had agreed that this was the principle upon which the Constitution of 1780 was founded; and that this was the principle upon which our present Constitution now rested, as an established fundamental doctrine; and that under the present Constitution, this idea was intended to be carried out in all our elections; but it is true, in the present Constitution, in case the majority of the people fail to elect the governor of the Commonwealth, then the people delegate their authority to their agents. Let us see what the Constitution now says:—

“But if no person shall have a majority of votes, the House of Representatives shall, by ballot, elect two out of four persons who had the highest number of votes, if so many shall have been voted for; but, if otherwise, out of the number voted for; and make return to the Senate of the two persons so elected; on which, the Senate shall proceed, by ballot, to elect one, who shall be declared governor.”

Gentlemen speak of a great departure in this Report, from the majority principle, as recognized in our present Constitution, in this respect. Why, Sir, the Report is precisely the principle of the present Constitution. It is an embodiment of the same idea precisely, although the language is somewhat changed. You have provided, by this Report, that certain officers now elected by the legislature shall be elected by the people, if they can elect them by a majority of their votes, but if they cannot so elect them, then you provide that they shall be elected by the legislature, the same as under the present Constitution. Well, Sir, no evil can grow out of this amendment, if our present Constitution is right, certainly, for in one case these officers are elected by a majority of the people, and in the other they are to be elected by the same number, or otherwise precisely as we now elect them; in this particular, this Report coincides precisely with the method recognized in the old Constitution. Now, Sir, is that principle a correct one, as it stands in the old Constitution? If it is, then that upon which the Report of your Committee rests is also correct, for it is identically the same thing. And when gentlemen object to the Report because it is a departure from the majority principle, they object to our present Constitution—which in the minds of some gentlemen is perfect. We agree that it is a departure, to some extent. We have departed in the election of officers to be voted for by the whole people of the State, only so far as has been demonstrated that a departure was necessary, and no farther. We abide by the old Constitution in the main, in the election of State officers.

But other gentlemen say there should be a departure, *in toto*—that the plurality is the principle. Well, Sir, be it so, for the purposes of the argument. Suppose it is the principle, have we not accommodated these gentlemen in this Report, in a measure? Have we not adopted the plurality in every case where a political necessity can be shown to exist? I take it the people have no attachment to the rule of a less number than a majority, as a principle. They consent to the rule of a lesser number than a positive majority, as a political necessity, growing out of the multiplicity of parties. This Report adopts the plurality system of the election of all the officers except

those which are now elected by the legislature. It leaves these officers to be elected by a majority of the people, if a majority can elect. Now, where is the great departure from principle in this Report, which gentlemen talk so much about, and say has been concocted in a pot-house, eating-house, or somewhere else?

But the gentleman from Natick, (Mr. Wilson,) objects to it, because it gives the plurality system in the choice of representatives; and says, sooner than choose by plurality, towns will go unrepresented, and vote not to send. Now, I submit to that gentleman, if in his sober judgment, he believes the towns will be less likely to send representatives under this third resolution, giving the plurality choice upon the second ballot, than they will under the present system? I put it to every member of the Convention, if the towns will not, in nine cases out of ten, be less likely to return full delegations under the system proposed by the gentleman from Natick, than under that proposed in the Report of the Committee? It is not because the towns do not want to be represented, that they do not send their full quota of representatives. They like to be represented, but every man is attached to his own party, and dislikes to give up in favor of another party; they also dislike these repeated elections, and therefore they allow themselves to go unrepresented; and perceiving no prospect of a choice, they vote not to send. I think there is no weight in the objection of the gentleman from Natick.

The gentleman from Abington, (Mr. Keyes,) has well answered the argument of the gentleman, that a third part of the people of the Commonwealth, from the small towns, will choose the governor. The case has never arisen, and never will arise, when all the small towns will array themselves on one side, and all the large towns upon the other. There always will be some of the small towns which will sympathize with the large ones, and there always will be some of the large towns that will sympathize with the other small towns; and the case, therefore, will never arise where a portion of the House of Representatives, representing only a third part of the people, will choose the governor. Under this resolution, if adopted in your Constitution, I verily believe you will always have your governor chosen; if not by a majority of the people themselves, by the representatives of a majority of the entire people of the Commonwealth. And how is the case where the majority rule is applied exclusively? Why your governor has often been chosen by a minority during the last eight years. Where there are third parties, there always will be vacancies under the majority rule. And under that rule, a small majority, by possibility, may choose your governor. And I therefore think that this argument, as applied to the Report of this Committee, is entitled to no weight at all.

The gentleman from Framingham (Mr. Train) said that this Report would furnish an opportunity for “truck and dicker.” Now, Sir, I say that if there be any such opportunity furnished anywhere, it cannot be charged upon this Report, or upon this Convention, should it adopt this Report; because in these particulars it copies the present Constitution; and therefore the majority of this Convention can in no sense be charged—by those who have opposed all alterations in the Constitution—when they leave the Constitution as it is, with having furnished opportunities for “truck

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nd dicker." It is chargeable upon the present Constitution entirely, and not upon the Report now before us. Your present Constitution makes the same provision, so far as elections by the legislature is concerned; and the fault, if fault there be, rests upon that, and not upon us. The people have not complained, so far as I know, of the present mode of choosing governor; they have made no call upon us to change the present mode of choosing their State officers. In fact, I am not aware that any fault has been found with it; and therefore, I take it that the argument, so far as relates to alterations of the Constitution for choice by the legislature in case of failure to elect by majority our State officers, is, in this particular, groundless, with regard to the election of representatives, and other officers that the people must elect, if elected at all.

Every gentleman knows the effect upon communities, of frequent elections, where they are continued day after day; where neighbor is arrayed against neighbor, and friend against friend; ill-feeling is often engendered, ill-blood is produced, discord and strife provoked, all of which tend to degrade your electors, and bring them into disrepute, and thus drive the better portion of the people away from the exercise of the sacred right, and high privilege of self-government.

Now, Sir, if you want to make the people love and respect their government, let the people have an opportunity, at the ballot-box, to elect by a practicable number of their votes; and in case of their failure to elect by a majority, let a plurality suffice, in the election of members of the legislature; and let that legislature be chosen by the people, without engendering that ill-feeling and party animosity which is the certain result of frequent elections. But to return to the matter of "truck and dicker." I hold that, as to this matter, the Report of the Committee leaves it precisely where the present Constitution leaves it, with the exception that where the present Constitution allows the House of Representatives four candidates to "truck and dicker" upon, four persons to be voted for, this Report furnishes only three; therefore, I undertake to say that this Report has lessened the number of chances to "truck and dicker," and to that extent it has removed the objection.

Now, Sir, I think the repeated trials to elect, to which the people are subjected under a majority rule, is what the people of this Commonwealth wish to change in the Constitution. They look upon the plurality rule as a necessity in some cases; and they wish to adopt this rule only so far as a necessity exists, retaining the great principle established by our fathers: that in a majority, the only acknowledged sovereignty resides in an organic law, wherever it can be preserved consistently with the practical convenience of the great body of the people. And I think we ought to transmit to our posterity this great principle in our constitutional law.

I intend to vote for the Report of that Committee, as I cannot see any great objection to it, or that departure from principle which gentlemen have endeavored to make out. It provides that every elective officer, excepting such as are elected by the legislature, shall be elected under the plurality rule. If the gentleman from Boston, (Mr. Schouler,) favors the plurality rule, why does he not favor the Report of this Committee?

Mr. SCHOULER. I did not object to this part of the Report, but the other portion of it.

Mr. WHITNEY. I beg pardon of the gentleman. I am happy to hear that he is intending to support the Report of the Committee. I would much prefer, in the case of representatives to the general court, to have had a plurality upon the first choice. In the terms of the Committee, generally, it is true, there is an opportunity to ballot twice upon the same day, and there may be something gained by a second ballot. If men come together, and a caucus nomination is not acceptable to the sober judgment of the people of the town, they will repudiate that caucus nomination on the second ballot. They will once vote, and thus get an honest expression of sentiment upon the first ballot, as to who is the best man to represent them, and after having obtained that expression of opinion by this method, the Constitution will allow them to change the mode of election, if they fail to make choice by majority, to that of plurality. I think that such a plan will not work any great inconvenience to the people. I go for the majority rule as a principle; but I say we cannot abide by it, and as the gentleman for Manchester, (Mr. Dana,) said, in another matter the other day, we cannot carry theories always into practical demonstration in our government. We cannot abide strictly and legitimately by theories, and the theory which I take to be right here is the government of the majority. We depart from it in this case only so far as our convenience compels us to do so, and we give the people the opportunity to prevent any snap judgment, as the gentleman from Pittsfield, (Mr. Briggs,) calls it, by a speedy vote. We will require a majority the first time. I believe the people all over the Commonwealth are looking to this Convention to lighten their burdens in reference to repeated elections. I hope this Convention will stand by the Report of the Committee, and, for one, I design to vote against the amendment of the gentleman from Natick, (Mr. Wilson,) for I think it has produced confusion, and will, if adopted, leave this matter in a worse state than it was before. I intend to vote for the plurality in every case where the people are liable to be called together the second time, for an election; and in every case where the Constitution provides that they shall now be chosen by the legislature, I propose to let the Constitution remain as it is, only giving the opportunity to the people to elect by majority, if they will, if not, let State officers remain where they now are in the Constitution. By so doing, I see no great departure from principle. I think that upon a reexamination of the Report of the Committee, gentlemen will not find it such a monstrosity as it has here been, by some gentlemen, represented to be. I shall abide by the Report of the Committee exactly as it came from their hands.

The question was then taken on Mr. Wilson's amendment, and there were—ayes, 59; noes, 145.

So the amendment was rejected.

Mr. ALLEN, of Worcester. I move to amend by striking out the third resolution entirely. I will not multiply words at this hour of the day. Striking out the third resolve, will leave the Constitution where we found it, and surely that must be a very good condition of things, and a wise provision of the present Constitution, when gentlemen, upon all hands find it so difficult to change it. Upon this question of plurality or

majority, gentlemen have changed their opinions from day to day; not only single individuals, but bodies of men. My friend from Pittsfield, (Mr. Briggs,) and those with whom he associates, have acknowledged the changes which have been wrought in their minds, and, indeed, so rapidly have they been, that my head grows dizzy when I think about them. I was gratified with the course of the conservative members of this Convention in this one particular. I would not preserve the rust which remains in the Constitution; but, as there is great diversity of opinion in respect to any modification of one of its substantial propositions, I propose that we leave the Constitution, in regard to representation, just where we found it. I have not heard any great complaint, only in respect to the election of representatives. I believe that the practice which is allowed for the purpose of a choice, three days in November, and one in December, is amply sufficient on all ordinary occasions. I believe no serious difficulty has been found in this matter in the towns of the Commonwealth, when we had two parties, and none even when the Commonwealth has been divided into three. It was necessary to introduce another element, but I apprehend it will soon be removed from the political affairs of the Commonwealth, and we shall find that we shall go on hereafter, as we have heretofore, quite comfortably and conveniently, so far as respects the manner of choosing representatives, and the principles which will govern them, under the Constitution as it now stands. Differing in almost everything which has been proposed, let us unite in this matter, and retain that provision of the Constitution to which I have alluded, which has existed so long.

Mr. FROTHINGHAM. I shall go for as much of the plurality principle, as I can get; for I believe there is a demand upon the part of the people for it, and its adoption would save time and expense, and certainly party feeling. We have taken the vote upon this question several times. Yesterday, the gentleman from Plymouth, (Mr. Davis,) moved an amendment, the effect of which was to strike out this plurality rule after the first choice. Then, this afternoon the gentleman from Natick, (Mr. Wilson,) to my great regret, moved an amendment, which amounted to the same thing. Now, we have another amendment moved by the gentleman from Worcester, (Mr. Allen). All of these amendments would have the tendency of destroying the plurality rule, for the choice of representatives. I have nothing more to say, at this time, but I appeal to members of the Convention to stand fast by this rule, for the election of members to the House of Representatives; for it will be sure, notwithstanding what has been said by the gentleman from Natick, to cure that great evil—non-representation.

Mr. STETSON. I move the previous question.

Mr. FRENCH, of Berkley. I hope the gentleman from Braintree will withdraw his demand for the previous question, for a moment. I wish to offer the following amendment:—

But in case of the failure of an election on such ballot, then at a subsequent meeting, called for the purpose, the person having the highest number of votes, shall be deemed, and declared to be elected.

I have said a word in regard to this amend-

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ment before, and I labored under an entire mistake, when I supposed that the amendment offered by the gentleman from Natick, had for its object, the same effect.

Mr. STETSON. I rise to a question of order, and it is this: I moved the previous question, and I would like to know if debate can go on?

The PRESIDENT. It is not in order for the gentleman from Berkley to discuss the merits of the question.

The previous question was seconded, and the main question ordered.

The PRESIDENT. The first question is upon the amendment offered by the gentleman from Worcester, (Mr. Allen,) to strike out the third section.

The question was taken on the amendment, and it was rejected.

Mr. HOPKINSON, of Boston. I rise to a question of order. I find the first resolution provides, substantially, that the governor, among other officers, in case of a failure of an election by the people, shall be elected in a particular manner pointed out, to wit: that a certain number of candidates shall be voted for by the House of Representatives, that they shall return the persons so elected to the Senate, out of which number the Senate is to make an election. I find by referring to the record of the 30th of May last, that this Convention, by a very large vote, passed upon this subject, and adopted a different provision. The resolve adopted on that day, reads as follows:—

Resolved, That it is expedient to alter and amend the Constitution, so as to provide that in case of the failure of an election of governor by the people, he shall be elected by the Senate and House of Representatives, by joint ballot.

I suppose it is a general parliamentary rule, which, if it has not been applied here, has been frequently applied, that when a particular matter has been finally passed upon, a reconsideration may be moved within a certain time; but if that time has passed by, such a reconsideration cannot be moved. It appears to me that this provision is a violation of the rule, as it makes provision for the choice of governor, by another method than that already passed upon and determined by the Convention.

The PRESIDENT. The suggestion as to the question of order amounts to this: that this proposition is inconsistent with another proposition, which has been assented to by the Convention. It, therefore, revolves itself into a question of consistency, and that is a matter for the Convention to decide. The Chair understands the general parliamentary rule to be that where a subject has been disposed of, the same subject cannot be presented again. But, that rule is not invariably adhered to, under the general parliamentary law. It is also provided for by a rule of legislative bodies, as by our House of Representatives, that when a question has been rejected, that question shall not be presented again. But, that is not the case in this instance.

Mr. BRIGGS. I would like to have the resolution which has been heretofore adopted, read.

It was accordingly read.

The PRESIDENT. This is, in the judgment of the Chair, a question of consistency, and not of order, and is so laid down in Jefferson's Manual, which is the standard authority.

Mr. HOPKINSON, of Boston. I would inquire, whether, when a matter has been acted upon, it can be taken up again?

The PRESIDENT. The Chair cannot reply to a question of that general character, but only with reference to this particular case. The decision of the Chair is, that it is not for the Chair to decide, whether this is consistent or inconsistent; it is for the Convention to determine.

Mr. BRADBURY, of Newton. I would ask the Chair, as a question of order, would not this be a matter for discussion, and as this is like a question of order, whether, the previous question being ordered, it will cut off these two contradictory acts of the Convention?

The PRESIDENT. The rule is, that after the previous question has been ordered, the main question shall be taken without debate.

Mr. HILLARD, of Boston. I suppose that the previous action of the Convention has been limited to an expression of opinion, that it is expedient to do so and so; and I take it, that these expressions of opinion will be put into definite shape, and come up for the action of the Convention; and that when so brought before the Convention, and the inconsistencies are pointed out, instructions can be given so as to obviate them.

Mr. GRAY, of Boston. I would ask for a division of the question, so far as relates to the first resolution, so that it may be taken upon that separately.

The PRESIDENT. The question will be taken on ordering the first resolution to a second reading.

The question being taken, there were, upon a division—ayes, 140; noes, 90.

So the resolution was ordered to a second reading.

The question was then taken separately, on ordering the second resolution to a second reading, and it was decided in the affirmative.

Mr. HALLETT, for Wilbraham. I ask for the yeas and nays on ordering the third resolve to a second reading.

The yeas and nays were not ordered, and the question being taken on ordering the third resolution to a second reading, it was decided in the affirmative.

The question was taken on each of the succeeding resolutions separately, and they were ordered to a second reading.

On motion by Mr. DUNCAN, of Williams-town, the Convention then adjourned until nine o'clock, to-morrow morning.

WEDNESDAY, July 20, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President at nine o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read.

Lieutenant-Governor.

On motion of Mr. CUSHMAN, of Bernardston, the amended resolves on the subject of the lieutenant-governor were taken from the table and placed upon the Orders of the Day.

Orders of the Day.

The Convention proceeded to the consideration

of the Orders of the Day, the first item being the motion of the gentleman from Fall River, (Mr. Hooper,) to reconsider the vote by which the resolves relating to the incorporation of new towns had been indefinitely postponed.

On motion by Mr. THOMPSON, of Charlestown, this item was passed over.

The resolves on the subject of the Judiciary, and the resolves on the subject of Harvard College were also passed by.

General Laws for Corporations.

The resolve on the subject of General Laws for Corporations, being the next item on the calendar, was taken up for consideration. The question being upon its final passage.

The resolve was read as follows:—

Resolved, That it is inexpedient to incorporate into the Constitution a provision that corporations shall not be created by special act, when the object of the incorporation shall be attainable under general laws.

Mr. CHAPIN, of Worcester. I voted against the resolution as amended, when it was before us on a previous occasion; and I wish to give some reason why I did so. It seems to me there is a misapprehension as to its meaning and operation, because I find that gentlemen voted in its favor on precisely different grounds. Some voted for it because it meant nothing, in their opinion; and others, because, I am bound to suppose, they expected it would accomplish something. Now the difficulty which I have in regard to it, is this: when I vote for a resolution, I wish to vote for one which is intelligible to myself, and the meaning of which I can, at least, think I understand. Now, I wish to make one proposition, and to ask this question of the members of this Convention: Do they wish to adopt in the Constitution a provision which will forever forbid the legislature granting any charter for a railroad? Some would say they do, and others that they do not. Now I ask if, upon that resolution, there is not a question whether the legislature will have the right to grant such a charter? What is the meaning of the clause "when the object of the incorporation shall be attainable under general laws." If it means that the legislature are to decide whether it is attainable or not under general laws in existence, why not say so? If it means an incorporation, the object of which is, in its nature capable of being attained under general laws which may be passed, why not say so? There is an uncertainty about it which makes it difficult for me to vote for it. I would not be willing to vote to give to the legislature power, under a general law to charter a corporation which should have the right to make a railroad or a turnpike so that the company might exercise the right of eminent domain, and so that it might appropriate your land and mine at its election, reserving to us only the right to have compensation. I believe that it should be left to the legislature to pass special acts for corporations of this kind. I am not an advocate for vested rights, but I am an advocate for the doctrine of good faith in legislation. If you and I, Sir, have invested our money in a railroad originally, it has not been for the purpose of making money by the investment, but for the purpose of encouraging the enterprise. Are we to make it necessary for the legislature to pass a general law on the subject, so that this question

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can never be examined by the legislature as each case arises—and so that A, B and C may establish railroads where they please, and locate them over every acre of the Commonwealth without any special legislation upon the subject? I do not say that this resolution necessarily involves this result, but I do say that it leaves it in vagueness and uncertainty, and I am unwilling to adopt a resolution which contains in itself the elements of uncertainty, doubt, and consequent litigation.

I find, on looking at the Constitution of New York, there is a provision somewhat like this resolution; but there is in that Constitution an expression like this: "when in the judgment of the legislature it shall be expedient." Now suppose the legislature of Massachusetts should grant a special charter for a railroad, this resolution standing as a part of the Constitution. You go on and take stock in that road; and by and by, for some reason, you refuse to pay your assessment. The road is under way, the money has been invested, but persons who have taken stock, refuse to pay their assessments. Suppose they are proceeded against, and they come before the court and say that the legislature has no constitutional right to grant that special act. Then comes the question whether it was constitutional. It may be decided that this resolution means that no special act shall be passed when there is a general law upon the subject. Well, if it means that, it does not accomplish what is intended by its friends, because, all that the legislature would have to do would be to repeal the general law, whenever a special act should be required. It seems to me that the amendment introduced the other day by the gentleman from Oxford, contains the true principle. He offered an amendment that certain corporations for certain specified purposes, should not be chartered, except under general laws; and he specified what they should be. They were subjects in relation to which the principles are well settled, and which are well understood by the community. But it seems to me that there is a vagueness about this resolution which will give rise to litigation hereafter, and this in the establishment of an organic law of the Commonwealth we should carefully avoid; therefore, unless this can be amended so as to make it certain as to what we are doing, I feel bound to vote against it as I did before.

Mr. SCHOULER, of Boston. After the very decided vote, in favor of this resolution the other day, it may appear like hardihood or impudence, to rise in the Convention, and attempt to speak against it. But, I do not believe that the Convention fairly understood the whole matter, when they voted upon it before. The question was taken immediately, after a very able and eloquent speech by the gentleman from Conway, (Mr. Whitney,) and I think that he succeeded in presenting his side of the question exceedingly well, by leaving unsaid certain things which had better been said. The whole strength of his argument was, that we should have a general system of corporations. To that, I have no objections. We have now, upon our statute books, a general corporation act, for manufacturing and mechanical, and other business purposes of that kind. We have also, a general law with regard to banks. I have no doubt that these laws will stand permanently, upon the statute books of this Commonwealth. But, I am opposed to taking from

the people forever, the right to say, whether they shall have the right, under any circumstances whatever, to make a special act, for any special purpose. I desire to let the Constitution remain, so that the people shall have the power. I do not wish, for instance, that the people of 1853, shall bind for all time to come, the people of other years. I wish the people to have the right to say through their representatives, after they have heard a case, whether the legislature shall act upon it or not, keeping these general laws all the time upon the statute book, so that whoever wish to form themselves into corporations under these general laws, may do it.

There is another objection to this resolution, and one which the gentleman from Conway, avoided altogether; and that is: if we place this provision in the Constitution, we give to those special corporations now in existence—banking corporations—a monopoly for the next twenty-five years at least; for their charters extend until 1780, and they were all chartered the year before last. The very legislature which passed this general banking law, also re-chartered every bank in the Commonwealth. The very legislature which passed the general joint stock law, also incorporated companies for mechanical purposes, so that the theory and argument used upon that occasion was, that we would have both systems in operation; that is, we should have a general banking law for all those persons who think a general banking system is best, and wish to avail themselves of it, and also with regard to joint stock companies.

The proposition before us is to deprive the legislature of any supervision whatever over this great question of corporations; and I think the argument put forth by the gentleman from Worcester, this morning, is, of itself, conclusive, that we ought not thus to tie up the hands of the legislature. There is no doubt at all but that we can pass a general law with regard to railroads, as well as with regard to banks; and I ask whether it is the best, the purest, and the surest policy to allow persons to form themselves into corporations for railroad purposes, and run a railroad through our land, if we have any, to any point they please; whether the effect of it will not be to depreciate the property of individuals now in corporations of that kind, and whether it will not bring up the question of parallel roads? After men have invested their property upon a pledge of the State, in building railroads, I think it ought to be protected in some degree, upon the faith which the State has given.

Now, Sir, I think the argument is unanswerable, that all these matters ought to be kept in the hands of the people, and that we should allow them to do as they think best when the circumstances come up; and that is all that I desire. I think it is wrong to cramp the legislature of our State in this way. We have already general laws, and I trust that these general laws will remain; I have no doubt that they always will remain. There was no attempt last year to repeal them, and there will be no attempt to repeal them. It seems to me that there is an argument, and there is a strong reason, why we should keep this great power in the hands of the people, so that they can act upon the cases as they come up, and not forever exclude them from being heard here through their representatives. I trust that the order will be defeated, and that we shall leave the Constitution precisely as it now stands.

Mr. DAVIS, of Worcester. I trust, Mr. President, that this proposition will be adopted; and it strikes me that if the members of the Convention will consider the matter, it would be adopted almost by a unanimous vote, if they are desirous of the prosperity and happiness of the good old State of Massachusetts. It is true that this is an important question; it is one which is to effect a major portion of the wealth of Massachusetts; because, by the last valuation, there are in this State about six hundred millions of property, and a majority of all this property, or more than three hundred millions, is now tied up in special acts of incorporation, where certain individuals have special privileges over the mass of the people. This has been done substantially and mainly during the last quarter of a century. With general laws upon the statute book, last winter there were special acts of incorporation passed by our legislature, to the amount of twenty-six millions of dollars; notwithstanding we had a general banking law upon the statute book, banks were incorporated to the amount of ten millions of dollars, when there was not specie enough in Massachusetts, by the bank returns, to put into these new banks to carry them into operation. Gentlemen know what the law is, and what men have to swear to, in order to get these banks into operation; and yet in the face and eyes of the returns of these banks that there was only three millions of specie, not ten cents to redeem a dollar, of the deposits for the bills in circulation, ten millions of dollars of capital were created by these special acts last winter, for banks; and for other business corporations, some sixteen millions more.

Gentlemen can easily see the whole length and breadth of this question, if they will look at the volumes of our special laws. Here are eight large volumes of special laws for the few, and two volumes of general laws for the many. This will show that there has been a system of legislation here in this Commonwealth, for the last quarter of a century, for the benefit of the few, and not of the many. Now, the principle of the proposition is to bring corporations, whenever practicable, under general laws, so as to legislate for all the people of the Commonwealth. The objection which has been taken by my colleague, (Mr. Chapin,) in my judgment, has no force in this particular; because, when the application comes up for a special act, it is for the legislature to judge, before they grant it, whether it can be brought under the general law. There may be cases, and I have no doubt but that there will be cases, in which it will be necessary to grant a special act; but, whenever they can be brought under general laws, they should be brought under general laws that will apply to the whole subject, and operate alike upon all the people. If gentlemen would go into a consideration of this matter—take up the ponderous volumes of special acts, and see how much time has been spent in legislating for the few—they will perceive that hundreds of thousands of dollars will be saved, in the mere business of legislation, by the adoption of this simple principle; for, if they will look over the work of last winter, they will perceive that three-fifths of the whole time was spent upon special legislation. Now, the question is—and I want gentlemen to meet it directly—is it right to legislate for the few or for the many? Should not our laws operate for the

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benefit of the whole people of the Commonwealth, and not for the few?

In my judgment, Mr. President, if we had not been trammelled by these special acts, which are calculated to cripple, to break down and destroy individual enterprise, the population of Massachusetts, instead of being a million, would have now been a million and a half; and instead of the property of the Commonwealth amounting to six hundred millions, it would have amounted to a thousand millions of dollars. What has made fifty-five thousand of the native citizens of Massachusetts emigrate into the State of New York, where they can live under general laws, and where there is a fair competition in all these branches of business?

Yes, Sir, fifty-five thousand of our native-born citizens have gone out from Massachusetts, as is shown by the last census; and they have gone into New York to get a livelihood, simply because they were trammelled here, and all competition was broken down by these corporations. Take an illustration. At first, individuals in this Commonwealth set up establishments for the manufacturing of railroad-cars, and they did well, and were prosperous. By and by it was discovered to be a prosperous business, and people petitioned the legislature, and got an act of incorporation. By the combination of capital they succeeded in putting down prices, and they endeavored to crush every individual who was in the business. They accomplished this, and failed every individual in the Commonwealth who was engaged in this business; and in the effort to do this, they failed themselves. If gentlemen will look into the history of these special corporations, they will perceive—for it is obvious on the face of it—what these special acts are desired for. It is because those who ask for them want special privileges. What are these special privileges for? They are to enable them to gain an advantage over the masses of the people; that is all the reason why they come to the legislature for these special acts. But, says the gentleman, this is to open the door too wide, you are going to make more corporations, if you have such a general law. But when this general law comes before the legislature, I have confidence enough in the representatives of the people, to believe that a general law, which is to affect the whole people, will be guarded, so that men cannot get, under a general law, what they get under special laws, where they come into the legislature and have hundreds of petitions for special acts piled up on the table of the House, and, by a system of log-rolling, secure the passage of an act giving special and exclusive privileges.

Mr. CHAPIN. I wish to inquire of my colleague, who is to decide whether the object of the corporation can be attained under general laws or not.

Mr. DAVIS. The legislature will judge as to that matter.

Mr. CHAPIN. I suppose that the legislature, under this general law, could pass a special law, declaring that, in their opinion, the object was not attainable under general laws, and should therefore be chartered. I will also ask the gentleman another question: whether, in his opinion, the legislature can pass a general railroad corporation act?

Mr. DAVIS. There are general laws relative to railroads. I admit that railroads should never be

permitted without some action on the part of the legislature; but yet there may be general laws that will affect the whole. The principle is substantially that which has been adopted in other States. It has been adopted in the State of New York, and it has operated well there. If gentlemen will look at the last census, and see the tide of population which has gone into that State, they will see how much this system has operated for her advancement, and they will see one of the causes which has driven energetic young men from this State. This leaves it in the power of the legislature to determine the matter. Take, for instance, the banking law of Massachusetts. The general banking law now upon the statute book is much more stringent than these special laws, which have been given to these individuals; and that is the reason that the bank men do not like it. Under the present system they can issue any amount of money they please, without anything to redeem it, in direct violation of the Constitution of the United States, in my judgment. The Constitution of the United States establishes the fact that gold and silver shall be the standard by which we are to estimate the value of our goods, lands, wares, and merchandise; and yet we have another standard here in Massachusetts. Ten millions of bank capital are created in a single year, and everything is raised in value, not comparing it by the gold and silver standard, but by the paper standard, which is not a representation of specie, because, by the last returns of the banks there is not ten cents on a dollar to redeem their circulation and deposits. Why are all these ups and downs in trade, commerce, and manufactures, except from the constant change and variation of the amount of this paper circulation? And this is done for the benefit of the few, who wring their thousands from the masses. But if these ten millions of bank capital had been created under a general law, instead of being created under special acts last winter, it would have had a material effect upon the prosperity of this whole Commonwealth. The man who sits in State Street has the control of more than seventy millions of dollars—the control of all the paper circulation in New England. Every gentleman knows very well that all the banks pay tribute there. No bank can go into operation in New England, until it pays tribute to State Street; and whenever they see fit to put on the screws there, and to make money scarce by curtailing the circulation ten millions, they can do it, and what is the consequence? The farmer's produce falls, and the manufacturer's produce falls in value—all the products of labor fall, and the knowing ones can take the advantage and buy up what they want. The screw is raised, money is plenty, prices increase, and the knowing ones reap the harvest; and the people suffer, and are defrauded in that way. Their honest earnings are taken up in this manner; whereas, if all this business had been entered into under this general banking law, which stands upon your statute book, they could only issue so far as they have the money to redeem their paper with, and every bill-holder would have been safe with his bills. But no! they go on passing these charters, these special acts to give privileges to the few at the expense of the many. I think there is a sufficient guard, if the legislature should pass a general act, for they will do it with vastly more care than they exercise in granting a special act. It is impossible for them

to review all these special acts with much care, as numerous as they are. Nobody knows the law with regard to these special acts. You may ask the best lawyer in this Convention about any particular charter, and he could not tell you unless he had happened to have occasion to examine it, and thus to become familiar with its provisions. But if we had a general law, every lawyer would understand it. Now, the simple proposition is to bring these special acts under a general law. Why, Sir, they have become so numerous in this Commonwealth, that—as gentlemen will see if they turn to document No. 37—it takes ninety pages, to enumerate these special acts! Here is a return made by the Secretary of State, filling ninety pages, just to name these special acts. We have gone to the extreme of any State in the Union. If gentlemen will look at the special acts of other States, they will find nothing to be compared with it. Now, Sir, I ask for this simple provision; it leaves it for the legislature to judge whether these corporations require a special act, as each case presents itself. I know, that under different legislatures, there might be different decisions. There is a certain set of gentlemen who think that it is proper to legislate for the few at the expense of the many, and they would judge that it was best to grant a special act; but whenever you have a legislature who believe that they ought to legislate for the many, and not for the few, then they would give them a general law.

I see no objection to it, nor do I see why it does not obviate the objection of the gentleman from Boston, (Mr. Schouler,) entirely; that it leaves it with the legislature to determine; so that either a railway, or other corporation, can obtain full privileges to carry forward any needful enterprise. But to give privileges to any corporation, that will tend to crush individual enterprise; to all that class of corporations I am opposed. If they are placed under a general law, then there is no special privilege, and they will do no harm.

Mr. GRAY, of Boston. It appears to me, and I think it will so appear to most gentlemen, who look coolly at the question, that there are, in fact, two questions before us; and I certainly think—with all respect to some of the gentlemen who have preceded me—that these two questions have been confounded. These two questions are, first, that corporations—and, I will add, a great number of corporations—are an evil; that it is an evil to have this system of carrying on business by means of joint stock companies. Then, Sir, the next question is—suppose that it is not an evil, but a benefit upon the whole, at any rate a thing not to be prohibited—how shall these corporations be created? What is the most convenient and proper way of doing it? Now, I think, that these two ideas have been confounded by gentlemen in their arguments. We are told of millions of capital being locked up in corporations; we are told that the legislature favors a few among the many; and we are farther told, that these corporations destroy individual competition. That is one branch of the question. And if all these arguments are true to the extent to which gentlemen have maintained them, what would be the course which we ought to take? Why, Sir, I think that an unbiased observer would naturally say that your course is to have no more of them, and to put an end, as far as you can legally, to all that you have got—if not on a principle of immediate abolition, at least, on one of gradual

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abolition—of these joint stock companies. But, Sir, nothing of the kind is proposed here. I can admit every word uttered by the gentleman from Worcester, (Mr. Davis,) and those who have taken the other side of the argument, and then I would ask them, what do you intend to propose? Do you make one corporation less? Not one. What then? Why, you give them a different origin. You change their birth-place, but their nature is the same.

Now, the gentleman talks about three hundred millions of capital being locked up in corporations, and says that in this you have been legislating for the benefit of the few, to the disadvantage of the many; and yet, Sir, if these corporations are such a great evil as gentlemen would fain make the people believe, they would open the door, and let every-body come in, and by this process increase the evil to an indefinite extent. I tell the gentleman from Worcester, that by adopting this course, he will legislate for the few after all, for these three hundred millions of property are held not by a very few, absolutely speaking; but, considering that those engaged in business corporations are confined to a few spots, and considering that the great masses of the rural and laboring population—considering that these great masses are not owners in joint stock companies, and cannot well be—you still leave a very large majority of the people without the limits of corporations.

Now, Sir, I have no objection to a system of joint stock companies, always bearing in mind that I reserve a control over them; I have no objection in that sense to legislate for the few, provided we benefit the few without injuring the just rights of the many. If we benefit the few directly, and the many more than they were benefited before; if we take away no man's privilege by giving a privilege to a few because they want such privilege, where is the harm? Gentlemen say that this is a monopoly. I think it is not. If gentlemen want to be incorporated, and they come to the legislature for such purpose, the legislature having investigated the matter, and feeling assured that no party is to be injured by such grant will, as a matter of course, as it is a matter of duty, give them a special act of incorporation. But if they do not want to be incorporated, if the people generally think that these corporations are a great and crushing evil, then the will of the people will reach the legislature, and the legislature will take pains not to let every-body be incorporated, but will endeavor to diminish such corporations as we have.

Sir, the distinction which the gentleman makes, reminds me of a law formerly existing in some of the petit German States, and which, for anything I know, may exist now. In England, and most other countries in which they have orders of nobility, the king or sovereign ennobles whom he pleases; but in these German States, baronies could be bought; every man might have a barony who could pay ten thousand dollars for it. And was it any less an order of nobility because a man bought it himself instead of its being conferred by the crown? No gentleman will say that it was. An order of nobility, I suppose gentlemen here would consider as an evil. I suppose that we would all think so. And what course do we take in this respect? Why, Sir, we prevent their existence altogether. But my friend, who considers corporations an evil, and would prevent

men from going into them indiscriminately and without means, yet does not prevent the man with ten thousand dollars from going into them. After all, it seems to me that this is only legislating for the few; for the "many," as the gentleman calls them, stand in the same degree by the one proposition as by the other.

I thought the argument of the gentleman's colleague very conclusive, but it seemed to me that it did not go far enough. I shall be obliged to go against the amendment, and also against the Report, for reasons which I have stated before, and which I will not now repeat. But I will say a word or two in addition to what I have said, and my object is rather to direct the minds of gentlemen to what I consider the true state of the question—rather to lead them to take a discriminating view of the issues before them, and I think only a little reflection is necessary for that—than to urge any other argument.

Now, we speak of creating corporations by special acts; and we say that we voted to create them by general laws. The truth is, if we would be precise, that I think our system is a mixed system. Take an illustration. Say that a manufacturing company comes up, or that you and I establish a milling company at Lawrence. We come in and petition for an incorporation, with a certain amount of capital. The legislature grants us an act of some twenty lines; and what is the provision that it puts in? It grants a charter with all the powers, and subject to all the liabilities of the 38th chapter of the Revised Statutes. The legislature grants this incorporation partly by general act, and partly by special act, covering the few points which, from the nature of the case, cannot be covered by a general act. They retain the provision of allowing persons to incorporate themselves under a general law, unless they see some objection to it. Now, let me ask, is not that distinction a wise one? Are gentlemen prepared to say that every-body ought to go in under all circumstances, and that to all future time? I think not. Is this to be done in regard to railroad corporations, canal corporations, and the like? No, Sir; because you would put into their hands the power of eminent domain. By a construction of the Constitution not warranted in its express terms,—as an original question, I think not a clear one, nevertheless highly necessary it may be,—we give them a power of eminent domain; we hand over to them our sceptre, and they march through any man's land they please; and they give him such remedy—the best remedy, perhaps, that can be had; but how near it is to perfect remedy, gentlemen can pretty well judge—they give him such remedy as he can find, by going to law for his recompense; for it does happen, that these corporations are sometimes difficult to deal with. But we give them certain powers which they generally take care to exercise. For instance, here is a private corporation in some business or other with which the public interest is connected, say a railroad company; or, if you choose, take another class of corporations—those engaged in the banking business, as that has been so specially referred to. Well, Sir, these corporations are connected with the public interest. They are not mere corporations for the transaction of business benefiting or injuring the public it may be by their relations with those who are their customers, or who transact business with them; but they have the power of regulating the whole

currency of the State, and that I call a high public power. They can affect the prosperity of those who can least afford to lose any anything, and therefore, I think that these are corporations over which the legislature ought to exercise some control. They ought to adopt something more than a general act. But the general act they have now. They have the 38th chapter of the Revised Statutes, which, after all, regulates the banks; a provision enforcing the soundness of their currency; a provision which enforces their keeping themselves in good condition, as far as banking men under the supervision of the statute can affect it. These, and other provisions of importance, are all contained in the general act. Well, but my friend thinks that there ought to be other provisions—provisions as to the investment of their capital—provisions like that existing in the New York system; establishing a different basis of currency, a better system than ours. Now, how can that objection be met? Why, Sir, it can be met in a much less hazardous way than he proposes to meet it. Let him go into the legislature and take up the 38th chapter of the Revised Statutes and persuade the legislature to alter it, or else learn a lesson which we all have to learn even here—that is, to be voted down when we think and feel that we are right. That is the course, Sir.

Now, Sir, I will state what I think has had great effect upon the minds of gentlemen, and that is the mere fact of the saving of the time of the legislature. Gentlemen meet here, and they sit here—it may be for a hundred and twenty days—they come here every morning with a most determined purpose to end the session at the earliest hour; but they find, somehow or other, that the session spins on, and issue after issue arises, and time after time is fixed upon for adjourning, and one branch fixes a time and the other branch postpones it, as it may be; and, after all, the legislature, like all things human, does at sometime come to an end, at a time which nobody anticipated when they commenced their labors—that is, at a later day. Well, Sir, it is customary to ascribe all this to the immense mass of "private business," as it is called; but, Sir, I think they ascribe too much to that cause. If it were of any purpose to say much about it, I should say that the size of the House had something to do with it, but that might be a disputed point. But there is no dispute that the gentlemen of the House of Representatives do sit here for the first three weeks, appearing to those who are without as if they were helping each other to do nothing, while they are quietly preparing their business. But are we sure that this can be dispensed with? Take, for instance, a railroad corporation. We wish, when such a corporation is going to march through the land of individuals, to know something about the line they are going to take; we wish to know something, not only about the practicability of the enterprise, but something, also, in regard to the route that is to be taken. Is not this necessary and proper? Are we prepared to say—as my colleague has already spoken upon that point—that any company of men may come in and organize, under a general act, and run a railroad where they please? Sir, how can we say so? There might be a difference in the cases. Ten years ago, if we had authorized a railroad to run through the city of Lawrence, or had we authorized gentlemen to build a railroad where they

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pleased, they might have run a road through that ground, and would have done no more harm than driving a railroad through the centre of Africa. But what should we say of driving a railroad through the centre of Lawrence now? So with banking corporations. Suppose that application should be made for a bank at Lawrence, with a capital of two millions. The legislature would hesitate. They might grant it to a company in State Street. They are both respectable places, but are far from being equal in the control of business.

The gentleman talks about the control in State Street. Sir, he must alter something else than general laws, before he can affect anything here. There are such things as general laws of trade, which are usually above the statute laws of any particular place, and are world-wide in their application and effect. What is done on the London exchange, we feel here; and twenty declarations of independence would not exempt us from it. But suppose the gentleman takes a general act—what is to prevent the owner of twenty millions from marching into State Street and doing all that the Suffolk, or any other bank, does now? Sir, I am at a loss to see it.

Now, Sir, I did not intend to trouble the House again upon this subject, and I should not have troubled them as it is, if I thought their minds were made up upon the subject. I did think that the question would not stand the worse for a little farther consideration. But, be a corporation a benefit, or be it an evil, they will be incorporated, and it is assumed that they will be incorporated under this general act; that if there are any provisions that ought to be incorporated in a general act, they can be inserted in the thirty-sixth chapter of the Revised Statutes now, and every corporation can, by its charter, be referred to that statute, and to the forty-fourth chapter, which puts them all under the control of the legislature. I say, Sir, that I humbly conceive that all the evils which result from corporations, will result from them whether they create themselves, or whether they are created under a general act. I say that the number of holders of stock in joint stock companies are pretty numerous, but they are not a majority, or anything like a majority, or even anything like a respectable minority, of the whole population of the State. But whether we legislate for the few or for the many, the question now seems to be, whether we shall legislate for them by general act, or by special act.

But I go back, for a moment, to the objection which I advanced upon a former occasion. I am ready to leave this matter with, and I think it is best to trust this matter to the legislature; but I would also say—and if I ever expected to be a member of the legislature, I would say the same thing there—I think it desirable to work by general laws as far as we can conveniently do so. I can see how we can have general laws for insurance and manufacturing companies, because they are companies for the transaction of private business. They do not seem to come in contact with the public generally, but only with their own customers. But as to railroad companies, they exercise the right of eminent domain, and come in contact with many people who have nothing to do with them of their own will, and never want to have. I say, with regard to banking corporations, that a state of things may arise in which

the legislature may properly hesitate as to granting a charter, out of regard to what they think will be the effect upon the currency of the State, and in which effects every man, woman, and child in the Commonwealth are interested, and by which the poor are affected more than the rich, because they have their all to lose by it, and less discretion and power to protect themselves from loss.

One word only, will I say farther, in regard to real estate corporations. Shall we part with the power of discrimination of, and control over, them? Real estate corporations are sometimes a matter of necessity; for instance, those in relation to wharves and flats. Ever since the formation of the Constitution, I suppose, such corporations have been formed by law, because it is difficult to manage such matters in any other way. A limited partnership is so impracticable and inconvenient in regard to them, as to prevent the adoption of such partnerships. But the legislature might well hesitate to create many such real estate corporations as have been created heretofore, and may hereafter be incorporated. I do think that whole matter had better be left in the hands of the legislature. They can, if they see fit, adopt every one of the ideas of my friend from Worcester, (Mr. Davis,) and what is a matter of some consequence, if experience, which may throw some new light upon their minds, should lead them to vary and modify their course hereafter, the door will be open, to enable them to do so.

Mr. FRENCH, of Berkley. I am in favor, Mr. Chairman, of these resolves, and particularly the third one. I never was very friendly to corporations. I was never fond of monopolized privileges, for I always supposed that corporations got more than belonged to them.

In reference to banks, let us look at the matter, and see whether or not, we ought to have a general law by which all the people who wish to be incorporated into such institutions, who wish to lay aside a part of their property, and be incorporated on the rest, may not have the privilege. Banks have undertaken to furnish the country with a circulating medium, and how stands the matter now, under that attempt? Go out and make inquiries in this city, and the people will tell you that they are greatly embarrassed every day for the want of change to do their ordinary and daily business. Undertaking to furnish the country with a circulating medium, they do not do it.

Are banks incorporated monopolies? Is there any other class of people that have the privileges which pertain to banking corporations? I wish some one would show me any other class of the community, who are drawing interest on their own indebtedness—on their own promises to pay. Other people are obliged to pay interest upon their promises to pay, but banks are exempted from that rule.

There is another consideration connected with this matter. There never was a State bank created, which was not created directly in violation of the Constitution or Federal Compact. Nothing in that instrument was more perfectly guarded than the regulation of the currency. Its framers saw at a single glance, that the regulation and control of the currency, was the highest prerogative of sovereignty, and they saw that they could not put its control into the possession of any body

of men, or corporation of men, and they gave it to the whole people of the United States; to my father and to yours, Mr. President, to you and to me as their descendants. They said to the people, you shall have the control of the currency. The people could exercise that power only through their representatives in congress. The Constitution declared that congress should have the power to coin money, and to regulate the value thereof, and of foreign coin. But how is that matter regulated now? Who coins money now? That power was given to the whole people, but where is it now? In the hands and possession of the banking corporations. Are they acting for the public good, or for their own private benefit? This power, Sir, has been stolen from the people, and they do not know it. What power is there in congress to regulate State banking?

Well, it was said by the gentleman who a few moments since stood where I now do, (Mr. Gray,) that they control not only the currency of the country, but regulate and control the value of the whole property of the country. Is that an exclusive privilege, or is it not? Is it an exclusive privilege to diminish the value of any man's property, when they choose, in order to make the most of it, and to increase the value of that property when it is for their interest to do so? Now, when the people come forward and ask for a general law, and ask not to be shut out from the privileges which other people have, the favorites of the banking system come up and make a great complaint, and say that it would be very improper to do so. They say the people ought not to have this privilege, and that it does not belong to them.

Banks promise to pay, and they give their notes promising to pay on demand. How is their capital stock made up? Is it made up of specie; or is it made up of stock notes? Very poor property that, with which to pay specie upon demand. Thus it is improper, very improper indeed, that the people collectively should have a general act giving them equal privileges with others, so long as it is important that those who now have the power, should retain it.

I hope, Sir, this resolve will pass, so that the people shall have some chance. Now, what does this power of incorporation do? It gives to a certain class of the community the right to trade to any amount, whilst at the same time they are held responsible to pay only a specified amount. Has any other class of people that privilege? No. An individual is held to pay his debts, to the last farthing, and that is right. I hope, Sir, in order to remedy this great complaint which is now made throughout the country, that the next legislature which convenes, will pass a law that no bill under the denomination of five dollars, shall be passed in the State of Massachusetts; and if they do that, believe me, there will be no complaint of a want of change, to do business with. I submit the question to the Convention, whether or not Mr. Webster was right, when he said that the most effectual way of fertilizing the rich man's field by the sweat of the poor man's brow, is this State banking system.

Mr. WATERS, of Millbury. In the discussion of this subject, frequent allusions have been made to the industrial interests of Massachusetts, without defining what they are; and, by way of episode, we have been entertained, occasionally, by a chapter upon free trade. I propose to pre-

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sent, from official documents, some statistics, to show what those interests are, and also to prove what has been the effect produced upon them, by the repeal of the protective tariff in 1846—that being regarded as an approximation to free trade.

To these facts, I bespeak the candid attention of the members, as business men, without regard to party affiliations or favorite theories in political economy, for they involve questions vital to the growth and prosperity of our ancient Commonwealth. *What are the industrial interests of Massachusetts?*

From a volume of statistics, published by the Secretary of State for the year ending April 1, 1845, the annual products of the principal branches of industry, were as follows:—

I. COTTON MANUFACTURES.

Cotton Cloth,	\$12,193,449
Calico,	4,779,817
Bleaching and Coloring,	2,166,000
	\$19,139,266

II. BOOTS AND SHOES.

Boots and Shoes,	\$14,799,140
Leather,	3,836,657
	\$18,635,797

III. FISHERIES.

Whale,	\$10,371,167
Mackerel and Cod,	1,484,137
Candles, Sperm and Oils,	3,613,796
	\$15,469,100

IV. AGRICULTURAL.

Hay,	\$5,214,357
Grain,	2,228,229
Potatoes,	1,309,030
Butter,	1,116,709
Wood, Bark and Charcoal,	1,088,656
Fruit,	744,540
Vegetables,	515,082
Cheese,	398,174
Wool,	365,136
Milk,	304,917
Beef, Brooms, Honey, Hops, Poultry, &c.,	917,787
	\$14,202,617

V. WOOLLEN MANUFACTURES.

Woollen Goods,	\$8,877,478
Carpeting,	834,322
Worsted Goods,	654,566
Hosiery and Yarn,	94,892
	\$10,461,258

VI. IRON.

Rolled and Slit, and Nails,	\$2,738,300
Castings,	1,280,141
Machinery,	2,022,648
Cars and Carriages,	1,343,676
Anchor, Cables, &c.,	538,966
Shovels,	275,212
Scythes,	113,935
Cutlery, Axes, and Edge-tools,	242,616
Engines and Steam Boilers, Ploughs,	
Tacks, Tools, &c.,	1,433,807
	\$9,989,201

VII. PAPER,	1,850,273
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VIII. STRAW BONNETS AND PALM LEAF HATS,	1,649,496
IX. VESSELS,	1,172,147
X. GRANITE,	1,065,999

Adding to the above, various miscellaneous items, the aggregate of the products of the State for that year, is \$115,000,000.

From these data, it is obvious, that the most prominent interests of Massachusetts are manufacturing and mechanical, whose aggregate annual products are at least eighty millions out of one hundred and fifteen millions—the entire products of the State. Hence, it follows as a necessary corollary, that the prosperity of the State depends chiefly upon the success of those interests. When they are prosperous, the whole are prosperous, embracing all other interests; and *vice versa*. This is a proposition which the experience of the last quarter of a century has abundantly established.

Of these interests, the leading in amount of products is the cotton, which amount is greatly understated in the above table, from the fact that some large establishments refused to make any return. In amount of capital invested, this interest also far exceeds either of the others. To manufacture cotton cloth requires a large investment in buildings, motive power, fixtures, machinery, &c., but in many kinds of business—the boot and shoe, for example—no such outlay is necessary. Indeed in most kinds of business the annual products largely exceed the capital invested, while in the cotton they fall below.

What has proved to be the effect upon this interest of the repeal of the tariff of 1842, in 1846?

I am prepared to prove, from official documents, that by that change in our national policy, Massachusetts has been set back one hundred millions of dollars in her valuation, and in amount of products seventy-five millions annually, amounting, in the six ensuing years, to four hundred and fifty millions. This statement will doubtless strike some minds as astounding and incredible, but I believe I am fully fortified by facts to sustain it.

The following table, taken from the Patent Office Report, 1851, (Agricultural,) exhibits the statistics of the cotton manufacture in different States:—

STATES.	Number of establishments.	Capital invested.	Value of entire products.
1. Massachusetts,	213	\$28,455,630	\$19,712,461
2. New Hampshire,	44	10,950,500	8,830,619
3. Rhode Island,	158	6,675,000	6,447,120
4. Pennsylvania,	208	4,528,925	5,322,282
5. Connecticut,	128	4,219,100	4,257,522
6. New York,	86	4,176,920	3,591,989
7. Maine,	12	2,329,700	2,596,356
8. Maryland,	24	2,236,000	2,120,504
9. Virginia,	27	1,908,900	1,486,384
10. Georgia,	35	1,736,156	2,135,044
11. New Jersey,	21	1,483,500	1,109,524
12. North Carolina,	28	1,058,800	831,342
13. South Carolina,	18	857,200	748,337
All others,		2,884,700	
Total,	1,094	\$74,501,031	\$61,869,184

Of the capital invested in New Hampshire and

Maine, it is estimated that two-thirds, at least, belong to people of Massachusetts, which, added to the amount invested in this State, makes an aggregate of \$37,500,000 capital owned by Massachusetts in the cotton manufacture—a sum equal to fully *one-half* of the whole capital invested in this business in the United States.

The following table, taken from the same Report, exhibiting the number of bales of cotton manufactured in this country, from 1841 to 1850, will show how the cotton business was affected by the tariff of 1842, and also by its repeal in 1846:—

1841—267,850
1842—325,714
1843—346,744
1844—389,000
1845—422,597
1846—427,627
1847—531,772
1848—518,039
1849—487,769
1850—404,108

From this table it appears, that in six years, from 1841 to 1847, under the influence of the tariff of 1842, the cotton manufacture increased in this country 264,000 bales—an expansion equal to 100 per cent., while, in three years, from 1847 to 1850, after that tariff was repealed, it actually receded 127,664 bales, a contraction equal to 22 per cent. These remarkable results are to be traced directly to the repeal of the tariff of 1842, and no other cause can be assigned.

Let us now glance, for a moment, at the condition and prospects of the cotton-growing interest of the South. The following table, taken from Patent Office Reports, exhibits the annual number of bales produced, average price and value of the same for seven years, from 1846 to 1852 inclusive:—

1846	1,778,651	7.81	\$42,767,341
1847	2,347,634	10.34	53,415,848
1848	2,728,596	7.61	61,998,294
1849	2,096,706	6.4	66,896,967
1850	2,355,257	11.3	71,984,616
1851	3,015,000	12.11	112,316,317
1852	3,400,000		136,000,000

From the above, it appears, that since 1846, the cotton crop has increased, in bales, 1,600,000,—equal to one hundred per cent. nearly, and in value, \$93,000,000,—exceeding two hundred per cent. This accounts for the high degree of prosperity prevailing at the South, and the great advance in the price of slave property. In the face of this rapid and enormous increase of crop, the price has been fully sustained, which proves that the consumption has advanced *pari passu*, with the production. Of course there has been an increase in the cotton manufacture in the same proportion. The positive increase of the crop, is equal to four times the number of bales manufactured in this country, and consequently the increase in the number of spindles, must be equal to four times the whole number running in this country. Where has this extraordinary increase of manufacture been developed? Not certainly, in Massachusetts, nor in the United States, as has already been shown. While the cotton growing interest of the South, has increased since 1846, nearly two hundred per cent., the manufacturing interest of the North has remained

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stationary. But this increase of manufacture, corresponding to the increase of crop, has been developed mostly in England. The newspapers contained an account a short time ago, of one mill erected by Mr. Titus, of Manchester, England, covering six acres; and many other similar accounts of increase there, have been published.

Had this expansion been made in this country, it would have added two hundred millions of dollars to our manufacturing capital, and one hundred and fifty millions to our products annually. This loss of business is fairly chargeable to the advocates of free trade. What the country has gained by way of compensation, I have yet to learn. As one-half of the cotton manufacture in the United States, belongs to Massachusetts, it follows that one-half of this loss falls to her—that is to say, she has lost in her valuation, by the repeal of the tariff in 1846, *one hundred millions*, and in annual products, *seventy-five millions*, amounting in six years, to *four hundred and fifty millions of dollars*. This is not a matter of conjecture, nor of prophecy, nor of theoretic speculation, but it is a matter of absolute demonstration—a result, which a few short years has clearly proved. No other cause but the repeal of the tariff in 1846, can be assigned, and no theory of the free traders, can account for it. Here is experience against theory—practice against prophecy. If to any member these facts seem to be exaggerated, I would say, that no estimate was made for collateral interests, such as building, machinery, foundries, rise of real estate, trade of all kinds, *&c. &c.*, which, when made, will be found to far outweigh all deductions that can be justly claimed on the score of exaggeration. If then, such disastrous results have accrued to the leading interests of Massachusetts, from an approximation to free trade, what are we to expect from its full realization, which some gentlemen on this floor, have, with so much confidence predicted, at no distant day? The member for Berlin, (Mr. Boutwell,) in some remarks which he made in favor of this doctrine, was so sanguine of its early adoption by the people, that he said he would venture to predict, that in ten years, it would be the prevailing sentiment of the North; that Boston itself, would adopt it, and that at some remote period hereafter, a Custom House would be as great a curiosity, as the Coliseum of Rome, or the Temple of Carnac.

Mr. HALLETT, for Wilbraham. I rise to a question of order. The gentleman from Millbury is discussing the tariff, and the doctrine of free trade. Now, I am anxious to make a speech upon that subject of several hours in length. But if it is to come in here, I wish to know whether the subject is legitimately before the Convention?

Mr. WATERS. Whether legitimately before the Convention or not, I did not introduce the subject. In the discussion of this and various other questions, we have had several speeches in favor of free trade, and no member was called to order. Regarding this as a most fallacious and destructive doctrine, it seemed to me that some remarks, *per contra*, would not be ill-timed nor out of order. However, I do not wish to pursue the matter against the wishes of the House.

Cries of "Go on," "Go on."

If the expansion of business to which I have referred had been developed in this country, it would have enhanced the value of every square inch of territory in Massachusetts; added thou-

sands to her population, and opened new avenues of wealth and employment. The programme of those gigantic enterprises at Holyoke and Lawrence would have been filled up, and scarce a foot of available water power in the State would have remained unoccupied. Many a water-fall now wasting its power upon the desert air, would have been brought into requisition, and filled the surrounding region with the music of prosperous industry. In short, the six years of leanness ensuing the year 1846, would have been years of plenty and prosperity. It has been a common impression in the country, even among manufacturers themselves, that under the tariff of 1842, this interest was stimulated to an unnatural growth, and was in danger of a reaction, from being overdone. But the foregoing statistics prove that this opinion was entirely erroneous; that rapid as was the expansion, it did not keep pace with the growth of the crop, nor the consumption of the fabric, but fell far behind both. Massachusetts has probably never known a period of so rapid growth and development, as from 1842 to 1847. Before this period, say from 1836 to 1842, there was a general crash, or breaking down of all kinds of business. General bankruptcy, and universal prostration prevailed, as though a tornado had swept over the land, until the passage of the tariff in 1842, when there was a simultaneous quickening into life of all our dead and prostrate interests; and they continued to grow in an accelerating ratio, until that Act was repealed, when their growth was arrested, as by a sudden frost. Some of them have since remained stationary—few have flourished—during the six famine years, being sustained chiefly by the strength and impetus before acquired, to the present year, which fortunately proves to be a year of plenty and prosperity, such as Massachusetts has not seen since 1845. What is the cause of this great change, this universal and exuberant prosperity? Not, certainly, that there has been any change in the policy of our government. It was formerly thought that loyalty on the part of the citizen, and protection of person and property, on the part of government, were reciprocal duties; but that is now called an exploded idea.

This change, it is well known, has been brought about, chiefly, if not solely, by the rise of labor in Europe. The drain of laborers from the workshops of Europe, to the gold mines of Australia and other regions, has been so heavy as to cause a general rise in the prices of labor and manufactured products, carrying them up to a grade where our manufacturers and laborers can thrive and prosper. No reason can be assigned, why we cannot, at all times, manufacture as cheap as in Europe, except the price of labor. If capital is cheaper there, so also are taxes very much higher. To obviate this difficulty—the higher price paid here for labor, and also to prepare the way for the glorious advent of free trade, the member for Berlin (Mr. Boutwell) proposes, and in his prophetic vision confidently predicts, the importation of large numbers of coolies from China. In this direction his prophetic vision even discerns an antidote for the removal of slavery itself!

Suppose this to happen; what is to become of all the Yankee boys and girls who now operate the machinery of our mills, and who are thus under-bid in the price of labor? Are they to be driven out from their native land, to make room

for a horde of demi-barbarians from the Celestial Empire? Is that a wise and paternal statesmanship, looking to the best good of our country and our race? Besides, is the gentleman quite sure that these impressive Celestials, in wooden shoes, and with pumpkin-vine queues, are fitted to perform the labor of our versatile Yankees, with the same tact and rapidity? With all due deference to that gentleman, I must say, that this vision of his seems to me more like a creature of fancy, than the gift of prophecy.

This whole, and much vexed question of protection, resolves itself into a question of labor. Capital, in this country, needs no protection. The rate of interest is always about three times as much as it is in England, while the price of labor there, averages about one-third as much as is paid here. Labor can never be so cheap under a democracy as under a despotism. The former is founded upon numbers, and makes no distinctions of persons, between the laborer and the lord, the mechanic and the millionaire. To enable the laborer therefore, to maintain the dignity of his station, it is necessary that he should be able to read books, take newspapers, educate his children, and have many of the comforts of life which are unknown to the boors of England, the serfs of Russia, or the coolies of China. He must maintain a higher and more expensive style of living, and ought not, therefore, to be exposed to a competition with the bone soup, and pauper labor of Europe. "But," say the advocates of free trade, "it is on the very ground of sympathy for the poor laboring man, that we advocate this doctrine. A tariff is indirect taxation, and operates unequally. In the article of sugar, for example, the poor man consumes six times, it may be, as much as the millionaire, and consequently pays six times as much tax. This system surrounds him unseen, like the atmosphere, and he does not know how he is abused." Very likely. Probably he never will. For argument's sake admit all this to be true. If by paying one cent a day extra, on sugar, and as much more on a few other articles, he gets, instead of fifty cents, from a dollar and a half, to two dollars per day more for his labor, is he not the gainer? Where in the wide, wide world, is the laborer so well paid, as in this country? And here, especially in New England, labor is never in so great demand, nor so high, as at periods when the manufacturing interest is prosperous. Witness the present year, the years 1844, 1845, and 1846. For the reverse, witness the years from 1836 to 1842—from 1846 to 1850.

Who are the great sticklers for free trade in this country? Importers of foreign merchandise, resident agents of foreign manufacturers, bankers, and brokers, who have expended vast sums of money to buy up and subsidize some of our most influential presses. Much the largest proportion of the press, in this country, is concentrated in cities; and of that, a large share is enlisted in the foreign importing business. Hence, the general delusion which prevails upon this subject.

Another class of very obstreperous free traders, are the Southern planters, whose laborers are slaves. "Labor," say they, "should come from that quarter where it can be obtained cheapest." If this is a correct doctrine, we should expect that, like charity, it would begin at home. Let us see how their practice conforms to their teachings. The great interest of the South, is the slave

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interest. The raising of slaves is to Virginia, and the older slave States, what the raising of cattle is to Vermont—their most profitable production. Now, it is well known, that slaves can be imported from Africa, for two hundred dollars, which sell at the South readily, for eight and ten hundred—a difference of from three to five hundred per cent. But, be it remembered, whoever attempts to import this kind of labor is hung up at the yard arm, as a *pirate*! There is protection for you, with a vengeance! It is perfectly right and proper to bring the free labor of the North into competition with the pauper labor of Europe, but to bring the slave labor of the South, into competition with the slave labor of Africa, is *PIRACY*! True, the laws prohibiting the importation of this kind of labor, profess to be founded upon motives of philanthropy; but, on that score, what is the difference between the foreign and domestic slave-trade—whether the planter of New Orleans imports his slaves from Richmond, Va., from South America, or from Africa? If ever his highness, the arch prince of darkness may be supposed to grin horribly a ghastly smile, nay, to laugh outright, it must be when he hears Southern statesmen advocate the enforcement of these laws on the ground of humanity! They go in for free trade for the free labor of the North, and for entire prohibition, under a penalty of death, for the slave labor of the South. Abolish these laws, obtain your slave labor where it could be obtained cheapest, and you might reduce the cost of raising cotton fifty per cent., but you would also sink the whole valuation of the South, hundreds of millions. Let congress assume this ground, and we should soon witness as great a revolution at the South in regard to protection, as we have, recently, in regard to the doctrine of internal improvements. This doctrine they have denounced, until it has been fairly read out of the creed of all parties; and now, after the North has made all her own improvements, and built her railroads, the South find they want a railroad to the Pacific. Presto, these strict constructionists discover that there is nothing more constitutional, national, and patriotic than for the United States to build it for them, and if necessary, to take another slice from Mexico, to eke out the route.

One word more upon the doctrine of free trade, and I have done. This doctrine, in theory and on paper, appears very plausible; and in the great, good time a coming, when the commerce of the world will be unrestricted, it may, perhaps, be practicable; but at present, it is perfectly suicidal to our best interests, especially to labor. Reason teaches it; experience has proved it; speculative and superficial politicians are very apt to be carried away by it, and deluded, like the theorist in civil engineering, who said that railroads over our prairies ought to be perfectly level. When he came to reduce his theory to practice, he found that the Creator had made the earth round, and to make his road perfectly level, he must run it into the air or into the ground.

I have addressed these remarks to the members, as Massachusetts men, whose first duty it is to look after our own home interests. The bearing which this question has on the interests of sister States, of the United States, and especially on the finances of the country, opens a broad and inviting field, into which I have not time to enter.

The fling which has been made here, under the term "cottonocracy," at the largest industrial interest of the State, an interest which probably employs more persons, as well as capital, than any other in the State, seemed to me not only to be in bad taste, but to savor more of demagoguism than of that sound statesmanship which embraces in its ample and comprehensive scope, the whole interests of the whole Commonwealth.

Mr. STETSON, of Braintree. I desire to inquire if the previous question will cut off amendments from being made?

The PRESIDENT. The Chair will remark to the gentleman that there is no amendment pending, and if the previous question is ordered, it will be simply upon the main question, which is upon the final passage of the resolve.

Mr. STETSON. I have an amendment that I desire to offer. If the gentleman from Millbury will withdraw his motion for the previous question, and allow me the floor for five minutes, I should be under obligations to him.

Mr. WHITNEY, of Conway. I do not rise to oppose the previous question, for I think the general question has been sufficiently discussed. An amendment, however, has been offered, which I should be glad to have explained, and that is one reason why the previous question should not be put now.

The PRESIDENT. The amendment has been withdrawn.

Mr. WHITNEY. I was not aware of that fact. Then I am ready for the question.

Mr. MORTON, of Quincy. I have noticed, for the last hour or more, that gentlemen who have been addressing the Convention have received very little attention. Therefore, from the general intelligence of the Convention, I presume they have all made up their minds how to vote upon this question, and I hope the previous question will not be withdrawn.

The previous question was seconded, and the main question ordered, which was upon the final passage of the resolution.

The question was then taken, and the resolution was passed, there being—ayes, 212; noes, 76.

On motion by Mr. KNOWLTON, of Worcester, the Convention then proceeded to the consideration of the resolves relating to

The Judiciary.

Mr. KNOWLTON moved to substitute for the last resolve—that it was inexpedient to make any changes in the first, second, and fifth articles of the third chapter of the Constitution—the following:—

Resolved, That it is expedient so to amend the Constitution, that all judicial officers, except those concerning whom a different provision shall be made in the Constitution, shall be nominated and appointed by the Governor, by and with the consent of the Senate, for the term of seven years; that they may be reappointed at the expiration of such term; and that all such nominations shall be made at least seven days before such appointment.

Mr. PARKER, of Cambridge. I rise to a question of order, that this proposition cannot be entertained, the subject matter having already been before the Convention and a vote taken upon it.

The PRESIDENT, *pro tem*. The Chair is of

the opinion that the motion of the gentleman from Worcester is in order.

Mr. KNOWLTON. I do not propose to revive the discussion upon this subject. The matter of the judiciary has been ably and thoroughly discussed by the Convention, and I doubt not that the whole subject is thoroughly understood by every delegate upon the floor. Two propositions have been laid before the Convention upon this subject. One of them was a proposition containing the elective principle, providing that all judicial officers should be elected by the people. That proposition has been rejected. The other proposition was for the appointment of judges for a period of ten years. That proposition has been rejected also; so that the Convention has thrown itself back upon the Constitution, in respect to this matter, as it now stands and has always stood. It seems to me that the Convention, by the votes taken, has reached a conclusion, which, if I understand public opinion, ought not to have been taken; and I move this proposition with a view of deciding whether the Convention has reached a conclusion by which it is willing to abide. I should have been glad, for one, if we could have carried the elective principle; for I think it is demanded by a great portion of the people. Certainly it is in my own section of the State, if I am any judge of the public opinion of that portion of the Commonwealth which I have the honor, in part, to represent upon this floor. If I cannot carry that principle, I desire to approach as near as possible to it. This proposition varies from the other in one particular. It provides for the appointment of judicial officers, but it varies from the other in the limitation of the tenure, and in the confirmation by the Senate. The former was for a period of ten years; this is for the period of seven years. I offer it as a compromise between the two sections of the Convention—those who are in favor of the election of judges, and those who go for the appointment of judges for a period of ten years. I think we are in duty bound to present some proposition upon this subject to our constituents, upon which they can act, to say whether they desire that the Constitution shall remain as it is in regard to the judiciary, or whether its basis shall be reorganized. As I said in the beginning, I do not move this proposition with a view of reviving discussion upon this subject, but simply to test the sense of the Convention whether they are willing to go home to their constituents and leave the Constitution as it is in this respect, or present another proposition for their consideration.

Mr. ADAMS, of Lowell. I move that when the question is taken upon the proposition of the gentleman from Worcester, (Mr. Knowlton,) it be taken by yeas and nays.

The yeas and nays were ordered.

Mr. DANA, for Manchester. The reason given by the President of the Convention yesterday, for his casting vote upon the subject of the plurality system, struck me as a very judicious one. He said, that it was not expedient to submit to the people of Massachusetts a fundamental change, which could be carried in this Convention only by a casting vote. The Convention is aware that last week a very full and able discussion upon the subject of the elective judiciary was voted down by a majority of over one hundred. A proposition more likely to be carried than that of the gentleman from Worcester, for a ten years'

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term, and not varying from it in principle, was lost by a majority of two votes. Every gentleman must be aware, that whether this proposition of the gentleman from Worcester be lost or carried, it must be by a small vote, with great difference of opinion, without a previous public demand, and without an issue raised before the people. I ask if it is well for us to submit a proposition to the people under such auspices? Besides, if the Convention will allow me, I will suggest, as a member of the Committee upon the Revision of the Constitution, and I think—and every gentleman in the Convention will agree with me in it—that it will be necessary to submit our Constitution to the people as an entirety. We desired, if possible, to submit it to the people in parts, in single propositions; but the farther we have gone in our labors, the more we are satisfied that it must be submitted to the people as a whole. We have the Constitution of 1780, a great part of which is already inapplicable to the present state of our affairs. We have the amendments of 1820, and we have a whole series of amendments since 1820. And now we shall have some twenty or thirty amendments scattered all over the Constitution, striking at every part of it, which are still to be submitted. The result will be, that you will have the smaller Constitution of 1780, with a series of amendments running through the time of three generations, dangling on the end of it, so that not only citizens unaccustomed to legal investigations, but lawyers themselves, would not be able to understand the Constitution without the utmost study. You will have amendments piled upon amendments. And then, too, when we come to examine the resolves which you pass here, we find that a single resolve of three lines will require the rewriting of the Constitution in several places. The sixth chapter, for instance, must be rewritten in almost every section, and four sections must be stricken out entirely. I fear you will find it impossible to submit such a Constitution to the people in any other way than as a newly-arranged, symmetrical instrument, to be adopted or rejected as a whole. If this proposition of the gentleman from Worcester, (Mr. Knowlton,) is adopted here, you cannot give to the people of Massachusetts an opportunity to vote upon it, but it must go to the people with all the other propositions, and I submit to that gentleman as a matter of good faith, whether it is proper to cover up in the Constitution, without an opportunity to vote upon it separately, a fundamental change, for which the people of Massachusetts have never asked, as to which an issue has never been raised, and upon which the Convention is about equally divided? Our time is important to us. If we are to reconsider propositions passed upon here, re-examine and reconsult, bring parties again to a vote, and shift the balance one way or the other by measuring casts, we shall never come to a vote. I am willing to abide by the decision of any question of which I am in favor, when it has been lost. I am willing to abide by the decision on the plurality question, and not to trouble the Convention with my proposed amendment, unless I find a general disposition to open the question again. I therefore move to lay the proposition of the gentleman from Worcester, (Mr. Knowlton,) upon the table.

Mr. BUTLER, of Lowell. That is one of the matters which I should like to discuss, and I appeal to the gentleman for Manchester, if he

thinks it is fair to make that motion? If he will withdraw the motion, I will renew it.

Mr. DANA. The objection will be, that the gentleman from Lowell would discuss the merits of this proposition, and I would not.

The PRESIDENT. The Chair would suggest, that the motion carries the resolution and amendments, all together.

Mr. LORD, of Salem. I would inquire of the Chair, if the motion made by the gentleman for Manchester, to lay the amendment of the gentleman from Worcester upon the table, if adopted, carries anything with it upon the table, except the resolution which is to be amended?

The PRESIDENT. The Chair understands, that it carries with it the fourth resolution.

Mr. DANA. I understood the Chair to say, that it carried the whole. Then, if it only carries the fourth resolution with it, I adhere to my motion.

Mr. ALLEN, of Worcester. I would ask the Chair, if a single resolution, a part of a series, can be laid upon the table, without laying the whole series upon the table? If you lay one portion of a resolve upon the table does not the act of necessity carry the whole there?

The PRESIDENT. The practice in considering a resolution of this character, is to take it up and vote upon its several parts, separately, if such a desire should be manifested on the part of any member. A motion is made to amend one of the series of resolves upon this subject, which the Chair does not understand, has any connection with the rest; and the Chair has ruled in this matter, according to the practice which has been adopted here, of considering resolutions separately.

Mr. EARLE, of Worcester. It appears to me, according to the recollection I have of legislative proceedings, that in a proposition of this kind, you cannot lay any portion of a report or bill upon the table, without laying the whole upon the table. You may take up a report and consider it in detail, but you cannot take one part of a proposition and lay it upon the table.

Mr. HUBBARD, of Boston. I rise to a question of order. I believe the only motion pending, is to lay the amendment of the gentleman from Worcester upon the table, which I understand is not a debatable motion. The Chair has ruled upon the question, and no appeal has been taken.

Mr. HOOPER, of Fall River. I wish to make a motion to amend the second resolution, which I believe will take precedence of the motion made by the gentleman for Manchester, according to the decision of the Chair made a few days ago, that a motion to amend a previous section took precedence of a motion to amend any other part of a resolve.

The PRESIDENT. If the gentleman will withdraw his motion for a moment, the Chair will state, that upon reflection, he is satisfied that his decision is not correct. When the gentleman for Manchester made his motion, the Chair supposed it would necessarily carry with it the whole question; but the suggestion of gentlemen, that the practice has been to consider these matters separately, inclines me to the opinion that it would only carry with it the fourth resolution. But, no motion being made to consider them separately, the Chair rules that the motion to lay the amendment on the table, carries the whole with it.

Mr. DANA. I made the motion, that the question be taken on the resolution separately.

Mr. BUTLER. I rise to a question of order. The first motion of the gentleman for Manchester, was to lay the amendment on the table; and afterwards asked to have the vote taken separately.

Mr. HOOPER. I would inquire whether my motion, being for an amendment of the second resolution, does not take precedence? I believe that was the decision yesterday.

The PRESIDENT. The Chair is of opinion that it does not. The whole of the resolutions, being at the time the motion was made under consideration, the motion to lay on the table carries the whole with it. The simple question is, on the motion to lay the amendment on the table.

Mr. DANA. I rise for information. The gentleman from Worcester, (Mr. Knowlton,) did not move an amendment to all the resolutions; but he moved an amendment to the fourth resolution. The Chair states, that if I move to lay that amendment on the table, it carries the whole of the resolutions with it. That must be on the supposition that the amendment of the gentleman from Worcester, applies to the whole subject. I then withdraw my motion to lay the amendment on the table, and move for a division of the subject, so that each question may be taken separately, and then the question on the amendment offered by the gentleman from Worcester, must wait till we come to the fourth resolution.

The PRESIDENT. The whole question was pending. The question was on ordering the whole of the resolutions to their final passage. The gentleman from Worcester moved to amend, when that motion was pending, and the gentleman from Manchester moved to lay the motion to amend upon the table. The Chair rules that if that motion be carried, it carries the whole question, and lays the whole subject upon the table.

Mr. DANA. I have withdrawn my motion to lay the motion to amend upon the table; and I call for a division of the subject, so that the question may be taken separately.

Mr. BUTLER. That call, of course, will be heard at such time as it can be done, by parliamentary rule. I do not propose to speak upon the division of the question. Any member has a right to call for a division of the question when a vote is about to be taken.

Mr. GRAY, of Boston. I rise to a question of order. I understand that any member has a right to call for a division of the question at any time. I understand my friend for Manchester has called for it now. I beg the gentleman now speaking to understand that I do not oppose any latitude being given, but I understand they are divided.

The PRESIDENT. The gentleman for Manchester calls for a division of the question now. Any member has that right; and when the question is put, it will be upon the first resolution; but the whole question, and all the resolutions are open for discussion.

Mr. BUTLER. That was precisely the way I understood the matter; and I do not think the judges will save their lives by parliamentary tricks and manoeuvres. In my judgment, if the judiciary of Massachusetts stands on no firmer foundation than mere parliamentary rules, the quicker it is tipped over the better. I propose that this question shall be met fairly, and on its merits. I wish, now, to disabuse the mind of

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the gentleman for Manchester, of one or two errors which he put forth, and in which he seemed to wish to carry the Convention along with him. The first is, that that vote heretofore given shows any result like that which he stated. He says, we must not touch this subject now, because the President said, very properly, that where the votes are pretty evenly balanced, it is well not to make any great change in the Constitution. So I agree, and so I would agree, in the application of it to this case, if the premises of the gentleman were correct. But I know of many men who are in favor of an elective judiciary, and who are in favor of the abolition of the life tenure, in some form, who voted with the gentleman for Manchester the other day, and against the tenure for ten years. And why? Because they thought it not enough. I can put my eye on many who voted against the ten years' tenure, because they thought it was not all they wanted; because they thought it did not crack the old shell widely enough.

But this proposition of the gentleman from Worcester, commends itself to my judgment. It has two elements in it that I approve. The one is an appointment for a given term, holding the judges responsible to the people; and the other is, that the appointment shall be confirmed by the Senate, and the Senate is to be elected by the people; in like manner the Senate of the United States has a confirming power. Again, the appointment has to lie seven days before it is confirmed, so that we can know who is nominated before he gets into an office for life. Aye, Sir, I know judges, and I could call names, if I was provoked to it, who, if their nomination had lain over seven days before the Senate, would have stood as much chance of being confirmed, as they would of being elected, if the question had gone to the people; and that is putting it strong enough. But the difficulty is, they are appointed; it is done in the Council-Chamber, and I do not propose to interfere with the Council now. But it is done in the Council-Chamber, and nobody knows who the judge is to be, until he is a judge, and there is an end of it, so far as getting at him is concerned, except by impeachment. And if he knows just enough not to do any great wrong, or if he does not commit any flagrant outrage, he can go along, and nobody can interfere with him. I have had my attention specially called to this matter by an article which I find quoted, with a great deal of approbation, in a leading political newspaper, which goes in strong for the life tenure of the judges. I mean the *Boston Atlas*, which meets the approval of the conservative portion of this Convention. And, as though that was not enough, it is copied from the *North Adams Transcript*, which I commend to my friend from North Adams, (Mr. Dawes,) as being under his particular jurisdiction. It seems that a man by the name of Howe, has been appointed down in Haverhill, for a judge of probate. Now the Whig papers defend that appointment. What is the reason? I will read the article, as it is short:—

"N. S. Howe, of Haverhill, a member of the State Senate, has been appointed, by the Governor, a Judge of Probate for Essex County, in place of Daniel A. White, resigned. This appointment has given rise to some dissatisfaction, and intimations are thrown out, in some quarters, that it is an injudicious one. It would be strange if, in

every instance, the governor should be so fortunate as to make the best selection that could be made. But in this instance, we have no hesitation in saying that we believe he has made, under all the circumstances, the best appointment that could be made from among the applicants."

Now comes the reason:—

"Mr. Howe is a stirring, active young Whig, and we believe his appointment, (and we think our sources of information are tolerably good,) will give more general satisfaction to the live, moving Whigs of the county, than that of any other man mentioned for the office. We suspect the mournings, if traced out, will be found to come from interested, if not disappointed, persons, who, until they have malice enough to back up their insinuations by something tangible, or put their hands to paper, as they have been invited to do, had better say less."

Here is a man who is to settle the estates under the beautiful system which the gentleman for Manchester is so anxious to retain; or if he cannot remain there for life he is to remain till he turns old foggy, which is the next step to death.

Mr. DANA. He holds his office only three years.

Mr. BUTLER. Aye, but it would be for life if the gentleman could have his way. True, we have made the judges of probate elective once in three years. Sir, I thank God we have got a chance at that young Whig, in the county of Essex, in about a year. This is the life system, and these are the reasons given when there is dissatisfaction manifested, when the men of the county say we do not want him. How is the appointment defended? On the ground that he is a live, active young Whig. And that is endorsed by a newspaper in the western part of the State, which I have heard is edited by one of the Executive Council, and then reendorsed by the *Boston Atlas*. Is this right? Suppose we had put that man before the Senate. What would have been the result? Would he have been confirmed for that reason? I grant that we must go to appointments; I grant that is the best which can be done now; because, I am sorry to say, we cannot have an elective judiciary. Let there be five more, or ten more—one in each county—of such appointments, and that would settle the question. But the motion of the gentleman from Worcester exactly meets my difficulty. We have by that an appointment once in seven years, and then we have the nomination lie over seven days; and if the people are dissatisfied they can go to the Senate and have an understanding upon the subject after the appointment has passed the ordeal of the Council.

A word as to what was said by the gentleman for Manchester, who, although he said he did not argue the question, yet—with an adroitness which does him honor as a member of a somewhat adroit profession—still put forth the strongest argument which lay in his mind. He says we cannot put the Constitution to the people by piecemeal. I agree with him in that; we cannot do it. I was afraid it would be done. For there is very much of my success in my profession depending on the adoption of this Constitution, because I do not know what will be visited upon me from the judges, because I have laid my unhallowed hand upon the judiciary. But I am willing to take the risk, for I have been among the people since this matter came before the Convention, and I under-

stand how they feel since I have seen them, and since this Convention has promulgated the idea that the people were not to be trusted with the election of the judges. That fell upon the people of the Commonwealth like a cloud, and no man, of all those I have met, except those in the ranks of conservatism, but what said: is it possible that the Convention has taken such a step? And those steeped in conservatism turned up their eyes, and said: "Well, you are a good reformer, but you are afraid of the judiciary." The laymen here know whether this is true or not. We could have carried that question of the election of the judges if the lawyers had not been a set of cowards. You were afraid of the judges, it is said, and you wanted to plaster and gloss over the matter. That is the way they speak outside of us. But I want it understood that I am not afraid of the judiciary. I am not very anxious on that point; my works may speak for me.

Now, we come to the people, if we sustain this amendment, and we say to the people, your judges shall be made amenable to you, once in seven years, through the Governor elected by you, and through the confirmation of a Senate elected by you. I ask gentlemen if they are not ready to put this into the Constitution, as a whole? In my judgment, it will carry with it three or four other measures which have not quite come up to the expectations of the people. I believe in the effect of the popularity of this measure. I may be mistaken; but I am not mistaken about the feeling in the Convention. The feeling here, I have no doubt is, that an elective judiciary would be best. But there is a little distrust of the people. Let us lay aside this distrust, and put the proposition to them, and when we do it we shall get the response.

There is one thing which I wish to state, and I challenge contradiction in regard to it: that in every instance where the proposition to either elect judges, or to appoint them for a limited time, has been submitted to the people, with either proposition as a separate proposition; the proposition to elect the judges has received more votes than any other which was put to the people at the same time.

There was not a man found in New York to stand up against it at all. Where it has been put separately, even in the conservative State of New Hampshire—and I commend that to my friend from Cambridge especially—where they have been subject to such a state of things that if any State could have been wedded to the life tenure, it should have been that State; there, the proposition to limit the term of the judges, and alter their tenure, was received with more favor than any other proposition, being put separately.

Sir, I have listened to the arguments on the one side and on the other, and I have carefully weighed them in my own mind; and I wish gentlemen to understand that when I voted against the ten years' tenure, I did it not that I loved the life tenure more, but that I loved the ten years' tenure less. It was not because I wanted a ten years' tenure, but because I wanted the tenure of seven years.

There is a sort of magic about the number seven, if I may be permitted to say so. The Jews had a jubilee every seven years, under the Mosaic law, and so should we if we could get out some of our judges. [Laughter.] I could tell you a thousand reasons in favor of seven years, and against

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ten; but, more than all that, it is the shortest period. I will take occasion to repeat, that I may disabuse the minds of members of the Convention of the impression which might be created by the remarks of the gentleman for Manchester, that the vote indicated the state of feeling. I wonder if in this he included me, for I was one of the one hundred and sixty gentlemen, and I know of several members, who, if they would speak for themselves, would say that they voted the same way, because they thought we did not get enough. They wanted more.

And as the gentleman for Manchester has started this matter of parliamentary tactics and holding us to the rule, I propose, before we get through, to hold that same chalice to his lips. If we carry on these parliamentary tactics, as well as himself, I trust he will not complain.

Mr. DANA, for Manchester. I hope that so important a question as this, affecting ourselves and our posterity in Massachusetts for a great many years to come, will not be prejudiced in this Convention by any consideration of the manner in which the question arises. When the proposition was moved by the gentleman from Worcester, it seemed to me that there were certain preliminary considerations, not touching the merits of this case, that should settle it; and therefore I proposed to get the sense of the Convention at once, by moving to lay it upon the table, and let the Convention decide whether it ought to be voted down. Because, if the motion failed, the whole subject was up for discussion; and if it prevailed, it would show that the Convention did not want to entertain the proposition. I do not consider that a parliamentary *ruse*; it was a parliamentary proposition, and if there were any parliamentary *ruse* about it, the ground taken that this Convention could not decide upon the preliminary question at all, but that the whole question must be decided at once, had much more of that aspect.

I thought the preliminary consideration should settle this matter; that it was not worth while now to enter upon the discussion of the question as to the judiciary, and I wished the Convention to say so; but I have been prevented, by a parliamentary *ruse*, from getting that question before this body; and now we cannot avoid the discussion of the whole question. I do not mean to alarm the House by proposing to discuss the merits of the whole question; but what I have to say I shall say as briefly as may be. And I will remark, in the outset, that I propose to discuss it in a very different manner from that in which it was discussed by the gentleman from Lowell. It seems that the gentleman from Lowell has been out among the people, and he has heard it said that he was afraid, or rather, that the lawyers, here, were afraid, and did not dare to come up to the work. He desires to show that he is not afraid. But, Sir, it is not necessary to amend the Constitution in order to prove that the gentleman from Lowell is not afraid. I think it was decided by the legislature last year that he was not afraid of anything. [Laughter.] I was not here at the time, but I understand that such was the decision. He has shown, furthermore, that he is not afraid by bringing this forward and making his speech. He has exhibited his courage, and no man here doubts it; and it was not necessary that he should have proclaimed it upon this floor. Another thing, which I wish to sug-

gest, is, that this question ought not to be decided by any reference to special cases of appointments. It seems that one Mr. Howe, of Essex, has been appointed to office, and it seems that some injudicious newspaper has given a very wrong and a very bad reason for the appointment. Now I want to ask the Convention whether they will decide this important question on a mere article from the *North Adams Transcript*—perhaps as good as any other paper—but will you decide upon one paper or upon all the papers in Massachusetts? Will you decide, upon the case of one Mr. Howe, or all the Mr. Howes in Massachusetts? Will you decide it by one judge of probate, or all the judges of probate in the Commonwealth? I trust that we shall put out of the question any newspaper paragraph, or any man's courage, or want of courage. I hope we shall decide this matter upon general principles. Besides, if Mr. Howe's appointment was an improper one, did not the governor nominate him? Whom does the gentleman from Lowell propose shall nominate his judge? Why, the governor—the same officer who nominated Mr. Howe.

Mr. BUTLER, (in his seat). The Senate is to confirm him.

Mr. DANA. The gentleman says that the Senate is to confirm him. That is true; but does he suppose that a Whig Senate will not confirm "an ardent young Whig" like Mr. Howe? Does he suppose that that fact would be any objection to him in a Whig Senate? And suppose we had a Democratic Governor and a Democratic Senate, is it not perfectly clear that we should have some ardent young Democratic lawyer [laughter] nominated for judge by this Democratic Governor, and confirmed by this Democratic Senate?

Mr. BUTLER, (in his seat). Not for life.

Mr. DANA. It would be done every year, and that is no better. We should have a series of ardent young Democrats, and there would be no chance for any of them to grow older and wiser in office. [Laughter.] That is all that we should gain by it.

Then it seems that the gentleman is superstitious. With all his courage, he is a victim of superstition. He voted against a ten years' tenure, and will vote for a seven years' tenure, because seven is a sacred number! He says that the Jews had a jubilee every seven years, and therefore he wants a judge of the supreme court for seven years. Now, a superstitious man who reasons well about everything else, seldom reasons well about superstition. And he must remember, when he quotes the Jews for authority as having a jubilee every seven years, that we also read that they had seven years of famine, while they were in Egypt. [Great laughter.]

Mr. BUTLER, (in his seat). That was a curse upon them.

Mr. DANA. Well, I am afraid we shall have a curse upon us, if we follow bad examples. Our ancestors had a seven years' war, which turned out well; but does anybody want a repetition of it every seven years? I am not satisfied with making this change out of a superstitious veneration for the number seven, or for any other reasons which have been given. In sitting here as a deliberative assembly to make great fundamental changes in the Constitution, let us consider the matter seriously, and in a manner becoming the great questions which we have to pass upon. Let me repeat what I said when I moved to lay

the resolution upon the table, that I think we had better drop the whole subject. The gentleman from Lowell says, that the vote the other day was not a test vote, for there was a majority of two against the proposition, and he knows of four or more who voted for special reasons, because they could get seven, and could not get ten—persons under the same hallucination about the number seven.

Mr. KNOWLTON. If the gentleman will allow me, I will state that I voted for their election, and voted against the term of ten years; and I did so as a matter of compromise.

Mr. DANA. It seems that there were four then, and that would leave just two in favor of the proposition, or about a measuring cast. How many gentlemen there may be, who follow in the wake of the gentleman from Lowell, I do not know, and I do not believe that he can tell himself; I do not believe that any man can count his adherents in this body—he says he knows of four; but I know of some who voted for the proposition of the gentleman from Natick, for a ten years' tenure, who may vote against the whole thing now, upon the principle which I relied upon when I moved to lay this resolution upon the table; that is, to let bygones be bygones. As I said before, we ought to do so, because we must submit this Constitution to the people as an entirety. I will satisfy any gentleman, who will go into the Senate-Chamber and look over the work which I had the honor to have confided to me by the chairman of the Committee, in making up the parts of this Constitution, that this is inevitable. The gentleman from Lowell says he is of that opinion also. Now, I ask the friends of this Convention, who must be responsible for the success of this Constitution, whether they think it worth while to peril it by referring this question, or by altering our judiciary system? Sir, I think they have got a good deal to do to carry this Constitution. There will be a good deal of hostility to some of the essential principles which we have maintained here; and if in addition to that, we stir up all the feeling in this Commonwealth by an unadvised change in the judiciary system, it will be a great risk to run, for the people of the Commonwealth are attached to the judiciary system. They have no complaint to make about it. Some lawyers who have lost cases may complain, and may think they have been ill-treated; but the great body of the people do not complain. If you attempt to reduce the tenure of the judges to seven years, you will find a good deal of popular feeling against it.

The argument of the gentleman from Lowell was principally based on opposition to the appointing power. It was based on the right of the people to choose their judges. He says that we have indicated to the people of the State, that we think they are not capable of electing their own judges. He says it fell like a cloud—I am not in the habit of seeing clouds fall where I live—it fell like a cloud upon the people, to hear it said that they could not elect their judges. But, Sir, he proposes to say this again, that the people are not capable of electing their judges, and that it must be left to the Governor and the Senate, for he voted against the amendment of the gentleman from Fall River. Now what kind of answer is that to the popular argument? You cannot get up any popular enthusiasm in favor of the seven years' appointing power. That is out

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of the question. If the people believe that they have a right to elect their judges, you cannot get up any popular enthusiasm in favor of increasing the executive power.

Another objection which you will have to counteract, when your Constitution goes out to the people, is this: that you will be adding vastly to the executive power and patronage. I ask the gentleman from Natick, and those gentlemen whose names are signed to the report of 1851, saying that the executive power in this State had increased, and ought to be diminished, with what face they can go out to the people and say: "We have increased the executive power seven-fold. Our little finger shall be heavier than our father's loins; for the governor could merely appoint a judge, and, after he had appointed him, he was entirely out of his power for life; but we now propose to give the governor power to appoint a judge once in about ten months?" That will be the result. If you have the seven years' tenure, with the resignations and deaths that will ordinarily occur, there will be a judge to be appointed every ten months. You then propose to add to the executive power and patronage, by giving him the right to nominate a supreme court judge about once in every ten months, and a common pleas judge about as often—two judges every year! I submit to gentlemen, what kind of argument is that with which to go out to the people, and ask them to support your Constitution, when you tell them, we have pretended that we wanted to diminish the executive power, but we have given the governor the power to appoint one supreme court judge and one common pleas judge in the course of every year? The objection will be, that you have put the judiciary under the control of the executive, and there will be no escape from it. Some one of these judges will, every year, be looking towards the Council-Chamber for his fate. No gentleman here can have a case come before the supreme court, without knowing that some one of those judges is looking to the powers that be, for his re-appointment. Suppose a political case has arisen—a case in which parties have got mixed up, and suppose the suitor has incurred party odium, will he want to carry his case before such a court as that? Will not that circumstance be a strong objection? Which would you rather do: go before a judge when you knew his reelection was pending before a million of people, or when his reappointment was pending in that Council-Chamber? The gentleman from Lowell says, he wants to have a chance at that young Whig judge who has been appointed in Essex County. Well, Sir, he does not propose to make judges of the supreme court elective. If he wants to have a chance at one of the judges of the supreme court, how is he going to do it? He must reach him through the executive chamber, if at all. That will be the result. Whenever the gentleman from Lowell wants to "have a chance at a Whig judge," or whenever some Whig wants to have a chance at a Democratic judge, he must do it through the executive chamber. But while this is going on, the friends of that judge will not be idle. They will not submit to have him over-riden. They will support him there, and if we have occasion to go there on any public business, we shall find the ardent young Democrats and ardent young Whigs blocking up the lobbies of that chamber, all the while that the nomination

of that judge is pending. Well, Sir, after he gets his nomination, he must go to the Senate to be confirmed, and there it will be just about as bad. The same spirit will prevail, and whether he be a Whig judge or a Democratic judge, there will be the lobbying for and against him, and this contest will be kept up by a great many persons, and the influence will be felt throughout the State.

Now, I do not know that I can convince gentlemen in this Convention that that would be a bad principle; but I can tell them that there will be people enough in the State who will think it a bad principle to make it quite worthy of their serious consideration, whether they will put it into the Constitution, and add that risk to the one they have already run on the subject of the town representation. Now, I put it to the calm good sense of gentlemen who do not feel excited on the subject, who have not been out and had their courage questioned, and got excited; or who have not read newspaper paragraphs and got excited—I put it to calm-minded gentlemen in this assembly, whether they had not better let the thing rest where it rested last night. If you want issues before the people, do something that you said you were going to do when you came here. Introduce the plurality system. It will be popular in the end. Abolish the Council, or adopt some other popular measure. Do something which you proposed to do, and not something which the people never had any idea you intended to do; something that no issue has been raised upon. The people will not feel a great deal of interest in a matter which is to be transacted between a governor and a judge, once in seven years, in that chamber. The people will have no chance here. But once in seven years, the judge, by himself, or his friends, is to lay his case before the governor, and his enemies will lay their case before the governor also. And what do the people care about that? Why, Sir, the people, looking carefully to their rights, will say we would rather have no such doings between the judges and the governor; we would rather have a judge who is responsible only to us by impeachment or by address. As one of the people of Massachusetts, who have more interest in the right decision of cases than I have as counsel—because as counsel, probably, I should gain or lose one-half of my cases, for such is usually the fortune of life; but my life, liberty, property, and reputation, may rest any moment upon the decision of the supreme court—as one of the people, I would rather that there should not be a private transaction once in seven years between the judge and the governor, involving the official life of the judge before whom I have causes to try, and on whose impartiality my client's all, or my own, may depend.

[The gentleman's half hour having expired, the hammer fell.]

Mr. LORD, of Salem. I rise, Sir, not for the purpose of entering into a lengthy discussion of this question, but rather for two purposes: one to take away the pretence which the gentleman from Lowell has laid before the Convention as the reason why the Convention was divided so closely on the vote which was taken last Thursday. I propose to take away that pretence, and to show that every proposition which has been entertained by this House, or which has been presented before us, has met with favor only in proportion as it has approximated the present

state of things. When it was proposed to make the judiciary elective for seven years, there were more than a hundred and twenty-five majority against it. When it was proposed by the gentleman from Lowell himself to have them appointed for seven years against ten years, there was a majority of ninety-six against it in this House; and the same page which records the vote of two majority against the ten years' tenure, records the vote of ninety-six majority against the tenure for seven years, upon the motion of the gentleman from Lowell himself, for he moved to strike out "ten" and insert "seven" in its place; and eighty-eight gentlemen only voted in its favor; and one hundred and eighty-four against it, as an examination of the record shows; which examination I have made within the last five minutes.

Then, Sir, the gentleman says that this is a new proposition, because it is now proposed that these appointments shall be submitted to the Senate for ratification. Sir, that same proposition was also made, and voted down without a count. There was not a minority sufficient in favor of that proposition to divide the House upon. Now, Sir, I say that that pretence cannot stand here—that this proposition was defeated the other day because the Convention desired a seven years' proposition instead of ten years. Every vote has shown that any proposition has received favor, just in proportion as it has approximated to the present tenure.

Now, Sir, I said that I was not going to discuss this matter; and I only desire to express my preference for the mode of the gentleman from Fall River, over that of the gentleman from Worcester. If the office of judge is to be made a political office, let the people, and not the executive, take care of it. I am willing that the people should elect their judges. I have no fault to find with that. It is only the tenure that I want to have independent. I do not care how they are appointed. I think the people can elect them better than the executive can appoint them; but I want an independent tenure when they are put there; and if it should turn out that either the one term or the other is to be adopted, if a judge is to be appointed every four months—which will be the case if the calculation of the gentleman for Manchester, (Mr. Dana,) is correct—I prefer, infinitely, that the people should make such new judge, rather than the executive. The gentleman for Manchester, according to his calculation, says that there will be, at least, two judges to be appointed every ten months—one supreme judge, and, one common pleas judge—that is, at least, one judge in every five months.

But, Sir, there is an objection to the resolution, which I wish to suggest to the consideration of the gentleman who moved it. This is the final stage of this matter. By a parliamentary rule, which cannot be avoided, except by a suspension of it, if we insert that resolution as it is—and the question now comes up upon it—we must stand by it. There is no mode by which we can change seven years to ten or fifteen years, or to any other period. Having adopted this, and there being no other stage, it must finally stand as it is adopted. Gentlemen should remember that the inconvenience of this sort of thing was felt at the close of the Convention of 1820, when they were obliged to suspend the rules to get out of a difficulty, having inserted a number in a resolution

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in which the number should have been left blank. I suppose that the gentleman from Worcester would accomplish his object, if he left the period blank; it would, at all events, be quite as well as to fill it with the word "seven." But, still I do not propose to offer any amendment in that respect; because, if I can judge at all of the character of this Convention, inasmuch as by a majority not of two, but of NINETY-SIX, this Convention has already determined that they will not have a seven years' tenure. Unless the gentleman from Lowell knows members enough who will turn round with him, and change that majority of ninety-six, his majority of *four* comes to nothing. His little matter of *four* is a very trifling number in this respect, because we are dealing with a proposition that we have dealt with before—a proposition for a seven years' tenure; and that proposition the Convention has voted, by a majority of ninety-six, that they will not adopt; and that is the only motion which can be submitted, according to the proposition of the gentleman from Worcester, and having been thus made, it becomes unalterable.

Now, I desire only to make another observation, so that I may stand right, and 't is this: if the gentleman will propose such a tenure of office, so as to make it an object for suitable persons to take upon themselves its responsibilities, and will not permit them at all to be candidates for reappointment, then I will go with him; but I am not willing to make the office of judge a merely political office, so that when they decide, as one gentleman said the other day they decided incorrectly in relation to the fugitive slave law, that caucus resolutions shall say that that decision is wrong, and they must make such a judge as will set the matter right; I am not willing to say that the great party—perhaps the majority party in Massachusetts to-day—shall say: "We have determined that the law for the suppression of tippling-houses, or whatever else it may be, is a constitutional law, and we will resolve it to be constitutional in the same caucus by which we nominate our judge, who must 'accept the nomination, with the resolutions annexed,'" [laughter,] or not at all—because all political men, when they accept office now-a-days, or even nominations for office, must accept with "resolutions annexed," platform and all—[renewed laughter]. I say I do not care what the decisions of a judge may have been, when a party caucus shall have resolved a great question of political law; then the judge who is to receive an appointment or nomination from them, is a judge whose opinions are made for him to his hand before he goes upon the bench, or who is continued upon the bench in consequence of these opinions. Sir, I want a judge to be entirely free from any considerations of this kind. How that is to be accomplished, I do not know; but certainly, to make the tenure of office a seven years' tenure, will not make him independent. If gentlemen will bring their minds to bear upon that proposition, whenever they will show me a mode in which a judge shall fear nothing but God, whenever they have found out that, then I am ready to go with them and vote. But I do not see how that is to be, if he is to be dependent upon any political organization,—because if the governor appoints him for this short tenure, he is as much dependent upon political organization as any officer of the State can be,—I say, if he is to be thus made dependent upon

any political organization, the system which proposes it can never have either my approval or my vote.

Mr. HALLETT, for Wilbraham. This subject has been discussed heretofore, and discussed mainly upon one side; there are nearly equal differences of opinion prevailing here upon it. The votes, which have already been taken, have shown a nearly balanced division of opinion. I do not know that anything that I can say, will affect that opinion, one way or the other. I had an opportunity, the other day, of just seven minutes, for expressing, rather what might be termed a sentiment, than of making an argument, upon the life tenure office. I desire to add a few words, to-day, and leave the Convention to decide upon this matter, as to them may seem best. To me, this is not in any sense a question of personal feeling, or private griefs; but a question of principle. I wish it to be considered and discussed without any possible reference to existing judicial officers. Sir, my relations to all the judicial officers of the Commonwealth—however hard I may have found it in the beginning—are of the kindest character; and it is impossible for me to entertain any feeling of disrespect towards any of them. I think they sometimes err in matters of courtesy, and in savvy to counsellors and parties; and from my long experience of the effects of life tenure upon the personal bearing of judges generally, I have believed, and do now, that they need some court of errors to stand behind them; either the elective principle, or the rule of periodical reappointment. I, therefore, for one, feel pretty certain that I can lift myself above all personal considerations on this question. Indeed, if I have any difficulty at all, it is the pain I feel—in common, I know, with other gentlemen of the bar, who think with me—at the supposition, in any shape, being entertained, anywhere, that members of this Convention, or any lawyer in it, could be actuated by any personal feeling towards any judge on the bench, in proposing amendments, either to elect judges, or to limit, in appointments hereafter to be made, the old life tenure to a term of years.

When this question first came up, many days ago, I said I was not in favor of a present election of judges, but I was in favor of a limited term for future appointments of new judges, of ten years; and this, I still think, is the only ground we can strongly stand upon, and can carry before the people. I have no question that the election rule is the true one, but it is not expedient to resort to it now. The member from New Bedford, (Mr. French,) demonstrated, that in the present state of parties in this Commonwealth, it would be unwise to run the risk of a fusion of parties who might elect judges for the reason he wanted them elected, namely, because he wanted a chance to choose a judge who would not be such a coward as to regard his oath to support the fugitive slave law! And having thus alluded to that rather extraordinary, though not very alarming outbreak from the eccentric member from New Bedford, I desire to say, that in regard to the tenure of office for the judges of the Commonwealth, or any change to be made in it, I have not the most remote idea of referring to any decisions of the courts, or its members, as affecting this question; because, I think we should aim at principle and not at the officers; and hence it was, that if I had had, for a moment, any doubt in my

mind as to the propriety of now providing for electing the judges—which I believe, in principle, is right, though I cannot deem it expedient in the present state of things—my mind would have been brought to the conclusion that it was not expedient now to elect judges, by the remarkable argument used by that delegate from New Bedford, (Mr. French,) which was, in direct effect, that you must appeal to the people, in order to induce them to elect judges who are not such cowards as to adhere to their oaths to support the Constitution and laws of the United States, which includes the fugitive slave law! I did not answer that remark then, and I do not propose to answer it now; but I mean plainly to meet and repel that principle, or rather perversion of principle, whenever it arises, in this Convention, or elsewhere. And, while I do so, I wish, at the same time, to express my great respect for gentlemen differing from me in regard to the construction of some particular law of the United States, which has made strong party issues, that they have most honorably, with very few exceptions—I believe the delegate from New Bedford, and, perhaps one other, is the only one—refrained from bringing these questions into this Convention. And with the like regard to the harmony and good results of this Convention, while holding very decided opinions upon the other side, I have refrained from alluding to them, unless it has been for the direct purpose of repelling or answering.

Now, Sir, the reason why I think a great proportion of this Convention went against the elective doctrine was, because, as some gentlemen put it, if you had an unpopular law—the fugitive slave law or any other law—which a party wanted the judges to put down, and which they refused to disregard, because their consciences and their oaths would not let them, the party opposed to the law could go to the people and stir them up to a partisan heat, in order that they might elect judges who will violate their oaths! The delegate from New Bedford, (Mr. French,) or any other delegate, who would use such an argument, should know, not only that it is dishonoring the people, but that the laws of the United States are the supreme law of the Commonwealth of Massachusetts, and that all her judges are expressly sworn to regard them as the supreme law of the land. And, hence, if they are applied to, to set aside a law of the United States, they cannot do it, whatever their individual opinions may be upon the subject. Therefore, I say that such a proposition, to elect judges who would violate their oaths, never should be entertained here, and never would be entertained by the people; and moreover, I say, in relation to that very case, and to the conduct of those judges, and of the learned chief justice of this Commonwealth, in it, that the history of judicial actions does not present an instance of more calm, dignified, prudent, deliberate, and judicious conduct or decision, than was shown in that case; and there I leave it.

Now, upon another suggestion in regard to this amendment of a term for seven years, which is proposed by the gentleman from Worcester, (Mr. Knowlton,) and which is so much opposed by the gentleman from Manchester, (Mr. Dana). I desire most explicitly, to enter my protest against an intimation made by the latter gentleman, as if to conclude the question beforehand, and that is, that we should be obliged to take this Constitution as a whole, and put it before the people as such.

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I happen to be on the same Committee with that gentleman upon the mode of sending the Constitution to the people, and he has no right to make that assertion. The Committee have come to no conclusion, and have made no such recommendation, and there has been no legitimate action upon the subject.

Mr. DANA. If the gentleman will permit me, I will say, that I spoke entirely for myself. I have had no conference with any one, and the Committee have not acted upon the subject. I suppose I stated that I am satisfied, for myself, that no such course can be pursued.

Mr. HALLETT. That explanation is satisfactory; but I would say, if the gentleman cannot frame such a report, I think I can, for I have tried it, and if found necessary, it can be done. The only question of difficulty is arrangement and expediency. If he fails, he has only to transfer it to other hands, and they will see that it is done, if found, on the whole, to be necessary and proper. The idea that we have got to submit this whole matter to the people in the lump with no reservations, is advanced by that gentleman in this debate, I apprehend, for the purpose of affecting this decision. The impression, that we cannot put to the people any proposition upon a doubtful matter, for fear that we shall lose the whole of our labors, has deterred this Convention from doing many things which they believe ought to be done. Why, Sir, when we get through, I fear most that the people will ask us not why we did so much, but why we did no more. And, I want to send some propositions to the people, which will show, that we have done something besides sitting here and voting against propositions. If there is any fear of this proposition, let it be submitted to the people as one of the separate propositions which must be selected out of the whole Constitution.

Now, a few words upon the merits of the subject. We have had arguments here from two of the most distinguished gentlemen—do I say in this Commonwealth? No, Sir. Do I say in the United States? No, Sir; but two of the most distinguished gentlemen to be found anywhere—one of them the most fervid, eloquent, and forcible among the living orators of the world, (Mr. Choate); the other, one of the most distinguished and profound legal professors, whose jurisprudence has ever given distinction to any legal institution in the world, (Prof. Greenleaf). We have also had an able argument for the life tenure, from one of the most eminent judges of this Commonwealth, who himself sat for fifteen years upon the bench of the supreme court, (Judge Morton). Around these three great legal lights have gathered—I hope I may be excused for saying it—the lesser satellites of the bar, who have come to their support. This doctrine of a tenure for life for judicial officers, is sustained by these gentlemen; by distinguished professors; by distinguished advocates at the bar; who are in all possible favor with the judiciary, and whose personal influence is often exceedingly effective in turning the balance of the scale where the argument is doubtful. But, while the bar and the bench thus say give the judges a life tenure, what say the people here? When has a prominent member risen who has supported the life tenure of judges who has not been, or might have been, or is not himself, in some way in the line of succession? Now these learned gentlemen have attempted to terrify this Commonwealth, and the

members of the Convention, by depicting the awful consequences of destroying this life tenure. England had it for a great while, before we took it. We have had it for a long time, and gentlemen say, we must continue to have it, or property and person will no longer be safe! Well, Sir, I respect, but cannot sympathise with their fears. When they so solemnly deprecate this idea of a change of the tenure of judicial office, and depict the awful consequences which are to follow, it reminds me of the similar and equally sincere apprehensions of poor, unhappy George III., when on the 5th of December, 1782, he signed that famous message of his to parliament, acknowledging the independence of America. That very pious gentleman said upon that occasion: "I make it my humble prayer to Almighty God, that America may be free from those calamities which have proved how essential MONARCHY is to the enjoyment of constitutional liberty!" When Burke was commenting upon that message in parliament, and came to that passage, he threw the whole House into a roar of laughter by one of his dashes of ridicule, in which he described the king "in this marvellous exhibition of piety, falling upon his knees to deprecate the awful consequences likely to result to America from the want of monarchy;" and he might have added, such a monarch for life as George III.

Now, I think we are in about the same condition here, seventy years after that event, touching judicial life tenures. The wisdom and foresight of pious George III., must be still living among us, when wise men stand up here in the last half of the nineteenth century, and pray Almighty God to save Massachusetts from the awful consequences which will follow, if she does not have a life tenure for her judges! There is just as much reason and common sense in the one as in the other apprehension, and the progress of the age has already shown just as much truth in these modern fears about the judiciary, as there was in the lamentations of George III., about America and monarchy, and constitutional liberty.

Sir, as to this matter of taking our lessons of government from England, or of what England has given us—for it seems that there are gentlemen here, as well as elsewhere, who think we cannot have anything which England has not given us—I say England has given us nothing good that we have not improved, and I say, as to the life tenure of judicial officers, which we derived from England, there was some reason for it there, where the sole power is in the hands of the king; but there is no good reason for it here, where the power is in the hands of the people. The courts there, may, by being independent of the king, protect the people, but they would do all that a great deal better, if elected by the people, in spite of the king. With us we want judges to protect the people against the legislature and the executive, and not against the sovereign power.

The gentleman for Marshfield, (Mr. Sumner,) said the other day, upon another topic, that England had given us five great institutions, and he went on and enumerated them. One, was the doctrine that the atmosphere of Great Britain could not be breathed by a slave! England gave us that doctrine? No, Sir. England gave us exactly the opposite doctrine. England gave us slavery, and fastened it upon us. I will tell that gentleman what five institutions England has given to us.

England gave us *religious persecution*. Well, I thank her for that, for it planted our colonies.

England gave us *taxation without representation*. I thank her for that, for it achieved our independence.

England gave us *insult to the new States*, and sought to crush them, by commercial restrictions. I thank her for that, too, for it gave us our glorious UNION.

England gave us *search on the high seas*, and impressed our seamen. I thank her for that also, for it forced us into the war for a second independence, a moral, intellectual, commercial and manufacturing independence, as important as any we had achieved over the mother country.

Lastly, England gave us the institution of slavery, and for that, I do not thank her. Instead of an atmosphere in which a slave could not breathe, she poisoned the atmosphere of the colonies, by importing slaves, compelled to breathe it. And, Sir, but for England, with her cupidity and her slave-trade, we never would have had this question raised and agitated here as a discordant element in free institutions.

Let not the gentleman for Marshfield, (Mr. Sumner,) come here with eulogies upon England and English aristocracy, which are to go back to that country, the great oppressor of labor, to be taken up by those who frequent the house of "My Lady Sutherland," to abuse America, and superciliously thank God they are not like these publicans! I want no such sympathy from England. These very philanthropic individuals, these high lords and ladies, who take hold of this sore that they think exists under the general Constitution of our country, do it for what? Not that they love America, but because they would inwardly exult to see anything festering in the heart of America, which they think—but, thank God, falsely believe—will impair, if not destroy, its free Constitution; I have no faith in such sympathy from England for America. I look for true sympathy from her masses, her great commoners, and not from her sickly aristocracy.

Then, Sir, as it regards this question of the life tenure of the judges, which we have derived from England, what do we propose? Why, we propose that we shall no longer follow the principles or practice of England, upon this single question, just as we long ago ceased to follow her doctrine, that the executive office should be held for life. I do not know of an argument in favor of a judicial tenure for life, which is not equally strong in favor of an executive tenure for life. Now, Sir, I am not going to England for any such institutions. I will take her common law doctrines, as far as they go, and improve upon them; but, Sir, I would prevent the judges in this country, whenever I have any power of doing so, from having that sort of independent life tenure which the twelve judges of England had, when, on one occasion, they were used to carry out, for the government, the doctrine of constructive treason. There was a law in England, as there is in this country, that there must be two witnesses to the same overt act of treason, in order to convict a citizen of that crime. The simplest proposition in the world, because otherwise there is the oath of allegiance in the person charged with the crime on the one side, and the oath of a single man that he has violated it on the other. What did these twelve judges, holding their tenure for life, do? The king wanted to convict certain

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subjects of treason, but the law was in his way. The king called together the twelve judges of England, and submitted this proposition to them; and I ask the attention of the learned professor from Cambridge, (Mr. Greenleaf,) to it: "If J. S. buy a knife to kill the king, and it be proved by one witness that he bought a knife for that purpose, and another comes and proves he bought such a knife, are they two witnesses to one overt act sufficient to prove high-treason?" And the learned judges all said "yes," in presence of all the king's counsel! Now tell me not of judicial independence, and judicial impartiality, when it comes in contact with political power in England! Their Holts, and Scroggs, and their Jeffreys, and Norburies, were judges for life, and the bloodiest annals that stain the pages of history, mark the track of the judicial decisions of English judges of life tenure.

Those were decisions in the courts of common law, where all the judges are appointed for life. But let us look into the court of chancery, the great equity tribunal of England. Have gentlemen thought it worth while to tell us by what tenure the Lord Chancellor holds his office? No. Did the gentleman from Boston, (Mr. Choate,) ever think of it? If so, why did he not inform us how long the Lord Chancellor of England holds his office? Just as long as the ministry themselves, and no longer. He is appointed upon every change of the ministry, and changes with every political change in the administration. And yet, more property rights, and more great questions between parties, involving the guardianship of all wards and minors, and the settlement of trust estates, passes through the court of the chancellor, than through all the other courts of England.

Mr. DANA, for Manchester. If the gentleman will permit me to interrupt him, I wish to say that England has felt the importance of no longer having the Lord Chancellor a political judge, and they have already passed, or are about to pass, a bill to give him a life tenure.

Mr. HALLETT. They are just about doing that the gentleman informs us, and I inform him that we are just about going the other way. That is just the difference in progress and freedom, between the old and the new world. All the old world has gone back to utter despotism. The heel of the tyrant is on every neck in Europe, and England is about to follow in the same course; and we are asked to retain the life tenure of judges, because England may, possibly, apply it to the only judge she has without it. No, Sir; that is no argument, but the reverse, for the United States of America. Where is Hungary, and her free Constitution? Trampled down in the dust of the earth, and trampled down, too, by this dogma of life tenure of kings, and lords, and judges, and other officers and instruments of despotic power. It is time we had done looking in this new world, to the old, for examples to guide us in government. We have good precedents in our own country, and we need not go to Europe for them. Let us rather take such as we have here, and see how they stand. There are fourteen States in this Union in which the judges are elected by the people; ten States in which they are appointed; and but seven States in which they hold a life tenure. And which are those seven States? New Hampshire, who has never changed her Constitution; Massachusetts,

who is about to change hers, I trust, in this matter; Connecticut, who has not changed hers since 1818; North Carolina and South Carolina, with their old colonial Constitutions; Delaware, the least considerable State in the Union; and Alabama, in her Constitution of 1819, the only new State that has fallen into this old usage of monarchical government. In twenty-four States of this Union, there is a limited judicial tenure, averaging in the whole but six years. The four largest States elect their judges—Pennsylvania for fifteen years; New York and Virginia for eight years, and Ohio for five. Massachusetts may safely stand on ten years, where I hope to see it placed, at this time. Now, Sir, is there any danger in following these examples in future appointments of judges?

Let me hasten to say, in conclusion—for my time is just running out—that while I would divest myself of every personal consideration in this matter, all I desire is, that in conformity with every fundamental principle of popular government, the judges shall be made accountable. Give me accountability for the judges of all our courts to somebody, at some stated time, in some way, and I shall be content. I prefer to begin with the limitation of ten years, but I must take the seven, if it is that or no limitation. The cry of the people everywhere, concerning their judges and rulers is, give us accountability!

Sir, accountability is the great moral gravitation, without which heaven and earth would fall asunder! Wherever there are human agencies, wherever there are intellectual beings, there must be accountability. Without accountability to his God, man is but a beast; without accountability to the public will, the ruler is but a despot; and without accountability to the people, the judge, with his life tenure on the bench, is but a modified tyrant.

[Here the hammer fell, at the close of the half hour, as the speaker took his seat.]

Mr. FRENCH, of New Bedford. Mr. President: I have been much interested in this discussion, and from what I have heard, I am satisfied that, since the subject was up before, there has been quite a change of opinion among the members of the Convention. I have no doubt that if this discussion were to continue a little longer, we should have a majority in favor of the amendment of the gentleman from Worcester; and if the question could be postponed, and come up a few days later, I presume we should even have a majority in favor of electing judges by the people. Sir, what is the reason of this change of opinion? Since the subject was discussed before, gentlemen have been home to their constituents, and they have come back with new light as to the opinions of the people, upon this subject. If they would rise in their places, and testify what they have seen and heard, many of them would tell us that their constituents have said to them, "Give us an elective judiciary."

Sir, as I said on a former occasion, I am for a system that shall bring the judges a little more in sympathy with the people. We were told here the other day, by the distinguished member from Boston, (Mr. Choate,) of the purity of the judges of this country, and Lord Mansfield, and the common law of England, were not only alluded to, but eulogized. Sir, have we Mansfields upon the bench of our supreme court? Have we even apologies for Mansfields there? If we had, how

would human rights stand affected by the change? It will be remembered, that Lord Mansfield liberated Somerset, and caused the shackles to fall from the limbs of every slave in Great Britain, against the influence of the government of England, and in favor of the impulses of the people. If we had the common law of England, and Mansfields to administer it, how long should we be compelled to look upon human slavery in this country?

There was a case a few days ago in this city, illustrative of this point: A man appeared in this harbor, on board the brig Florence, from Wilmington, N. C., just escaped from the land of whips and chains, panting for liberty, which he had perilled his all, yes, even his life, to obtain, and when he was just about to touch our soil, and was in imminent danger of being seized, and sent back, could his friends obtain from the justices of your supreme court, a writ of *habeas corpus* to prevent his being returned into slavery, "without due process of law?" No, Sir; but they took out a writ of *habeas corpus* from the people, and a writ which put him in possession of his rights. While the captain, after nailing him up in a box, was looking round after your commissioners, your marshals, and the officers of the government, to seize him and bind him, and carry him back to slavery, he took an appeal to the people. They granted a writ of *habeas corpus* upon which he was taken ashore, and set at liberty. He is now, I hope, in Queen Victoria's dominions, rejoicing, not as the gentleman for Manchester, (Mr. Dana,) said the other day, that he had been tried before a court of independent judges—as independent and impartial as the lot of humanity will admit. No, Sir; but that he had obtained a writ of *habeas corpus* from the people, by virtue of which, he was beyond the reach of his oppressors.

Sir, I regretted exceedingly, to hear it said the other day, by a gentleman in this Convention, the learned gentleman from Cambridge, (Mr. Parker,) in whom so much confidence is reposed, in matters of law, that while the fugitive slave law was upon our statute books, it was the law of the land, and it must be obeyed. Oh! how it thrilled through my bosom. Where is the man in this Convention, who, if he had stood upon the shores of our harbor when that poor panting fugitive landed, to whom I have referred, if the officers of your government had been there, ready, but unable to subdue him, and called upon him to assist in seizing him, would have done it?

Sir, I put it to every gentleman in this Convention; the gentleman from Cambridge, and the gentleman for Wilbraham, in particular: would you have assisted the marshal, had he needed, and commanded your services, to have dragged that fugitive before a ten-dollar commissioner, (Mr. Curtis,) who would have doomed him to the chains of slavery?—"one hour of which, is fraught with more misery than ages of that which our fathers rose in rebellion to oppose." I ask any man who believes in the doctrine that a law must be observed, because it is spread out upon your statute book, whether he would have helped to have sent that man back to slavery? Will any man rise in his place and say, yes? I pause for a reply. No, Sir; no one will do that, because that man is not in this Convention, and I thank God that he is not.

Now, Sir, I have not a word to say against the

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judges of our supreme court. I do not believe, as I was represented by the gentleman for Wilbraham, to intimate, the other day, that judges of the supreme court should violate their oaths. I do not wish to elect judges who will violate their oaths. Oh no, Sir; but I do want to elect judges who shall be near enough to the people, to remember, and realize, too, that men have inalienable rights, and who, when a man comes before them, and applies for his liberty—when he comes and asks for his rights, to which he is entitled under the Declaration of Independence, the Constitution of the United States, and the Bill of Rights, and laws of the Commonwealth of Massachusetts—will grant them to him, and not turn their backs upon him, without making any reply. I want supreme judges who can remember that the Constitution of the United States, says this:—

“No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law, or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor shall be due.”

No person shall be “deprived of life, liberty, or property, without due process of law.” Which means trial by jury. And, farther:—

“In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.”

I want them to remember that before such person can be sent back into slavery, it must be shown that such service or labor was due to the party claiming it, under the laws of the State from which he comes. Here, is where I claim the Constitution of the United States is violated in its most essential provision. I want it to be shown, that the service or labor of a slave, is due to the party claiming him, by the laws of the State from whence he has escaped. It cannot be done. There is not a single State in the Union that has upon its statute book a law making any man or woman a slave. And when they come to the State of Massachusetts and claim the right to take a man from our soil, they must first show, according to the Constitution of the United States, that he owes service or labor, under the law of the State from whence he has escaped. This must be done, too, by “due process of law.” No grab game, No snap-judgment. They know they cannot show it; and, therefore, it is that your odious, abominable, detestable, unrighteous, inhuman, heathenish, barbarous, heaven-daring, man-debasing, woman-killing, demon-pleasing, unconstitutional fugitive slave law was made, [laughter,] which is no law, and should be trampled under foot by every freeman in the land. Lord Brougham has said:—

“There is a law above all the enactments of human codes, the same throughout the world; the same in all times; such as it was before the daring genius of Columbus pierced the night of ages, and opened to one world the sources of power, wealth, and knowledge, and to another all unutterable woes; and such as it is this day. It is the law written by the finger of God on the heart of man; and by that law, unchangeable and eternal, while men despise fraud, and loathe rapine, and abhor blood, they shall reject with indignation the wild and guilty fantasy that man can hold property in man.”

Sir, when congress passed that law, those men

who voted for it knew it would be no law. They knew it was in violation of the Constitution of the United States. They knew all this. Will any man stand up here and deny it? Why did they make it at all? Because they—the slaveholders—knew they could not come to Massachusetts, and other free States, and take a fugitive slave under constitutional law, for constitutional law required them, in the first place, to show that the fugitive owed service or labor, under the law of the State from whence he had escaped, and they could not show that, because no State has enacted any such law. Therefore it became necessary to pass a law in violation of the Constitution of the United States, in order to allow them to come North and take up fugitives, and carry them back to slavery. It could only be done in violation of the Constitution of the United States, in violation of the Bill of Rights, and of the Constitution of the Commonwealth of Massachusetts, and of every free State in the Union.

Sir, how was it in the case of Sims? The learned gentleman for Manchester tells us he was one of his (Sims') counsel in that case. The Constitution of the United States and the laws of this Commonwealth were disregarded entirely.

A member (interrupting) here asked what was the question before the Convention. [Laughter.]

The President said it was upon the amendment of the gentleman from Worcester.

Mr. FRENCH, (resuming). And the gentleman for Manchester remarked, although he lost that case, yet he rejoiced that it was brought before a court of independent judges—as independent and impartial as the “lot of humanity would admit.” Now, I ask that gentleman, supposing he were to change sides for a moment, and Sims were the lawyer, and the learned gentleman for Manchester the client, would his rejoicing, think you, have been the same? If it would, then when he arrived upon the rice plantation, down in Georgia, he would have lifted up his prayer, morning and evening, thanking God that although he was condemned to slavery, he had been fairly tried and condemned by a judge who was as independent and impartial as the “lot of humanity would admit.” [Great laughter.] If he would have done that, he would certainly have exhibited more of the Christian spirit than it has been my lot to fall in with yet. No, Sir; I tell you he would have offered up an entirely different prayer. If he had had any thanksgivings to render up, they would have been of an entirely different character. I think he would have been apt to have repeated the 109th Psalm and 8th verse: “Let his days be few, and let another take his office.”

Sir, there is not a man in this Convention today who can deny that Sims was not entitled to the same privileges of life and liberty that we are.

A poor trembling fugitive came to my door the other day, having been five long weeks under the fore-castle floor of a schooner, in close confinement, in coming from that land of sighs and groans; and while the gentleman for Manchester was offering up his thanksgiving for independent judges, and praying that they might continue to be appointed for life, instead of appealing to them, that same writ of *habeas corpus* was applied for and issued by the people, who took him safely off, and he is now, I trust, in Canada.

Who does not rejoice at it? Does any one wish

to help catch him? The aforesaid fugitive slave law must be enforced, must it? I desire to bring the case nearer home. The way to test a principle and gentlemen's professions here is to take an extreme case. While I am speaking, for instance, suppose a poor fugitive woman, with her little one in her arms, enters yonder door, rushes down that aisle, and undertakes to crawl in behind your chair, Mr. President, for protection, followed by her husband, and at the other door in come the officers of the law in pursuit. The marshal of the United States, with his insignia indicating his office, comes down near your desk, while the husband of the poor woman stands between her and that officer. You all sit here, and of course, I stop speaking, while that husband stands up in all his manhood, and says to the officer and posse, thus far you shall come, and no farther, upon your peril; and he produces his weapons of defence, which convinces the officer that he is too much for him. The officer calls upon you, gentlemen, in this Convention, by virtue of, and in obedience to the fugitive slave law, in the name of the United States of America, to assist him in seizing, binding these fugitives, and taking them before a commissioner. Would you do it? That is the question. No! not a man here would lift his hand to assist that officer, notwithstanding that aforesaid fugitive slave law commands all good citizens to assist in its execution. Then away with the idea that whilst it is upon the statute book, it must be obeyed and enforced. Spit upon it—trample upon it, rather than obey and enforce it. The attempt never would have been made to execute the law in Massachusetts, had it not been for a particular political purpose, and I do not believe it will be attempted again very soon by the authorities of the city of Boston, or if attempted, that it will be backed up by a corps of fifteen hundred of her most wealthy and influential merchants.

I wish to say one word more in reply to what was said of Lord Mansfield. He struck the fetters from every slave in Great Britain, and all we want here is judges like Mansfield. Had we one or two Mansfields on the bench of the supreme court of the United States, then, when men brought their fugitive slave cases before that court, they would set the slaves free. I remember reading that there was a judge once, who, the first time the question was brought before him, set the slave free, and with him every slave in this Commonwealth. He was a little nearer the pattern of Lord Mansfield than any judge you find now a days. There was a judge in Vermont, who, when a similar case was brought before him, required a bill of sale from the court of Heaven, to prove one man's title to another. Although we did take our common law from England, and with it our slavery, still let me say to gentlemen that England has set us a glorious example in the application of that law, by the manumission of her slaves, worthy of our swiftest imitation, and the imitation of every republic and government on earth. It makes me feel sad for my country to hear men talk about liberty, while I remember that there are so many millions of poor creatures in slavery down South. Gentlemen can sympathize with Hungary, but they cannot sympathize with three and a half millions of human beings, crushed in slavery at home, denied the privilege of the marriage institution, worked without pay, scourged without mercy, sold upon

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the auction-block, maimed with impunity, and thousands of them hunted with blood-hounds, and shot at outlaws. Every-body admits that slaves are human beings. How long shall these things continue?

In discussing this question the other day, the gentleman from Boston, (Mr. Choate,) in regard to the matter of the great expense of collecting debts,—and let me here say that I thank the gentleman for his kindness,—used this language: "I would recommend the gentleman from New Bedford to advise his friend to change his lawyer." I knew a man once to do that, and he not only had to pay the new one for doing the business, but he had to pay the old one to keep him still. [Laughter.] The gentleman said that business would be delayed, because there would not be judges enough to do the business. I happened to step into the police court room, in this city, the other morning, to see a gentleman I was told could be found there, and while waiting, the justice disposed of some twenty cases in about as many minutes. And this was all done by a single police judge.

What a great blessing it would be, when cases come into the court of common pleas, and the supreme court, if they were put through the same or even with appropriate speed. It seems to me if judges were elected by the people, that there would be more promptness and dispatch in the decision of cases, because the people would demand that such should be the order of things. In that case, there would be no two or three years' delay to find out whether a man's fence was two or three feet over the line of another man's ground or swamp pasture, which was not worth two dollars an acre, the decision of which would cost hundreds of dollars. [Laughter.]

I am in favor of the amendment of the gentleman from Worcester, (Mr. Knowlton,) because as the gentleman from Lowell, (Mr. Butler,) said, it is better than anything now before us. I will take it as far as it goes. I wish it was one or two stages farther off, because by the time it came to its final passage, I think that we might get a vote for electing judges by the people. I support this amendment, because if nominations have to go before the Senate, our governors would be a little careful to make the very best nominations, with some other recommendations beside the fact that they were "live, young, and active Whigs." If the governor had to nominate them to the Senate, he would endeavor, I think, to select men who have character, standing, and something else besides ability to serve party purposes. When this question is taken, I feel perfectly confident, and I earnestly desire that this amendment will prevail.

The usual hour of adjournment having arrived, Mr. French gave way, and on motion, the Convention adjourned until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

Leave of Absence.

Leave of absence was granted to Mr. Morton, of Tisbury, for the remainder of the session.

Justices of the Peace.

Mr. CUSHMAN, of Bernardston, offered the following substitute for the first resolve reported

by the Committee on the subject of Justices of the Peace, which, on his motion, was laid on the table and ordered to be printed.

Resolved, That it is expedient to amend the Constitution as follows:—

There shall be two classes of Justices of the Peace, viz.:—

1st. *Trial Justices*, who shall be elected by the legal voters of the several towns for a term of three years. There shall be one in each town, and one additional for every two thousand inhabitants. They shall have the same jurisdiction, powers and duties that are now exercised by justices of the peace, justices of the quorum, and commissioners to qualify civil officers; and such other powers as may be given them by the legislature.

2d. *Justices of the Peace*, who shall be appointed by the Governor and Council for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of justices of the peace shall extend only to the acknowledgment of deeds; the administration of oaths; the issuing of subpoenas, and solemnization of marriages.

3d. The offices of Justices of the Quorum, and Commissioners to qualify civil officers, are hereby abolished.

The Judiciary.

The Convention renewed the consideration of the unfinished business of the morning, viz.: the resolves on the subject of the Judiciary, the pending question being on the amendment moved by the gentleman from Worcester, (Mr. Knowlton).

Mr. HOOPER, of Fall River. I move to amend the proposition before you, by striking out all after the word "Constitution," in the first line, and inserting the following:—

Resolved, That it is expedient so to revise the Constitution that all vacancies occasioned by death, resignation, or other cause, among the judges of the supreme judicial court, shall be filled by an election at large throughout the State, for a term of ——— years, so arranged that two shall not be elected at the same time for the same term of years.

Resolved, That it is expedient so to revise the Constitution as to require that provision shall be made, by law, for the election of all the judges and justices of inferior courts, in districts, for a term of years; and that so long as the court of common pleas shall continue as at present constituted, the judges thereof shall be elected in districts for a term of ——— years, so arranged that only one shall be elected in any one year, unless it shall be to fill a vacancy in an unexpired term, and the judge whose term of service is first to expire, shall be the chief justice of said court, till such expiration, so that each shall in turn be, successively, the chief justice.

Mr. HOOPER. The effect of this proposition is to fill the vacancies upon the bench by election, instead of by appointment. The object of it is, first: not to disturb the present tenure. It does not meddle with the court as now constituted, but it enables you to glide into an elective system without any shock or disturbance of those who are at present there. The term for which they are to be elected is left blank, that it may be filled afterwards. The object is simply to present the question whether we will have an elective or an appointed judiciary.

I do not propose to discuss this question at any length, because it seems to me that all that has been said in favor of a limited tenure goes in favor of an elective judiciary; and I appeal to gentle-

men who are responsible for the result of this Convention, whether it will not be better for them, and safer, to put this question of an elective judiciary to the people, than simply to propose a half-way measure of limiting the tenure. The gentleman from Taunton, (Mr. Morton,) the other day, in arguing this matter, put the question to us whether, if we had a house to construct, if we had not better employ an architect; or a house to build, if we had not better employ a carpenter; or any other piece of work we wanted done, we had not better employ some one who had served an apprenticeship to his business, and understood it, rather than undertake to do it ourselves. I suppose he applied that to the appointing power. But, I would like to ask, when did the appointing power ever serve an apprenticeship in appointing? Are not the people as capable of selecting the judge as the governor can be, who but yesterday was one of them? It would seem that the gentleman supposed that the governor had some talent, or skill, which other people could not exercise in the selection of these officers. When, or where did he serve his apprenticeship, or where did he get his patent that confers upon him such superior qualifications for the business? The gentleman from Manchester, (Mr. Dana,) has asked us why we do not put out the questions we were sent here to put out to the people, and let other things alone? I was not aware that the question of plurality was one that we were sent here to put out, any more than this. The very document to which the gentleman has alluded, expressly leaves this matter for the Convention to do as they please. The Committee who drew up that document say, expressly, they leave it for the discretion of the Convention which is to assemble. Therefore it is supposed that the decision of this question of an elective judiciary is imposed upon us by the very terms of the document in question, and this is one of the issues on which we are sent here to act.

Now, the argument in favor of appointing for a limited term, instead of electing the judges, is, to my mind, an argument which is wholly in the other direction. If a judge hopes to be reelected, he would be very likely to devote himself to his duties; and if he is learned and impartial, he can rely with great certainty on a reelection. Such a man, in opposition to a man of whom the people know but little, would have an incomparable advantage, and would succeed in nine cases out of ten. But what would be the effect in case the judges are appointed? Suppose a term is about to expire, and here is a man in the office who combines in his character all the requisites of a good judge—learned, courteous, able, and impartial—but a political contest ensues, and some ambitious young gentleman, perhaps, gets his eye upon that judge's place, and becomes all at once very patriotic, and attends all the primary meetings—is sent as a delegate to the State Convention, and manages to get his friend nominated for a governor; and then, by great exertion, and spending time and money, succeeds in getting his friend elected for governor. Then how will the case stand? He demands the place of the judge whose term expires. The judge happens to belong to another party, and, although he is impartial as a man can be, or as any man in the community, and has given good satisfaction, would you often find a man in the place of that governor who would resist the claim of the man who had

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put him in his position? I fear not, Sir. It would be demanded of the governor as the price of his office; and few, under such circumstances, would have the independence and manliness to refuse such a claim. Whereas, if the judge held his seat by the voice of the people, there would be no question how they would decide, when the matter should be referred to them. They would retain the man whom they knew to be able and impartial, in preference to one of whom they knew little or nothing. And, for this reason, I am in favor of making the office elective, instead of continuing it by appointment for a term of years; and I hope this Convention will come to this conclusion.

I offer this amendment, because I have been solicited to do it by a number of gentlemen, who stated that they voted against it when the proposition was up before, and who desire to change their vote. If this Convention are wise, in my opinion they will adopt this measure, and give it to the people. It is a proposition which I believe the people will hail with acclamation. I believe they will give it a more hearty support than to any other proposition which we shall put to them. I maintain that no such proposition has ever been put to the people of any State, which was rejected by them. To be sure it was not adopted in New Hampshire, because a two-thirds' vote was required; but it received a large majority of the votes, and more than any other proposition submitted to them. Such a proposition has never been rejected by a majority of the people of any State, and I hope it never will be. I hope this will be accepted.

[Mr. French, of New Bedford, who was interrupted by the adjournment of the morning session, now took the floor and concluded his remarks.]

MR. FRENCH, of New Bedford. I have been significantly reminded that it is not democratic, and I know it is rather startling to many persons, when the idea is advanced that law is to be disregarded. Therefore, I beg leave to reply to that insinuation here. The gentleman for Wilbraham (Mr. Hallett) told us the laws of the United States were the supreme laws of the land. I agree with him that they are so, but only when those laws are in accordance with the Constitution of the United States. In regard to the law to which the gentleman for Wilbraham referred upon a former occasion, I wish to introduce a little proof of its unconstitutionality—that it is no law, and should not be regarded as such, and cannot be, to much extent, enforced. It was the opinion of John C. Calhoun, that great statesman from the Palmetto State, that the fugitive slave law was unconstitutional; and such was the opinion of Honorable Mr. Rhett, his successor, who pronounced upon the floor of the United States Senate, these remarkable words:—

"This government has it not in its power to enforce this law, so as to make it efficacious. I believe that by the action of States *alone* the rights of the South can be maintained and enforced." Again he says: "The delivery of a fugitive from labor is an affair between two States. The fugitive is to be delivered up. To be delivered up, he must be seized. He must be in the possession of those who are to deliver him up. No authority within a State can seize a criminal against the laws of any other State, but the authority of the State itself to which he has fled. This is the law of the nations. Look at

the Constitution. Is there one word in it referring to fugitive criminals and fugitive slaves, conferring any power on congress to legislate upon these subjects? No power whatever is given to congress; congress is not mentioned in that connection. What is the inevitable inference? Why, that congress has no such power."

I regret that my learned friend for Wilbraham, (Mr. Hallett,) is not in his seat, that he might put me right if I have wrongly quoted these distinguished gentlemen. I will go as far as any man for maintaining law; but it comes with a very ill grace from the gentleman for Wilbraham to talk to us, and give us lessons upon this subject, after what he has said upon the very point in question. It will be remembered that about a year ago, there was a certain convention held in Baltimore, and that a certain gentleman went down there from the State of Massachusetts, who participated in that convention. In laying down their national platform in that convention, they laid down and asserted the old resolves of 1798—the resolves of Madison and Jefferson. The gentleman for Wilbraham claims to be a Jeffersonian Democrat, and so do I; and I wish he was here to explain and show how he stands upon this matter.

It is well known that these resolutions, which declared certain statutes to be no laws, were incorporated, in 1852, as a part of the Democratic platform. I believe that if those resolutions had been read at the time, they would never have formed a part of that platform. I beg leave to read one or two extracts from those drawn up by Thomas Jefferson, which are very short:—

[From Resolve the First.]

"Whereas over the general government assumes undelegated power, its acts are unauthorized, void, and of no force; that to this compact each State acceded as a State, and as an integral party; that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, *each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.*"

[From the Second Resolve.]

"The same act of congress passed on the 14th day of July, 1798, and entitled 'An act in addition to the act entitled an act for the punishment of certain crimes against the United States;' as also the act passed by them on the 27th day of June, 1798, entitled 'An act to punish frauds committed on the bank of the United States;' and all other their acts which assume to create, define, or punish crimes other than those enumerated in the Constitution, are *altogether void, and of no force*, and that the power to create, define, and punish such other crimes is reserved, and of right appertains, solely and exclusively, to the respective States, each within its own territory."

[From Resolve the Third.]

"That, therefore, the act of congress of the United States, passed on the 14th of July, 1798, entitled 'An act in addition to the act entitled An act for the punishment of certain crimes against the United States,' which does abridge the freedom of the press, is not law, but is *altogether void, and of no effect.*"

[From Resolve the Fourth.]

"The act of congress of the United States, passed the 22d day of June, 1798, entitled, 'An

act concerning aliens,' which assumes power over alien friends not delegated by the Constitution, is not law, but is *altogether void, and of no force.*"

[From Resolve the Ninth.]

"The Commonwealth is determined, as it doubts not its co-States are, not tamely to submit to undelegated, and, consequently, unlimited powers, in no man, or body of men, on earth."

That is the doctrine of the gentleman for Wilbraham, as put forth at the Democratic Convention in Baltimore, in 1852. Now, I submit whether it becomes the gentleman to read us lectures, because we are opposed to the fugitive slave law, and because, as there is not a particle of authority given to congress to pass it, we say it is void, and of no effect.

The gentleman, in the course of the discussion, made an allusion to Hungary. When that Democrat of all Democrats, Kossuth, was here, he made a short tour in the South; and while there, it may be well supposed, that the question came up about the application of his doctrines to the peculiar institution. Upon one occasion, when two gentlemen were discussing the matter, one says to the other: "What shall we do with Kossuth? The doctrine he puts forth is in direct opposition to the peculiar institution, and, if carried out, would give liberty to every slave in the South." The reply was: "It's no use talking about it—we must go in for liberty in Hungary."

It is very convenient for some gentlemen to go for liberty in Hungary, but not so convenient to go for it nearer home. An attempt has been made to carry out this fugitive slave law in various places, but it has been trampled under foot; and I shall continue to rejoice so long as such is the fact. How was it at Syracuse, in the State of New York? The officers of the United States government did not dare to put their hands upon the man who rescued Jerry. It was there, that Gerrit Smith said to the officers of the law: I am the man who rescued Jerry. I am accountable. Let the sledge-hammer of your fugitive slave law fall upon me as soon as you please. He remained in Syracuse three long days, to give them time to deliberate as to what course they should pursue. The officers of the general government in the Empire State, did not dare to put their hands upon Gerrit Smith, although he stood up and boldly told them to their faces: "I rescued Jerry, I am responsible, execute your law as soon as you please." Thank God, that man is elected to congress, and he will stand up there like a man, in the face of this slave-holding nation, and preach truth which will make many a man free. What has he said? He has declared that there is not a single slave in his chains at the South, that has not a perfect God-given right to liberty, and advised all the slaves in this republic to take it immediately. So much for the constitutionality of the fugitive slave law, and the ability of the government to enforce it. Mr. Rhett was a truer prophet than the Massachusetts senator, Mr. Webster.

One word in relation to the amendment of the gentleman from Fall River, (Mr. Hooper,) just now read, which provides for electing judges by the people.

I can most cheerfully give it my support, and hope it may find favor, and be adopted, confident, Sir, that the tendency of such a provision in the Constitution will be appreciated by the people,

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and be calculated to improve our judiciary system.

Let our judges be elected by the people, and you will never be told that they crawl under chains to reach their benches, or turn their backs upon an application for a writ of *habeas corpus* in behalf of a poor colored man, equally with us entitled to life and liberty, who shall be kidnapped in the streets of Boston, locked up in an upper chamber of your chained-up court house, guarded by fifteen hundred wealthy merchants, "gentlemen of property and standing," finally, in the "gray of the morning," marched in a hollow square of the armed police of this city, over the very spot, of revolutionary memory, which was moistened by the blood of Attacks, and put on board brig "Acorn," bound South, whilst the soldiery shall be sleeping upon their arms in Faneuil Hall.

Mr. GILES, of Boston. I wish to speak for ten minutes on this subject, in justification of the vote which I shall give, as the yeas and nays have been ordered upon it. I wish my friend from Worcester would modify his resolution by leaving out the number seven, and let us take the question upon the simple idea of a limited term. If that be carried, we can put in such a term as the Convention please. I think there are many who would vote for the proposition to limit the term to seven years; but I should like the privilege of voting simply upon the question of a limited term. The proposition has been discussed in reference to two things: the first an elective judiciary, and the second a judiciary for a limited term. I am opposed to an elective judiciary system, but not because the people are not competent to elect a good bench. I believe they are. And I am not opposed to it because it has not precedent in its favor. It has precedent, and American precedent, and Massachusetts precedent. The first court that we had was elective. I have here "The coppie of the liberties of the Massachusetts Colonie in New England," and this was the first code of laws ever established in New England; and by that code the court was an elective court, and that annually. There are two simple provisions relating to it.

The fiftieth article is as follows:—

"All Jurors shall be chosen continually by the freemen of the Townes where they dwell."

There you have part of your court. The fifty-first article is this:—

"All associates selected at any time to Assist the Assistants in Inferior Courts, shall be nominated by the Townes belonging to that Court, by orderly agreement among themselves."

And, by the Colony Charter of 1628, these assistants who were to be assisted, were chosen annually, by the freemen, according to the fundamental law of the Colony. Therefore, we began, here in Massachusetts, with an elective judiciary, elected by the freemen annually, including jurors and judges. That was tried, and they abandoned it, and the court appointed by the executive, was substituted in its stead.

Now there are two practical objections to electing judges, which are decisive in my judgment: First, it is not enough that a judge should be a great lawyer; it is not enough that he should be uniformly and universally known to the people,

but he must have a mind and a body constituted for judicial duty; and that body and that mind are personal, and generally known to the public only to a limited extent, and to be found out by the executive on inquiry. I have always understood, that the greatest lawyer we ever had in this country, now among the honored dead, ever discouraged the wish of some to place him upon the bench, though it were the highest office of that character in the Union, because, although every-body conceded that he understood the Constitution of the country better than any other man in it, and he had earned the reputation of the "Defender of the Constitution;" yet he said he knew the constitution of his own body and mind too well to accept that station. And the greatest living lawyer we have among us, his friend and successor, who has electrified this body with his eloquence, and carried everything before him except truth, that nobody can overcome, knows himself too well ever to accept a seat upon the bench.

Then, I say, that for a good judge, something more is required than popularity, and extended fame, and great legal attainments, and great powers of eloquence in the advocacy of a cause; and that something more must be found out by one man, whose duty it is to inquire and ask advice of his Council.

If we look to the character of a judge, I know of no place where it is better described than in the Book of Moses, who was the first and the greatest judge whose name is recorded in history. Jethro, his father-in-law, advised him to select men to help him to judge the causes of the people, because it was too hard for him, and he advised him to select men who feared God, men of truth, men who hated covetousness; and Moses did select able men, known to all the tribes; and he made a court, whose decisions, so far as they are on record, are good authority to this day, notwithstanding the fling at the Connecticut Blue Laws. I have those laws, and the fling is unjustifiable; for they founded a court who obeyed the laws, and in default of there being any statute law, they were bound by the law of Moses and the Word of God. That is good doctrine now.

But, Sir, there is another reason, equally as decisive to my mind, upon this question, as it was on another, a short time ago. I do not wish to put the election of the judges to the people, to have them voted for or against; I do not wish the people to take sides for or against a judge. The gentleman to whom I have alluded, set forth graphically and truly the effect of popular elections upon the bench and the bar, and said that it would subject the bench to suspicion, that it would incite the bar to opposition, and that justice would suffer in her sworn temples, among her sworn officers. But, Sir, he did not, as I expected and hoped he would, go farther, and say that it would demoralize the people in regard to the bench, and divide them in reference to their own bench. I would never put the election of the judge to the people in such a way that they should say, I am for him, and I am against him. Never; for a reason that I will state directly.

What is the danger to our judicial system, that calls for any action? I admit, with my friends, that our court is a good one. Who can read Judge Kent's Treatise upon the Judicial System

of England and of America, and not feel grateful to his Maker for the institution that has put so much of human reason into law, and so much of human conscience into judicial decisions? No one. There is no tribunal so well deserving of the admiration of any man who is a friend of humanity, and who is a part of humanity, as our judicial system; and the strongest argument against any change is, that our court, as now constituted, is good enough. Let well enough alone. But there is a danger, and that danger I wish to avert. If the court is good, and if the danger is great, I am ready to vote for the limited tenure, which is proposed by my friend.

Sir, the tenure of our judiciary at this moment, in Massachusetts, in this land of liberty, is a freehold. Yes, Sir; a freehold at common law, because it is during good behavior, of uncertain length and breadth—a freehold, a base freehold, I grant you, Sir—compared with certain titles to real estate, but still a freehold. Now, Sir, look at the judicial history of this country, at this moment, and what is it? You see the people going from one extreme to the other—going from an appointive judiciary, with a life office, a freehold office, to an elective judiciary, for a short term—some terms as short as one year. The truth is, Mr. President, that a freehold office, with a life tenure, is repugnant to American liberty. I might say it is abhorrent to American liberty, but I will only say, that it is abhorrent to my own heart; and, Sir, against that tenure of our judiciary, the great popular heart of American liberty beats—beats—beats—and mine beats in sympathy with it. And that, Sir, has swept away, and is sweeping away, and will sweep away, that foundation stone of our liberty, unless that objection be removed. Now, Sir, I would propose this remedy: I would substitute, for the English foundation of your court, the American foundation. I would substitute for "independence of the crown," the "support of the people." I would take your court up bodily from that monarchical basis, and place it bodily upon the basis of liberty, viz.: instead of independence of the crown, I would have the support of the people. I would so arrange your fundamental law that the people as a whole, and as a body, should always be in favor of the court. Hence, I would not put it to them so as to compel them to divide for and against it; and hence, I am opposed to an elective judiciary. I want to take away this popular feeling—call it prejudice, or what you will; but it is a fact, and a stubborn fact. I want to take it away, and let your whole people come up to the support of the court with a warm heart, and with strong hands. Now, Sir, what is the English system? The English system was established by the act of settlement in 12th and 13th of King William III., in 1700. There you have it, *verbatim et literatim*; and we have it in our Constitution, almost bodily, in chapter third, article first, and the subsequent article of another chapter. The object in view in the English system, was to prevent the crown from making a court to try its own cases against the people. The judges holding office at the will of the crown, when the crown wished to try a case of privilege against liberty, it could, and it frequently did, make a court to try its own case. That act provided that, after it took effect, the judges or pensioners—for they were classed with pensioners—under the crown, should not hold a seat in the

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House of Commons, and their commissions should run, in the Latin words of the writ, *quamdiu bene se gesserint*—while they carry themselves well, or while they behave well. And another article in that same law, prevented the pardon of the crown being pleadable in bar of the judgment of the court. There was the system, and here it is in this article of the Constitution. But the American system is in article third, which the gentleman from Fall River read, and I was glad to hear it. Our fathers had both systems before them, and they put them both into the Constitution, side by side. The American system is as follows:—

"In order that the people may not suffer from the long continuance in place of any justice of the peace who shall fail of discharging the important duties of his office, with ability and fidelity, all commissions of justices of the peace shall expire, and become void, in the term of seven years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well-being of the Commonwealth."

That is the American system—known by our fathers, approved by our fathers, put into the Constitution by our fathers, right after the English system. In regard to the number of years, we differ; that is a matter of judgment; but in regard to limiting the tenure of office, so that it shall not be a freehold, that is a matter of principle. I shall vote for a limited tenure.

Mr. HOOPER, of Fall River. Is not a proposition now pending before the Convention to change what the gentleman calls the American system, and make the judges elective?

Mr. GILES. I am not able to answer that. The gentleman refers to another proposition; as to justices of the peace, I am not able to say. While we are upon the subject of justices of the peace, let me ask, what governor turns out justices of the peace when he comes into the executive chair, whatever may be his politics, if the justice of the peace is a popular officer? Does not every gentleman, who comes into the executive chair, renew their commissions, without being asked to do so? I have seen gentlemen show commissions sent to them by a political opponent, without being asked; they did not know that their commissions had expired, until they received a renewal from a political opponent.

Now, as to tenure, I should prefer fifteen years. I would not say that the judge should not be reappointed, because that might take away the inducement to good conduct, and to study faithfully his duty; but, as gentlemen know, if the tenure was fifteen years, he would seldom, if ever, be reappointed; and all the objections so forcibly put by gentlemen upon the other side, as to the effect of reappointment upon the existing judge, would be removed. Let me say, that in seven years, or in ten years, or in fifteen years, a proper man will acquire a judicial character that no political party can afford to sacrifice upon political grounds merely. I wish to vote distinctly upon a limited tenure of office, as a matter of principle—of American liberty and policy; but the number of years is a question upon which I, with others, must assent to the decision of the majority. In answer to what gentlemen so forcibly put, as to what is called the popular idea of liberty, as it may bear against the court, when I

say it is beating against the bulwarks of the judiciary, I will refer to the speech of the gentleman from New Bedford, this morning, and the effect which it had upon their own minds. I say that the judge should be no man's man—the judge should be no party's man; and when I say that, I say, with equal emphasis, the judge should be the people's man—he should be the State's man—he should be the law's man; and, agreeing with the approving nod of my friend for Wilbraham, I will say, with all the emphasis of my mind and heart, that he should be the Constitution's man. Give me a man like that, and he is my judge for any human tribunal. I am opposed to the elective principle, but I am in favor of a limited tenure, and, although I may differ from others to whose judgment I defer, I shall give my vote upon the convictions of my mind and conscience; and I believe that this will be right.

In conclusion, as I must omit many things in my mind, to conclude within my time, I will say, that a judge should be no man's man; he should be no party's man; but he should be the people's man—he should be the State's man—he should be the law's man, and—I say it with all the emphasis of my mind and heart—he should be the Constitution's man.

Mr. ADAMS, of Lowell. I have not occupied the attention of the Convention for one moment upon this question, and I do not propose to do so, if I can get an opportunity to vote. This discussion has run through several days already, and I submit that, if we should sit here and discuss the question a day or two longer, there would not, probably be anything new said upon it, either for or against. It is extremely desirous that the vote should be taken before the adjournment of the Convention to-night; and, as the yeas and nays are ordered upon this amendment, and as there may be one or two other amendments on which the yeas and nays may be ordered, I think, under the circumstances, it is proper that I should move the previous question, which I now do.

Mr. SUMNER, of Otis. I have a very few words which I should like to say, if the gentleman will have the goodness to withdraw his motion for a moment.

Mr. ADAMS. If it is the wish of the Convention to hear the question discussed farther, I will withdraw the motion; but I am desirous of having the question taken this afternoon. I would yield to my friend who has just taken his seat, as quick as I would to any other man living, but I think it is the general desire of the Convention that the question should be taken.

[Cries of "Question!" "Question!"]

Mr. LORD, of Salem. I am very sorry, Mr. President, that the chair happens to be occupied as it is now, (Mr. Wilson in the chair,) because if it were occupied by the President of the Convention, I should call upon the gentleman from Natick to spring to his feet, as he did yesterday, in opposition to that adroit movement by which, just upon the heel of a speech of a gentleman who made just such a speech as if he expected that the previous question was to be moved;—I say that I regret that the chair happens to be so occupied, because we cannot now have the benefit of those suggestions. I know that we shall, in a moment, have my learned friend from Worcester, whom I see right before me, (Mr. Allen,) and who yesterday followed the gentleman from Natick against this motion, to put an

end to the debate upon a subject that had not occupied the attention of the Convention more than four or five times as long as this has, and which was not more than a hundred times as important as this is. I think he certainly will spring to his feet—

Mr. ALLEN. In every instance, hitherto, where I have spoken or acted upon the subject, it has been in favor of allowing to the gentleman from Salem, and his friends, an opportunity of discussion; and therefore I am at a loss to know why an allusion has been made to me in relation to this matter. My influence has been uniformly in favor of the freedom of debate.

Mr. LORD. I will certainly apologize to the gentleman from Worcester, if I have, done him any injustice. I am very happy indeed now to learn that he is opposed to the previous question. I am very happy to learn that he does not now desire that this motion shall prevail. And, Sir, I have observed that it is not those gentlemen who have been most prominent in this discussion, upon whom the lot always happens to fall to move the previous question. The gentleman from Lowell, whom I see directly before me, (Mr. Butler,) did not move the previous question this afternoon directly; it was his colleague who made the motion; and I say it so happens that those gentlemen who, in the matter of political preferment, stand the best chance, are not the ones upon whom the lot ordinarily falls to move the previous question. If, Sir, it would be at all proper to allude to a fable which is now fresh in my mind, and which I know the Convention will not want me refer to, because every gentleman has it in his own mind,—I hear it whispered all around me,—that would be a good illustration; but I will not name it.

Now, Sir, we all agreed yesterday, on both sides of the House, that the best mode to close debate was to allow those gentlemen who had anything to say upon the subject to say it; and when they had said it, to take the question. We all agreed to that. And, as I said, if I did any injustice to the gentleman from Worcester, (Mr. Allen,)—and I do not know that I did, because he says he is always opposed to this previous question; but I confess I had a sort of lingering reminiscence,—probably it was a mere delusion in my own mind,—but there was there a flickering recollection that not very late in the session, on a matter that had not been wholly exhausted, the gentleman from Worcester did move the previous question,—although, I say, that such is my recollection; and although gentlemen around me aver that my memory is not at fault, yet I am bound by the declaration the gentleman has just made, to believe that I am laboring under a mistake in this matter, and that the gentleman did not move the previous question. If, therefore, I have done him wrong, he will accept this as my apology.

Mr. ALLEN, of Worcester. Mr. President: I do not know that I ought to notice an attempt to introduce a personal question with me—for what purpose I know not, having had little to do with the gentleman from Salem, either now or formerly; I say, why he should seek a personal controversy with me, or refer to me in the manner in which he has just done, I am wholly at a loss to say. I do not know to what cause I am indebted for this particular honor. If, however, he chooses to honor me with his remarks, and to

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quote either my words or my acts, as uttered and done in this Convention, I would be obliged to him, if he would quote them correctly. I said that my uniform action had been in favor of granting the right of debate to the fullest extent; and, I believe, that on one occasion, when that gentleman was desirous of addressing the Convention, and by the rules of the Convention he was precluded therefrom, I obtained the liberty for him, and under similar circumstances I obtained leave for other gentlemen of his party to address the Convention; and, I believe that I can safely say, that, if the course of any one in this body, towards that gentleman and his friends, has been marked with liberality from the beginning, it has been mine. But, Sir, I repeat, that perhaps I may have done wrong in noticing this attack, which the gentlemen has seen fit to make upon me. I do not know to what cause I am to attribute the honor. Certainly not to any relations that have subsisted between us, friendly or unfriendly, or to any movement of mine by which I have come in contact with him.

Mr. LORD. [Mr. Allen having left his seat and walked up the aisle, towards the door.] Mr. President:—

"He that fights and runs away,
May live to fight another day."

[Much laughter, and Mr. Allen returned to his seat.] I have no desire to say, either, that there have been any relations between the gentleman from Worcester and myself. I am quite indifferent in that respect. I have made no attacks upon him. Anything I have said cannot be tortured into an attack upon him. I said that I was happy to see the gentleman from Worcester in his place, because I should expect him to take the same ground to-day that he took yesterday. Unless he is one of those gentlemen who cannot keep the same thought over night, I think—

Mr. WHITNEY, of Conway. I rise to a question of order.

The PRESIDENT. The gentleman from Conway will state his point of order.

Mr. WHITNEY. The gentleman does not discuss the question before the Convention. The Chair will be good enough to state what the question is.

The PRESIDENT. In the opinion of the Chair, the gentleman from Salem was not adhering closely to the question before the Convention. The question was on the call for the previous question. A certain line of remark, however, had been previously indulged in, and the Chair did not feel called upon to interfere of his own accord.

Mr. LORD. The only remark I have to make is this: while I had the floor, and was discussing the question, the gentleman from Worcester, (Mr. Allen,) rose and made some allusions—

Mr. WHITNEY. Did the Chair decide the question of order. Did he rule that the gentleman was speaking to the question? I rose to a question of order. I think the gentleman is not speaking to the question before the House. If the gentleman is not discussing the question, I desire that the Chair will hold him to the rule.

The PRESIDENT. If the Chair is called upon to decide the matter, he must say that the gentleman is not strictly in order. The gentleman from Salem will confine himself to the question.

Mr. LORD. If it is not in order to apologize

to the Convention for being out of order, then I must go on. [Laughter.] Now, Sir, I desire to bring myself precisely within the rule of order, if I can do so; and I think I can do so, and at the same time reply to the gentleman from Worcester.

I say, Sir, that yesterday, when the motion was made for the previous question, the gentlemen who are in the majority in this House, rose in every quarter of the House, protesting against it. It was upon a subject which had been discussed much more than this subject has been. It was upon a subject much less important than this—a subject on which every gentleman had spoken, as it turned out afterwards, who desired to speak—because, although the gentleman from Natick, (Mr. Wilson,) and the gentleman from Worcester, (Mr. Allen,) and others, rose to oppose the demand for the previous question, yet an intermission of two hours, (from one o'clock till three,) answered just as well, and in the afternoon no person spoke upon the subject. I say, therefore, that these gentlemen are committed to a position upon the previous question, on a matter of this importance, that has not been discussed any more than this matter has. And I am opposed to the previous question, at this time, for other reasons. I am opposed to it because I myself, through the—perhaps I ought to say, because I was more active than some other gentlemen, and have had an opportunity to address the Convention, though not at any great length, for I believe the President told me afterwards that I was only upon the floor about eleven minutes—I say that I am opposed to the previous question, because other gentlemen desire to speak—not I. The gentleman from Manchester, (Mr. Dana,) made a brief address on the other side of the question, which is now in its last stage, and those followed one after another on the majority side, and nothing has been said at all except by those who are in favor of the proposition. The gentleman from Manchester made a brief speech in the morning, and I made a few remarks—and but a very few—but not on the general subject. I did not propose to discuss it.

It has been discussed by others, and it is now in its last stage, in a condition in which it cannot be amended; because, I understand the rule to be, that if we adopt this resolution, it must stand just as it is, as part of the Constitution; and, inasmuch as gentlemen wish to propose amendments, it seems to me, that of all occasions when the previous question might be moved, this is the most unseasonable time to sustain it. But, Sir, I do not make these remarks from any personal feeling in regard to myself. I have had my day. I have said what I design to say, and therefore I speak from no personal considerations. I speak in behalf of others, towards whom I am democratic enough to believe that they ought to have as free an opportunity to speak as I have had, and for the freedom of debate.

Mr. BUTLER, of Lowell. I will detain the Convention only with a single word. "Out of the abundance of the heart, the mouth speaketh." I have observed that the gentleman from Salem, on this call for the previous question, thought it was quite pertinent to the subject of debate, to say that I have moved the previous question indirectly.

Mr. LORD. If the gentleman from Lowell will pardon me, I said no such thing. I said that the gentleman did not move the previous question directly.

Mr. BUTLER. Oh, yes; no doubt. And the gentleman has not now even the virtue of honesty. [Cries of "order," "order."] Every-body understood him, Sir, because every-body knew that he meant to intimate that I did move it indirectly; and I must say that when a man manifests so much malignity—

[Renewed cries of "order," "order."]

Mr. LORD. I rise to a question of order. [Laughter.]

The PRESIDENT. The gentleman from Salem will state his point of order.

Mr. LORD. My point of order is this: whether the gentleman's remarks are to the question; whether "the main question shall be now put?" [Laughter.] I withdraw my point of order if I may be allowed the opportunity of replying.

The PRESIDENT. The gentleman from Lowell will proceed in order.

Mr. BUTLER. I say that one of the gentleman's arguments why the previous question should not be put, was that I had made the call for it indirectly. Sir, I had the honor to ask my colleague to withdraw it in favor of my friend from Otis, but he would not, and certainly had a right to exercise his own judgment.

Now, I have seen men, in my time, who had malignity enough to make an attack, and not manliness enough to stand by it; and, Sir, I have seen the gentleman from Salem, now complaining of the freedom of debate, and he says that the main question ought not to be put, because it will cut off the freedom of debate. I remember, Sir,—in order to show that it is parliamentary usage to stop debate whenever the majority think proper,—the first time that I had the honor of rising in a deliberative assembly. It was in this House, on a joint meeting of the Senate and House of Representatives; the president of the Senate in the chair. In the remarks I made, being ignorant of parliamentary rule, I had the misfortune to wander from the question, and the gentleman representing the city of Salem—called the city of peace, I suppose, because there is no peace in it—rose and called me to order; and when I attempted to go on he moved the House that I be prevented from going on, and he got one hundred and thirty-eight men to stop me; but that was not quite men enough to stop me, and I was permitted to proceed. And this is the man who talks about the freedom of debate!

Mr. LORD. Is all this pertinent to the motion for the previous question?

The PRESIDENT. The gentleman from Lowell will proceed in order.

Mr. BUTLER. I think the time has come when the question should be taken, and I hope it will be taken. I only thought I should like to call back this reminiscence. I grant that I was not stopped, but it was not on account of any good-will in this quarter.

Now, I think we have said enough on this matter, and I hope the previous question will be sustained.

Mr. HILLARD, of Boston. I am not one of those, who, at all times, and on principle, am opposed to the previous question. I think it is a right which the majority may use, and sometimes must use, but I think, also, that it is an extreme medicine of a deliberative assembly, and not its daily food. And I submit it, if the gentlemen who are charged with the responsibility of this

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body—the majority—are not now administering this extreme medicine when we only want a little more of the daily bread. What attitude are we in? Here is a question which we supposed was settled some days ago. This morning, between ten and eleven o'clock, the subject revives again, upon the proposition for a tenure for a term of years, and this afternoon it takes another aspect: that of making judges elective. I submit that these two questions are not only more important, but they are at least four times more important—if you can thus guage such things—than any other one question that has come before this body. And what has been the course of debate to-day? We have had a speech from the gentleman representing Manchester, (Mr. Dana,) and another from the gentleman from Salem, (Mr. Lord,) neither of them cutting into the pith of the question, but only suggesting certain grounds of expediency, irrespective of their merits, why they should not be pressed at this time. Following them, we certainly have had some noticeable speeches, such as the very effective speech of the gentleman for Wilbraham, (Mr. Hallett,) and the remarkable conflagration of the gentleman from New Bedford, (Mr. French,) and this afternoon a brief speech from the gentleman representing Fall River, (Mr. Hooper,) and one who has startled friend and foe, from the valued friend of twenty-six years, whom I see before me, (Mr. Giles,) who spoke with the voice of Jacob though the hands were the hands of Esau; and, yet, upon the tail of all this, when the minority feel that this is a paramount question, in which our constituents are most deeply interested, is the great axe to fall, cutting off from the minority the power of answering one of the new arguments which have been made to-day?

Now I submit to the majority, that the minority are in a position not to ask favors, but to claim rights, because we have not turned towards them a factious countenance. We have adhered to the legitimate functions of a minority, and no more. We have thrown no factious or captious obstructions in the path of business here; and we are, therefore, not reduced to ask favors. We claim it as a right, to be allowed to answer some of the new arguments which have been made to-day; and, if we are denied that right, I hope we shall forever after hold our peace, and appeal from this body to the people in November next.

Mr. KEYES, for Abington. I do not rise because I am in favor of the previous question at this or at any other time, but because, if the previous question should be adopted, there would go out, as the discussion now stands, a false impression—if any impression at all—in reference to the facts of the case. I should suppose, by the course the argument has taken, that one party here, called the minority party—by which, I suppose, is meant the Whig party—had been very much oppressed, and had not had an opportunity to be heard, while all the speeches made, had been against the position taken by its members. I do not know that I am a very good judge, not having been here all the time, but I think that the gentleman from Fall River, (Mr. Hooper,) and myself, are almost all who have said a single word in favor of the election of judges by the people. We knew that there were here a hundred friends of that measure, who feared the people too much to advocate the measure, but I have

heard few make speeches upon that side of the question; whereas, all the power of the Whig party, and, if I may say it without disrespect—all the cowardice, and that is much, of all the parties—have been exerted upon the side in favor of appointment and the life tenure.

Now, Sir, I should be glad to have this debate continued, because I feel stronger and stronger, every day, in support of the policy of the election of judges by the people. I do not guess at it, but I know that if this debate continues, that view of the question will accumulate strength every hour. I am satisfied, that however much talent may be left in the quarter against such a proposition, that some of the best has already been expended in opposition to such a scheme, and those efforts cannot be outdone. But, I wish to say, if ever there was a time when a party, or the friends of a particular measure, could with propriety move the previous question, this is the time; because it is a time when the side moving it, have had but two or three speeches upon the subject; while a large portion of the talent of the opponents of an elective judiciary, has been poured out in defence of their side of the question, and my impression is—though I by no means wish to make a comparison of one part of the members of this Convention with another—my impression is, that no argument upon that side could strengthen it, but that debate would have a tendency, in a body like this, to do away with the bugbears which always have existed in the community in regard to it. If we could strip this subject of that influence which is born with us, and which has existed in the atmosphere about us as long as we have lived, a large portion of what are called the most able arguments put forth would seem absurd. The idea that you must strip the governor of all his appointing power, because he is not fit to be trusted with the selection of even the least important agents, and yet, that he is the only power competent to be trusted with the appointment of judges, is absurd.

Mr. SCHOULER, of Boston. I rise to a question of order. The question before the Convention is on the call for the previous question, but the gentleman is discussing the main question, and therefore is out of order.

The PRESIDENT. The point of order is well taken, and the gentleman for Abington will confine his remarks to the question before the Convention.

Mr. KEYES. I beg pardon of the Chair. I forgot myself for the moment, inasmuch as others did not talk about the question. But, to confine myself to the point, I certainly shall not vote for the previous question—I do not know as I ever did—so long as persons wished to discuss. Our side has not been discussed, while the time and talent of the opposition has been poured out in full measure.

Mr. TRAIN, of Framingham. I do not desire to occupy the time of the Convention, although I know they would listen to me with pleasure, because they know me to be a good-natured man, and one who never does anything simply for the sake of irritating somebody—exactly as my friend from Worcester says, I never say anything maliciously—but I speak out of the fullness of my heart. Well, Sir, I had the misfortune, yesterday, to move the previous question out of that fullness, and I am sorry to confess to-day, that I

did a very foolish thing; and I am afraid my friend over the way (Mr. Adams) has done another very foolish thing, because it is perfectly obvious to-day, that there are those who wish to address the Convention upon the main question, though it was perfectly evident yesterday that there was nobody who wished it. But, times change, and men change. That we cannot help; we are all in the same boat, and we will sail along as well as we can.

I am delighted, on the whole, that this matter has arisen, because it verifies the old maxim that "what is sauce for the goose is sauce for the gander," and it is no matter which is the goose, as long as the gander is on the other side. [Laughter.] I hope the previous question will not be ordered at this time. Certainly, no eloquence of mine is needed, to convince this Convention that this is the most important question we shall be called to pass upon here. Every-body concedes that. If this is the vital question, let us talk it out, and my word for it, the people will not care whether we spend a hundred dollars more or less, provided we settle this question with a degree of unanimity which will be satisfactory to all the people of the Commonwealth. I desire to mete out to my friends upon both sides of the question, the same sort of consideration which I received yesterday. As there seems to be a disposition to press the call for the previous question, I move that when the question is taken it be taken by yeas and nays.

Mr. HOOD, of Lynn. I desire to give a few reasons why the previous question should be sustained. This Convention have voted to adjourn on Saturday next, [laughter]; they voted to accept the Report of the Committee on adjournment, which was that we could bring our labors to a close at that time. There comes up here from the people of the Commonwealth the expression of a general desire that this Convention should finish their labors and adjourn without day. There comes up through the reform press of the State, the same expression. On the other hand, there comes from the press of the party to which the gentleman from Salem, (Mr. Lord,) belongs, a denunciation of this Convention for lengthening out its session. I submit to the Convention that is sufficient reason to induce us to proceed as rapidly with our business as can be done consistently with a proper regard for the public interest. I submit that this question has been thoroughly discussed, and pretty much on the side of gentlemen opposed to taking the previous question. I should be glad to occupy some time in the discussion of the subject, myself, but I am willing to concede my right to the floor upon this question, at this time, and I trust other gentlemen are willing to do the same thing. We have a large number of subjects upon the Orders of the Day, which have to be disposed of; I presume every member here has made up his mind how he shall vote upon the question, and I think the time has come for it to be taken.

The gentleman from Boston, (Mr. Hillard,) says that the minority, to which he belongs, has not endeavored to delay the business of the Convention. I do not propose to make any charge of that kind against them, but from the commencement of this Convention, there has been a constant and continued opposition to any attempt to hasten our business. I believe it was on the second week of the session that I moved the appointment

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of a Committee to consider the question whether it was possible for the Convention to finish its labors before the fourth of July. When the question was brought up, who opposed it? And whenever a motion has been made to shorten debate upon any question, gentlemen have risen in their places and come out strongly in favor of free discussion. I am in favor of free discussion; but, Sir, I remember the promises made to the people, before the Convention assembled, that the Convention would finish its labors within seventy-five days. I have a printed document before me, to which I would call the attention of gentlemen, for it has been customary to refer to the programme laid down by the committee. In this document they declare that the Convention could be brought to a close in seventy-five days. If we are to confine ourselves to the rule which has been laid down, I ask gentlemen to apply it in this case. But the rule has been departed from in one respect, for in this document I see it is said that the pay of members of the Convention shall be the same as that of members of the legislature.

The PRESIDENT. The Chair must remind the gentleman from Lynn, that the main question is not under discussion.

Mr. HOOD. I hope, therefore, the question will be taken, and that the Convention will then proceed to consider the subjects upon the Orders of the Day, and finish its business by Saturday next, according to the expectation of the people.

Mr. BARTLETT, of Boston. I have had the misfortune to be absent while this debate has been in progress, and I should have been very glad, if not to have participated, at least to have a chance to review the entire ground. That indicates, of course, my desire that the previous question be not now sustained. Probably, Sir, all that could be fairly said, has been exhausted upon the subject. But there are some few questions which, at some proper period, I desire to put to the gentleman who introduced the project. I suppose if the question should be decided to be taken, that the explanations elicited by those questions will be lost, and I will now, if it is in order, put the interrogatories.

The PRESIDENT. The gentleman can proceed, if there be no objection.

Mr. BUTLER, of Lowell. I object.

Mr. BARTLETT. Thanking the Convention for being permitted to proceed thus far, I will trouble them no longer.

Mr. DANA, for Manchester. I have an objection to urge against putting the previous question. I am one of those who usually remain here until there is no quorum, at night, when those gentlemen who are very desirous of terminating debate, and hurrying business, are not here. I agree that the main questions have been pretty thoroughly discussed; that is, the question of an elective judiciary, and the tenure of office, and perhaps as far as gentlemen wish to discuss them, and I think if no attempt is made to put the question, the Convention will not be troubled by farther debate upon those points. But there is something peculiar in the proposition of the gentleman from Worcester, which has never been discussed, and that is, the subject of confirmation by the Senate. There are some serious questions which arise out of that subject, which I intended to have spoken of, but was prevented, by being cut off by the half hour rule.

The PRESIDENT. The Chair would remind the gentleman that the only question before the Convention, is the call for the previous question.

Mr. DANA. I wish to state the reasons why the previous question should not be put. It has been argued here, that the main question has been thoroughly discussed; and am I not in order in saying that, though the main question has been discussed, yet there are other questions connected with it, which have not been?

The PRESIDENT. The gentleman is in order.

Mr. DANA. Then I wish to say, that there arise serious questions out of this matter of confirmation by the Senate; and, if I am not mistaken, the gentleman from Worcester has an amendment to that very point, which he will be cut off from offering, if the previous question is adopted. I ask him if he has not an amendment, which provides that the government may fill a vacancy in the court during the nine months when there is no legislature in session?

Another thing: the gentleman's resolution, as it now stands, would remove all the present judges, all of them; and the governor, in 1854, would have to appoint a complete set of judges, of both courts. I would ask if the gentleman has not some amendment relating to that point? These questions are important, and they have not been discussed at all.

Mr. GRAY, of Boston. I would ask upon what principle it is that we allow of more than one stage in the progress of a bill? I take it, that it is to throw the whole ground open more than once; and it is by virtue of that very proper principle that these amendments are offered. It seems to me that, by parity of reasoning, the conclusion is irresistible, that if there is an opportunity of offering amendments, there should be an opportunity of reasonable discussion upon them. I stand upon a ground where I stood yesterday, and standing upon which, I opposed some of my friends. I said then, and I say now, that I have yet to hear the first speech of any length made against time. I say, Sir, though it may not be in order to reflect upon the past, that these attempts to cut off debate are lowering the dignity of the Convention in the eyes of the people, and I think it ought to lower the Convention in its own eyes. I say, also, that not one moment is gained by this course. Now, Sir, I want the question taken this afternoon, because we have a very full house, and I believe we should have reached it, and, what is more, I believe we shall still reach it, without any attempt to force the question. I suppose gentlemen can recall an old tale in verse, which was one of the first things I ever learned, and of which I will only repeat a couple of lines. A soldier came into a lunatic asylum, with his sword by his side. One of the inmates of the asylum asked him why he carried the sword. "Why," said he, "to kill my enemies." I thought there was good sense, as well as good feeling, in the reply of the lunatic:—

"Sure that's a thought I'd not own,
They'll die of themselves, if you let them alone."

If gentlemen will let this debate alone, it will die of itself. And I really think there are questions connected with the subject, which ought not to be forced under the previous question.

Mr. STRONG, of Easthampton. I am opposed to putting the previous question at this

time, for two reasons. In the first place, I think if this subject is debated until some time in the forenoon to-morrow, we shall be able to get a majority of the Convention to vote in favor of the amendment of the gentleman from Fall River, (Mr. Hooper,) which, if I mistake not, is to apply the elective principle to the judiciary. And if we can carry that proposition through the Convention, and submit it to the people, it will be the only thing which I can imagine that will save the life of the Constitution which you will submit to them. I cannot think of anything else which we can do that will have the effect of redeeming the other acts which we have passed.

But I oppose this motion at this time for another reason. There are gentlemen in the hall who have not yet had an opportunity of speaking upon this subject, who, I understand, desire to speak upon the propriety of making the judges elective by the people. For these reasons, therefore, and especially for the last reason, I hope the previous question will not now be sustained.

Mr. EARLE, of Worcester. I was about to say that I hope the motion for the previous question will not be sustained at this time. And I rather hope my friend from Lowell, (Mr. Adams,) will withdraw it. It is very evident, from the state and temper of the Convention at this time, that if the previous question is sustained and enforced, it will be no saving of time whatever; because under the existing circumstances, these amendments having been recently introduced, and having too been not very fully discussed upon this occasion, there is a disposition manifested upon the part of some gentlemen to discuss them farther. And if they are not discussed now, undoubtedly there will be a reconsideration, and the discussion will then take place. I think it is better, when a subject is directly before the Convention, to allow it to be fully discussed, and for it to be finally disposed of, rather than to have the discussion come up upon a motion to reconsider; a motion which, of itself, opens the whole subject again to discussion. I hope, therefore, my friend from Lowell will be induced to withdraw his motion for the previous question; and if he is not, I shall be constrained to vote against it; and if the motion is lost, it cannot be made again.

Mr. BRADBURY, of Newton. I never moved a previous question in my life, and never voted for such a motion. I should, however, have voted for the motion yesterday, if the question had been taken. But I am surprised that gentlemen should confound that motion with the one which the gentleman from Lowell (Mr. Adams) now makes. Any one who knows anything of parliamentary law, or who understands anything of the mode of proceeding, must see that there can be no comparison between the two motions. The gentleman from Framingham (Mr. Train) moved the previous question, upon a motion to reconsider a particular vote. His motion did not open the whole subject to discussion at all. But if the reconsideration had taken place, it would have opened the whole subject to discussion. If ever I could be in favor of a motion for the previous question, therefore, I should have been in favor of it then, because its effect would have been to have extended the discussion rather than to limit it. The effect of the motion of the gentleman from Framingham was to enlarge the rights of members, so far as discussion is concerned, and not to curtail it. In the

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case now before us, however, the effect is exactly the reverse. The motion is retaliatory in its character. Its effect is not to enlarge debate, but to curtail it. It is not to open a wider range of debate, but to close it upon the final disposal of one of the most important subjects before the Convention. I hope, therefore, the previous question will not be sustained.

Mr. LORD, of Salem, claimed the floor.

The PRESIDENT. By the rules of the Convention, the gentleman from Salem having spoken once upon this motion, cannot again take the floor until the question is disposed of.

Mr. LORD. If the Chair had understood my purpose in rising, he would not have been under the necessity of calling me to order. I am aware that, by the rules of the Convention, I am not entitled to the floor again upon this motion. I was, however, about to say, that, inasmuch as the gentleman from Lowell has introduced here a matter connected with a past proceeding in the legislature, which is personal between himself and me, I desire the leave of the Convention to give my version of it.

The PRESIDENT. The gentleman will proceed, by general consent, if no one objects.

Objection was made.

Mr. LORD. I then move that I may be permitted to speak again upon the subject, that I may reply to the gentleman from Lowell.

The motion was agreed to.

Mr. LORD. I desire to return my thanks to the Convention for giving me this opportunity for personal explanation. I knew that I had no right to speak. I threw myself upon their indulgence, and they have treated me with great kindness.

The gentlemen from Lowell (Mr. Butler) introduced here, before the Convention, a scene which was enacted in the House of Representatives during the last session of the legislature, in which he said that he and I were the actors. I propose, Mr. President, to give my version of that scene—and those gentlemen who are members of both bodies, will judge between us.

The two branches of the legislature—the Senate and the House of Representatives—met in convention; the president of the Senate in the chair. The gentleman from Lowell addressed the convention, and was called to order. He was called to order once, and he was called to order twice—he was called to order three times, and more than three times, by members—when the president called him to order. Every-body who was in that House remembers how the gentleman from Lowell then addressed the president, and said, “Who made you a dictator?”

Mr. BUTLER, of Lowell. I rise to correct a personal matter. The gentleman says this occurred on one day. Now, Sir, there was nothing said against debate on the first day, nor on the second. It was not till the third day, that the occurrence of which the gentleman speaks, took place.

Mr. LORD. I am giving my version of the affair; but I am very happy to hear that the gentleman acknowledges it to be the true version. When the gentleman from Lowell was called to order by the presiding officer, he rose and said, “Who made you a dictator?” That was the position of things. The gentleman proceeded, and proceeded, until there was very great irregularity. The difference in days, of which he

speaks, is of very little consequence. The gentleman proceeded upon that occasion until it was apparent to every-body that he was, in truth, “inexperienced” in parliamentary matters—that he did not even know the rules and proprieties of the place. It was then, after he had been called to order over and over again, that I rose to a question of order, and my question of order was this: When a gentleman speaking is called to order by the presiding officer, or by any other member, he shall sit down. I have tried, myself, to follow that rule. I complied with it two or three times this afternoon, when I was called to order by the gentleman from Conway, (Mr. Whitney). Well, Sir, upon that occasion, I raised a question of order, whether, a point of order being made, and being sustained by the presiding officer, the member decided to be out of order could proceed without leave of the House? The Chair sustained me, and a motion was made, that the gentleman from Lowell have leave to proceed. Now, will the gentleman from Lowell tell how I voted upon that motion? Will he undertake to say, that I voted against his having leave to proceed? That is the question. When he had been called to order—when he had been decided to be out of order, by the presiding officer, and when he had demanded of the presiding officer to know “who made him a dictator”—even then, did the gentleman find me voting against his having permission to speak? No, Sir. No, Sir. But, when he was decided to be out of order, I suggested that permission be granted for him to proceed *in order*. The gentleman *knows* that I never objected to his debating, *in order*. It is not for him, therefore, to get up here and—

Mr. UNDERWOOD, of Milford. I rise to a question of order. I want to know what is before the Convention?

The PRESIDENT. The Convention have granted the gentleman from Salem leave to make a personal explanation, and the gentleman is proceeding with his explanation.

Mr. LORD. I will not trouble the Convention very much more. I merely wanted to make this explanation, that when the gentleman from Lowell was in the position which I have stated, I suggested that he be permitted to proceed in order. Now, if the gentleman from Lowell, or anybody else, ever find me, upon a question where the decision is to be final, undertaking to stop debate, they will find me in a position in which I have not been heretofore. I do not mean to say that I have not, in the legislature, voted for a motion of the previous question. I have done it a hundred times. I have, myself, moved it fifty times, but I have moved it upon motions to reconsider, and upon questions which would open the whole subject again for consideration. I have moved it where no action was proposed, and upon questions from which no harm could come. But, in cases where important action was taken, and where the decision was to be final, I have not only never moved the previous question, but I have never voted to sustain it. And this is the distinction which I think should be made just now. And again, gentlemen will do well to bear in mind that this is not a legislative assembly, where our acts will not only be subject to revision every year, but have the ordeal of two other branches to pass; but ours is a final decision, which is not subject to revision by any legislative body. And in reference to this par-

ticular case, the vote to be taken is the final vote.

Mr. HOOD, of Lynn. I rise to a question of order. The gentleman is not making a personal explanation. He is discussing the question.

Mr. FROTHINGHAM, of Charlestown. It seems to me, that in the present temper of the Convention, it will not be the wish of the majority to take this question at the present time. I rise, therefore, not for the purpose of making any argument upon the expediency or the non-expediency of the previous question at this time, but to suggest that, by a general arrangement, it may be the understanding that the taking of the question be postponed until to-morrow at eleven o'clock, and that, in the meantime the discussion may be allowed to go on.

For that purpose, and with that understanding, I will venture to ask the gentleman from Lowell, (Mr. Adams,) to withdraw his motion for the previous question.

Mr. ABBOTT, of Lowell. I certainly am in favor of the suggestion of the gentleman from Charlestown—

Mr. LORD, of Salem. I rise to a question of order. I desire to inquire if the President has decided the question of order made by the gentleman from Lynn, (Mr. Hood)?

The PRESIDENT. The gentleman from Lynn rose to a question of order, when the gentleman from Salem took his seat, and the Chair supposed he had concluded what he had to say.

Mr. LORD. I supposed it was my duty to take my seat when I was called to order.

The PRESIDENT. The gentleman from Salem was speaking out of order. He had made his personal explanation, and was discussing the question, when the gentleman from Lynn, (Mr. Hood,) called him to order. The gentleman from Salem then took his seat, and made no subsequent attempt to go on. The Chair supposed, therefore, that the gentleman had finished his explanation, and yielded to the point of order, that he was discussing the question, which he had no right to do.

Mr. LORD. I have no wish to say anything more upon this subject. I had supposed that anything I was saying was not without the leave of the Convention, and that as long as I conducted myself with propriety, I had the leave of the Convention to proceed. But, Sir, it is my custom to sit down when I am called to order, and having got a little used to it, it becomes natural for me to sit down as soon as I see certain gentlemen get up. [Laughter.]

Mr. ABBOTT, of Lowell. I was about to say, when I was interrupted by the gentleman from Salem, that if, by general consent, it can be understood that the question shall be taken at ten or eleven o'clock to-morrow, I am quite content that that arrangement should be made; and I think that with this arrangement my colleague, (Mr. Adams,) will withdraw his motion for the previous question. But, Sir, the responsibility of this Convention is upon the majority, and if we cannot have the general consent to fix some time, at no very distant period, for taking the question, I shall go for exercising the power of the majority, and for enforcing the previous question now.

Mr. UPTON, of Boston. The minority of this Convention have had some lectures read to them, and, perhaps, the majority would not take it amiss,

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if an humble member of the minority should read a lecture to them. I can see around me members of this Convention, certainly more than one gentleman, who had the honor some ten or twelve years ago, of holding seats in the legislature, in another part of this building. If I recollect aright, the division of parties then was as eighteen to twenty-two. I happened to be a member of the dominant party, and I will say in regard to that minority of eighteen, that they were a set of men who were incessantly talking, much worse, if anything, than even the minority of this Convention; and it was necessary in some way to check debate, and bring our labors to a speedy conclusion. Being a member of the majority, I proposed what I considered a very simple way to dispose of the whole thing, and that was, to let the minority go on and talk, without any hindrance on the part of the majority. Well, they did go on and talk, and after they had made five or ten speeches upon their side, and spoken all they wanted to, we would then take the question, and vote them down. I propose that the majority in this case should allow us the minority to go on and talk. If they are right in their propositions, for Heaven's sake, give us a feeble chance to use the few arguments which we may have. If they are good for nothing, no harm can come, and the majority can at all events vote us down.

Mr. HOOPER, of Fall River. I happened to be one of those to whom the gentleman from Boston, (Mr. Upton,) alludes, as I was a member of the Senate at that time. I would remind the gentleman, that it was under different circumstances from those in which we are placed here, that that course was pursued. In a body of only forty-four, a majority of twenty-three could very easily come to an understanding and settle such a matter; but it would be a very difficult matter to decide this question by a lobby understanding, and then come in here and be prepared to vote down the minority.

The PRESIDENT. The Chair must remind the gentleman that the question is upon ordering the main question.

Mr. HOOPER. I stand corrected, but I was only following in the track of other gentlemen.

Mr. ADAMS, of Lowell. Notwithstanding the insinuations made by the gentleman from Salem, (Mr. Lord,) I made the motion for the previous question upon my responsibility as a delegate to this Convention. I made that motion, because I believed then, as I do now, that it was the desire of the Convention, that debate should cease; but as it seems that a motion for the previous question involves the history of the last legislature, and the character of the gentleman from Salem, (Mr. Lord,) and that a discussion of these subjects would probably engross more time than the question of the judiciary, which has been before us for several days, I rise for the purpose of withdrawing that motion, and make a motion to lay the Orders of the Day on the table, so that the gentleman from Charlestown, (Mr. Frothingham,) may make a motion for an assignment of a particular hour when the question shall be taken. I therefore withdraw the motion for the previous question, and move that the Orders of the Day lie upon the table.

Mr. BRIGGS, of Pittsfield. It seems to me, that this course is hardly necessary, for I believe, judging from my own feelings, however, that the unanimous voice of the Convention will be given

to such a proposition, liberal as I consider it to be. If the Chair will submit the question, whether it is the unanimous voice of the Convention, that the question upon this subject shall be taken to-morrow at eleven o'clock, it is the strongest expression which we can have, and no one can rise with a good grace, hereafter, and interpose any objection.

Mr. GARDNER, of Boston. I rise to a question of order. I presume the gentleman from Lowell, (Mr. Adams,) has no right to withdraw the demand for the previous question, when the yeas and nays have been ordered. If the Convention give unanimous consent to the gentleman from Lowell, that he may withdraw his motion, they may be understood as tacitly assenting to an arrangement to take the vote to-morrow at eleven o'clock.

The question was then taken upon Mr. Adams's motion, that the Orders of the Day lie upon the table, and it was decided in the affirmative.

So the Orders of the Day were laid upon the table.

Mr. FROTHINGHAM, of Charlestown. I move that the question in relation to the Judiciary be taken to-morrow, at eleven o'clock.

The motion was agreed to.

On motion of Mr. FROTHINGHAM, the Convention then proceeded to the consideration of the Orders of the Day.

The PRESIDENT. The question pending, is upon the amendment of the gentleman from Fall River, (Mr. Hooper,) and the gentleman from Lynn has moved that when the question be taken, it be taken by yeas and nays.

The yeas and nays were ordered.

Mr. HILLARD, of Boston. I would ask if the amendment of the gentleman from Fall River, (Mr. Hooper,) will not open the whole subject for discussion?

The PRESIDENT. The Chair rules that the whole subject is open for discussion.

Mr. HILLARD. Whatever be our shades of opinion, and to whatever party we belong, we all agree in one thing—in a habit of exaggeration and over-statement in debate. We all magnify the evils of a system we deprecate, and the benefits of that to which we wish to cling. While opposing the amendment offered by the gentleman from Worcester, (Mr. Knowlton,) to which I shall confine my remarks, I wish at the outset to make the magnanimous concession that I do not believe that chaos will come again if we do adopt that amendment in Massachusetts. I concede that life, liberty, and property, and rights, will still be secure in Massachusetts. The elements that have given us a good judiciary hitherto, will operate to give us a good one still, whatever may be the tenure of office, and whether judges be elected or appointed; and those elements reside in an enlightened state of public opinion, in a learned and upright bar, and in the liberal compensation which we give to the judges; and therefore I would admit that we have before us now, substantially, a comparison of advantages and not of disadvantages. I am willing to go a little farther, and admit that there may be some possible advantage secured to us by adopting the amendment of the gentleman from Worcester. I admit, if there be a tendency in a judge to discourtesy of manner or habits of indolence and procrastination, that periodical accountability may serve to correct those tendencies; but I think that

those advantages, if they be advantages, are more than counterbalanced by the consideration that if you apply the limited tenure you will have, in the first place, to choose your judges from a region of the bar inferior to that from which you now can select them; and that in the second place, you impair the independence of the judiciary. In regard to both of these positions I think there can be no doubt. Take the case of a leader at the bar, who is considering the question of a seat upon the bench. He understands that he must sacrifice one-half of his income, at least, by so doing; but he reflects that the function of a judge is higher than that of an advocate—that the office is honorable and useful, dignified and secure. He therefore consents, in consideration of these equivalents, to a pecuniary sacrifice. But take away the life tenure, make the seat insecure, and you deprive it of one of its primal attractions. The same class of men will no longer ever think of going upon the bench; and you will, therefore, be compelled to extract your judges from an inferior stratum of the bar. As to the second position which I laid down, that the independence of a judge must be, and will be, impaired by the consideration that at the end of a certain period his claim to a re-appointment must be submitted to the pleasure of the executive, it needs not to be maintained by any course of reasoning. He who has not come to this conclusion from his own self-consciousness, and from his observation of humanity, cannot be led to it by argument. There is no security for judicial independence but that furnished by the tenure during good behavior. My friend and colleague, (Mr. Giles,) objects to the judicial tenure in Massachusetts because it is a freehold. I thank him for that word. I rejoice that judges in Massachusetts have their seats by a freehold, and not a slave's hold. Where you have dependence, you have some slight taint of slavery. I use this word in no offensive sense. As independence and freedom are correlative terms, so are dependence and slavery. That is what I mean by the expression. I admired the adroitness of my colleague (Mr. Giles,) in his choice of language. In speaking of the judges, he contrasted their independence of the crown in England, which he approved, with the support of the people in America, which he said the judges needed. I admired his adroitness in avoiding the words dependence on the people. In my judgment, as judges ought to be independent of the crown in England, so they ought to be independent of the people here. It is no answer to these considerations to say that in point of fact, as a general rule, the executive, in obedience to the popular will, will reappoint a good judge. This may or may not be true, and the question is: what effect will the element of contingency, however slight, have upon the judge himself? This will depend upon his temperament. Will any one give bonds that a faithful discharge of duty will secure a reappointment? If not, his future will be darkened with doubt; and so long as the mind of the judge is like a pendulum, alternating between hope and fear, his independence, and consequently his value as a magistrate, must be impaired.

The gentleman for Wilbraham, (Mr. Hallett,) wishes to make the bench accountable and responsible to the executive, and through him to the people. As I understand these words, I deny their application to the relation between the bench

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and the people. One man is responsible or accountable to another, when the latter has the right to call the former to account, or make him respond. Such is the relation between master and servant, and principal and agent. A judge is responsible to the legislature, because he may be impeached or removed by address. He is accountable to God and his conscience, as all men are. He is amenable to public opinion, as are all men clothed with public trusts. But that he is, or ought to be, directly or indirectly responsible to the people as such, I respectfully deny. For what purpose is a judge put upon the bench? Is it to do the will of the people? By no means: it is to do justice between man and man. In doing this he may be called upon to act in direct opposition to the will of the people. And can he be, ought he to be, removed for that? And if not, how can he be said to be responsible to the people. It is said that if you appoint judges for life, why not choose the executive for life? The answer is found in the different functions of the two departments. The executive is chosen to execute the will of the people. The moment he ceases to do that he ceases to stand in a proper relation to them. He is, therefore, chosen often enough to reflect the popular mind in all its changing moods. The gentleman from New Bedford, (Mr. French,) who took part in this discussion, laid down some positions from which I presume the gentleman for Wilbraham, (Mr. Hallett,) would recoil. But I submit that the difference between them is merely in degree and not in kind. The former gentleman pushes to its extreme that principle of popular accountability which the latter laid down as a cardinal point in his creed. One travels seven stages upon the road, and the other to the end.

There have been cases in the history of this country, where, I think, we can see that the tenure for years would have worked injuriously, or at least, it might have done so. In the early part of this century, there occurred at Richmond, Virginia, a memorable trial, which some of the elder members of this Convention will remember, the trial of Aaron Burr, for high-treason. I suppose it is no injustice to the eminent person who then occupied the executive chair of the United States, to say that his feelings, both as a man, and as a political leader, were strongly interested in the result of that trial, and that his influence was given, so far as it was consistent with the decorum of his high office, towards procuring the conviction of that distinguished offender, if I may so call him. The presiding judge at that trial, was John Marshall, a man, who then and there, as in his whole judicial life, presented the living image of that ideal and perfect judge, so beautifully drawn by my distinguished colleague, the attorney-general, (Mr. Choate). John Marshall was incarnate justice, embodied reason,—and not to speak it profanely,—conscience made flesh. Now had the judges of the supreme court of the United States been appointed for years instead of for life, in the first place, would such a man as Marshall have been likely to have been on that bench? And in the next place, would an average man, such as the tenure for years would probably have secured, with his mind alternating between hope and fear, as to his reappointment, have held the scales of justice with so firm a hand as did that great man? Would he have resisted all external pressure, as well? Let those who can estimate the infirmities

of humanity, answer these questions for themselves.

That eminent man passed through a long and illustrious judicial life, and towards the close of it, he was a member of the Constitutional Convention of the State of Virginia, and when he was there this question of the tenure of the judges came up, and I will ask the attention of the Convention to listen for a moment to the words of wisdom and truth which he then and there spoke:—

"The argument of the gentleman," he said, "goes to prove, not only that there is no such thing as judicial independence, but that there ought to be no such thing—that it is unwise and improvident to make the tenure of the judge's office to continue during good behavior. I have grown old in the opinion that there is nothing more dear to Virginia, or ought to be more dear to her statesmen, and that the best interests of our country are secured by it. Advert, Sir, to the duties of a judge. He has to pass between the government and the man whom that government is prosecuting, between the most powerful individual in the community, and the poorest and most unpopular. It is of the last importance, that in the performance of these duties, he should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security, and the security of his property, depends upon that fairness?"

"The judicial department comes home in its effects to every man's fireside—it passes on his property, his reputation, his life, his all. Is it not to the last degree important, that he should be rendered perfectly and completely independent, with nothing to control him but God and his conscience?" "I acknowledge, that in my judgment, the whole good which may grow out of this Convention, be it what it may, will never compensate for the evil of changing the *judicial tenure of office*." "I have always thought from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent judiciary."

Mr. President: I had other considerations to urge, but the Convention does not seem to be in a mood to listen, and therefore I obtrude myself no farther upon their patience.

Mr. BOUTWELL, for Berlin. It seems to me, Mr. President, that there are three main points in the proposition of the gentleman from Worcester. I am opposed to the amendment submitted by the gentleman from Fall River, (Mr. Hooper,) and every proposition for an elective judiciary, which contemplates the reflection of the same individual.

I think it worth while to consider how far our law tribunals should be independent, notwithstanding what has been said of the importance of the absolute independence of the judiciary. I would have the judiciary independent, so far as this, that they may always feel at liberty, and under the strongest inducements to do right; but a proposition which places the judges under any motive, or gives them any other than such opportunities for independence of the people as are absolutely incident to the system, is certainly wrong. By that, I mean to say, I go for an independent judiciary so far as this: that they may always be at liberty to give, and be protected in giving, just decisions between man and man. But an independence which leaves the judiciary at liberty to be indolent in the discharge of their duties, to be regardless of the rights of individuals,—and they are human as well as other men,

and they may, under some circumstances, be left to disregard the rights of individuals,—or even an independence which goes no farther than this, to leave the judges at liberty to be bad-mannered to the bar,—though I suppose the bar are able to take care of themselves,—is, in my judgment, wrong, and I wish the judges to be so dependent that they shall always respect parties and persons in court—the witnesses and jurors especially.

Now, how does the proposition of the gentleman from Worcester affect the appointing power? If it prevail, will the appointing power be as able to select proper judges as now? I take it, that so far as the nomination is concerned, it does not affect it, and therefore the appointing power remains the same. Another tribunal—the Senate—is, however, the confirmatory body. Now it is the Council. If the amendment of the gentleman from Worcester prevails, the Senate will be the confirming power. I have no great choice to which of these tribunals these nominations are sent. If the Council is made a popular body it will represent the people of the Commonwealth, but it will not be quite so much a popular body as the Senate, inasmuch as each member of the Council will represent a larger constituency. But it does not appear to me that any essential difference will result from sending the nomination to one body rather than the other; therefore no great objection can be made on that head. Nor will it happen, as suggested by the gentleman for Manchester, (Mr. Dana,) that these appointments will be much more frequent under the seven years' tenure than now. The judges of the court of common pleas, on an average, according to the statistics—and they never lie—hold their offices five years, and the judges of the supreme court hold theirs thirteen years; therefore it will happen that there will be about as many opportunities for the exercise of the appointing power under the existing as under the proposed system; and consequently, so far as regards the appointing power, the new system is substantially the same as the old one.

I come, now, to the next consideration—that of the character of the men who will be appointed under the new system, as compared with the character of those appointed under the existing system—whether the judicial standard will be lower than heretofore. Gentlemen say you will not get men of the same standing as lawyers as the men that you get now, that gentlemen have already been known to decline seats upon one or the other of the benches of the Commonwealth. It may be so, it is true; but so far as I know, the cases of declination are not of a nature to be affected by the proposed change. Every-body sees, that if a man goes upon the bench, and it proves an unfortunate appointment, and he finds it to be his duty to resign, his position in society will be thereby affected, and his means of acquiring a livelihood will be affected also. It is likewise true that a public position anywhere, in the House of Representatives of Massachusetts, in the Senate, or in Congress, as well as upon the bench, does affect unfavorably a man's position as to the means of acquiring a subsistence in other and different pursuits. There is no doubt about that; but then it happens, notwithstanding all these considerations, that men take these various places. My friend from Salem, (Mr. Lord,) has come to the general court for several years, at a great pecuniary sacrifice, I have no doubt.

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Other gentlemen do the same thing, knowing that the moment they enter upon public life their means of livelihood will be unfavorably affected. Men do not decline these places. I do not believe that one in ten of the cases of declination of a seat, either upon the bench of the court of common pleas, or that of the supreme court, has been on account of the character of the office. Nor do I believe that the declinations would have increased if the tenure had been seven years, or ten years, instead of a life tenure. These declinations do not come from the character of the office, but are in consequence of the fact that it is an office where the salary is limited, and that it takes a man out of his accustomed pursuits, for which he has more taste than for judicial life.

I believe it will happen that men of the same character will go upon the bench under a seven years' tenure as under a life tenure; men who are inclined to these offices will accept them, and men who are not inclined, who prefer to remain advocates at the bar, will not go upon the bench, whatever may be the tenure or salary—that is, whatever salary the Commonwealth will be likely to establish.

Therefore, I come to the conclusion, on the second point, that the standard of judicial character, will be as high under the proposed, as under the existing system.

I come now to another point, and that is, whether, in consequence of the limited tenure of the office to seven or ten years, the character of the judges will be affected; that is, whether they will be independent so far that they will render just decisions and interpret the law correctly between man and man in court. I proceed first on the common and well-known principle that honesty is the best policy, and that if a man desires a reappointment ever so much, he will see that from mere motives of policy he should do the very best that he can. In the first place, the appointing power possess a degree of intelligence, I take it, when it is confided to forty-one men, selected from the Commonwealth, which will save it from those influences which are merely popular in their nature. And secondly, there will ever be in Massachusetts, in the executive department, and in the Senate, an amount of intelligence which will enable these two departments of the government to discriminate between that opposition which is popular, transitory, and unfounded, sometimes existing against upright persons, and that opposition which is really and substantially based in the incompetency of the man. And if that is not so, if it be true that these two departments of the government will be unable to determine whether the opposition which may exist against a reappointment is a well or ill-founded opposition, I take it that our government, for all purposes of good, is substantially at an end.

Now, with this view, believing in the first place that the appointing power will be equally competent; that secondly, the judicial standard will be as high; and in the third place, that the judicial character will be as pure, I come to the conclusion that the proposition submitted by the gentleman from Worcester, is altogether safe.

Now, what are its advantages? I have only one thought to submit in reference to the advantages to be derived from a limited tenure. It has happened in Massachusetts, it has happened in every State in this Union, that men have been appointed to seats on the bench who were unfit

for the places. Some of them were known, perhaps, by those who were intimate with them, to be unfit when appointed, but all the facts were not before the appointing power. It has also happened that some men, very well fitted for advocates at the bar, fail altogether upon the bench. Now, it is a great public calamity that a man should be appointed under a life tenure to a seat on either bench in this Commonwealth, who proves incompetent to the discharge of its duties. And I think that if there were hardships, if there were even evils growing out of the proposed change, very many of them would be fully compensated by this consideration; that under this limited tenure, you have an opportunity to get rid of a bad judge. A judge may be very bad—I do not know much about courts, but I know something of human nature—and a judge may be very bad, and yet keep himself so far within the line of duty that he is not subject to removal by address or impeachment. I think that the limited tenure will operate well. Our good judges will be continued. There is a conservative feeling in Massachusetts, and if a judge during seven years shall sit impartially, shall hold the scales of justice even between man and man, whatever may be his political opinions, I say there never has been an administration strong enough to resist that popular voice which will demand his reappointment. And on the other hand, if it shall happen, as it has happened, and must happen, that occasionally you get a judge unfit for the duties he is called to perform, this is the best way, without public action or general effort, to remove him. Now, then, trusting to the people, the executive and legislative departments as the representatives of the people, and wishing to have a conservative and just influence which will ever protect a man in Massachusetts, in the faithful discharge of his duties as a judge, I am ready, for one, to vote for the proposition submitted by the gentleman from Worcester.

Mr. GRAY, of Boston. As this question has been so long and so ably discussed, and most of the arguments which could be adduced upon it, are exhausted, I trust that the Convention will do me the justice not to expect that I can offer much that is new or unknown, and I shall endeavor not to offer much in quantity, but confine myself simply to a few suggestions which have occurred to my mind. I should not perhaps have done this, was there not an important point in this question, which has been ignored, and overlooked in the discussion of this subject, and especially by those gentlemen who have spoken upon the opposite side. From their remarks, it would seem as if we based this proposition to continue the tenure of the judicial office as it is, on English experience. Now, Sir, I throw aside all the experience of England. When the Convention of 1780 assembled, they had none but English experience to enlighten them in their legislations upon this subject; and the same arguments which have, during this debate been urged against the existing tenure, would have been exceedingly appropriate at that day. But I am guided by the experience of America, by the experience of more than three score years and ten; and what has it been? Let gentlemen open with me the volume of the history of Massachusetts, and I submit to them and to you, Sir, if there is a prouder page in it, than that which records the history of its judiciary? We have

had judges for the last seventy years; they must have been somewhat numerous in the course of that time, and yet has there ever occurred a single instance where a judge has been accused of holding the scales of justice in an unequal and partial manner, upon the bench he occupied? We have had at times, it is true, judges who have been obnoxious to large portions of the community, on account of their extra judicial conduct, so to speak; who have been held up as politicians by one party, and of course zealously opposed by the other; subjected to the attacks of their adversaries who, in the depth of their animosity, would gladly have seized upon any charge of partiality or injustice of the bench, had it been vulnerable upon that point, as the strongest argument that could be brought to bear against them. But, notwithstanding these animosities, never, to my knowledge, has a judge sat upon any bench in our State, who has ever been, or ever could be, accused in the slightest degree, of soiling his ermine, or who has not been honored for the uprightness, the ability, and impartiality with which he has discharged the duties of his office. I would ask, then, is it any ultra conservatism; is it any blind reverence for what is old; is it, to use a more popular than elegant expression, any old foggyism, that makes gentlemen hesitate in departing from a system which has been productive of so many beneficial results, and brought forth so many good fruits? For one, I am not disposed to change at all, certainly so long as the maxim of old holds good: that by their fruits we shall know them; which has both reason and Scripture for its foundation.

My friend for Berlin asks the question whether we are in any danger of lowering the judicial character? and here is where, in my opinion, the whole merits of the question rest; and it is here that I take issue with him. Everything else is comparatively unimportant. Now, there is one argument upon this point to which I think allusion has not been made—or if so, it has been in an indirect manner—which is this: under our present judicial system, when a judge is appointed, he knows that he can occupy his situation so long as he behaves himself with ability and integrity; and that there are only two processes of removal, one of which is by impeachment, and the other by an address of the legislature. He feels that he is not to be brought up as a candidate for reelection every seven years, subject to all the vicissitudes of change in party or sentiment, but is to retain his office in peace and quietness during his life; in a word that he is provided for. And what is the consequence? He may be called by the people to occupy a higher position in the arena of life, or some extraordinary event of the kind may occur; or it may please Divine Providence to remove him by death at an early day; but aside from these contingencies, he considers himself fixed, stationary for life, and he gives his whole attention, his heart to the duties before him! His soul is in his work! I utter these words with emphasis, because they are significant, and in the present instance have more than an ordinary meaning. With his family around him, and provided for, he feels no solicitude in regard to what he shall do for them seven years hence; he feels that he will not be compelled, at the expiration of his term of office, to prepare himself once more, and enter the field with younger competitors, when he has not had

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an opportunity to make himself capable of "meeting them in that capacity.

Sir, the work of a judge, as gentlemen well know, is very different from that of an advocate, requiring great judgment and discretion, and the highest order of talent, from the fact that he is compelled to cope with the greatest genius of the land. I do not mean that every judge must have the intellectual capacity of a William Wirt, or a Daniel Webster; there could be few candidates for such an office, if we exacted that; but he is to meet the shrewdest men in the land, sift their arguments, guard against their sophistry, and regard the case in question fairly and clearly, when the ingenuity of the ablest men in the community is engaged in throwing a false light upon it; he has to do justice between party and party in the matter of property; and not unfrequently has he to administer justice and mercy to the poor criminal who stands before him pleading for life and liberty. In a word, we commit to him the highest power; I mean the power of fixing the sentences of criminals brought before him, for any period from one day in the House of Correction, to imprisonment for life in the State Prison.

But the question has been asked, does it not make them too independent, to allow them to retain their office for an unlimited time? I reply, as I have before stated, that for any positive fault or misdemeanor, they are liable to be removed by either one of two processes: first, by impeachment; and next, by an address of the legislature. Will not this satisfy gentlemen? Here is the legislature, the most important of any of the departments of government, the branch that make our laws; and that body can, with the concurrence of the governor and by a simple majority only, remove any person holding judicial authority, against whom the charge of misdemeanor can be satisfactorily sustained.

There is another point to which I think allusion has not been made: In my own political experience, which has been neither the longest nor the shortest of many in this body, I have seen governors of all parties, those who have been opposed to what has been my constant political creed, as well as those in favor of it, appoint judges for life; and in all cases of that kind, without a single exception in my knowledge, they have felt the weight and responsibility which rested upon them in the discharge of that duty, and acted accordingly. It may be that they have appointed gentlemen of their own particular way of thinking upon political subjects, but they have ever been able, competent, and upright men; who, while they have occupied the bench—whether like the present attorney-general of the United States, for a few months; or whether, like the late lamented chief justice Parker, who occupied it for more than fifteen years—have conducted themselves with discretion and ability. If, however, it should be found that a judge was not competent to discharge the duties of his office, he would be glad enough to vacate the bench, to save himself from the disgrace and mortification which would be consequent, without being compelled to do so by a peremptory removal. But my friend for Berlin says that the governor will reappoint them. I wish there might be such a state of things. I wish there might be such a state of things as Thomas Jefferson prayed for, but which has never come to pass, when the only

question to be asked in such cases, would be: "Is he honest? Is he capable? Is he attached to the Constitution?" But Thomas Jefferson, when he asked that question, went contrary to its doctrine: for he said the state of things did not permit his following that rule. I have nothing to do with his conduct in that case, and make no comment, favorable or unfavorable, in regard to it. But, Sir, will it not always be so? How is it in the United States government, and what is the course of a new president when he comes into office, especially when a new and important officer is to be appointed? Does he not turn out men acknowledged to be able and competent, that he may fill their place with others? All new presidents pursue this course. And it is a much easier, a much less irksome and trying process, to avoid reappointing men, than it is to turn them out.

The question asked, is not merely upon the capability of men, but also upon their political principles. It is expected that the president will reward his friends, not those who are dishonest, but those who are qualified to discharge the duties of their office; and others who perhaps are just as capable, but belonging to the opposite party, are accordingly removed, to make way for them.

I should be very glad to agree with my friend for Berlin, who differs with me, could I do so consistently with the views which I at present entertain; and I assure him that I would never more willingly be found wrong than in the present instance. I do admit that if we limit the tenure of the judicial office to seven years, that that there may be a way of keeping up the dignity and character of the judiciary; but it is a way which, if it be advisable, is certainly impracticable. The judge who takes the office for seven years only, will demand a great remuneration for the sacrifice of the large income of his profession which would result from the total interruption of his business, for such would be the case. He would require a salary of perhaps five, six, or seven thousand dollars a year; or you would have to select some other person, perhaps, not half so competent. The people, too, would be opposed to raising the salaries to such an extent as would necessarily be required. But how is it that men are induced to accept the office under the present circumstances? My friend says that there are but few declinations. I do not dispute his word; he has been in a situation to know more upon than subject than myself; but I venture to say that there have been more persons who have declined to take the judicial office than either that gentleman or myself may be aware of. He alluded also to the great sacrifice made by some gentlemen who were members of the legislature. I admit that there are some who do make great personal and pecuniary sacrifices, for the time being, in coming here; but there are others very differently situated. I have no doubt that my friend from Salem, (Mr. Lord,) among other gentlemen, experiences no little sacrifice of time and money, by his absence from his sphere of duty; but how long does it last? I have had but little experience myself, but I should suppose that it would be a pleasant relaxation from the laborious duties of the legal profession, to come up here and attend to the affairs of the State.

I come back to the point, however, to which I alluded in the beginning of my remarks, because

it is the point which has the greatest weight in my mind. I trust that we shall not make any change in the tenure of the judicial office, as has been proposed; but I hope that the judges will be allowed to occupy their position so long as they do their duty, and satisfy the public; and if they continue in it for a longer time than that, it will be for the legislature to take the necessary steps for their removal. I have never heard, however, of but one instance where a judge has been removed by address, or where the people desired to have him so removed.

If gentlemen desire to ascertain the character of our judges, let them go to the juries, let them inquire of members of the bar, let them ask the people of the country, and they will obtain a ready response.

As I have said before, there has never existed a higher tribunal of justice than that of the supreme court of the State of Massachusetts; it is known not only for its integrity, but for the ability and legal acumen which are its chief characteristics. Our reports are read where any are read, and that too by a people not accustomed to think too highly of their cousins on this side of the water. We have the highest testimony of England, in regard to the ability and justice displayed in the reports and decisions of our judiciary. Under these circumstances, are we not excusable, and justified in hesitating to make a change in the tenure of office so important as this?

Now, there is one time of life when I think it would be a great inducement to accept an office of this character, and continue in it permanently. There is an age of life,—that is, between forty and fifty years,—when the constant toil and active habits resulting from the frequent collision of members of the bar, begins to wear upon men; when they find that they are becoming old—not superannuated by any means—but less calculated for the laborious duties of an advocate than in the early part of life. Then is the season when, if they are qualified, they are better adapted for the quiet labors of a judge, for those duties which befit the calm of their declining years. Who would have wished that Marshall should have left the bench at sixty years of age? Who would not have desired that Kent should have remained beyond sixty, had not the hour struck which, by the Constitution of the State of New York, sent him from his seat. And yet sixty years is full old for active legal practice.

But, on the contrary, go to a man who occupies an active position as a practising lawyer, a man of talent, one who possesses all the essential attributes of a good judge;—ask him to accept that office, and how will he reason? He will say, by my practise I am now making several thousand dollars a year, and I am unwilling to give that up for the sake of a mere temporary office, with the prospect, in a few years, that I shall be compelled to vacate it and return to my practise, which will then require more activity than will be suited to my temperament; but give me this place with the privilege that if I demean myself in a proper manner, I can hold it until I am seventy years old or more, and I will accept it. This is the manner in which he will consider the subject. The office of judge is one that is, and has ever been, held in high honor, I had almost said idolatry, by the people of Massachusetts; and they desire to see it ably occupied. Let gentlemen go

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THE JUDICIARY, &c. — SCHOULER — RANTOUL — WILSON — TYLER — DANA — SUMNER.

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into any town where a court is in session, and see how the judge is looked up to with respect and honor by every one present.

It is for these reasons,—agreeing entirely that my friend for Berlin has stated the issues fairly, but believing that we shall tear down this standard of judicial officers, and that we shall not have the men of talent and worth that we have had during the past; believing, farther, that it has been overlooked in the consideration of this subject, that the power of impeachment which still exists will effectually check corruption, if there be any; believing farther that the power of removal by address of the legislature, is a sufficient provision against all incompetency,—I feel compelled to vote against this motion to shorten the tenure of the judicial office.

Mr. SCHOULER, of Boston. Believing, Sir, that we have heard enough upon this subject for one day, and that we are so full we can take in no more, I move that the Convention do now adjourn.

The question being put, a division was called for, and it was ascertained that there was no quorum voting. The President *pro tem.* then, at six o'clock, declared the Convention adjourned.

THURSDAY, July 21, 1853.

The Convention assembled pursuant to adjournment, and was called to order at nine o'clock, by W. S. Robinson, Esq., one of the Secretaries to the Convention, the President being absent in consequence of indisposition.

Prayer by the Chaplain.

Election of President *pro tempore.*

The Secretary read the eighteenth rule of the Convention, which directs that he shall preside, in case of the absence of the President at the hour to which the Convention was adjourned, until a President *pro tempore*, shall be appointed, which shall be the first business before the Convention.

Mr. RANTOUL, of Beverly, moved that the Convention proceed to the election of a President *pro tempore*, by nomination.

The motion was agreed to.

Mr. RANTOUL nominated HENRY WILSON, of Natick, and moved that he be President *pro tempore*, of the Convention.

The motion was unanimously agreed to.

The Secretary appointed Messrs. Briggs, of Pittsfield, and Boutwell, for Berlin, to conduct Mr. Wilson to the chair.

Mr. WILSON, upon taking the chair, said:—Gentlemen of the Convention: I thank you for this expression of your confidence and kindness. I shall endeavor to discharge the duties assigned me, with fairness and impartiality.

Appendix to the Debates.

Mr. TYLER, of Pawtucket, submitted the following order:—

Ordered, That the Committee on Reporting and Printing, be instructed to append to the published Debates, Poole's Statistical View of the Members of the Convention.

Mr. TYLER. I beg leave just to remark, that

the proceedings of the New York Constitutional Convention in 1846, contain a similar table to this, and I hope that this may be appended, and that the meritorious author may obtain an honorary degree from some of our colleges.

Mr. EARLE, of Worcester, moved to amend the order, by inserting after the word "Convention," these words: "with the amount received by each for travel and attendance."

Mr. BATES, of Plymouth. Before the vote is taken, I hope the Convention will consider, for a moment, what the proposition is. It is to append to the published Debates of this Convention, a private document belonging to a gentleman who has published it for his own private emolument. Perhaps he will have something to say about our taking it.

Mr. BOUTWELL objected to the consideration of the order at this time, and asked that it lie over.

In obedience to the rule, the order lies over.

Permission to submit a printed Report.

Mr. BOUTWELL, for Berlin, asked and obtained permission, for the Committee on Revision to make their Report in print.

The Judiciary.

Mr. DANA, for Manchester, desired to be informed by the Chair, in order to determine the form of a motion which he desired to make, whether the amendment submitted yesterday, by the gentleman from Fall River, to the resolves on the subject of the Judiciary, was an amendment to an amendment, or whether it was itself susceptible of being amended.

The PRESIDENT. It is an amendment to an amendment.

Mr. DANA. That being the case, we are in this situation: no amendment can be offered now, because there is an amendment to an amendment already pending. The question on the amendment to the amendment, cannot be taken until eleven o'clock, and—

The PRESIDENT. The Chair must remark, that the Orders of the Day are not under consideration.

Mr. DANA. No, Sir. And the motion which I wish to make, would not be in order if they were.

Hour of Adjournment.

Mr. BOUTWELL, for Berlin, moved that two o'clock, instead of one, be fixed as the hour of adjournment during the remainder of the session.

The motion was, upon a division agreed to—ayes, 99; noes, 56.

Orders of the Day.

On motion by Mr. BOUTWELL, the Convention proceeded to the consideration of the Orders of the Day.

The first subject in order being the resolves on the subject of

The Judiciary.

The pending question being on the amendment moved by the gentleman from Fall River, (Mr. Hooper,) to the amendment of the gentleman from Worcester, (Mr. Davis).

Mr. SUMNER, for Otis. I trust that it will not be supposed from the effort I made to obtain the floor yesterday, that I am very anxious in re-

lation to this great and important subject now under consideration, because I have lived long enough, and have had experience enough in the judicial tribunals of this Commonwealth, to understand this fact, that almost any judicial system which might be adopted and put into operation in this Commonwealth, would be made, perhaps, to a fair extent, to work tolerably well. Whether life tenure, limited tenure, appointment by the executive, or election by the people—whichever system should be adopted, it would be, as I apprehend, sustained by the people, and measurably it would effect its great purpose, viz.: the administration of justice. But, Sir, of different modes, I think there is a choice. We have hitherto existed under a judicial system of judges appointed by the executive, and appointed for life; and there is a great portion of the people, undoubtedly, who entertain towards that system—although they may not, perhaps, prefer it to all other systems—a great degree of respect. Unquestionably a proposition materially changing the present system will meet with opposition; there is a disposition, at least, to give to any proposition for change, a very thorough and close examination; and this feeling is to be countenanced and favored. Sir, in the discussion which has taken place here in my hearing—for I have not been able to be present in all the debates upon this subject—I have been very forcibly reminded of a series of discussions which I had an opportunity to hear some twenty years since, upon this same floor. There is in this Commonwealth a semi-judicial board of officers, namely, county commissioners. As originally created, they held their offices by executive appointment, and this continued for several years. Finally, however, there was a feeling pervaded the Commonwealth, to a considerable extent, in favor of a change in the manner of appointing these officers; as is well known. The people demanded, in somewhat loud terms, that the appointment of these officers by the executive should be changed, and that the people should be permitted to elect them. They accordingly preferred their applications to the legislature, and these applications for a long time met with precisely the entertainment that the proposition meets with here in regard to the change in our system as to the appointments of the judges of the court of common pleas, and of the supreme court. It was said, in the first place, that it would be unconstitutional; that if the legislature should pass a law giving the election of this board of officers to the people, the supreme court, upon a proper process bringing the question before them, would set the proceedings all aside, because, forsooth, this was a judicial office, and under the Constitution, the executive, and the executive alone, was competent to appoint. That argument had its weight, and its influence. But, the greatest difficulty anticipated, and which was put forth as an argument by those who resisted the proposal to make these officers elective, was that it would create confusion, disorder and trouble; that there would be conflicting interests in different localities; that men of influence, having this or that purpose to subserve, would enter into the arena in regard to the selection and choosing of these officers; that there would be no such thing as independence on the part of the incumbent; that they would, in their conduct, favor their friends and supporters; that they would resort to improper efforts for the purpose of securing their election,

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THE JUDICIARY. — SUMNER — BARTLETT.

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and that the consequences would be disastrous; and, beyond all this, it was believed, that it would be a great entering wedge which applied to the entire judicial system, would finally rive it asunder, so that the whole system, so honored, and so cherished, would fall to ruin, and beneath that ruin our liberties would be buried. Well, Sir, all those arguments produced an effect; the legislature looked at the matter and considered it, and finally, with great trembling, concluded to make this mighty and fearful experiment, and they gave the people the authority claimed. We have tried the experiment, and we find ourselves yet alive and above-board, like Belzoni's mummy, "revisiting the glimpses of the moon," without being destroyed. I have heard almost the same arguments in this Convention in relation to the change now proposed in our judiciary system, which I heard here in 1834, in respect to county commissioners, and I could almost believe, that there were yet remaining, in some of the historical archives of the city, some of the old papers of that day, in which were set forth, not so eloquently, perhaps, or so forcibly, as the arguments of my friend from Boston, (Mr. Schouler,) or the member for Manchester, (Mr. Dana); but yet, some arguments, certainly, very much like them. After all, I am satisfied that a plan for an elective judiciary with a limited tenure, may be safely adopted.

I wish, Mr. President, to enforce the idea which I have already suggested, that there is amongst the people of this Commonwealth an ever-abiding sentiment of affection and respect towards the judiciary of the State. We are all interested in its preservation, in its uprightness, in its faithfulness, in its high character throughout; and it is upon this great fact that I think we may safely rely in giving the people power in relation to the formation of the judiciary, the choice of judges, and the preservation of the system. If different feelings prevailed—if there was a feeling of contempt towards that branch of the government—if there was a sentiment of disrespect, or anything bordering on disrespect towards the judiciary, we might well pause before we gave into the hands of the people any power to touch it; we might let the appointments be made by some authority beyond the control of the people, for the reason that the people would not be safe depositories of trust, in relation to it, because of popular aversion to its power and authority, and not holding it in proper regard.

Now, Sir, what is it that the people desire? They desire learned judges—men who are capable, honest, faithful, pure-minded, independent; such is the all-pervading sentiment throughout the whole community. That is the wish, and the sole wish of the people; and such being the fact, it is of great consequence to preserve this sentiment. But, Sir, I think that any one who looks at the present condition of things, concerning the judiciary,—and I certainly am not going to stand up here to arraign or impeach its members,—will be satisfied that it not only is becoming, but perhaps has become a matter of necessity that there should be some modification of the system, in order that this respect may be preserved. Let us suppose a state of affairs, in order to illustrate my views. Suppose, notwithstanding a desire to sustain the judges, it should happen, in the course of things, that when the members of the legal pro-

fession, with their clients, should visit the courthouse, at term-time, and find upon the bench Judge A., or Judge somebody else, and instead of their going forward and trying their causes, the counsel and clients should all consent to continue their cases, preferring to take their chance when some other judge, less obnoxious, should hold the court. Suppose, too, in addition to this, that it is impossible to touch any judge, except in one way, and that one which is most obnoxious and abhorrent to the feelings of the people, viz.: by address to the executive for removal. Nobody wants to resort to that. The legislature may address the governor to remove a judge; and he has authority, with consent of council, to cause his removal; but that provision in the Constitution is but a dead letter. Nobody wishes to go to the legislature, nor do the legislature want, of their own motion, to say to the executive: "We wish to have removed from office a judge who has been ill-advisedly placed upon the bench."

Now, Sir, if such a state of things were to exist,—and perhaps it may exist,—would it not affect the kindly and desirable sentiments of the people towards the judges; and would it not of itself form a good reason for some constitutional modification or change as to the construction of our judiciary, and the appointing of our judges?

Without pursuing this subject any farther—and I repeat, without making myself any arraignment of the present judges—I have to submit, that I do believe a majority of the people of Massachusetts desire there should be some change in our judicial system; and I do not accord at all to that sentiment, which seems to find some favor in different parts of this Convention, that it will not do to present this proposition to them because they are not ready to adopt it. I am decidedly in favor of the proposition for a limited tenure. I think that we have favored this system of life tenure so long that it is one of the worn out things in old Massachusetts, and that young Massachusetts requires some improvement in this behalf. When regard for any institution becomes impaired, though slightly, it is wise and prudent to see if some change cannot be made, that will restore confidence and respect. I shall vote, therefore, if I have an opportunity, in favor of the proposition for a limited tenure; and if the judiciary be made elective, I would most heartily concur in the proposal as to the length of tenure suggested yesterday, by the learned gentleman from Boston, (Mr. Giles). I would prefer a longer tenure than that which is embraced in the resolution offered by the gentleman from Worcester; but still, Sir, if it is the voice of the Convention that that should be the tenure, I have no fears whatever in regard to the trial of that proposition. I would prefer a longer time, if the judiciary be elective. I would propose such a tenure as that it should be an object to men of talent, honesty, and character, to take judicial office; and for that purpose I would rather favor a proposition for fourteen years than for seven years.

And, Sir, I have no fears upon the subject of the eligibility of the incumbents for reelection; for, in my belief, if there is anything fixed in the minds of the people in relation to this subject, it is that they are in favor of men for the bench who are aloof, and will stand aloof from the political field. I do not think like many gentlemen here, that the great criterion in relation to the selection of judges, will be made at all, or to any

alarming extent, to depend upon the political preferences of gentlemen who may be brought forward for judicial offices. I believe, Mr. President, that the people understand perfectly well, that it is for their interest to have "good men and true," for their judges; and I have yet to learn, that in an intelligent Commonwealth like this, they will be likely to act in a manner adversely to their interests. Is it not for the interest of every man, woman and child, high and low, rich or poor, in the State, that those who are invested with authority to pass upon their rights in the judicial tribunals, should be men of tried integrity, of sterling merit, of ability, and learned in the law? Is not all this for their interest, and will not the people act according to what is for their interest in the selection of their judges? Who doubts the fact?

Mr. President: I do not wish to take up time by scrutinizing, at this moment, with any great particularity, the different propositions which are before us, either as to the principal resolution, or the amendments offered. I think, Sir, that considerable improvement may be made in relation to them, and farther amendments will probably be offered; and I suspect we shall have no great difficulty in completing in proper form the propositions, so that they may be made acceptable.

And now, Sir, one word in regard to those fears which are entertained in respect to ingrafting this proposition in the proposed Constitution which is to be sent out to the people. I believe, with the gentleman from Easthampton, who briefly addressed us yesterday, that it is one of the calls of the people, that the very changes which we are now considering, should be submitted to them; and I agree with him, that one of the most acceptable propositions, as I apprehend, which can be presented to them, would be that we should give into the hands of the people the power of electing their judges, with limited tenures.

Mr. BARTLETT, of Boston. In the present attitude of the question before the House, though in my view, I trust that no one of the propositions at present offered, may prevail, and that the original Report should stand, it seems to be desirable that all projects that may be offered should have the best chance for being properly matured. As the matter now stands, we have two amendments pending; and with the vote of the Convention that the vote be taken at eleven o'clock. I do not see how farther amendments are to be reached; and therefore, with your leave, and that of the Convention, I propose to offer a resolution which was once adopted in relation to another topic—to amend the order fixing eleven o'clock for the taking of the question, so as to permit ten minutes to the mover of each amendment for the purpose of explanation, and ten minutes to any person who may obtain the floor to reply, before the main question be taken. For that purpose, I therefore move that for the present, the Orders of the Day be laid upon the table.

The motion to lay the Orders of the Day upon the table, was agreed to.

The resolution of the gentleman from Boston was then read, as follows:—

Amendments shall be admitted after debate on the main question shall cease; and the mover of each amendment shall be allowed ten minutes to explain his amendment, and the person who shall next obtain the floor, shall be allowed ten minutes for the purpose of replying.

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THE JUDICIARY. — BUTLER — SCHOUER — BARTLETT — EARLE — ABBOTT.

[July 21st.

Mr. BUTLER, of Lowell. I have long acted upon the principle, which, perhaps, I can express to the entire understanding of the gentleman from Boston, by the Latin legend, "*Timeo Danaos et dona ferentes*"—I fear the Greeks, even when they bring gifts; and therefore, as I found yesterday on the part of gentlemen with whom he acted—not on his part, I must do him the justice to say—a disposition to protract the time,—a disposition, upon the most frivolous pretexts, to put off taking the question. After they got us to postpone the question until eleven o'clock this morning, with the view of giving gentlemen an opportunity of expressing their views still farther, every-body held off, gentlemen went away, no quorum was left, and the consequence was that the Convention adjourned half an hour or three-quarters earlier than the usual time. Now, if we are to open the door to these amendments, in the manner proposed by the gentleman from Boston, their name will be legion, and the yeas and nays will be called on each, and we shall lose much more time. I am, therefore, afraid of this proposition. I am afraid that, after we get through the debate, we may have amendments offered to such an extent as will amount simply to a consumption of time; because, from the way in which this thing was started, and the mode in which it was attempted to be made by parliamentary tactics yesterday morning and yesterday afternoon, by which the gentleman from Boston moved the previous question, and another gentleman moved the yeas and nays on the previous question;—so the thing would have been carried on, without end. I should, myself, have no objection to the proposition to give each gentleman ten minutes to explain his amendment, if I could see that the thing was to be carried out in a proper spirit; but I fear that we should have the same spirit manifested which was shown here yesterday afternoon, and that it would entirely frustrate the object of the mover of this resolution. We should have all sorts of amendments, and all kinds of terms, from seventy years' downwards, the longest term, of course, being taken first, and perhaps the yeas and nays ordered upon each. I only speak thus, because I fear such would be the result. I do not, therefore, know whether it is best to vote for this resolution or not. Upon the whole, coming in that way, I have always found it safe to doubt when a gentleman gets up and says, "I hope the resolution will not pass, in any shape," and then proposes to amend it. I say, I have always found it safe to doubt in such cases. There is an old parliamentary maxim which says: "Never put your child out for his enemies to nurse;" and I trust, therefore, that this motion will not prevail; and more especially for this reason, that unless the gentleman will indicate some of the amendments which he proposes to offer, or other gentlemen their amendments, I hope the motion will be rejected.

Another thing, Sir: I have seen matters in other places—if the gentleman from Boston desires me to explain, I can do so—I have seen heads together this morning, and I have my doubts. I am safe where I am, and therefore I think it is best to remain so.

Mr. SCHOUER. I think, Mr. President, if the Convention would spend its time in some other manner than in listening to harangues from certain gentlemen here, who proceed, in all

their movements and arguments, as though one class in the Convention alone had a right to make a motion, it would spend its time much more profitably than it has frequently done. Sir, no motion can be made by any member of this body not of the party of the gentleman from Lowell, without that gentleman suspecting something evil in it. Shakspeare says—

"Suspicion haunts the guilty breast;"

and if there be any truth in that observation, one might think that the gentleman from Lowell was haunted from morning till night; for no motion of any kind can be made on a certain side of the House without his seeing trouble in it.

Now, Sir, I do not know what he has seen by heads being put together this morning, but he keeps his eye all around upon the House, and if he sees a couple of gentlemen speaking together, he imagines evil in the wind. I do not know anything about this motion, but I have no doubt at all that it was made in good faith, and I presume it will be acted upon in good faith. There has been no attempt at all, since the commencement of the session—and I appeal to the candid men of this Convention if it is not true—by the minority to consume the time of the Convention. They have called for the yeas and nays upon no question, as far as I know, and have offered no frivolous motions; and yet we are daily dragooned with this kind of stuff. I trust, as we have got along so well thus far, with good feeling, and good spirits, on all parts of the House, that we will continue so to the end, and that we may consider each other as gentlemen, and not suspecting that when any gentleman offers an amendment, that he does so for the purpose of delay. I can say for myself, that I concoct and make no motion to delay the business of the Convention; and I do not believe there is any gentleman in the Convention who desires to see its close more heartily than I do, for I have business to attend to elsewhere. I would like to see the Convention adjourn on Saturday night, and I do not believe that any attempt whatever, on the part of any one, will be made to delay the action of the Convention.

The gentleman from Lowell, (Mr. Butler,) referred to the motion which I made last night. Now, Sir, it was six o'clock when I made that motion, and at the time there was not a quorum of members in the Convention. I trust I have as good a right to make a motion as has the gentleman from Lowell; and it seems that my motion was proper, because a large majority of the members then present voted to adjourn. If it were not that my colleague, (Mr. Bartlett,) wishes to speak upon this question, I should move the previous question, so as to stop this debate.

Mr. BARTLETT, of Boston. I have troubled this Convention so little, and I am so little of a stratagist, that I do not very well like to be told that I have made a motion for a factious purpose. As it is not the habit of my life to adopt a course of that sort, I put in a disclaimer. My purpose was a correct one, and with no other intent than I then avowed; and that was, that in a matter of the gravest importance to the interests of the Commonwealth, if my own wishes should not prevail, and the proposition of the gentleman from Worcester, (Mr. Knowlton,) should not be rejected—as I hope heartily it may—I still desire, as I

always do, to mature even the most objectionable project which is to be placed ultimately before the Convention, and then before the people.

It is useless to discuss farther this matter. If the gentleman from Lowell, (Mr. Butler,) had remembered that yesterday, when I proposed to ask the gentleman from Worcester, (Mr. Knowlton,) for some explanation of the practical workings of his plan, he objected—I will not say from discourtesy on his part, for probably he acted from a sense of public duty—he would have seen that I had in view, this morning, an amendment to that proposition, if it was ultimately to be passed.

Mr. EARLE, of Worcester. I do not know but that I can say what I wish to say, under the present motion. I simply wish to say that I hope the discussion of this kind may not go on. We had enough of it yesterday. I am as anxious as any other gentleman to bring the session of the Convention to a close, and, I believe the best way in which we can accomplish that end, is for each member to do what he can towards carrying along the business in the regular course, and to treat every other member present, as if he were a gentleman, and as if he meant to conduct as one. If the majority—for I may allude to majorities and minorities in such a case—if the majority adopt that principle and act upon it; if they concede to the minority every right which the minority could reasonably ask or expect, then, if they are factious, and do not conduct themselves in the spirit with which the majority act towards them, theirs is the fault. I would rather permit them, in error, if error there is to be, than to be in error ourselves, in pressing them too severely. I have no objection to sustaining the previous question at this time, but I had hoped that instead of wasting the time as we have done, in discussing the mode of shortening the session, that we would take hold of the work, and by accomplishing it, shorten the session in that way—the only effectual way, in my opinion, of doing it.

Mr. ABBOTT, of Lowell. I trust that the motion of the gentleman from Boston, (Mr. Bartlett,) will not be adopted. As I understood the matter last night, and I think it was so understood in all parts of the House, it was agreed all around, that for the purpose of preventing anybody from saying they had not time to make amendments, and to discuss everything to be discussed, that all talk upon the matter should not cease until, and should cease, at eleven o'clock, to-day. I went in good faith for that arrangement, and I supposed I was satisfying every-body upon the other side of the House. Now that the arrangement has been made, I, for one, shall stick to the arrangement and agreement as it was made. I do not mean to charge anything upon anybody in this Convention, but I mean to say that we who are here in the majority of this Convention, are responsible for the length of the session, and will be held to that responsibility, and not the gentleman from Boston, (Mr. Bartlett,) and those with whom he is associated. I ask, if the gentleman himself will not, when we get through, and our labors are submitted to the people, will not charge that this Convention have set here too long? I do not mean to charge that they intend to keep us here too long, but I do mean to say that we have been here quite long enough. We are responsible, and unless we do bring this debate to an end somehow or other, and stick to the arrangement

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[July 21st.]

and agreement we made yesterday, I apprehend that the vote you passed a little while ago, that your session ought to be brought to an end on Saturday next, means nothing.

Mr. KEYES, for Abington. I am almost sorry that I got up, but I supposed somebody else would, if I did not. [Laughter.] I got up upon the same principle, that, sometimes when I have been in a small room where half a dozen gentlemen have been smoking cigars, I have been compelled to take one, too, to enable me to endure the atmosphere. On this occasion I have become so nervous in hearing the discussion of yesterday afternoon, repeated this morning, that I cannot sit still, but must participate in the discussion, or grow crazy, and I prefer the former. This is pretty much all the reason and all the argument I have to use here. [Laughter.] Since I find that the object of the delay granted yesterday afternoon, has not been accomplished, and is not meant to be accomplished by anybody, I suppose it was not meant to be carried out. It was proposed to delay taking the vote yesterday, for the purpose of having some discussion upon the questions before the Convention; but nobody seemed to take the floor, except the gentleman representing Otis, (Mr. Sumner,) and I confess that owing to the noise and my disturbed state of mind, I did not find out upon which side of the question he was, whether upon my side, or against it. I dare say, however, he made a very able argument in favor of the election of judges by the people.

Now, as to the proposition of the gentleman from Boston, (Mr. Bartlett,) let us look at it and see what reason there is for supporting it. I understand that he means to be understood as not favoring this bill or anything like it. What, then, does he want an amendment for? I do not think he cares enough about the bantlings of this Convention, to take care of them; and the worse shape in which they come out, the more agreeable to him. If there was any gentleman who really had an amendment which he felt sincerely desirous to offer, as a modification of this proposition, that would be an argument in favor of it, and I do not know that we should exclude it. If an amendment is presented to us, let us vote it, or vote it down, as we like it. I do not, after all, see any great deal of difficulty. Nobody seems inclined to enlighten the Convention upon the question for which action was delayed yesterday. There is an opportunity now before eleven o'clock, to make at least twenty better speeches than are usually made here, for the longer they are, the worse they are.

Mr. BIRD, of Walpole. A proposition was made yesterday afternoon, to delay taking the question until eleven o'clock this morning, as gentlemen were anxious to hear farther discussion. They wanted light, and it would not do to press the previous question. Finally, as a matter of compromise, we put off taking the question until eleven o'clock this morning. What was the result? The very moment the vote was taken to postpone the taking of the vote, almost every one of the gentlemen who were anxious for it, went out of this House as though they were shot. In fifteen minutes after that vote was taken, not one-half as many members were in their seats as there were when the vote was taken. They wanted light, did they? One most distinguished gentleman took the floor, and, failing to get a hearing,

took his seat, because members would not listen to him. They wanted light, did they? Another distinguished gentleman, upon the other side, the gentleman for Berlin, (Mr. Boutwell,) took the floor—I will not say that he did not get a hearing—but certainly he was talking to empty benches, and, absolutely, about an hour after that vote was taken, we adjourned without a quorum. We adjourned at six o'clock without a quorum. And gentlemen wanted more light! Now they want to put off the question four or five hours, for more discussion. I say, that with the exception of the gentleman who just moved this motion, (Mr. Bartlett,)—I believe he remained until the close—there was hardly a single gentleman upon that side—I believe not one in favor of that continued debate—who did not go out of the House in twenty minutes after the vote was taken. I belong to the majority, but I am not to be frightened by the divisions of parties. I hope that the majority of this Convention, who are responsible for the length of this session, will delay action no longer. And I consider the course pursued yesterday by the minority as a sheer pretence, and for a hypocritical purpose.

[Cries of "Order," "Order," "Order."]

Mr. GRAY, of Boston. Mr. President: it is really hard, after having detained the Convention, or those who were here to listen to me yesterday afternoon, for nearly half an hour, and then have it said—not that I made a very poor speech, which perhaps could often be said with truth—but to have it said that I was not even here. I do assure the gentleman from Walpole, (Mr. Bird,) that I claim no more power than any other member of this Convention, and not so much as some, and, least of all, do I claim the power of being in two places at once. I submit it to the candid gentlemen of the Convention, upon all sides, that there is too much of these repeated attacks upon the minority for delaying the business of the Convention. Have the gentlemen in the majority been silent? Have they failed to do justice to their side of the question? The fault was in the ground of their argument, and the side of the question they were upon, and not in their ability or their disposition to do the best they could. I do hope—and I say it seriously—that in this Convention, which, up to this moment, has been distinguished by courtesy and comity upon all sides, that courtesy and good feeling will continue until the end, and that we shall not lose our character in that respect, however our character for wisdom may stand before the people.

Mr. DANA, for Manchester. Feeling an interest in the character and credit of the majority, of which I am one, and fearing that one or two of them are in danger of losing their temper, and that we are wasting time, I move the previous question.

The previous question was ordered.

Mr. BRIGGS, of Pittsfield. I wish to inquire of the Chair, when the hour of eleven o'clock shall arrive, and the pending amendment shall have been voted upon, whether other amendments will be in order?

The PRESIDENT. The Chair thinks they will be in order.

Mr. BARTLETT, of Boston. The object of the motion is not simply that amendments may be offered, for they fall dull upon the ear unaccompanied with explanation. If the Convention are in such hot haste that ten minutes cannot be

afforded for explanation, the sooner we rise and go home the better.

The question was then taken upon the motion of the gentleman from Boston, (Mr. Bartlett,) and there were, upon a division—ayes, 140; noes, 144.

So the motion was not agreed to.

Orders of the Day.

On motion of Mr. KNOWLTON, of Worcester, the Convention proceeded to the consideration of the Orders of the Day, the first business in order being the consideration of the resolves upon the subject of

The Judiciary,

To which an amendment offered by the gentleman from Worcester, (Mr. Knowlton,) and an amendment to the amendment offered by the gentleman from Fall River, (Mr. Hooper,) were pending.

Mr. KNOWLTON, of Worcester, by unanimous consent, modified his amendment by inserting in the fifth line, after the word "years," the following: "and, for the purpose of such confirmation, the governor shall have power to convene the Senate from time to time, at his discretion," so that the amendment as modified, would then read:—

That it is expedient so to amend the Constitution, that all Judicial Officers, except those concerning whom a different provision shall be made in the Constitution, shall be nominated and appointed by the governor, by and with the consent of the Senate, for the term of seven years; and, for the purpose of such confirmation, the governor shall have power to convene the Senate from time to time, at his discretion; that they may be reappointed at the expiration of such term, and that all such nominations shall be made at least seven days before such appointment.

Mr. BARTLETT, of Boston. I regret, Mr. President, that the stage of the debate is such, that every ear is weary of the discussion. I feel that all argument, all illustration that can fitly be applied to the subject, has doubtless been exhausted. But, having been necessarily absent while this most important topic has been under consideration, I am unwilling that the vote should be taken, without expressing, in some brief manner, the views which, with some experience of the working of our present judicial system, I confidently entertain.

And, now, Mr. President, allow me, summarily, to state what, in my judgment, is the precise attitude of the question. I shall not advert to the project of the member from Fall River, because I think there is a foregone conclusion with regard to that project; but I think that those who favor the project of the gentleman from Worcester, should fairly and justly be held to establish three things.

In the first place, I think they are bound to show that the present judicial institutions of the Commonwealth are, in some respects, defective. I think that gentlemen who come here to carry out speculative opinions on this subject, are bound, at the outset, to establish that the existing state of things is one which fails to meet the entire approbation of the community. They should be rigorously held to this, as forming the basis of their argument.

In the second place, if they succeed in their

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first step, I think they are bound to show that a learned and able judiciary can be secured under the tenure of office proposed by the gentleman from Worcester.

If those two points can be established, I think they are bound, in the last place, to make it reasonably certain that that learning and ability thus secured, will be placed in such a position of independence, that every man who has rights, or property, dependent on judicial decision, may feel, whatever may be the result, unshaken confidence in the purity and impartiality of our tribunals. These three questions, I think, are questions which should be deliberately considered and fairly settled.

Now, Sir, in relation to the first question, although I have not been able to be present during this discussion, yet, from inquiry, I am not able to find that anywhere during that debate, the suggestion has been made, that the judicial system of Massachusetts, from its earliest to its latest history, has not accomplished, or that it does not now accomplish, fully and satisfactorily, the great purposes for which it was instituted. What man has told you that human liberty, the rights of property, and all that is confided to judicial keeping, has not been well and wisely confided there, during the whole time that our judiciary has been established upon its present basis? I have heard of no such complaint, abroad or at home. But, on the contrary, if there be any portion of the institutions of Massachusetts which has, more than anything else, redounded to her credit next to her common schools, it is the marked ability, fairness and learning to be found in her judicial decisions. Wherever, in this country, the common law is administered; wherever the application of the great principles of commercial law is studied or investigated; wherever schools of jurisprudence are established, there will be found the reports of your adjudicated cases.

In the extensive collection of books forming the law library of congress, I am told, that among the best thumbed volumes are the Reports of your Pickering; a fact, if it be true, which constitutes a proud tribute to the institution which the pending resolution seeks to alter if not impair.

I submit, then, Mr. President, that the first important position which those who support the pending resolution are bound to establish, has nothing to rest upon. That your existing judicial system is, and should be, a source of just pride and congratulation; and that it is due to common prudence to leave untouched a branch of your government that commands and obtains unusual approbation and respect.

But if this were doubtful—as it is not—and if the conclusion should be adopted that our present system requires to be modified, or radically changed; the next important question occurs: will the proposed substitute secure the requisite learning and ability?

In determining this question, the advantage of professional success, compared with a judicial position, are to be carefully balanced. You must assume that the selection of judges is to be made from among those who have reached the foremost rank of the profession, that a humiliating contrast between the capacity of the bar and the bench may be avoided. To attain such degree of professional standing, years of severe study

and practise, reaching, on the average, to the meridian of life, will commonly be requisite. The present standard of judicial compensation—or, indeed, any probable measure of compensation which will ever obtain in this Commonwealth—will compare most unfavorably with the results of professional success. In this condition of things, is it probable, nay, is it even possible, that, for any lengthened period, the judicial office, with a tenure of ten years, can be an object of professional aspiration? What is to be the fate of an incumbent at the end of his term? Reappointment can never be counted on with certainty. Failing that, he is left without resource. The instances in which a return to practise at the bar has been successful—aside from the irksomeness of such change of position—are very rare. The usual resort, under such circumstances—to the habit of giving advice and opinions at chambers,—has been found to be unenjoying, and from obvious causes, unsatisfactory; and your judge is left substantially stranded and helpless, on the shore of the great current with which he has heretofore mingled, and, to some extent, aided to guide.

It may be, Mr. President, that where judicial positions have ceased to be the aim of those whose experience and learning furnish the requisite qualifications, talent and industry may occasionally be found, and trained by the experience of years, to come up to the standard of judicial excellence which it has hitherto been our pride to require. But this must be the accident and not the rule; and I am unwilling to believe that this Convention will be content to subject to chance the sound and successful administration of justice in this Commonwealth.

Mr. President: There are many gentlemen in this Convention, who upon this subject are, from their independent position and large experience, qualified to testify rather than to argue the question. The journal shows that they have been heard, and I desire only to add my own convictions, that the proposed scheme of limiting the judicial tenure to a period of ten years, will fail to secure the talent and learning which have hitherto been deemed so essential to a safe and impartial administration of the law.

Mr. President: Assuming that a change in our system is required,—or, whether required or not, is to be made,—and assuming, farther, that the scheme proposed by the member from Worcester will command the requisite learning and ability in the judicial office, the question still remains, will that learning and ability be placed in a position that will secure its independence and purity?

The argument founded on the alleged average number of years, during which office has been held by the judges of this Commonwealth, if, under any circumstances entitled to consideration, can have no weight in determining this question. The practical inquiry is, whether—contrasted with a tenure during good behavior—a term of ten years will probably preserve the sense of just independence, without which, all agree, the judicial office may be a scourge or a nuisance.

This must be tested by assuming that your judges are dependent on their compensation for their support. It may not always be true, but the exceptions are too rare to be relied on in forming a system. In this condition of things—having deserted a profession to which he cannot successfully return—how can a judge, as his term

approaches its end, free his mind from solicitude as to the future? and pressed by that solicitude—with no hopeful issue save a reappointment—he must be more than human, if his conduct be not, insensibly, perhaps, to himself, influenced by his position; and how important that influence may be, to what extent it may interfere with the fair and just administration of his office, must depend on the strength of his mind and character. But a system that places its magistrates in a position of possible peril from such causes, has no foundation in true wisdom.

It has been suggested that no good and competent judge need ever subject himself to unworthy appliances, to secure a reappointment—that policy as well as duty, point to the uncompromising discharge of the functions of his office, as the true method of securing his continuance in it. I agree that acknowledged judicial eminence increases the embarrassment of displacing its possessor; but the certainty of such ultimate eminence at the outset, where one is to shape his destiny for life, can never be felt to be secure; and a fear or a doubt of its existence, when the period of reappointment arrives, may disturb the coolest judgment.

Mr. President: Judicial appointments will be made in the future—as they have for the most part been in past times—from the ranks of the dominant party, whenever it is supposed to contain persons of fit or equal qualifications. To that condition of things every incumbent must have more or less regard; and in my judgment it is vain to hope, that under the short and limited tenure proposed, the great judicial offices of this Commonwealth can be worthily filled, or their purity and independence as successfully maintained as under the existing, long-tried tenure; and I hope, as I stated at the outset, that the proposed scheme will be rejected altogether.

Mr. DANA, for Manchester. I have already had the attention of the Convention several times upon this subject, and if there is any other gentleman who desires to speak, I will yield the floor with great pleasure. I do not desire to speak upon the general subject, but upon a collateral point which I cannot speak to when it regularly comes before the Convention, by reason of the rule you have adopted, closing debate. I have an amendment, *bona fide*, which I mean to offer; and as I shall not have the opportunity under the order to explain it when it shall come up, I desire to speak to it now.

The gentleman from Worcester, (Mr. Knowlton,) proposes in his amendment that the judges shall be confirmed by the Senate. But, he has seen this morning, that his proposition would operate rather badly in one respect. That is to say, by the provision you have adopted in relation to the length of the sessions of the legislature, the Senate ought not to be in session more than one hundred days in any one year, leaving two hundred and sixty-five days in each year, in which you would have no confirming body in session. But, this morning, the gentleman from Worcester has modified his plan so as to allow the governor to call the Senate together, whenever a vacancy in any of your courts occurs during the recess. Of course, the chances are that three-fourths of the vacancies will occur during the recesses, and the governor must call together a body of forty men and keep them in session for seven days to confirm a single judge,

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perhaps of the court of common pleas. Yet, all that time, the Council, elected for the purpose of being a confirming body, are in session in their chamber.

Now, let us put this question to the Convention. You have a Council of nine, elected for the purpose of confirming the appointments of the governor, with nobody to confirm but coroners and notaries. They are in session a great part of the whole year. Is it, then, worth while to provide that whenever a vacancy occurs in your supreme court, or your court of common pleas, you must wait for nine months without a judge, with your courts over-crowded as they are with business, or call together a body of forty men, from the different portions of the Commonwealth, and keep them in session in the other end of this capitol for seven days, at an expense of some \$1,200 or \$1,400?

That objection, I think, ought to be fatal. I shall propose to amend by striking out the word "Senate," and inserting the word "Council;" because it is my wish, that whatever passes here, may pass in the best form possible; for I expect to be obliged to go before the people and defend the Constitution, when the time comes, and I desire to make it as good as I can. I do not wish to be obliged to go down to Manchester, and tell the people of that town that we must have a session of the Senate seven days—forty men here sucking their thumbs, wandering about Boston with nothing to do, at three dollars a day, and all to confirm a judge of the court of common pleas. The people of Massachusetts will not sustain such a proposition as that. It may be that the Council is unnecessary. Then do away with it. The Convention have voted to retain the Council; and influential men here, ex-councillors and ex-governors, are in favor of it on account of the pardoning power. If we have that Council, let us give them something to do. The most dignified part of their business is taken away from them. Of course, I am opposed to the whole proposition of appointing judges for the period of seven years, for I do believe that it will place the judiciary under the control of the governor too much, and will lead to cabals, and influences, and suspicions, and conditions of dependence, which I do not wish to see. But this subject has already been discussed at great length, and I do not wish to detain the Convention any farther.

Mr. KEYES, for Abington. I hope the amendment offered by the gentleman for Manchester, (Mr. Dana,) will prevail. I was surprised, I confess, to find the proposition now under consideration, coming from the sensible gentleman from Worcester, (Mr. Knowlton). I supposed it was settled, that it was bad policy to combine two branches of the government, the executive and the legislative. If we vote to have judges appointed by the governor, that will amount to an additional necessity for a Council, and that body is a thousand times more adapted to the duties of a confirming body, than the Senate.

The Senate, as a confirming body, would be liable to all the objections which are urged against popular elections of the people; because it is a political body, and their actions upon such questions would be determined politically. The Council, as a body, may be political in its character; but it is not so likely to be guided by political considerations in its action. That is the difference

between the two bodies. The Council can find out what the Senate never can find out; and, of course, as a confirming body, it is far better and more convenient. By maintaining the present system, we do not trample upon the great principle we have adopted: that no two departments of the government shall, jointly, exercise political power. I hope that the amendment of the gentleman from Fall River, (Mr. Hooper,) may be adopted, and I trust we shall vote to elect judges by the people. I wish to offer one suggestion here, in regard to what has been the tenor of the argument upon the other side. It has been held for a positive fact by all the lawyers who have spoken on that side—who may be supposed to know their own kin in the profession better than I do—that they are the most corrupt and selfish men in the community; men who cannot be trusted for a day, unless you give them offices for life. I do not mean any impertinence or any disrespect by suggesting that it seems to be taken for granted that they would be always ready to "kiss the hand that feeds them." The gentleman from Boston, (Mr. Hillard,) has informed us that if the term of the office of judge should be limited, and the election given to the people, the latter would be likely to select for judges a pack of mean and abject wretches, who would, in order to gain a reelection, fail to discharge their duties faithfully, and violate their oaths. I desire to know if that was not the whole tenor of the gentleman's argument, from the beginning to the end, and if he did not proceed upon the assumption, all through, that a man who does not hold office for life, would, necessarily, become corrupt? I do not believe any such thing. I know how men will stoop, and how their judgments are apt to be warped in view of four-pence-half-pennies; but men placed in responsible public positions, lose a great portion of that weakness. It may be illustrated by the case of a man, who, hearing of some great crime committed, says, at once, and in the first excitement: "He ought to be hung, and if I was on the jury, I would hang him;" but put the responsibility of that office upon him, and he changes his tone immediately. I believe that this would be the effect in the case of judges. The gentleman for Otis, (Mr. Sumner,) was in favor of limiting the tenure of office, but he wanted it so long that a man, in many cases, would die before he would ever reach it. He might have as well put it at fifty as fifteen years. Such a tenure is good for nothing. Some gentlemen advocate the plan of electing judges by the people, if you will give them a life tenure; but what difference does it make whether they are elected, or appointed, if that is to be the tenure? The governor of Massachusetts can appoint, or the people can elect, good judges; but the whole argument against the people electing judges is entirely opposed to the form of government which we have adopted. The Convention have settled that the governor is not to be intrusted to appoint the least responsible and important officers; but here it is proposed that he is fit to be intrusted with the appointment of the judges, an office affecting the interests and honor of the people more than that of any other in the State. I do not understand such doctrine to be democratic doctrine. Thomas Jefferson was in favor of electing judges by the people; but men who are supposed to wear his mantle, preach a very different doctrine. But they do not quote or imitate him much nowa-

days. What would Thomas Jefferson's bones do if they could hear all this talk about compromise? [Laughter.] But of that I have not time to speak. The party to which I belong do not care anything about names; but it is the thing at which they look. When we support a compromise, you may be sure it will be one that has no villainy in it like that indorsed by the Baltimore Conventions. [Here the hammer fell.]

The hour of eleven o'clock, fixed by special assignment for taking the vote, having arrived,

Mr. HOOPER, of Fall River, moved to modify his amendment, so that the second resolve would read as follows:—

Resolved, That it is expedient so to revise the Constitution as to require that provision shall be made, by law, for the election of all the judges and justices of inferior courts for a term of years.

The yeas and nays having been ordered on Mr. Hooper's amendment yesterday, the question was then taken, and there were—yeas, 150; nays, 236—as follows:—

YEAS.

Aldrich, P. Emory	Griswold, Whiting
Allen, James B.	Haggood, Lyman W.
Allis, Josiah	Hawkes, Stephen E.
Alvord, D. W.	Hazewell, Charles C.
Austin, George	Heath, Ezra 2d,
Baker, Hillel	Hewes, William H.
Bancroft, Alpheus	Holder, Nathaniel
Barrett, Marcus	Hood, George
Bates, Moses, Jr.	Hooper Foster
Bigelow, Edward B.	Hoyt, Henry K.
Bird, Francis W.	Hunt, Charles E.
Boutwell, Sewell	Huntington, Charles P.
Breed, Hiram N.	Hyde, Benjamin D.
Bronson, Asa	Ide, Abijah M., Jr.
Brown, Adolphus F.	Jacobs, John
Brown, Hammond	Keyes, Edward L.
Brownell, Frederick	Kingman, Joseph
Brownell, Joseph	Knowlton, J. S. C.
Bryant, Patrick	Knowlton, William H.
Buck, Asahel	Knox, Albert
Burlingame, Anson	Langdon, Wilber C.
Butler, Benjamin F.	Lawrence, Luther
Case, Isaac	Lawton, Job G., Jr.
Childs, Josiah	Leland, Alden
Clark, Henry	Lincoln, Abishai
Clarke, Alpheus B.	Little, Otis
Cleverly, William	Loomis, E. Justin
Cole, Sumner	Mason, Charles
Crane, George B.	Merritt, Simeon
Cressy, Oliver S.	Monroe, James L.
Cushman, Henry W.	Moore, James M.
Cushman, Thomas	Morse, Joseph B.
Davis, Isaac	Morton, William S.
Davis, Robert T.	Nash, Hiram
Dawes, Henry L.	Nayson, Jonathan
Day, Gilman	Newman, Charles
Dean, Silas	Nute, Andrew T.
Denton, Augustus	Orne, Benjamin S.
Duncan, Samuel	Osgood, Charles
Dunham, Bradish	Packer, E. Wing
Durgin, John M.	Paine, Benjamin
Earle, John M.	Parris, Jonathan
Eaton, Calvin D.	Partridge, John
Edwards, Elisha	Perkins, Daniel A.
Ely, Joseph M.	Perkins, Noah C.
Fisk, Lyman	Phelps, Charles
Fiske, Emery	Pierce, Henry
Fitch, Ezekiel W.	Pool, James M.
Foster, Abram	Powers, Peter
Freeman, James M.	Rawson, Silas
French, Charles A.	Richardson, Daniel
French, Rodney	Richardson, Nathan
French, Samuel	Ring, Elkanah, Jr.
Frthingham, Rich'd, Jr.	Rogers, John
Gooding, Leonard	Ross, David, S.
Greene, William B.	Royce, James C.
Griswold, Josiah W.	Sanderson, Amasa

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Sanderson, Chester
Sheldon, Luther
Simmons, Perez
Simonds, John W.
Sprague, Melzar
Spoonor, Samuel W.
Stacy, Eben H.
Stevens, Granville
Stevens, Joseph L., Jr.
Strong, Alfred L.
Sumner, Charles
Sumner, Increase
Taft, Arnold
Thayer, Willard, 2d
Thomas, John W.
Tilton, Abraham
Turner, David P.
Tyler, William

Underwood, Orison
Upham, Charles W.
Walker, Amasa
Ward, Andrew H.
Weston, Gershom B.
White, George
Whitney, Daniel S.
Whitney, James S.
Wilbur, Daniel
Wilbur, Joseph
Williams, Henry
Williams, J. B.
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wood, William H.
Wright, Ezekiel

NAYS.

Abbott, Josiah G.
Adams, Benjamin P.
Adams, Shubael P.
Allen, Charles
Allen, Joel C.
Alley, John B.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Ball, George S.
Barrows, Joseph
Bartlett, Sidney
Bates, Eliakim A.
Beach, Erasmus D.
Beal, John
Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Jacob
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Booth, William S.
Boutwell, Geo. S.
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Brown, Alpheus R.
Brown, Artemas
Brown, Hiram C.
Bullock, Rufus
Bumpus, Cephas C.
Cady, Henry
Carter, Timothy W.
Caruthers, William
Chandler, Amariah
Chapin, Henry
Choate, Rufus
Churchill, J. McKean
Clark, Ransom
Clarke, Stillman
Coggin, Jacob
Cogswell, Nathaniel
Conkey, Ithamar
Cook, Charles E.
Coolidge, Henry F.
Copeland, Benjamin F.
Crittenden, Simeon
Crockett, George W.
Crosby, Leander
Cross, Joseph W.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Ebenezer
Davis, John
Davis, Solomon
Dehon, William
Deming, Elijah S.
Denison, Hiram S.

Doane, James C.
Dorman, Moses
Eames, Philip
Easland, Peter
Easton, James, 2d
Eaton, Lilley
Edwards, Samuel
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fay, Sullivan
Fellows, James K.
Foster, Abram
Fowle, Samuel
Fowler, Samuel P.
French, Charles H.
Gale, Luther
Gardner, Henry J.
Gardner, Johnson
Gates, Elbridge
Gilbert, Winton C.
Gilbert, Washington
Giles, Charles G.
Giles, Joel
Gooch, Daniel W.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Graves, John W.
Gray, John C.
Green, Jabez
Greenleaf, Simon
Hadley, Samuel P.
Hale, Artemas
Hale, Nathan
Hallett, B. F.
Hammond, A. B.
Hapgood, Seth
Haskins, William
Hathaway, Elnathan P.
Hayden, Isaac
Hayward, George
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James
Heywood, Levi
Hillard, George S.
Hindsdale, William
Hobart, Aaron
Hobart, Henry
Hobbs, Edwin
Hopkinson, Thomas
Houghton, Samuel
Howard, Martin
Howland, Abraham H.
Hubbard, William J.
Hunt, William
Huntington, Asahel
Hurlbut, Samuel A.
Hurlbut, Moses C.
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Johnson, John

Kellogg, Giles C.
Kendall, Isaac
Kimball, Joseph
Kinsman, Henry W.
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Knowlton, Charles L.
Kuhn, George, H.
Ladd, Gardner P.
Ladd, John S.
Lincoln, Frederic W., Jr.
Littlefield, Tristram
Livermore, Isaac
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Marvin, Theophilus R.
Meador, Reuben
Miller, Seth, Jr.
Mixer, Samuel
Morey, George
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Nichols, William
Norton, Alfred
Noyes, Daniel
Ober, Joseph E.
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Paine, Henry
Park, John G.
Parker, Adolphus G.
Parker, Joel
Parker, Samuel D.
Parsons, Samuel C.
Parsons, Thomas A.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Jesse
Phinney, Silvanus B.
Plunkett, William C.
Pomroy, Jeremiah
Preston, Jonathan
Putnam, George

ABSENT.

Abbott, Alfred A.
Allen, Parsons
Appleton, William
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Russell
Bliss, William C.
Bradbury, Ebenezer
Bradford, William J. A.
Bullen, Amos H.
Chapin, Chester W.
Chapin, Daniel E.
Clark, Salah
Cole, Lansing J.
Curtis, Wilber
DeWitt, Alexander
Hall, Charles B.

Absent and not voting, 33.

So the amendment was not adopted.

Mr. DAVIS, of Plymouth, moved to amend by striking out the word "Senate," in the fifth line of Mr. Knowlton's amendment, and insert in lieu thereof the word "Council," and also by striking out the words "for the purpose of such confirmation, the governor shall have the power to convene the Senate, from time to time, at his discretion;" so that it would read as follows:—

Resolved, That it is expedient so to amend the

Rantoul, Robert
Read, James
Reed, Sampson
Rice, David
Richards, Luther
Richardson, Samuel H.
Rockwell, Julius
Rockwood, Joseph M.
Sampson, George R.
Sargent, John
Schouler, William
Sherill, John
Sikes, Chester
Sleeper, John S.
Smith, Matthew
Southern, John
Stetson, Caleb
Stevens, Charles G.
Stevens, William
Stevenson, J. Thomas
Stiles, Gideon
Storow, Charles S.
Taber, Isaac C.
Talbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thompson, Charles
Tilston, Edmund P.
Tilton, Horatio W.
Train, Charles R.
Turner, David
Tyler, John S.
Upton, George B.
Viles, Joel
Vinton, George A.
Walcott, Samuel B.
Wales, Bradford L.
Wallis, Freeland
Walker, Samuel
Warner, Marshal
Warner, Samuel, Jr.
Waters, Asa H.
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
Wildor, Joel
Wilkins, John H.
Wilson, Henry
Wilson, Milo
Winn, Jonathan B.
Wood, Nathaniel

Constitution that all judicial officers, except those concerning whom a different provision shall be made in the Constitution, shall be nominated and appointed by the governor, by and with the consent of the Council, for the term of seven years; that they may be reappointed at the expiration of such term, and that all such nominations shall be made and publicly announced, at least seven days before such appointment.

Mr. CROWNINSHIELD asked for a division of the question.

The PRESIDENT. The question will first be taken upon striking out the word "Senate," and inserting the word "Council."

The question was taken, and the motion was agreed to—ayes, 213; noes, 78.

The PRESIDENT. The question now recurs upon the motion of the gentleman from Plymouth, (Mr. Davis,) to strike out the following words: "and for the purpose of such confirmation, the governor shall have the power to convene the Senate, from time to time, at his discretion."

The question was taken upon the amendment, and it was agreed to.

Mr. ALVORD, for Montague, moved to amend the amendment, by adding the following words: "and the judges now in office shall hold their offices according to their commission."

The question was taken on the amendment, and it was agreed to.

Mr. HUNTINGTON, of Northampton, moved to strike out the word "seven," in the fifth line, and insert in lieu thereof, the word "ten."

The question was taken upon the amendment, and it was rejected—ayes, 163; noes, 180.

Mr. HALLETT, for Wilbraham, moved to amend by inserting in the first line, after the word "that," the following words: "from and after seven years from the adoption of this amendment."

Mr. MORTON, of Andover. I move to amend the amendment of the gentleman from Worcester, by striking out the word "seven," and inserting the word "ten."

Mr. BREED, of Lynn. I ask for the yeas and nays on that question.

The yeas and nays were not ordered.

Mr. BUTLER, of Lowell. After the motion to strike out "seven" has been disposed of, can the motion be renewed by simply adding a word to be inserted?

The PRESIDENT. The Chair is of opinion that such motion is in order.

The question was taken, and, on a division, there were—ayes, 186; noes, 173.

So the amendment was adopted.

Mr. STEVENSON, of Boston, moved to amend the amendment, by inserting, in the third line, after the word "Constitution," the words, "and the justices of the supreme judicial court."

Mr. HALLETT. I suppose the gentleman understands, and intends that we shall understand, that an invidious distinction is to be created between different classes of justices.

The question was taken on the amendment, and it was rejected.

The question then recurred on the adoption of the amendment of the gentleman from Worcester, as amended, which is as follows:—

Resolved, That it is expedient so to amend the Constitution that all judicial officers, except those concerning whom a different provision shall be made in the Constitution, shall be nominated and appointed by the Governor, by and with the con-

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THE JUDICIARY.—BUTLER—HOOPER—ALLEN—WHITNEY.

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sent of the Council, for the term of ten years; that they may be reappointed at the expiration of such term, and that all such nominations shall be made at least seven days before such appointment; and the judges now in office shall hold their offices according to their commissions.

Mr. BUTLER, of Lowell. I move that the vote by which the word "seven" was struck out and the word "ten" inserted, be reconsidered, and on that question I ask the yeas and nays.

The yeas and nays were ordered, and being taken, there were—yeas, 188; nays, 195—as follows:—

YEAS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Allen, James B.
Allen, Parsons
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Ball, George S.
Bancroft, Alpheus
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Bennett, William, Jr.
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Booth, William S.
Boutwell, Sewell
Bradford, William J. A.
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Burlingame, Anson
Butler, Benjamin F.
Case, Isaac
Childs, Josiah
Clark, Henry
Clark, Ransom
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Cole, Sumner
Crane, George B.
Cressy, Oliver S.
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Davis, Ebenezer
Davis, Isaac
Davis, Robert T.
Day, Gilman
Dean, Silas
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Earle, John M.
Easland, Peter
Eaton, Calvin D.
Edwards, Elisha
Ely, Joseph M.
Fellows, James K.
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Abram
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Frothingham, R'd, Jr.
Gardner, Johnson

Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Rogers, John
Ross, David S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sheldon, Luther
Sherril, John
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spoonier, Samuel W.
Stevens, Granville
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Strong, Alfred L.
Sumner, Charles
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.

NAYS.

Adams, Benjamin P.
Aldrich, P. Emory
Allen, Joel C.
Alley, John B.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Barrows, Joseph
Bartlett, Sidney
Beach, Erasmus D.
Beal, John
Beebe, James M.
Bell, Luther V.
Bennett, Zephaniah
Bigelow, Jacob
Blagden, George W.
Bliss, Gad O.
Boutwell, George S.
Braman, Milton P.
Brewster, Osmyrn
Brinley, Francis
Briggs, George N.
Brown, Hiram C.
Bullock, Rufus
Bumpus, Cephas C.
Cady, Henry
Carter, Timothy W.
Chandler, Amariah
Chapin, Chester W.
Chapin, Daniel E.
Chapin, Henry
Choate, Rufus
Churchill, J. McKean
Coggin, Jacob
Cogswell, Nathaniel
Cole, Lansing J.
Conkey, Ithamar
Cook, Charles E.
Coolidge, Henry F.
Copeland, Benjamin F.
Crittenden, Simeon
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, John
Davis, Solomon
Dawes, Henry L.
Dehon, William
Deming, Elijah S.
Dennison, Hiram S.
Dorman, Moses
Eames, Philip
Easton, James, 2d

Thompson, Charles
Tilton, Abraham
Turner, David P.
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Weston, Gershom B.
White, George
Whitney, Daniel S.
Whitney, James S.
Wilbur, Daniel
Wilbur, Joseph
Williams, J. B.
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wood, William H.
Wright, Ezekiel

Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marcy, Laban
Marvin, Abijah P.
Marvin, Theophilus R.
Meador, Reuben
Miller, Seth, Jr.
Mixer, Samuel
Morey, George
Morss, Joseph B.
Morton, Marcus
Morton, Marcus, Jr.
Norton, Alfred
Noyes, Daniel
Ober, Joseph E.
Oliver, Henry K.
Orcutt, Nathan
Orne, Benjamin S.
Paige, James W.
Park, John G.
Parker, Adolphus G.
Parker, Joel
Parker, Samuel D.
Parsons, Samuel C.
Parsons, Thomas A.
Peabody, George
Pease, Jeremiah, Jr.
Perkins, Jesse
Plunkett, William C.
Pomroy, Jeremian
Preston, Jonathan
Putnam, George
Rantoul, Robert
Read, James
Reed, Sampson
Rice, David

ABSENT.

Abbott, Alfred A.
Appleton, William
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bliss, William C.
Bradbury, Ebenezer
Bullen, Amos H.
Caruthers, William
Clark, Salah
Curtis, Wilbur
DeWitt, Alexander
Doane, James C.
Durgin, John M.
Eaton, Lilley
Hall, Charles B.
Harmon, Phineas
Haskell, George

Absent and not voting, 36.

So the motion to reconsider was rejected.
Mr. HOOPER, of Fall River. I move to amend the amendment by adding at the end, the following:—

Provided, That no judge shall continue to hold office after he shall have arrived at the age of seventy years.

Mr. ALLEN, of Worcester. I wish to make the inquiry whether that will apply to the judges now in office, so as to remove the present chief justice from the bench?

Mr. WHITNEY, of Conway. I move to amend the amendment by inserting after the word "judge," the words "hereafter to be appointed."

Mr. HOOPER. I accept that modification.

The question was taken on the amendment, and on a division, there were—yeas, 158; noes, 154.

So the amendment was agreed to.

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THE JUDICIARY. — HALLETT — ALLEN — HOOPER — KEYES — BUTLER — DANA — GOOCH.

[July 21st.

Mr. HALLETT, for Wilbraham. I move to amend by adding, after the words "all such nominations shall be made," the words "and officially publicly announced."

The amendment was agreed to.

Mr. ALLEN. As the vote was small, comparatively, by which the amendment of the gentleman from Fall River was adopted, to test the sense of the Convention upon the question of changing the tenure of the judicial office from seventy to seventy-five years, I move a reconsideration of that vote.

The question was taken, and on a division, there were—ayes, 168; noes, 162.

So the motion to reconsider was agreed to.

Mr. THOMAS, of Weymouth. I move to amend by inserting eighty instead of seventy.

The PRESIDENT. The motion is not in order.

Mr. ALLEN. I cannot give the reasons for wishing to substitute seventy-five, but I ask the gentleman from Fall River if he will not accept that modification.

Mr. HOOPER. I suppose the question has been decided by the last vote; but I will accept of that modification with the striking out of the words "hereafter appointed."

Mr. KEYES, for Abington. I know not how the gentleman from Fall River presumes that the question has been decided as he says, in one way more than in another. The Convention may turn two or three more somersets.

The question recurred on the adoption of the amendment offered by Mr. Hooper, of Fall River, and on a division, there were—ayes, 160; noes, 168.

So the amendment was rejected.

Mr. ALLEN. I now move to amend the same amendment, substituting "seventy-five" in the place of the word "seventy" as the limit of the tenure of the judges.

Mr. THOMAS, of Weymouth. Is the amendment which I proposed, in order.

The PRESIDENT. It is not.

Mr. BUTLER. I rise to a question of order. In filling up amendments with numbers, is it not necessary to have the highest number which is proposed, put first? When a gentleman moves seventy-five, is it not in order for another gentleman to move to insert eighty, or for me to move one hundred? And must not the question be taken on the longest time first?

The PRESIDENT. The Chair is of opinion that it is not in order, and that the motion of the gentleman from Worcester is in order.

Mr. HALLETT. I would like to make the inquiry, whether it is not out of order to propose to have a judge hold his office beyond the years allotted to man in the Scripture? [Laughter.]

Mr. KEYES, for Abington. Inasmuch as no amendment can now be offered, I propose, if this amendment is adopted, to offer an amendment inserting the words "one hundred and fifty." [Laughter.] It is known that Dr. Parr lived to that age or more, and perhaps some of our judges may.

The question was taken on the amendment of the gentleman from Worcester, and it was not agreed to.

Mr. THOMAS, of Weymouth. I now move to strike out seventy-five and insert the word "eighty."

The question was taken, and the amendment was rejected.

Mr. STETSON, of Braintree, moved to amend the resolution so that no judge should continue to hold office after he shall have arrived at the age of seventy-two years.

The motion was not agreed to.

Mr. DANA moved to amend the resolution by adding the following words:—

Provided that no judge shall continue to hold office after he shall have arrived at the age of seventy-five years.

Mr. BUTLER inquired whether that amendment applied to the present judges, or those which should be hereafter appointed.

Mr. DANA said that it was intended to cover both classes of judges.

Mr. KINSMAN, of Newburyport. I would inquire of the Chair, whether the Convention have not already passed upon this subject, by a previous vote that judges shall continue in office according to their present commissions? If that is the case, it seems to me that the gentleman for Manchester cannot attain his object unless he moves a reconsideration of that vote.

The PRESIDENT. The Chair will state the question. The resolution closes with the following words: "they may be reappointed at the expiration of such term, and that all such nominations shall be made and publicly announced at least seven days before such appointment; and the judges now in office shall hold their offices according to their commissions: *provided*, that no judge shall continue to hold office after he shall have arrived at the age of seventy-five years." The Chair is of the opinion that the motion made by the delegate for Manchester is in order.

Mr. CHAPIN, of Worcester. I would like to ask, if our best judge now upon the bench has not already attained that age?

Mr. DANA. He is only seventy-two.

The question being then taken on the amendment of Mr. Dana, on a division there were—ayes, 102; noes, 193—so it was not agreed to.

Mr. GOOCH, of Melrose, moved to amend the resolution by striking out the words "according to their commissions," and inserting in lieu thereof the words "for ten years from the adoption of this amendment."

The PRESIDENT ruled the amendment out of order.

Mr. GOOCH. If my amendment is not in order in its present shape, I move to reconsider the vote by which the amendment of the gentleman from Montague was adopted by the Convention, in order that I may move this amendment.

The question being then taken on reconsidering the vote by which the following words were adopted, viz.: "and the judges now in office shall hold their offices according to their commissions," it was not agreed to:

The question then recurred on striking out the whole of the fourth resolution, and substituting therefor the amendment of Mr. Knowlton, as amended by the Convention; and the question being then taken by yeas and nays, resulted—yeas, 200; nays, 164—as follows:—

YEAS.

Allen, Charles
Allen, James B.
Allen, Parsons
Alley, John B.

Allis, Josiah
Austin, George
Ball, George S.
Barrett, Marcus

Bates, Eliakim A.
Bates, Moses, Jr.
Beal, John
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Bradford, William J. A.
Bronson, Asa
Brown, Adolphus F.
Brown, Artemas
Brown, Hammond
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Cady, Henry
Case, Isaac
Chapin, Daniel E.
Childs, Josiah
Clark, Henry
Clark, Ransom
Clarke, Stillman
Cleverly, William
Coolidge, Henry F.
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Isaac
Davis, Robert T.
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Eames, Philip
Earle, John M.
Easland, Peter
Easton, James, 2d
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fiske, Emery
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Rodney
French, Samuel
Frothingham, R., Jr.
Gale, Luther
Gardner, Johnson
Giles, Charles G.
Giles, Joel
Gooch, Daniel W.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Haskins, William
Hathaway, Elnathan P.
Hayden, Isaac
Hazewell, Charles C.
Heath, Ezra, 2d
Hewes, James
Hewes, William H.
Hobart, Aaron
Hobart, Henry
Hobbs, Edwin
Hooper, Foster
Howard, Martin
Howland, Abraham H.
Hunt, Charles E.
Huntington, Charles P.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jacobs, John
Johnson, John
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Little, Otis
Littlefield, Tristram
Loomis, E. Justin
Marble, William P.
Marvin, Abijah P.
Mason, Charles
Meador, Reuben
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Newman, Charles
Nichols, William
Orne, Benjamin S.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parris, Jonathan
Parsons, Samuel C.
Partridge, John
Peabody, Nathaniel
Penniman, John
Perkins, Daniel A.
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Powers, Peter
Putnam, John A.
Rice, David
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph
Rogers, John
Ross, David S.
Sanderson, Amasa
Sheldon, Luther
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stetson, Caleb
Stevens, Granville
Stiles, Gideon
Sumner, Charles
Sumner, Increase
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Abraham
Tilton, Horatio W.
Turner, David P.
Underwood, Orison

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THE JUDICIARY. — HOOPER — LORD — SCHOULER — WHEELER.

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Viles, Joel
 Vinton, George A.
 Wallace, Frederick T.
 Wallis, Freeland
 Walker, Amasa
 Ward, Andrew H.
 Warner, Samuel, Jr.
 Waters, Asa H.
 Weston, Gershom, B.

Whitney, Daniel S.
 Wilbur, Daniel
 Wilbur, Joseph
 Williams, J. B.
 Wilson, Henry
 Wilson, Willard
 Winn, Jonathan B.
 Winslow, Levi M.
 Wood, Nathaniel

NAYS.

Abbott, Josiah G.
 Adams, Benjamin P.
 Adams, Shubael P.
 Aldrich, P. Emory
 Allen, Joel C.
 Alvord, D. W.
 Andrews, Robert
 Aspinwall, William
 Atwood, David C.
 Ayres, Samuel
 Barrows, Joseph
 Bartlett, Sidney
 Beebe, James M.
 Bell, Luther V.
 Bigelow, Jacob
 Bird, Francis W.
 Blagden, George W.
 Bliss, Gad O.
 Brame, Milton P.
 Breed, Hiram N.
 Brewster, Osmyn
 Brinley, Francis
 Briggs, George N.
 Brown, Alpheus R.
 Brown, Hiram C.
 Bullock, Rufus
 Bumpus Cephas C.
 Burlingame, Anson
 Butler, Benjamin F.
 Carter, Timothy W.
 Carruthers, William
 Chandler, Amariah
 Chapin, Henry
 Choate, Rufus
 Churchill, J. McKean
 Coggin, Jacob
 Cogswell, Nathaniel
 Conkey, Ithamar
 Cook, Charles E.
 Copeland, Benjamin F.
 Crockett, George W.
 Crosby, Leander
 Crowell, Seth
 Crowninshield, F. B.
 Cummings, Joseph
 Dana, Richard H., Jr.
 Davis, Ebenezer
 Davis, John
 Davis, Solomon
 Dawes, Henry L.
 Dehon, William
 Denison, Hiram S.
 Doane, James C.
 Dorman, Moses
 Ely, Homer
 Farwell, A. G.
 Fowler, Samuel P.
 French, Charles H.
 Gardner, Henry J.
 Gates, Elbridge
 Gilbert, Wanton C.
 Gould, Robert
 Goulding, Dalton
 Goulding, Jason
 Gray, John C.
 Greenleaf, Simon
 Hale, Artemas
 Hale, Nathan
 Hammond, A. B.
 Hawkes, Stephen E.
 Hayward, George
 Heard, Charles
 Henry, Samuel
 Hersey, Henry
 Hillard, George S.

Hinsdale, William
 Holder, Nathaniel
 Hood, George
 Hopkinson, Thomas
 Houghton, Samuel
 Hoyt, Henry K.
 Hubbard, William J.
 Hunt, William
 Huntington, Asahel
 Hurlburt, Samuel A.
 Jackson, Samuel
 James, William
 Jenkins, John
 Jenks, Samuel H.
 Kellogg, Giles C.
 Kinsman, Henry W.
 Knight, Joseph
 Ladd, John S.
 Lincoln, F. W., Jr.
 Livermore, Isaac
 Lord, Otis P.
 Lothrop, Samuel K.
 Loud, Samuel P.
 Lowell, John A.
 Marvin, Theophilus R.
 Miller, Seth, Jr.
 Mixer, Samuel
 Morey, George
 Morss, Joseph B.
 Morton, Marcus
 Noyes, Daniel
 Nute, Andrew T.
 Oliver, Henry K.
 Orcutt, Nathan
 Paige, James W.
 Park, John G.
 Parker, Adolphus G.
 Parker, Joel
 Parker, Samuel D.
 Parsons, Thomas A.
 Peabody, George
 Pease, Jeremiah, Jr.
 Perkins, Jesse
 Plunkett, William C.
 Pomroy, Jeremiah
 Preston, Jonathan
 Putnam, George
 Rantoul, Robert
 Read, James
 Reed, Sampson
 Richards, Luther
 Rockwell, Julius
 Royce, James C.
 Sampson, George R.
 Sargent, John
 Schouler, William
 Sherril, John
 Sikes, Chester
 Simmons, Perez
 Sleeper, John S.
 Souther, John
 Stevens, Charles G.
 Stevenson, J. Thomas
 Storrow, Charles S.
 Taber, Isaac C.
 Talbot, Thomas
 Taylor, Ralph
 Tileston, Edmund P.
 Train, Charles R.
 Turner, David
 Tyler, John S.
 Tyler, William
 Upham, Charles W.
 Upton, George B.
 Walcott, Samuel B.

Wales, Bradford L.
 Walker, Samuel
 Weeks, Cyrus
 Wetmore, Thomas
 Wheeler, William F.
 White, Benjamin
 White, George

Wilder, Joel
 Wilkins, John H.
 Williams, Henry
 Wilson, Milo
 Wood, Charles C.
 Wood, Otis
 Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
 Appleton, William
 Baker, Hillel
 Ballard, Alvah
 Bancroft, Alpheus
 Banks, Nath'l P., Jr.
 Bartlett, Russel
 Beach, Erasmus D.
 Bishop, Henry W.
 Bliss, William C.
 Bradbury, Ebenezer
 Bullen, Amos H.
 Chapin, Chester W.
 Clark, Salah
 Clarke, Alpheus B.
 Cole, Lansing J.
 Cole, Sumner
 Curtis, Wilber
 DeWitt, Alexander
 Durgin, John M.
 Eaton, Lilley
 Eustis, William T.
 French, Charles A.
 Gilbert, Washington
 Hall, Charles B.
 Harmon, Phineas
 Haskell, George
 Heywood, Levi

Absent and not voting, 55.

So the amendment was agreed to.

The question then recurred on the final passage of the resolutions as amended.

Mr. LORD, of Salem, asked that the question on the resolutions be taken separately.

Mr. HOOPER, of Fall River, moved to amend the first resolution, by adding at the close the following words: "and that each branch of the legislature shall have authority to require the opinion of the justices of the supreme judicial court on questions of constitutional construction."

Pending this question, Mr. PHINNEY, for Chatham, moved to adjourn; which was not agreed to.

The question being then taken on the amendment offered by Mr. Hooper, it was not agreed to.

The first three resolutions were then severally read and finally passed; and the question was stated on the fourth as amended.

Mr. LORD, of Salem. I desire to know whether, in the ruling of the Presiding Officer, a resolution which is substituted for one that it is inexpedient to act upon a certain matter, has its several readings after it is substituted; or whether, this having been adopted, the question will now be on its final passage?

The PRESIDENT. The Chair rules that this is the final passage of the resolution; and the question before the Convention is now on its final passage.

Mr. LORD. As there has never been any vote taken upon this resolution in its present shape, I ask that the question may be taken by yeas and nays.

Mr. WARD, of Newton. I rise to ask if the yeas and nays have not already been taken upon this question?

The PRESIDENT. The yeas and nays have been taken upon it as an amendment to strike

out the original resolution, and to substitute this, but not upon its final passage.

The question being put on ordering the yeas and nays, on a division, there were—aye, 59; noes, 159—so the yeas and nays were ordered, more than one-fifth of the members voting having voted therefor.

Mr. DENTON, of Chelsea, moved that the Convention adjourn.

Mr. KEYES, for Abington, called for the yeas and nays on the question of adjournment, and they were ordered.

Mr. SCHOULER. I rise to make an inquiry of the Chair. The Convention has voted to adjourn at two o'clock; and as it is not possible to take the yeas and nays between this time and two o'clock, I wish to know whether the Convention will be adjourned as soon as that hour arrives?

The PRESIDENT. By the construction of the Chair, heretofore, it will be imperative upon the Chair, at the hour of two, to adjourn the Convention.

Mr. SHELDON, of Easton, moved a reconsideration of the vote by which the yeas and nays were ordered on the motion to adjourn, which was agreed to.

The question then recurred on the motion of Mr. Keyes for the yeas and nays on the question of adjournment; and they were not ordered.

The question then recurred on the motion of Mr. Denton, which was agreed to; and accordingly, at quarter before two o'clock, the Convention adjourned until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled, and was called to order at three o'clock, the President *pro tem.* in the chair.

The Judiciary.

On motion by Mr. SCHOULER, the Convention proceeded to the consideration of the Orders of the Day, the question pending being on the final passage of the fourth resolution on the subject of the Judiciary, as amended, on which the yeas and nays had been ordered.

Mr. WHEELER, of Lincoln. I would inquire whether it is in order to move a reconsideration of the vote by which the yeas and nays have been ordered?

The PRESIDENT. In the opinion of the Chair, it will be in order.

Mr. WHEELER. I will, then, submit that motion.

Mr. LORD, of Salem. Mr. President: I rise to a question of order, and that is, whether or not the matter of ordering the yeas and nays is a motion at all; whether it is not a demand which certain gentlemen, to wit, one-fifth of the Convention voting, have a right to make, and which none others can control after it has been ordered? The language of the rule is: "On all questions and motions whatsoever, the President shall take the sense of the Convention by yeas and nays, provided one-fifth of the members present shall so require." That is not a motion.

The PRESIDENT. The Chair is of opinion that it is competent for every member of the Convention to move a reconsideration of the vote by which the yeas and nays were ordered, and that it is competent for a majority of the Con-

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vention to reconsider that vote. The question will then recur on the motion for the yeas and nays, and one-fifth can carry that vote.

Mr. WHEELER. Since it is likely that the motion which I made will give rise to discussion, I withdraw it.

Mr. ELY, of Westfield. I wish to inquire, Mr. President, if a vote on the subject-matter of the resolution now under consideration has not been taken by yeas and nays already?

The PRESIDENT. A motion was made to strike out the fourth resolution, and to substitute the resolution now pending, which was carried by yeas and nays. That is a different question from the present; that was a motion to amend; this is a motion to order the resolution to its final passage.

The question being taken by yeas and nays, the result was—yeas, 204; nays, 143—as follows:

YEAS.

Allen, Charles
Allen, James B.
Allen, Parsons
Alley, John B.
Allis, Josiah
Andrews, Robert
Austin, George
Baker, Hillel
Ball, George S.
Bancroft, Alpheus
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beach, Erasmus D.
Beal, John
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Booth, William S.
Boutwell, Sewell
Boutwell, George S.
Bronson, Asa
Brown, Adolphus F.
Brown, Hammond
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Cady, Henry
Case, Isaac
Chapin, Daniel E.
Childs, Josiah
Churchill, J. McKean
Clark, Henry
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Cole, Sumner
Cooledge, Henry F.
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, Robert T.
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Dunham, Bradish
Eames, Philip
Earle, John M.
Edsland, Peter
Eaton, Calvin D.
Edwards, Elisha

Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fiske, Emory
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Samuel
Frothingham, R., Jr.
Gale, Luther
Gilbert, Washington
Giles, Charles G.
Giles, Joel
Gooding, Leonard
Graves, John W.
Green, Jabez
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Happgood, Lyman W.
Happgood, Seth
Haskins, William
Hathaway, Elnathan P.
Hayden, Isaac
Hazelwell, C. C.
Heath, Ezra, 2d
Hewes, James
Hewes, William H.
Heywood, Levi
Hobart, Henry
Hobbs, Edwin
Hood, George
Hooper, Foster
Howard, Martin
Howland, Abraham H.
Hunt, Charles E.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jacobs, John
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Littlefield, Tristram
Loomis, E. Justin

Marble, William P.
Marvin, Abijah P.
Mason, Charles
Meador, Rueben
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Newman, Charles
Nichols, William
Ober, Joseph E.
Orne, Benjamin S.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parris, Jonathan
Parsons, Samuel C.
Partridge, John
Peabody, Nathaniel
Penniman, John
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Powers, Peter
Putnam, John A.
Rawson, Silas
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Rogers, John
Ross, David S.
Sanderson, Amasa

NAYS.

Adams, Benjamin P.
Adams, Shubael P.
Allen, Joel C.
Aspinwall, William
Atwood, David C.
Ayles, Samuel
Barrows, Joseph
Bartlett, Sidney
Beebe, James M.
Blagden, George W.
Bliss, Gad O.
Braman, Milton P.
Breed, Hiram N.
Brewster, Osymn
Brinley, Francis
Briggs, George N.
Brown, Alpheus R.
Brown, Hiram C.
Bullock, Rufus
Bumpus, Cephas C.
Burlingame, Anson
Carter, Timothy W.
Caruthers, William
Chandler, Amariah
Chapin, Chester W.
Chapin, Henry
Cheate, Rufus
Coggin, Jacob
Cogswell, Nathaniel
Conkey, Ithamar
Cook, Charles E.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Dana, Richard H., Jr.
Davis, John
Davis, Solomon
Daves, Henry L.
Dehon, William
Denison, Hiram S.
Dorman, Moses
Ely, Homer

Sanderson, Chester
Sheldon, Luther
Smith, Matthew
Sprague, Melzar
Spoonor, Samuel W.
Stetson, Caleb
Stevens, Granville
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Sumner, Charles
Sumner, Increase
Taft, Arnold
Thayer, Joseph
Thomas, John W.
Thompson, Charles
Tilton, Horatio W.
Turner, David P.
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallace, Frederick, T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
Whitney, Daniel S.
Wilbur, Daniel
Wilbur, Joseph
Williams, J. B.
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Wifflaw, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis

Moss, Joseph B.
Morton, Marcus
Noyes, Daniel
Nute, Andrew T.
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Park, John G.
Parker, Adolphus G.
Parker, Joel
Parker, Samuel D.
Parsons, Thomas A.
Peabody, George
Pease, Jeremiah, Jr.
Perkins, Jesse
Plunkett, William C.
Pomroy, Jeremiah
Preston, Jonathan
Putnam, George
Rantoul, Robert
Read, James
Reed, Sampson
Richards, Luther
Rockwell, Julius
Royce, James C.
Sargent, John
Schouler, William
Sherril, John

Sikes, Chester
Simmons, Perez
Simonds, John W.
Sleeper, John S.
Stevens, Charles G.
Stevenson, J. Thomas
Storrow, Charles S.
Taber, Isaac C.
Talbot, Thomas
Taylor, Ralph
Tilston, Edmund P.
Train, C. R.
Turner, David
Tyler, John S.
Tyler, William
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Weeks, Cyrus
Wheeler, William F.
White, Benjamin
White, George
Wilder, Joel
Wilson, Milo
Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Aldrich, P. Emory
Alvord, D. W.
Appleton, William
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bell, Luther V.
Bigelow, Jacob
Bliss, William C.
Bradbury, Ebenezer
Bradford, William, J.A.
Brown, Artemas
Bullen, Amos H.
Butler, Benjamin F.
Clark, Ransom
Clark, Salah
Cole, Lansing J.
Copeland, Benjamin F.
Curtis, Wilber
DeWitt, Alexander
Doane, James C.
Duncan, Samuel
Durgin, John M.
Easton, James, 2d
Eaton, Lilley
French, Rodney
Gardner, Johnson
Gooch, Daniel W.
Gray, John C.
Greene, William B.
Hall, Charles B.
Harmon, Phineas
Haskell, George
Henry, Samuel

Hinsdale, William
Hobart, Aaron
Hopkinson, Thomas
Huntington, Charles P.
Huntington, George H.
Johnson, John
Kelllogg, Martin R.
Ladd, John S.
Langdon, Wilber C.
Little, Otis
Marcy, Laban
Marvin, Theophilus R.
Norton, Alfred
Paine, Henry
Payson, Thomas E.
Perkins, Daniel A.
Perkins, Jonathan C.
Prince, F. O.
Rice, David
Sampson, George R.
Sherman, Charles
Souther, John
Stacy, Eben H.
Strong, Alfred L.
Stutson, William
Swain, Alanson
Thayer, Willard, 2d
Tilton, Abraham
Tower, Ephraim
Wetmore, Thomas
Whitney, James S.
Wilkins, John H.
Wilkinson, Ezra
Williams, Henry
Wood, William H.
Woods, Josiah B.

Absent and not voting, 72.

So the resolution was passed.

Mr. FROTHINGHAM, of Charlestown. I move* to lay the Orders of the Day upon the table for the purpose of taking up Convention Document No. 54, being the Report of the Committee on Elections, in reference to the memorial of John Sanborn, from Charlestown, claiming a seat in the Convention.

The motion was rejected, on a division—ayes, 72; noes, 112.

So the Orders of the Day were not laid upon the table.

Mr. MORTON, of Taunton. There is a subject of considerable interest, which I had the honor to bring before the Convention, some time

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ago; and with the understanding that it should be taken up at an early day, I withdrew it as an amendment to a proposition then pending, and presented it as an independent proposition; and it was referred to the Committee of the Whole. I therefore move that the Convention resolve itself into Committee of the Whole, on Document 59. I wished to make this explanation, and then will move to lay the Orders of the Day upon the table, that the Convention may go into Committee of the Whole, and consider the alternative proposition in relation to the amendments of the Constitution. I move that the Orders of the Day be laid upon the table.

Mr. HOOPER, of Fall River. I hope that that motion will not prevail. It is only a few moments since the Convention refused to adopt the very same motion.

Mr. BIRD, of Walpole. I want to know if it is in order to make the same motion twice in succession, without the intervention of other business?

The PRESIDENT. The Chair is of opinion that the motion of the gentleman from Taunton is in order.

Mr. FROTHINGHAM, of Charlestown. I ask the leave of the Convention, at this time, to make a statement. I will not occupy more than one or two minutes.

Leave was granted.

Mr. FROTHINGHAM. I moved, a few moments ago, to lay the Orders of the Day upon the table for the purpose of going into Committee of the Whole on the Report on the subject of Banks and Banking. I did so because I had refrained for some time past from making that motion, and with a view to accommodate gentlemen who felt a strong interest in relation to other questions, which have been before the Convention. On the suggestion of some of the members of the Convention, I made the motion to lay the Orders of the Day upon the table, for the express purpose of taking up that question.

The PRESIDENT. The Chair, upon reflection, is of opinion that the motion made by the gentleman from Taunton, (Mr. Morton,) is not in order, no business having been transacted since the same question was previously decided. The next matter in the Orders of the Day, is the motion of the gentleman from Fall River, (Mr. Hooper,) to reconsider the vote by which the resolve on the incorporation of new towns was indefinitely postponed.

Incorporation of New Towns.

Mr. HOOPER. I moved a reconsideration of this resolution, with the view of offering an amendment. It will be recollected, that one of the resolutions fixing the basis of representation, provides that no town shall be incorporated, with the right to send a representative to the legislature, having less than fifteen hundred inhabitants. I suppose the meaning of that is, that no town hereafter created shall be represented in the legislature unless it have fifteen hundred inhabitants. But this resolution guards the matter only on one side. It does not prevent the creation of new towns having fifteen hundred inhabitants, and leaving the old town, perhaps, with less than one thousand inhabitants. For the purpose of preventing this, I moved a reconsideration, so as to guard the matter in such a way that no town should be left with less than fifteen hundred in-

habitants, by the creation of any new town. That is my object; and if the Convention decide to reconsider, I will offer such an amendment.

Mr. BATES, of Plymouth. I would simply say to the gentleman from Fall River, that when this whole subject was under discussion, an amendment precisely similar to this was moved and rejected, and that, consequently, such an amendment cannot be in order at this time.

Mr. HOOPER. I think the gentleman is mistaken. The amendment which was rejected was very different from this. That amendment was, that no town should be incorporated with less than fifteen hundred inhabitants, thereby implying that new towns having that number of inhabitants might be incorporated, and be entitled to representation. The object I have in view, is quite different. It is to prevent the formation of new towns, leaving the old ones with a less number of inhabitants than fifteen hundred. I think if gentlemen will reflect for a moment, they cannot object to having the matter guarded in this way.

Mr. KEYES, for Abington. It seems to me, that the gentleman from Fall River, is a little mistaken; that these towns do not stand on the same basis; and whereas, it might be unjust in one sense, it would not be in the other. I take it, that the Convention decided for good reasons, that no new town should be created for the purposes of representation with less than fifteen hundred inhabitants; and the ground was this: before these new towns petition for a town organization they understand precisely what they have to meet with. They may have a representation, or they may not, as the legislature may determine. If they choose to be incorporated for town purposes without the representation privilege, no injustice will be done. On the other hand, if they permit a new town to go off from the old one, and thereby take away the right of the old town to send a representative, a double injustice will be done. Suppose that a new village starts up in a town, with its railroad, and manufacturing, and other establishments, gathering around them a large population, and they say to themselves, "let us go off from the old town and leave it in its loneliness, and take with us the right of representation,"—this would not be right. I take it, therefore, that in such case, the old town ought not to suffer in consequence of the new town going off, because, if they do go off, they go with their eyes open.

Mr. SCHOULER. I hope the motion to reconsider will not prevail. It seems to me, that we ought to leave something for the legislature to do hereafter. The usual practice has been, that where a town was set off it should vote for representatives with the town from which it came out until the next decennial census. New towns can be incorporated for all purposes which appertain to town business, and nobody will be affected, but themselves; but they cannot vote for representatives otherwise than in conjunction with the town from which they were set off.

Mr. HALLETT. It seems to me, that this motion ought to be reconsidered, and for a very plain reason. You have got to provide against the indefinite increase of representation by the multiplication of new towns, and if that is not done, your system of town representation is not safe. You cannot well leave the matter unguarded in this way, so that a town having twenty-five

hundred inhabitants, may set off fifteen hundred of them, to be incorporated and entitled to a new representation, and still retain its own representation with a population of one thousand. The legislature may guard against it, but if they do not and we leave the matter in this shape, then, as I showed the other day, a town having four thousand inhabitants, and sending two representatives, may be divided into three towns, sending three representatives; and there is no knowing where the effect of such a thing is to stop, if the legislature connive at it. It seems to me, that we should not leave a loop-hole of this sort in the principle of representation. If this thing is to remain so, you had better declare at once, that your basis of representation shall be fifteen hundred for a representative in every town. If you say, in this implied manner, that there shall be as many towns sending representatives as your old towns will make, by dividing their population by fifteen hundred, you may have the House of Representatives enlarged to an impracticable extent. What would be the result? What would be the danger? Why, that in case of any extraordinary political pressure, your legislature would create so many new towns in order to accommodate the condition of political parties. Every-body knows this. Every-body can see it at a glance; and the question would at once be: what will be the political character of the representative who will come from such and such a new town, if it is created?

Now, if this motion is reconsidered, you can then adopt a principle such as is suggested by the gentleman from Fall River; or you can say upon a general principle that no incorporation of any new town shall thereby increase the representation within the limits of the old and new town together; and then you leave the matter so that if a town chooses to divide, it may do so; but it shall not divide at the expense of the whole representation of the State. I think that that is a sound reason; a good ground why this motion to reconsider should prevail; so that this salutary precaution may be adopted.

The question being taken on the motion to reconsider, it was decided, on a division, in the affirmative—ayes, 130; noes, 114.

The PRESIDENT. The question now is on ordering to a second reading the following resolve:—

Resolved, That the Constitution be so amended that hereafter no town shall be incorporated with less than fifteen hundred inhabitants.

A MEMBER. Is not the first question on the motion to postpone the farther consideration of the resolution indefinitely?

The PRESIDENT. That is the first question.

Mr. HOOPER, of Fall River. I wish to amend the resolution as follows: strike out all after the word "town," in the second line, and insert the following:—

The number of whose inhabitants shall be reduced below fifteen hundred by the incorporation of another town from a part of its territory, shall retain the right of sending a representative annually to the general court.

The resolution, if thus amended, will then read as follows:—

Resolved, That the Constitution be so amended that hereafter no town, the number of whose inhabitants shall be reduced below fifteen hundred

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by the incorporation of another town from a part of its territory, shall retain the right of sending a representative annually to the general court.

Mr. HALLETT. For the purpose of enabling the Convention to judge of the two modes of reaching this object, I would amend the resolution by adding the following words:—

But the incorporation of any town shall not thereby increase the whole number of representatives in the Commonwealth.

The resolution, if thus amended, would then read:—

Resolved, That the Constitution be so amended that, hereafter, no town shall be incorporated with less than fifteen hundred inhabitants; *provided*, that the incorporation of any town shall not thereby increase the whole number of representatives in the Commonwealth.

Mr. BIRD, of Walpole. I rise to a question of order. The point of order that I make is, that the same amendment was offered by the gentleman from Fall River the other day, in the same stage of the resolution, and was rejected. The phraseology of the amendment may be somewhat different, but the object to be attained is substantially the same.

Mr. HOOPER. I deny that it is the same amendment. If the gentleman will look at it, he will see that it is different. He will see that it restricts the old town, thus left, from sending a representative annually to the general court.

Mr. ASPINWALL, of Brookline. I rise to a question of order. It is, that the subject of the amendment is entirely distinct and different from the subject of the resolution.

Mr. HOOPER. The gentleman from Brookline is surely laboring under some great mistake. If he will examine the amendment in connection with the resolution, he cannot fail to perceive its pertinency.

The PRESIDENT. Two questions of order have been raised, one by the gentleman from Walpole, that the subject of the amendment has been already acted upon, and rejected, in the same stage of the resolution. This amendment, the Chair is inclined to think, was acted upon in Committee of the Whole, and the point of order is therefore overruled.

The gentleman from Brookline raises another point of order, which is, that the amendment has no connection with the resolution now pending. The Chair is of opinion that the amendment is not in order, not being germane to the resolution.

Mr. HOOPER. I am sorry that I shall be under the necessity of taking an appeal from the decision of the Chair. Sir, this amendment simply qualifies the subject-matter of the resolution in relation to the incorporation of towns. It is merely fixing a condition in relation to these incorporations. It is certainly pertinent to the subject of the resolution, if any one thing can be pertinent to another. It certainly seems to me that it must be in order.

The PRESIDENT, after reading the resolution and amendment again, decided that the amendment was not germane to the resolution.

Mr. CROSBY, of Orleans. I would inquire of the Chair whether the immediate question before the Convention is not on the motion for indefinite postponement?

The PRESIDENT. That is the first question.

Mr. SPOONER, of Warwick. I move the previous question.

Mr. HALLETT. I understood the position of the question before the Convention was, that the gentleman from Fall River moved an amendment to the present resolution, with the view of—

Mr. LORD, of Salem. I rise to a question of order. [Laughter.]

The PRESIDENT. The gentleman from Salem will state his point of order.

Mr. LORD. I understood the gentleman from Fall River to appeal from the decision of the Chair. I understand the rule of the House to be—

Mr. HALLETT. I call the gentleman from Salem to order. [Much laughter.] The question is that he is about to anticipate the very question I was about to state to the Chair. [Roars of laughter.] The Chair ruled that the amendment of the gentleman from Fall River, to which I moved an amendment, was out of order. The gentleman from Fall River took an appeal from the decision of the Chair; and it was not until after the appeal was made, that the motion for indefinite postponement was offered.

The PRESIDENT. The question before the Convention is on the motion for the indefinite postponement of the resolution. The gentleman from Fall River moves an amendment to the resolution, which the Chair decides to be out of order. The Chair did not understand the gentleman from Fall River as having appealed from that decision. The Chair understood the gentleman to say that he would be under the necessity of doing so; but not that he actually did appeal. If he appeals, that will be the first question to be taken.

Mr. HOOPER. I did take an appeal, and I supposed that the Chair so understood me.

Now, Mr. President—

Mr. SPOONER. I rise to a question of order, [laughter,] which is, whether a motion to postpone a resolution indefinitely, permits an amendment to the resolution to be offered pending the motion to postpone?

The PRESIDENT. It is competent for any gentleman to move an amendment to an amendment pending the question on the indefinite postponement. The gentlemen from Fall River will proceed.

Mr. HOOD, of Lynn. I rise to a point of order. [Great laughter.] The gentleman from Fall River took an appeal from the decision of the Chair; then the gentleman from Warwick moved the previous question. Is the appeal in order under the motion for the previous question? [Continued laughter.]

The PRESIDENT. The first question will be on the appeal.

Mr. HOOPER. I certainly, Mr. President, am sorry to be under the necessity of taking an appeal; but it seems to be so clear a case that there can be no doubt about it. The resolve is in relation to the incorporation of new towns. That is the object.

Mr. LORD, of Salem. I rise to a question of order. I believe, Sir, that there is but one gentleman in the House who does not believe that the ruling of the President is right, and that gentleman is the gentleman from Fall River himself. I submit, that under the second rule, the gentleman must find somebody to second his appeal. The second rule requires that the President shall decide all questions of order subject to an appeal,

on a motion regularly seconded. Somebody must second the appeal before it is before the Convention.

Mr. CHURCHILL, of Milton. I do not know anything about the question of order, and whether it is well taken or not; but, out of courtesy to the gentleman from Fall River, I second his motion.

Mr. HOOPER. I was not aware that I was out of order, and I am told by gentlemen around me, who understand these matters better than I do, that I was clearly right. The resolution is in relation to the incorporation of new towns, and the amendment simply fixes a condition connected with such incorporations. It provides that by such incorporation no town shall retain its right of sending representatives annually, if it is reduced below a certain number. It leaves the subject of incorporation open hereafter, without restricting it, but only attaches the condition that if the town assent, as it may readily do, to part with a major part of its inhabitants, it shall not thereafter retain its right of sending annual representatives. The old town may consent to such division for the purpose of increasing the number of representatives, and this is simply a condition to prevent such incorporations for the purpose of multiplying representation. It strikes me that it simply fixes a condition to the main proposition, and therefore must be in order.

Mr. KEYES, for Abington. It seems to me that the original resolution is better than the amendments, and none at all would be better than both; therefore, I move that the subject lie upon the table, and remain there forever.

The PRESIDENT. The question before the Convention is upon the appeal of the gentleman from Fall River from the decision of the Chair.

Mr. KEYES. My motion was to lay the whole subject, appeal and all, upon the table.

The PRESIDENT. The Chair is of opinion that such a motion is not in order.

Mr. HOOPER. I withdraw my appeal, having stated my views.

Mr. KEYES. I now move to lay the whole subject upon the table.

The question was taken, and there were—ayes, 99; noes, 120.

So the Convention refused to lay the subject upon the table.

Mr. HALLETT, for Wilbraham. I now move to amend the proposition as it stands, by adding the words which I submitted at a former stage, to wit; "but the incorporation of any town shall not thereby increase the whole number of representatives in the Commonwealth."

Mr. JAMES, of South Scituate. Suppose a town of four thousand inhabitants, wants to be divided, and is divided, which of them will be entitled to the representative?

Mr. HALLETT. If I may be allowed to answer that question, the legislature will take care of that matter, and determine which shall have the representation. The only effect of the amendment is to prevent the whole number from being increased.

Mr. STETSON, of Braintree. Having introduced this resolution at first, and having been asked the other day, when the question came up for discussion, the reasons for it, I wish briefly to state the reasons which induced me to offer the proposition for the consideration of the Convention. The resolve itself, is one which affects the prospective size of the representative body. The

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question then for the consideration of the Convention is, whether it is expedient to check the growing tendency which exists in relation to the formation of new towns. That is a question upon which every member of this Convention is able to judge for himself. My own opinion is, that some check is necessary, and that some constitutional provision should be provided to check the growing tendency to cut up towns into two or more small corporations. My opinion is, that some check should be made, in order to save harmless those little republics, of which so much has been said, and in reference to which, I think those who wish a check upon the size of the representative body, should have a little care for. I believe, Sir, that the largest number of the new towns, which have been incorporated for the last few years, have contained less than one thousand inhabitants; and Sir, they come in here, and claim a basis of representation upon equal grounds with towns created two hundred years ago. Now, if this work is to continue to go on, why Sir, what will be the result?

Mr. HOOD, of Lynn. I rise to a point of order. It is, that the amendment of the gentleman for Wilbraham is not in order under the thirty-fourth rule, that the amendment relates to a different matter from the subject of the resolve.

The PRESIDENT. The Chair is of opinion that the amendment is not strictly in order.

Mr. DAY, of Templeton. I move the previous question.

Mr. STETSON. I would like to raise a question of order myself. Having proceeded with the consent of the Convention, to argue the proposition before it, and having been called to order by my friend from Lynn, (Mr. Hood,) whether, by yielding the floor for a decision of the point of order, I thereby lose it, and a gentleman can take it away from me and move the previous question.

The PRESIDENT. The Chair understood the gentleman from Braintree as yielding the floor, the decision of the question of order having cut off the amendment. If, however, the gentleman claims the floor, the Chair will consider the previous question as not having been made, and the gentleman may proceed upon the question before the Convention, which is upon the indefinite postponement of the resolution.

Mr. STETSON. I trust the Convention will not postpone it. I say, Mr. President, it frequently happens, that in consequence of the location of railroads, or the establishment of manufactories in a portion of a town; in consequence of centralization, of which so much has been said, that some portion of the towns—

Mr. THOMPSON, (interrupting). I rise to a point of order. I wish to inquire what the subject-matter under consideration is? If I understand it, it is the previous question.

The PRESIDENT. The question under discussion is the motion to indefinitely postpone the resolution.

Mr. STETSON. I was saying that in consequence of centralization, in consequence of the location of railroads, and the establishment of manufactories, a new part of a town may become predominant, and outgrow the old town; and they can come before the legislature and ask for a separate town incorporation, and if they happen to be upon the right side of politics they get what they ask for. The proposition

which this Convention has determined to submit to the people, holds out strong inducements to the division of towns. Take the class of towns varying from one thousand to four thousand inhabitants—being the largest fraction under this rule which the Convention has passed—and they are the greatest sufferers. Now this involves the rights of the people, and the question is: does any exigency require its submission to the people, in order to save ourselves from the evils which go to undermine town representation? I am satisfied if this Convention vote to lay this upon the table, or dispose of it as they have heretofore done; but I want them to understand the principle involved, and the fact that the rights of the middle-sized towns of about four thousand inhabitants will be the greatest sufferers under it. Sir, I trust that this Convention will adopt some principle whereby they may save themselves from the undermining and underworkings of the system which involves in itself the rights of the people, under the representative system, which is to exist hereafter, if the constitutional provision which is proposed by the Convention shall be adopted by the people. The consequence, under this system, will be that the rural part of a town will be shorn of its strength, and left to shift for itself, and probably will be barely able to exist as a town corporation. The course adopted in regard to the basis of town representation, makes the question one of great importance. But if this Convention are willing to let the matter rest where it is, I am content.

Mr. SCHOULER, of Boston. I hope the motion for indefinite postponement will prevail. My friend near me says I am on the wrong side for once, but I think I am right. I think this is a matter which can be better left to the legislature than to this Convention. Now, what is this great evil which the gentleman speaks about? During the last thirty-three years, only thirty-two towns have been incorporated; less than one every year, and I appeal to gentlemen representing those towns, whether they have experienced any evils from that.

Here are the towns which have been incorporated in the several counties within thirty-three years.

Suffolk.—North Chelsea and Winthrop.

Essex.—Georgetown, Groveland, Lawrence, Rockport, Nahant and Swampscot.

Middlesex.—Ashland, Lowell, Melrose, North Reading, Somerville and Winchester.

Worcester.—Blackstone, Clinton, Webster and West Brookfield.

Hampshire.—Prescott.

Hampden.—Chicopee and Holyoke.

Franklin.—Erving and Monroe.

Berkshire.—Monterey.

Norfolk.—West Roxbury.

Plymouth.—East Bridgewater, North Bridgewater, South Scituate, West Bridgewater, Lakeville and Marion.

Bristol.—Pawtucket.

Is not that a very moderate number? The exigencies of the case sometimes require that new towns should be made. We had a case before the legislature last year, for the incorporation, in Hampshire County, of a new town at Cheshire. Cheshire village was composed of parts of four towns, which all happened to center there. A large village had been built upon this

junction of those towns, and a part of the village was in each of them. They could, in consequence, have no efficient police, and a person had only to cross over from one town line to another, to be out of the reach of the police. That case went through the House without any difficulty, although it is generally with the greatest difficulty that you can get an act for the incorporation of a new town, through the legislature. The case must be a strong one, before the legislature will do it. I think the whole matter should be left to the legislature to decide, when circumstances require the erection of new towns, as they have heretofore done.

Mr. HALLETT. I think this subject should not be indefinitely postponed, because it is, in my judgment, a very important question. It is one upon which may depend the continuance of town representation after the year 1860; because, if the legislature goes on to incorporate towns as fast as they will be applied for, your representative system cannot exist for ten years, without overwhelming the House with the number of members coming from these new towns.

Now the provision which has been adopted with regard to representatives—a provision which gives no new town the right of representation, unless it has at least 1,500 inhabitants—makes no express restriction to prevent both the old and new town from being represented, and the number of representatives from being increased, provided the new town has 1,500 inhabitants, and the old one 1,000. If gentlemen desire to have it understood, that within the given limits of a large town, you may multiply the number of representatives as many times as you can divide the number of inhabitants by 1,500, and leave 1,000 in the old town; if they mean to do that, then why not take the ratio of 1,500 alone, and stand by it? I should prefer that to adopting 4,000 as the increasing number, and then leaving a loop-hole whereby the legislature can divide any town having more than 1,500 inhabitants, and give to each town a representative. I do not believe the Convention mean to do any such thing; and yet the legislature may put that construction on the making of new towns. Now, Sir, I desire that some such amendment as that proposed by the gentleman from Fall River, (Mr. Hooper,) shall be adopted. I hope some provision will be made, in this stage or another, if not now in order, by which, when a new town is incorporated, with a sufficient number of inhabitants to give it a representative, the number of representatives for the two towns shall not be increased, if our Constitution provides that no new town shall be incorporated with the privilege of representation containing a less number of inhabitants than 1,600, but makes no provision against increasing the number of representatives where the number of inhabitants equal 1,500. The effect, therefore, may be, to increase the number of members in the House of Representatives, in a few years, to an inconveniently great extent. I hope the subject will not be postponed; and, if it is not, I have an amendment which I am sure will be in order, and which will obviate the difficulty.

Mr. SCHOULER, of Boston. Will the gentleman allow me to ask him a question? Within the last twenty years the town of Lowell has been set off from the town of Chelmsford; now I want to ask him which is entitled to be represented, Chelmsford or Lowell? Of course Low-

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ell will be represented, and yet Chelmsford will be left with only population sufficient to entitle her to one representative, or a half of one. Now, I do not think it is justice to the old town, to deprive her of her representative by cutting out a new one within her limits.

The same is true with regard to Lawrence. I want to know if there is to be no representative in the town from which Lawrence was taken, for all time to come? I want to know, when we come to have the new town or city of Holyoke, if the town from which it is taken is to be deprived of its representation?

Mr. HALLETT. The gentleman asks the question, suppose Lowell, with a population of 10,000, is taken from Chelmsford, leaving Chelmsford with a population of only 1,000, whether we are to deprive Chelmsford of her representative? Certainly not. I would give Chelmsford with its 1,000 population, a representative; but I would provide that the whole population of 11,000, which was originally within the limits of one town, should be entitled to no greater number of representatives when in two separate towns, than it was when in one and the same town. That is my proposition. The object is to give a reasonable limit to the increase of new towns, so as to prevent their being divided for the purpose of giving additional representatives. If the legislature go on incorporating new towns, at the rate it has done, for the last five or six years, and representatives are given to each of these new towns, you will soon have a House so large that you will be compelled to abandon town representation entirely, and adopt a district system. I hope this subject will not be postponed, but that we shall adopt some amendment to remedy the difficulty, and then incorporate the resolve into the Constitution.

Mr. UPTON, of Boston. I hope the motion, indefinitely to postpone, will not prevail. I think an amendment may be framed which will be in order, and which will have the effect of remedying the evil. It is a subject of considerable importance, and one which I hope we shall make provision for. By the provisions you have adopted, you apportion your representatives under the census of 1850, and that apportionment holds until a new census is taken. Now, the question before the Convention, as I understand it, is this: Do you mean to have this matter open, so that towns can be divided and entitled to an increased number of representatives without increasing their population? I say you ought not thus to have it, and I hope you will not. I agree substantially, with the position taken by the gentleman for Wilbraham, (Mr. Hallett). I had drawn up an amendment, which I think will meet the case, and which, at a proper time, I propose to offer. It is the following:—

That the Constitution be so amended, that hereafter no town shall be incorporated by which the representation on the present, or any future basis, shall be increased in consequence of the division of any of the existing towns.

That is the principle which I wish to adopt. I hold that to be a sound principle, and a principle which gentlemen from the rural towns in this Commonwealth ought to follow.

Mr. SARGENT, of Cambridge. I think, Mr. President, that the debates which we have had upon this question, furnish a most beautiful

commentary upon the system of representation we have adopted. The injustice and inequalities of that system, seem to haunt the minds of gentlemen at every step they take.

The gentleman for Wilbraham, (Mr. Hallett,) fears that in consequence of the incorporation of new towns, the House will become so large as to render the system obnoxious, and in a few years to overthrow it. To obviate this difficulty, he proposes to ingraft into the Constitution a provision, that the number of representatives shall not be increased by incorporating new towns. Well, Sir, let us look at it for a moment, and see how it will stand, if we adopt the amendment which he proposes. We have provided first, that every town in the Commonwealth now incorporated having 1,000 inhabitants, shall be entitled to one representative. We have provided farther, that no town shall be hereafter incorporated, with the right of annual representation, containing a population of less than 1,500 inhabitants. That is, if they have 1,500 inhabitants, they shall have an annual representative. Well, Sir, you make the census of 1850, your basis to start with. But, when you come to 1860, what are you to do? You take your towns, whether they already are incorporated, or whether they shall be incorporated between now and 1860, and apportion their representatives according to the plan you have already adopted. Well, Sir, there is no difficulty in this; it is all very plain and easily understood. But, Sir, what does the gentleman for Wilbraham, (Mr. Hallett,) propose to do? Here is your plan which you have already adopted, providing that at every decennial period you shall so apportion your representatives that each town now incorporated having 1,000 inhabitants shall have one representative annually, and that each town hereafter incorporated having not less than 1,500 inhabitants, shall have an annual representative also; and yet, with these provisions standing in your Constitution, the gentleman for Wilbraham proposes to adopt another proposition directly in conflict with this, providing that the number of representatives shall not be increased by the incorporation of new towns. Now, Sir, let us look at the practical result of this system thus complicated. Suppose you have a town with 2,600 inhabitants, which should be so divided, that the original town shall contain 1,050 inhabitants, and the new town 1,550. When the next decennial period arrives, how are you to apportion your representatives. You have one constitutional provision, which declares, that each of these towns are entitled to an annual representative; and yet you will have another provision declaring that those two towns shall have but one between them.

Now, Sir, which of these two provisions shall rule, and how shall that question be decided? This is the position in which we shall be placed if we adopt the amendment proposed by the gentleman for Wilbraham, (Mr. Hallett). And, Sir, this shows the difficulty into which we are led, step by step, when we attempt to remedy one evil, or one wrong principle by establishing another wrong principle. Sir, I think we had better pause, and not plunge ourselves into greater difficulties by attempting to convert two wrongs into one right. Sir, every step we take in that direction plunges us into greater difficulties. I hope, therefore, that the subject will be indefinitely postponed.

Mr. ELY, of Westfield. I move the previous question.

Mr. HALLETT. If the gentleman will allow me to make just a single explanation in reply to the gentleman from Cambridge, (Mr. Sargent,) I will then renew his motion.

Mr. ELY. With that understanding, I will withdraw the motion.

Mr. HALLETT. The gentleman from Cambridge, goes on as if each town had an absolute right of division with the privilege of representation, without reference to any other power. Now, Sir, this matter must all go before the legislature. If a town with 2,000 inhabitants, asks to be divided, and the legislature make the division, they will make it with certain restrictions which shall guard the right of representation. The legislature will take care of that; and, after all, there will be no very great difficulties to encounter. All they have to do is, that when a new town is to be incorporated under these circumstances, to provide, as a condition upon which it shall be incorporated, that the representation of the two towns shall not be increased thereby. It seems to me very necessary, that we should make some provision to prevent multiplying the representatives of these small towns, if we mean to stand by the basis which we have adopted. I hope, therefore, that the resolve will be properly amended, and then passed. I now renew the motion for the previous question.

The previous question was seconded, and the main question ordered.

Mr. HOOPER, of Fall River. I desire to inquire if the main question is not upon the motion indefinitely to postpone?

The PRESIDENT. The previous question cuts off the motion to postpone; and the question, therefore, now is, upon ordering the resolve to a second reading.

The question was taken, and the Convention refused to order the resolve to a second reading.

Harvard College.

The next business in the Orders of the Day was the consideration of the resolves upon the subject of Harvard College, the question being upon its final passage.

Mr. KNOWLTON moved that the subject be passed over in the Orders of the Day.

The motion was not agreed to.

The resolve was then read by the Secretary.

On motion of Mr. BOUTWELL, for Berlin, the yeas and nays were ordered upon its final passage.

Mr. WILSON, of Natick. Mr. President: Having, for some years, taken a deep interest in the discussions growing out of the questions that have arisen concerning Harvard University; having introduced, early in the session of the Convention, a proposition to authorize the legislature, in joint ballot, to choose the corporators of the University for the term of seven years, I had intended to address the Convention at some length upon the resolution now pending. I have prepared, with considerable care and labor, an argument to sustain the position that the college was founded by the Commonwealth, and that the Commonwealth has the right to change the mode of choosing the board of corporators, and that the interest of the university would be promoted by so doing. I hold in my hand more than fifty closely written pages of quotations from the

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records of the State, from the best authorities I could find, to show the connection of the State with the college, and the powers exercised over its government, through a long series of years.

Sir, had this resolution come up for consideration earlier in this session, I should have claimed the indulgence and attention of the Convention upon this great question—a question upon which the people of this Commonwealth take the deepest interest. But at this time, when we are pressed for time; when we have limited each speaker to half an hour; when all of us are exhausted and weary, I shall forego what I had intended to say upon the merits of the pending resolution. The chairman of the Committee, (Mr. Knowlton,) in his very able speech, has placed the question upon the basis on which we are content to rest it.

I desire, Sir, to say a few words in reply to the remarks made the other day by the member from Danvers (Mr. Braman). I regret that he is not now in his seat. I have not a word to say in reply to the personal allusion made by the member from Danvers. I fully concur in the remark made by Governor Leonard, one of the foremost statesmen of the republic, on the floor of the American Senate, that no man was personally of consequence enough to occupy the time of the body of which he was a member, one minute, by explanations of a personal character. But the member from Danvers came to the defence of Mr. Francis Bowen, who was rejected in 1851, by the board of overseers, of which many of us on the floor of this Convention were members. I am ready, here or elsewhere, at all times to defend that glorious act, which put the hand of condemnation upon the libeller of the advocates of popular rights in the old world and in the new. I am ready to defend that act, whether it be assailed by the polished rhetoric of the gentleman from Boston, (Mr. Hillard,) or the coarse wit of the member from Danvers, (Mr. Braman).

I propose, Sir, to prove the truth of the declaration made the other day, in reply to the charge of the gentleman from Boston, (Mr. Hillard,) that Francis Bowen was rejected, in 1851, not alone for his sentiments and opinions, but for ignorance of the historical questions discussed, and for misquoting, misstating, and garbling historical authorities.

Mr. PARKER, of Cambridge. I rise to a question of order. It is the prevailing fashion, I believe, to make points of order. The question which I wish to suggest is, whether it is in order for the gentleman from Natick to try the case of the Professor of History over again. That subject, Sir, was drawn into the debate here, I mean the subject of the rejection of the Professor of History. I believe, in the first place, there were some remarks made by the gentleman from Boston, to which the gentleman from Natick, and the gentleman from Abington, made their replies at the time. I had hoped that that subject—a subject foreign entirely to any business before the Convention—might, at least, have been suffered to rest there; but the gentleman from Danvers, some days since, saw fit to allude to the matter again, and the gentleman from Natick replied to him without any objection being made. Having been up twice before the Convention, it seems to me the gentleman who was nominated as Professor of History and rejected, should be allowed to sleep

in peace, and not have his case farther discussed before this Convention. It seems to me that the time of the Convention is quite too precious to be wasted in taking up that subject again for farther discussion. There is no gentleman I would listen to with more pleasure than I would to the gentleman from Natick. I do not make an objection because he proposes to discuss the matter, but because it seems to me that it is hardly just towards the gentleman who has been the subject of so much remark, that he should be drawn in here for the third time, without his agency, and without his consent.

The PRESIDENT. The Chair cannot undertake, at this stage of the gentleman's remarks, to say that he is out of order.

Mr. WILSON, of Natick. Mr. President: I am quite sure it would be in order for me to discuss the subject, in order to show that the Convention should adopt the resolution now pending—that the action of the corporation of the college in nominating Francis Bowen to a Professorship after his rejection from the Professorship of History, for his opinions, which unfitted him to be the teacher of American young men, and for his ignorance, exhibited in the discussions of historical questions; demand that a change should be made in the organization of that board of corporators—a change that shall compel the corporators to put that institution along abreast of the spirit of the age. The action of the corporation of the university in sustaining Francis Bowen, is one of the strongest reasons for the action of the Convention; and it is in order to show what that action was, and to explain and defend the motives and action of the overseers of the institution in 1851.

The PRESIDENT. The gentleman from Natick will proceed.

Mr. WILSON. I have no wish, Mr. President, to take up the time of the Convention with the discussion of this subject. I will forego what I was prepared to say, and at some future time I may publish so much of it as I deem necessary to vindicate the action of the overseers of 1851.

Mr. LOTHROP, of Boston. I move to strike out the words "hereafter granted," in the last line of the resolve.

The resolve as amended, would then read:—

Resolved, That the Constitution ought to be amended by adding to chapter 5, section 1, the following article, to wit:—

The legislature shall forever have full power and authority, as may be judged needful for the advancement of learning, to grant any farther powers to, or alter, limit, annul, or restrain, any of the powers now vested in the President and Fellows of Harvard College: *provided*, the obligation of contracts shall not be impaired; and shall have the like power and authority over all corporate franchises for the purposes of education in this Commonwealth.

Mr. LOTHROP. I have no very strong objection to the resolution as it stands at present. I think, however, it will be improved by the amendment I have proposed, because that amendment would make it more general and comprehensive. When this resolution was before us a few days ago, I proposed to amend by including the other colleges of the Commonwealth. That amendment was ruled out of order. It was also said by the chairman of this Committee, that that amendment was unnecessary, because the language of this resolution was already incorporated into the charters of the other two colleges. That

may be, Sir, but we have many other institutions for educational purposes in this Commonwealth, besides those two colleges. We have a great many academies, and some of their charters run far back, some of them dating even at an earlier period than the charters of these colleges. Several of these academies, also, have now a considerable amount of funds at their disposal. Others of them, as has been the case with that at Groton, for instance, may have their funds greatly increased hereafter by rich merchants, who were once pupils of these academies, and natives of the towns where they are located. They may become very important and influential institutions of learning, hold a large amount of funds, and still keeping their charters as academies, may become as worthy of the care and oversight of the Commonwealth, and may demand that care and oversight as much as Harvard University or any of the colleges of the State; and unless gentlemen can say that the provision contained in the first part of this resolution is expressly declared in the charters upon academies, my amendment ought to prevail. If I understand the distinguished gentleman for Berlin, (Mr. Boutwell,) this resolution simply declares expressly and unequivocally in its application to Harvard College, a general principle which, in point of fact, is applicable to every institution created by the State; and if he deems it necessary to make the distinct avowal of this principle in regard to Harvard College, then I think he must admit and maintain—or if he does not, I do maintain—that it is important that the Constitution should not leave it equivocal or doubtful, whether this principle does apply to these academies, or all institutions of learning in the Commonwealth. The Constitution ought not to leave that point equivocal or doubtful. The main reason given by the chairman of this Committee, the other day, for the adoption of the resolution as reported, was that there might be no doubt upon the subject. He contended that the Constitution now virtually gives to the legislature the power which is here given; but there might be some doubt about it, and in order to remove that doubt and make the matter distinct and clear, this resolution was introduced. I say it is equally desirable that there should not be any doubt, whether the legislature has like power over all the institutions incorporated in this Commonwealth for educational purposes. If you retain the words, at the close of this resolution, "hereafter granted," you do leave that matter doubtful; or rather you remove all doubt, and virtually say, that all other institutions for educational purposes, now incorporated, would not come in under the resolution, because the phrase, "hereafter granted," implies that those already granted, are not included. The principal reason which makes it necessary to pass the first part of the resolution, in relation to Harvard College, makes it equally necessary, and equally important, that you pass the same resolution in regard to all institutions incorporated for educational purposes in the Commonwealth. It is desirable that the academies of the Commonwealth; some of which may become very important institutions hereafter, hold a large amount of funds and exercise a wide influence, should be included under the same general rule, which is here expressly applied to Harvard College, which by their charters is applied to the other colleges, and which by the terms of the resolution is to be henceforth applied to all "corpo-

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rate franchises henceforth granted" for educational purposes. Unless there is in the resolution something specific and peculiar aimed exclusively at Harvard College, there can be no objection to my amendment, and every reason that can be given for the adoption of the resolution at all, applies with equal force to the adoption of the amendment.

I have said that I had no very strong objection to the resolution reported by the Committee. I should have been glad if the Committee had reported something a little more distinct, definite, and full, in relation to this subject. There were various orders submitted to that Committee for their consideration, emanating from opposite sources, and opposite in their character. I was in hopes that the Committee would, in their Report, refer to those orders, and that they would indicate pretty distinctly what they thought were, or ought to be, the relations subsisting between the Commonwealth and the university at Cambridge, and what line of policy it would be wise to pursue in relation to the college. I do not know whether the Committee intend to report farther in relation to these orders, or not. As this resolution has been explained by the gentlemen, I have no particular objection to it. If it is intended, as they say it is, simply to give the State of Massachusetts all the right, power, and control over the college which it can have, except the power to violate its own faith, break and invalidate its own contracts, and if that is all which the resolution is intended to convey, of course there can be no objection to it. No one will deny that the State has, and ought to have, that power. But, if it is intended to convey anything more; if there is anything concealed; if the provision alluded to, "provided the obligation of contracts shall not be impaired," does not cover the charter of the college, if it is intended that the legislature shall have power to take possession of this whole institution and all its funds, and bring it into the arena of politics and State legislation every year, then I object to the resolution as wrong in itself, extremely inexpedient and impolitic; prejudicial in every point of view to the interests of the college, and to that great object, the advancement of learning and education, which the college is instituted to promote. After the debate upon this subject the other day—if I may be permitted to allude to something which was said out of debate—my distinguished friend representing Berlin (Mr. Boutwell) said to me that I was afraid some harm would be done the college, that I was afraid to trust it with the State, &c. Sir, in one sense, I am not afraid of anything in this world. I believe in God, in his overruling providence, and I believe that progress is the law of that providence. But I do not believe that government has much to do with human progress, and I do not believe in the power of government to do much good in the world. I think that every gentleman must be satisfied, from the discussions which we have had here this very day, from the discussion of the last three months in this hall, that government is nothing but a necessary evil, a nuisance that cannot be abated from civil society. It has never done much, and cannot do much, to carry the world forward. It is the ship, the mariner's compass, the cotton-gin, the spinning-jenny, the printing-press, the steam-engine, the railroad, the telegraph, and all the other discoveries and inventions that result from human thought, and

give impulse to individual action, which have carried the world forward. Government has never done much positive good for the world. It can only prevent some evils, and that is the best you can say of it. The very discussion we have had here this morning, helps to confirm what all human history teaches, that in regard to government there is a continual struggle of conflicting opinions going on. Nothing is settled or determined; all legislation is, to this hour, an experiment; and taking this assembly as a type, I may say that even in this country, at this moment, not a single important principle entering into the organization and structure of civil government can be considered as fixed and established by the consenting wisdom of the people, not one that men are not discussing, and attempting, in some way, to change, modify, or overturn and destroy; and I have not much respect, therefore, for government. I am very glad that with us it is so good as it is; and I submit to it and honor it for what it is worth; but I do not attach much importance to it as an instrument of social progress. I think the great reason why we have made so much progress in this country, is not because of any direct and positive power of the government, but because of the extent to which our government lets the people alone, and leaves institutions alone to individual energy, enterprise, thought, and action. Has the government of Massachusetts raised up Harvard College to be the noble institution it is? By no means. The government permitted it to exist, and individual benefactions, individual enterprise, effort, and wisdom, have made it what it is. Taking into consideration the little government has done for this institution during the more than two hundred years which have elapsed since its foundation, and remembering that of that little, by far the greater part were appropriations to meet its annual expenses, so that the State, and the living generations of youth educated at the college, had then the benefit, and the whole benefit of these appropriations; and remembering, also, that this was done long years ago, at a time when nineteen-twentieths of the people of the Commonwealth were of the same religious denomination; remembering these things—which cannot be denied—I say, that if this resolution is intended to give the legislature power henceforth, to take that institution under its entire and absolute control, and bring the election of its president and fellows, and the direct management of its affairs into the arena of politics and legislation; and, to do this now, at a time when the State is divided into all manner of religious denominations, each of which, if you make it a State institution, may claim a right to be represented on its boards of government, and to have its opinions consulted in the course of studies and text-books appointed; and to do this now, when the institution itself has grown, from a small academy, to be the noblest seminary of learning on this Western Hemisphere, with large means and instrumentalities of education, nearly the whole of which must be acknowledged to come, not from State endowments, but from the donations and bequests of private individuals; if the resolution contemplates giving the legislature power, and an invitation to do this, then I say that I am opposed to it, both as a matter of right and of expediency. I do not believe it would be just for the State to do this. I am sure it would

be most injurious to the interests of the college, and to the great good the college can do the State and the country. A State cannot manage a higher seminary of learning, and make it useful and progressive, so easily or so well as a corporation of private individuals; and, admitting that the corporation of Harvard College have not been perfectly wise, free from all the errors incident to humanity, I yet maintain that neither the State nor any political or religious party in the State, could have managed the college more successfully, or conducted it upon broader, more generous, catholic principles. In this respect it may challenge comparison with any other college in the land. Gentlemen say they desire to make the institution more popular, to infuse a more popular spirit into it, and bring it more into sympathy with the people. Sir, in this desire, I go with gentlemen with my whole heart, so far as it can be done by any wise and legitimate means. I do not concur with gentlemen in the alleged necessity of any extraordinary efforts in this direction. If you look at the history of the college, its present condition and its continually increasing adaptation to the growing intellectual wants of the age, I do not see how gentlemen can stand up here and say that it is not in harmony with the people; that is, with their interests and wants, in regard to education. If a tree is known by its fruits, then I maintain that Harvard College has always been in sympathy with the people, and that, at all periods of her history, the leading popular men of the day have come forth from that college. This fact will be apparent to all who look over the catalogue of the names of the graduates of that institution, from the earliest period down through the days of the Revolution, to our own times. This fact is especially seen, by looking around upon our own community in Massachusetts. I maintain that many of the leaders in every popular movement, made among us at the present day, are sons of Harvard. Phillips, Quincy, Rantoul, Dana, Sumner, Adams, Cushing, Bancroft—are not these the names of men prominent in matters of moral, social, or democratic reform? are they not sons of Harvard? They were educated at that institution; their characters were there subjected to many forming influences, and whatever their present power—intellectual and moral—they owe as much, if not more of it, to Harvard College, than to anything else. Take the whole history of that institution, from its origin down to the present day. I believe it will be found, that the most leading and popular men of Massachusetts; those, in every generation, who have been the most earnest advocates of reform and progress, have been sons of Harvard College. I maintain, and the position is amply sustained by the facts of the case, that the influence always exerted upon the minds of young men at that institution, has been a good influence, an influence favorable to social progress. It has not been a narrowing, bigoted, sectarian spirit which has prevailed there, but a large, generous and progressive spirit; and we have a right to maintain, that that college has, in an eminent degree, contributed to the spirit of popular progress. Upon the principle that a tree is to be judged by its fruit, and looking at the character of those whom Harvard College has sent out into the world, I maintain that the college has never been behind the age, or wanting in sympathy towards the best interests

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of the people. The same position is true, if we look at the college itself, and the provision made to meet the educational wants of the people. I ask if there is any kind of learning, education, or preparation for life, which the people of this country desire for their children, that is not provided for them at that institution? Has not that college continually made progress in all directions, through the efforts of its friends, and the enterprise of those who have had charge of it? Look at its academical department now, and see what progress has been made there, in enlarging and perfecting its course of study. Look at its law school, with the best law library to be found upon this continent, if, indeed, there is a better in any place in the world. Look at its medical department, and its scientific school, founded by a munificent donation of \$50,000, from a distinguished merchant of this city, one of those rich men, of whom, as the gentleman said, we might kindly lay a thousand of them under the sods of Mount Auburn and not miss them. Look at the arrangements of that scientific school, and the facilities which it affords for thoroughly educating men for all the practical purposes of life. Look at its divinity school, and the principle upon which that school is founded; and I ask if it would be possible for the State to take control of it, and make a broader, better, more catholic and Christian foundation than the one upon which that school now rests? No man going there to acquire theological education, is called upon to subscribe to any articles of faith, or the doctrines of any particular denomination; nor is such subscription required of any professor; but every one connected with that school is at liberty to study the Divine Oracles, and interpret them according to the dictates of his own conscience, and gather from them what he deems to be their true meaning, and go forth into the world to connect himself with whatever religious denomination he chooses.

I say, look at the college in all these departments, and see if it has not constantly endeavored to come up to the wants of the people of this Commonwealth by presenting the means and opportunities for the best education that could be procured in the country. Has there ever been, on the part of those who have had charge of this institution, any action, which, fairly construed, could be regarded as an expression, or evidence, of their want of sympathy with the people? or has there ever been, as regards education, any want expressed, or manifested, by the people, which they have not endeavored to meet? I do not think, therefore, that we have a right to say that the college has no sympathy with the people, or with popular wants and interests, merely because the corporation of the college is a close corporation, as it is termed, and its members, in filling vacancies, have chosen men with whose characters and principles they were well acquainted, and who, they believed, would sympathize and unite with them in administering the college upon broad, catholic, unsectarian principles. The college was not established that the offices in its corporation might be for the benefit of those who hold them,—a benefit in which the whole community might have a right and claim to share. The offices in its corporation exist, that the college may be well administered; that it may be carried forward, as a seminary of education, in all the great departments of learning. And the only question of

any practical importance, is not, whether this or that man, of this or that political or religious party, has been chosen a member of the corporation, but, has the college been well administered; has it grown in means and instrumentalities of education, and in adaptation to the wants and progress of the age? And this question, I maintain, must be answered in the affirmative. No other institution of learning in the country has made greater, if any have made as great, progress during the last half century, as Harvard College. The offices in its corporation are offices of labor and responsibility, and they have been well filled, hitherto, throughout the whole history of the college, by men who had no object but to promote the best interest of this community by promoting the advancement of that institution. If we review the history of the college, therefore, if we review the catalogue of its graduates, and consider the present condition of the college, and all its instrumentalities for the promotion of learning, we shall find that all who have had the control of it have endeavored, according to their best judgment and ability, to bring it into sympathy with the wants and interests of the people, and make it promote their welfare and interest by the advancement and diffusion of sound learning.

As this question about the organization of the college is one of some interest, I may be permitted to say, that if I was supreme in this matter, and could take the colleges of the Commonwealth, and organize them according to my own judgment, I would adopt a plan which I propose to state, and I was in hopes that the various orders submitted to the Committee, would induce them to take the matter into consideration, and, perhaps, present something of the same sort. I would have a board of trustees for each of the other colleges, precisely similar to the corporation of Harvard College, perhaps a little larger, but still small; and a self-renewing board, which should originate all measures, have all the responsibility, and the controlling power over the institution. I believe that in all matters a small body acts better than a large one, and that a small body, having charge of a college, will be more faithful in carrying forward measures for the benefit of the college and increasing its value to the people of the State, than a large body, where the responsibility is greatly divided, consequently diminished. I would have such a board for each of these colleges, and then I would have a large board of overseers, like the overseers of Harvard College, consisting of fifty for each college; and these overseers should be chosen by the alumni of each college, in convention assembled, holding office for a limited term, or as long as they chose to serve, and I would include in the alumni all who had received honorary degrees in the college.

This suggests to me another point to which I intended to refer, while speaking of the sympathy of the college with the people. If you will look through the list of the honorary degrees it has conferred, you will find that whenever there has been a man who has distinguished himself in any department, but who had not the advantages of a collegiate education, was not a son of Harvard or any other college, the college at Cambridge has been among the first to recognize the merits of such a self-made man, and give him an honorary degree; showing, thereby, that the persons who had charge of the college felt some sympathy for the people, and with every manifestation of

excellence, superiority, and progress, among them.

I would organize these institutions in the way I have suggested, because nothing is so important for any of these colleges, as to increase alike the interest and influence of the alumni of each college, in its prosperity and welfare. A board of overseers for each college, chosen by the graduates, from their own number, of that college in convention assembled, would effectually produce this increased interest and influence. I regret that no distinct plan, no outlines of policy, nothing indicating the precise relations of the college to the State has been reported by the Committee; nothing but a single resolution, which decides nothing, and leaves it doubtful what those who like to speak of the college as a State institution, a government institution, propose to do.

There are one or two positions, which I wish, before I sit down, to state; propositions which gentlemen acquainted with the history of the college, will acknowledge, and which, fairly stated and considered, ought to influence the future action of the State, in relation to the college. The distinguished gentleman for Berlin, (Mr. Boutwell,) has several times spoken of this as a State institution. I believe that in the debate the other day, on a resolution which came from the Committee on Education—I was not present at that time, but I see him reported as using the words "government institution." If it is intended by this resolution, or if it is intended by that gentleman in his remarks, to claim that there is a special relation between Harvard College and the State, which authorizes such expressions, I should take issue with him on that point. The military academy, at West Point, is a government institution; the reform school, at Westborough, is a government institution; the State's prison is a government institution, a State institution. In regard to the reform school at Westborough, the State appoints all the officers, owns all the property, controls and manages the whole thing, in any way, at any point. It is, therefore, a State institution. But, a college, a bank, a railroad, though the State may give funds to it, though the State may be interested in it, though the State may have created it by a charter, it is still not a State institution, but an institution of the State, and is within the control and management of its properly constituted authorities. Now, my first proposition in regard to Harvard College, is this: If we go back to the early history of the college, during the time of the colonial government, I think you will find that the institution made very little progress so long as there was constant interference on the part of the State, with its affairs and interests. The college never began to grow and prosper, and take steps towards the great institution that it now is, so long as the colonial government was constantly interfering with it. It was only after it had worked itself free, to stand on its own foundation, that it began to rise and flourish. The interference of the State affected it in various ways; but more particularly, in regard to the important matter of the presidency of the college. You will find, on looking at its history and reading the record of the board of overseers, that it was almost impossible to get the best men in the State to take the office of president. There were innumerable cases in which gentlemen, who were consulted whether they would take that

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office, declined, because then the salary was precarious, dependent upon an appropriation from the colonial legislature. In other cases, gentlemen who were elected, and had agreed to accept it, had to decline, because the legislature would make no appropriation. My second proposition is, that all, or very nearly all, the funds which the college has ever received from the State, were received as appropriations to meet contingent expenses, to pay the salary of the president and other officers, or defray the expenses of indigent students. These appropriations were all expended during the year when they were made; and the community, the young men of that time, the generations growing up then, had the return for these appropriations to the college, in the education which they received. There is not in a single endowment—

[Here the time allowed under the rule, expired, and the hammer fell.]

Mr. HALLETT, for Wilbraham. I have listened with a great deal of interest, to the remarks of the gentleman from Boston. He made an appeal in this wise: whether Harvard College had ever failed to conform to the wishes of the people in its action. I would not have replied to anything else which the gentleman said, but I do feel it to be my bounden duty to mention one single act in the history of Harvard College, with which I was personally connected, relating to her respect for the laws of this Commonwealth. In 1828 an act was passed by the legislature of Massachusetts, requiring that Harvard College, thereafter, in the filling up of the clerical portion of the board of overseers, should have no respect to denominations. That order or resolve was passed by the legislature of Massachusetts, requiring the concurrence of the board of fellows of the college—five gentlemen—before it could become a by-law of the college. It slept on the statute book from 1828 to 1843; and during the whole of that period, no person was elected to the clerical board of the college, that was not of one particular denomination.

In 1843 a political change took place in the administration of the government of the Commonwealth of Massachusetts, for the first time since 1824. Although there was a majority of the Senate one way, yet with the minority and the Council, there was a majority of the board of Harvard College, of different political sentiments from those who had remained there since 1824.

A MEMBER. Of different religion?

Mr. HALLETT. No, Sir, there was no religion about it; it was all politics. It was then proposed in the board of overseers, that the fellows should adopt a rule, which we re-enacted, that the vacancies, which then amounted to four, in the board, should be filled without regard to denomination. That order passed the board, and was sent down to the fellows for their concurrence, and it remained there one fortnight. The majority of the board took the determination—and I know very well they would have adhered to it as long as they had any vitality, officially—that no nomination coming from Harvard College should be confirmed until the board of fellows did adopt that order. For one meeting, it passed over; but when the fellows found there was a determined resolution to carry out the will of the board of overseers, they accepted the order, and they went on and did the wonderful thing of

electing four clerical gentlemen, taking one from the Orthodox church, one from the Baptist, one from the Universalist, even, and one from the Episcopalian. Those were the four denominations. It was then most alarming and terrifying to a very reverend gentleman of the liberal order of Christians, and he expressed himself with a great feeling of awe and indignation towards some of us, that we were most irreverently laying our hands on Harvard College, to destroy the intention of the original founders of that institution. And thereupon, being brought up as I was, an old-fashioned Baptist—I regret to say that I have not honored the profession as I ought to have done—I said to that gentleman, "Who has perverted the original foundation of Harvard College, if that be the question? What would Harvard, and Ellis, and the rest of them say, to hear the doctrines preached which you preach in your pulpits?" Those doctrines were denounced by the early founders of the college as little better than heresy. We restore to the college, at least, religious liberty, whatever else may be its fate. That was the first time when Harvard College was opened to religious freedom; for she had been excluded from religious freedom in the hands of the liberal Christians! Sir, I am no bigot, on any point; I am as universal a man, as regards religious profession, as can be found anywhere. But that showed to me, what all history shows, that you cannot trust anything connected with religious freedom, in the hands of one denomination. I would not have trusted the Orthodox, any more than the liberal Christians. For I remember—and this is an illustration of that idea—that there was one Orthodox clergyman in that board. How he got there, I do not know; but he happened to be there, in solitary grandeur, and when we proposed to him that we were going to open Harvard College to all denominations of Christians, he was most delighted, and clapped his hands with joy, and said, "I go with you." But when we went farther, and proposed to introduce the Rev. Mr. Ballou, a Universalist clergyman, this reverend gentleman was horrified at the idea of opening it to every-body, and protested against it.

The conclusion of the whole matter is—and I appeal to the liberality of the last gentleman who spoke, and a more liberal and enlightened gentleman I do not know, and there is none for whom I entertain a higher respect, for I would trust him sooner than any denomination, or his own denomination—whether the supervision of the legislature has not had a pure, wholesome, beneficial influence, over this institution, in which we all take pride. That is just what you want, and nothing more: and whenever the influence of sects come in to disturb your legislature here, and your people behind them, are the best possible source to go to, to correct these evils. I think, therefore, this resolve should pass, precisely as it is; and that it should pass with the most cordial understanding between us, and the people when they adopt it, and Harvard College, which I trust we shall guard as the apple of our eye, and as the fountain from whence are to flow streams of purity and intelligence, to elevate and purify the land.

Mr. WILSON, of Natick. Mr. President: My friend from Boston, (Mr. Lothrop,) has opened a subject, upon which I have a few words to say. He has spoken with all the ardor and generosity

of his nature, of the liberality of Harvard College, and of the men who direct and control it.

Mr. LOTHROP. If the gentleman will allow me, I will tell him what I said. I referred to the efforts of these men to keep the college along with the wants of the people.

Mr. WILSON. The gentleman, as he states, spoke of the efforts of these men to keep the college along with the wants of the people. But he held out the idea, also, that in its management, it was guided by men of liberal opinions, who kept it abreast of the spirit of the age—along with the sentiments and opinions of the people. Upon this theme, the gentleman descanted with all the ardor of sincere conviction. Now, Sir, I have a word to say upon this topic, thus introduced by my friend from Boston.

In looking over the catalogue of Harvard College, I am not able to find a single name of a corporator, for more than half a century, which is not associated with one sect in religion, and with one party in politics. I may be mistaken; but out of the last thirty-three corporators, who have been appointed during the present century, I do not see a name that is not connected with the Unitarian sect, in religion, and the Federal and Whig parties, in politics. I must say, Sir, that it seems to me exceedingly strange, that the corporators of that institution—an institution founded by the Commonwealth—incorporated into the Constitution with the injunction that the government should foster and cherish it—should so manage it, that one religious sect, and one political organization, should alone be represented in that corporation. The corporators have the control of the university—they fill all vacancies in their number, that happen by death or otherwise. For fifty years, in spite of the remonstrances of all other religious sects, and of all other political organizations, they have continued to fill up the board of corporators with men of their own creed and political faith. I put it to the gentleman from Boston—I put it to the members of the Convention to say, if this is an evidence of liberality—an evidence of keeping along with the sentiments, and opinions of the people?

Furthermore, during a long series of years, the permanent overseers of the institution have nearly all been of one political faith, of one religious creed. In 1851, the legislature, under the lead of a distinguished gentleman, (General Cushing,) passed an act reorganizing the board of overseers.

At that time, there were thirty-one permanent overseers, of whom, twenty-seven were of one political party, and twenty-five, of one religious sect. By the provisions of the act of 1851, it was made the duty of the legislature, in joint ballot, to choose the overseers, and by the legislature of 1852, ten were accordingly chosen. The men who, for years, had complained of the exclusiveness of the corporators and overseers of the university, having then the power, determined to act up to their professions, and to set an example, which they hoped future legislatures would imitate. A meeting was called in the Senate-Chamber of Whigs, Democrats, and Free Democrats. Over that caucus of the members of three parties, I had the honor to preside; and I can bear witness to the desire expressed on all sides, to select men of learning and ability, without regard to parties, or sects. The delegate from Boston, (Mr. Gray,) a devoted friend of the university, was present, and he can tell you, Sir, that the meeting was

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unanimous in the sentiment, that men of learning and talent, of all sects and parties, should be selected. Ten gentlemen were nominated, three Whigs, three Free Democrats, and four Democrats, and the various religious denominations were represented; the Unitarians having three, although they had thirty-one, out of the existing thirty-seven corporators and overseers. The two branches of the legislature, went into convention, and the persons nominated, were elected without any opposition whatever. The men who had for years, justly complained of the policy by which nearly all the religious denominations were kept out of the corporation and board of overseers, thus set to future legislatures a glorious example of liberality, which, if followed, will cause all parties and sects to be represented in the board of overseers, by their most gifted and competent men—an example, which, if imitated by future legislatures, and by the corporators, will restore to the university, the affectionate regards of the whole people, lost to some extent, by fifty years of sectarian and political exclusiveness and illiberality.

By the provisions of the act of 1851, it became the duty of the legislature of 1853, to elect ten overseers. Day after day, no action was taken towards the performance of this duty. Efforts were made by gentlemen, who were anxious to follow the example of the legislature of 1852, and select persons of all sects and parties, to induce the leading members of the majority to hold a caucus with the minority, for the nomination of candidates. Mr. President: I know that these efforts were made—but they were made in vain. Under the pressing influences of men outside of the legislature,—men who claim to be the exclusive friends of the university,—the political majority of the legislature of 1853, went into a party caucus, and nominated ten candidates, eight of whom were of their own political faith. One political party, that gave more than a fourth of the votes of the State, at the last election, was entirely excluded from the list of candidates. This is the way the political majority of the legislature of 1853, responded to the example of liberality, set by the legislature of 1852. Sir, I assert what I know to be true, that this act of partisan exclusiveness, was performed under the influences of the men, in, and out of the legislature, who for years, have justified the exclusiveness and illiberality which have prevailed in the corporation and board of overseers.

Mr. HUNTINGTON, of Northampton, (interrupting). I wish to inquire of the gentleman from Natick, whether he intends to charge upon Harvard College, the action of a political party, here, last winter?

Mr. WILSON. I will tell the gentleman from Northampton precisely what I mean. There is a class of men in, and about the city of Boston, who seem to think that they were born to guard, guide, govern, direct and control, Harvard College. With the cry of "No party! No sect!" upon their lips, they have ever evinced the spirit of partisan and sectarian bigotry, intolerance, and exclusiveness. These men strongly objected to the act of 1851, but they acquiesced in it, because they could not help themselves. Last winter, knowing that there were men here whom they could use, they came here, and used these men to effect their purpose.

Mr. HUNTINGTON. I hope the gentleman

from Natick, does not mean to charge the acts of that party, upon the corporators of the college.

Mr. HILLARD, (in his seat). Or on the city of Boston.

Mr. WILSON. I do not, Sir, mean to charge it directly, or indirectly, upon the corporators of that institution, upon the president of that institution, or upon the overseers of that institution. I charge it upon a certain class of individuals, who seem to think that they own the institution, president, corporators, overseers, and all—a class of individuals who assume it to be their mission to keep Harvard College from the influences of the outside barbarians. I would not, if I could, take Harvard College from one sect of religionists, and place it under the control of another sect. I would not take it from the control of one political party, and place it under the control of another political party. I would introduce, into its government men of all religious sects and of all political parties, men of genius and knowledge; men devoted to the cause of sound learning and literature; men of liberal ideas; men who would bring that institution, founded by our fathers in their days of weakness, abreast of the progressive march of the age, and within the circle of popular sympathy.

Mr. President: In 1850, Francis Bowen, editor of the *North American Review*, was nominated Professor of History by the corporators of Harvard College. On the 6th day of February, 1851, his nomination came up for confirmation before the board of overseers in the Senate-Chamber. A majority of the board of overseers of that year, believed that he entertained sentiments and opinions which unfitted him to be a teacher of history in that university, or anywhere else in America, and he was rejected—ignominiously rejected—rejected for sentiments and opinions that disqualified him to be the teacher of American youth; and rejected, also, for the historical ignorance he had shown, for the perversions, misquotations, and blunders he had made in defending his obnoxious sentiments and opinions.

Sir, I ask the gentleman from Boston, (Mr. Lothrop,) if the nomination of Francis Bowen to the Professorship of History, by the corporation of Harvard College, in 1850, was an evidence of the desire of the men who control that institution, to keep it along with the wants of the people, and the spirit of the age? Are such sentiments and opinions as Bowen has expressed for years through the *North American Review*, such sentiments and opinions as fit him to teach the young men of Massachusetts, and of the country? Are such historical mistakes, blunders, and perversions, as he has exhibited in his Hungarian controversy, evidences of the qualifications to teach the young men of Harvard? Is such dishonesty as he has shown in garbling historical authorities, an evidence of fitness for the chair of the Professorship of History in the oldest university of the country? Is such a temper as he has manifested in the controversies growing out of his historical discussions, an evidence of his fitness—of his impartiality? His sentiments, opinions, historical ignorance, mistakes, perversions, blunders, plagiarisms, and garbling of authorities, were not unknown to the corporators when his name, in January, 1851, was submitted to the board of overseers. When, on the 6th of February, his nomination came up for confirmation, they were there—not to withdraw the nomi-

nation, in obedience to the almost united voice of the American press and the American people, who loathed and abhorred his sentiments—but they, and the peculiar friends of the college were there, to sustain the man whom the voice of the people had pronounced unfit to be the teacher of American youth. And, Sir, when the majority of the board of overseers had rejected their nomination, that board of corporators, sustained by the self-constituted friends of the college, seized the first accidental opportunity that turned up, to place that man in the chair of the Professorship of Moral Philosophy.

These men knew Bowen's sentiments; they knew he had been proved ignorant of the subjects he professed to understand; they knew he had been convicted of dishonesty in garbling, perverting, and misquoting historical authorities; they knew that the public, with a voice approaching unanimity, demanded his rejection; yet they pressed his nomination, and when that nomination was rejected, they seized the first opportunity to obtain a snap-judgment for him, and placed him in a professor's chair. Does the member from Boston, (Mr. Lothrop,) think this an evidence of liberality—of a desire to keep along with popular opinion?

Mr. President: The men who have thus, in defiance of the popular voice, sustained Francis Bowen, cannot plead ignorance of his sentiments and opinions. For several years he has edited the *North American Review*—a journal which claims to be the leading literary organ of the country; but which, in comparison with the English Reviews, in ability, learning, and scholarship, is something like a comparison between a Cape Cod fishing-smack and a line-of-battle ship. Through the columns of this journal, for years, he has avowed sentiments and opinions which show that whatever passes through his mind is perverted—that it is impossible for him to comprehend the true relations of events, or to give a truthful and philosophic view of the events of history in the old world or in the new—of the events of the past, or of the events of the present day. Narrow, bigoted, intolerant, he and the class of which he is the head, have converted the *North American Review*—once graced by the genius and learning of Edward Everett, and the ripe scholarship and comprehensive views of Alexander H. Everett; a journal once presided over by that liberal and true-hearted scholar, John G. Palfrey; by Jared Sparks, who has done more for American history than any other man in the country; and by other eminent men, who made the *Review* worthy of the country and of its rising literature—he, and the class of which he is the head, have converted that *Review* into a narrow, intolerant, bigoted organ of that conservatism which shrinks from everything progressive, at home or abroad. Could the spirit of William Gifford—who battled with such ferocious vigor and ability through the *London Quarterly Review*, against the spirit of progress, against the rights of the many and for the exclusive privileges of the few—come back to earth, he would be delighted with its tone of fanatical conservatism, if he did not feel utter contempt for its want of power, vigor, learning, and ability. Through the columns of that journal, Francis Bowen has poured out his slanders and libels upon the great leaders of European Republicanism. Men illustrious for genius, ability, learning, eloquence, and self-sac-

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rificing patriotism—men who have perilled all for the cause of republicanism; men who have been driven into exile for their devotion to popular rights—are sneered at, libelled, and slandered, by this Professor of History—this teacher of Moral Philosophy—through the pages of his journal.

When the reaction of 1850 overran Europe—when the high hopes excited by the popular revolutions of 1848 were buried in the graves and dungeons of the martyrs of freedom, quenched in the blood of the people; when the voice of freedom was heard only in the murmurs of the down-trodden masses, or in the sad accents of their exiled leaders; when Hungary went down before the armed intervention of Russia; when the hopes of Italy fell before the soldiers of Louis Napoleon; when the hopes of the friends of republicanism in France, Italy, Germany, Hungary, and on all the continent had failed; when the prisons were crowded with patriots; when banishment was the sad fate of some of the noblest men of the age; when Kossuth was languishing in his Turkish exile—Francis Bowen placed the *North American Review* on the side of the oppressor, and falsified and garbled even the oppressor's historical authorities, in order to blast the names of the champions of freedom. When Kossuth was in a Turkish prison, Francis Bowen sneeringly called him “a renegade,” “a fanatic and ultraist,” “a demagogue and radical of the lowest stamp.” Such were the epithets applied to one whom so many now here have welcomed to this Commonwealth, where he won all hearts by his noble qualities of mind and character. Mazzini, Garibaldi, and the Italian patriots, are denounced as “conspirators” and “brigands.” And, Sir, this man—this libeller of European republicanism—this narrow, bigoted advocate of a conservatism that shrinks from all change, is the man selected by the corporators of Harvard College to teach the young men of that University history and moral philosophy!

Mr. President: while this Convention has been in session, another article has appeared in that *Review*, which has met the sternest rebuke of the press of the country. This article is in perfect consistency with its general tone and character. I hold this Professor of Moral Philosophy personally responsible for every line and sentence of that article. He is the editor of the *Review*, the articles in which appear without the names of the writers. He is responsible to the literary public, to the country, and the world, for its articles. No matter who he employs, whose brains he taxes, whether he gets some one here, or whether he purloins his articles from French absolutist writers without giving any credit, he is morally and legally responsible for what appears in that journal. The *New York Commercial Advertiser*, a journal of the conservative school, which has heretofore sustained the *North American Review*, condemns the article in the most pointed manner. Says the *Commercial*:—

“The July number of that periodical contains an article entitled ‘France, England, and America,’ from which we must strongly and earnestly dissent, as utterly unworthy of a writer living in a republic, and professedly entertaining republican opinions. If the *North American Review*'s conservatism leads to the conclusions broached in the article under notice, we judge it to be high time that its publication office be removed from Boston to Paris, Vienna, or St. Petersburg.

“The general principles laid down at the commencement of the above quotation, the entire tone of the article in question, and the offensive and contumelious epithets heaped upon the friends of republicanism upon the continent of Europe, betray the writer's secret dislike of republican institutions, and his heart-felt admiration of absolutism. Not the writer, however, but the *North American Review* is to be held responsible for the publication and circulation of such sentiments; and much as we have hitherto respected that periodical for its conservative tone and manly but courteous independence, we are constrained now to say, that if such are hereafter to be its teachings, it will no longer be a fit instructor for the people of the United States, and ought to be repudiated by every American citizen.”

The Boston *Evening Transcript* quotes these remarks with approbation. Says the *Transcript*:—

“We notice with pleasure that a journal of the high character and ability of the *New York Commercial Advertiser*, administers a severe rebuke to the editor of the *North American Review* for the anti-republican sentiments expressed in the article on ‘France, England, and America,’ in the July number. We believe the *Commercial Advertiser* expresses the almost universal voice of the public upon this question; for, however much persons may differ upon affairs of domestic policy which relate to the government, we think that few can be found to sympathize with the *torgism* of the *North American Review*.”

The *New York Tribune*, whose sympathies are on the side of freedom at home and abroad, notices the *Commercial Advertiser*'s rebuke of Bowen in the following language:—

“The *Commercial Advertiser* is mildly shocked by an article in the last *North American Review*, justifying the usurpation of Louis Napoleon, effected, as it was, through perjury, treason, and wholesale murder; declaring him ‘the lawful heir of an empire,’ denouncing the republicans of France as an insignificant faction composed of ‘a few poets and theorists, four or five journalists, and one or two thousand ruffians!’ and asserting that ‘*The coup d'état of Louis Napoleon should have been a matter of congratulation to good citizens everywhere, and that ‘The dynasty of Napoleon, restored at last to its natural place in the affections of the French people, ought to be cordially recognized and supported by the active sympathies of the country.’*”

“How came the *Commercial* to have opened its eyes so tardily? When that infamous *Review* was industriously and unscrupulously engaged in lying down the patriots of Hungary, and defiling their green graves with its venom, we cannot remember that the *Commercial* devoted any considerable space to an exposure and reprobation of the palpable falsehoods it profusely vomited through issue after issue. When a Whig board of overseers, reversing the just action of its Coalition predecessor, rewarded this base successor of Benedict Arnold with the Professorship of Philosophy in the State's University, we heard no whisper of remonstrance from the *Commercial*. Then why not let the creature earn another instalment of despot's gold, red with the blood of martyred republicans, as quietly as before?”

I commend, Mr. President, this language of the *Tribune* to the consideration of the gentleman from Boston, (Mr. Hillard,) who charged us the other day with the crime of proscription for rejecting his nomination for the Professorship of History, “thereby,” in the words of Bowen, “despoiling him and his family of their daily bread.” I commend this language of the Whig *Transcript*, *Commercial Advertiser*, and *Tribune*, especially to gentlemen who last winter placed in

the board of overseers persons willing to aid in confirming the man who had once been justly rejected as unfit to be the teacher of the young men of the country.

I have said, Mr. President, that Francis Bowen, in his articles in the *North American Review*, on “The War of Races,” and on the Hungarian question, had exhibited historical ignorance; that he had misstated, misquoted, and garbled historical authorities. In reply to the charge made by the gentleman from Boston, (Mr. Hillard,) that he had been proscribed, in 1851, for his opinions, I took occasion to say that he was rejected, not alone for his opinions, but for the historical ignorance he had manifested in supporting his opinions. The member from Danvers (Mr. Braman) travelled out of his line of argument, the other day, to say that this was a bold declaration for me to make. A bold declaration for me to make!

Sir, here and now I repeat the declaration. Here and now—on the floor of this Convention, which has enrolled in its list of members the gentleman from Boston, (Mr. Hayward,) the gentlemen from Roxbury, (Mr. Lowell and Mr. Putnam,) three of the seven corporators of the university, the two learned and distinguished professors of the law school of the university, (Mr. Parker and Mr. Greenleaf,) and the gentlemen from Boston, (Mr. Lothrop and Mr. Hillard,) members of the board of overseers of the university—I renew and repeat the declaration that Francis Bowen was rejected in 1851 from the Professorship of History for his sentiments; for his historical ignorance, and for misstating, misquoting, and garbling historical authorities. Here and now I proceed to establish the truth of this declaration by authorities that cannot be questioned here or elsewhere.

In January, 1850, Francis Bowen's first article on “The War of Races” appeared in the *North American Review*; in April, 1850, his second article was published. It is said, Sir, that these articles secured his appointment of Professor of History by the corporators of Harvard University. This may or may not be so. A distinguished literary gentleman of Cambridge is said to have remarked that Mr. Bowen fell into eight historical blunders in his articles on the Hungarian question, for which he was made Professor of History—that in defending his blunders he told eight falsehoods, for which he was made Professor of Moral Philosophy. [Laughter.] Of course, Sir, I do not vouch for the literal accuracy of this criticism of the poet and scholar to whom I allude; but, really, the witticism gives a not very incorrect idea of the character of these appointments.

Whatever may have been the reasons of the corporators for his nomination, the opinions which unfitted him to be the teacher of American youth had been published when it was made; and when his name was submitted in 1851 to the overseers, his historical blunders, mistakes, misquotations, and plagiarisms, had been exposed. His articles were severely criticized in various quarters—by the presses of Boston, New York, and Washington—by journals of every shade of political opinion. They were almost universally condemned by the press of the country, so far as it saw fit to notice them at all. Conducting at the time a public journal in this city, I had an opportunity to know something of the opinions of the press on the subject. My friend from Concord, (Mr.

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Hazewell,) a gentleman of vast historical acquirements—a sort of walking encyclopedia of historical facts—through the columns of the *Boston Times*, had exposed the ignorance, perversions, and blunders of the author of these articles. The *Evening Transcript*—edited by Epes Sargent, a gentleman of literary reputation—had severely criticized them much to the annoyance of Mr. Bowen and his little coterie of “mutual admiration” friends. The *New York Evening Post*—edited by William C. Bryant, one of the first, if not the first, of living American poets, a scholar and man of genius who comprehends the spirit of free institutions—had also condemned the sentiments and exposed the errors of these articles. The *New York Tribune*—conducted by Greeley, Dana, Ripley, Taylor, and others, combining an amount of talent and culture unsurpassed, if equalled, in the press of this country—had likewise criticized and exposed Mr. Bowen’s historical blunders, mistakes, and misrepresentations. The *Washington Republic* and other leading journals, condemned, not only the sentiments and opinions avowed in those *North American* articles, but they showed that the writer pretended to knowledge he did not possess, and that he did not deal honestly by the authors he pretended to cite.

But the most thorough reply to Mr. Bowen appeared in the *Christian Examiner* of May and November, 1850, from the pen of Mrs. Mary Lowell Putnam, of Roxbury. Mrs. Putnam is a lady of distinguished ability and learning, whose rare knowledge of the languages and literature of Eastern Europe, gave her peculiar facilities for such a controversy. The member from Roxbury, (Mr. Putnam,) himself a member of the corporation of the university, and the learned editor of the *Christian Examiner*, can tell you, Sir, that Mrs. Putnam is a lady of eminent learning, and better fitted to treat the topics discussed by her than any other person in the country. Mr. Webster, at the congressional banquet to Kossuth, quoted her as the highest American authority on the history of Hungary.

Well, Sir, in the *Christian Examiner*, Mrs. Putnam proved, in a manner entirely satisfactory to every one who read her reply, that Bowen’s articles were a tissue of historical blunders, of perversions, of falsifications, and of plagiarisms. She demonstrated that he had pretended to knowledge on the subject he did not possess. She demonstrated that he had deliberately misquoted the authorities on which he pretended to base his articles, and had perverted them by omissions to such an extent, and in such a manner, as to make them appear to say just the reverse of what they really meant. She showed that his first article was taken almost wholly from the *Revue des Deux Mondes*, a French magazine, conducted by men hostile to freedom and democratic institutions—whose statements and arguments he had perverted in a most outrageous manner in order to make out a case against Hungary and in favor of Austria. He had placed at the head of his article the work of Degerando, a reliable French writer on Hungary. Mrs. Putnam showed that he had not used that work at all in the article, and that “there is not,” to use her language, “a statement of fact or opinion in the article which can be attributed to Degerando; and that the greater part of it is in direct contradiction to the statements of that author.” Mr. Robert Carter, of Cambridge,

who has published a pamphlet upon this controversy, states that of the sixty pages of Bowen’s first article, fifty are translated, without acknowledgment, from the partisan French magazine to which I have referred. Mrs. Putnam proves that in his zeal to vindicate his anti-Hungarian views he went beyond the French writers he plagiarized, so “that” to use her own words, “there is hardly a sentence in which an error is not either expressed or implied.”

One or two instances of Bowen’s perversions will be sufficient to show the character of the articles, which, it is said, secured his nomination to the Professorship of History. In giving an account of Kossuth, he translates, in his first article, without acknowledgment, from the French magazine, passing it off as his own until he arrives at a passage in which the French writer says that Kossuth is “a democrat of the new revolutionary school, who will seek to get rid of the nobility when he shall have got rid of Austria,” and that he “has not feared to overthrow the whole political and social state of his country, to realize dreams of universal equality, more chimerical in Hungary than anywhere else.” This passage Bowen is too dishonest to plagiarize. It will not answer his purpose. So he omits it and inserts a piece of his own composition, in which Kossuth is accused of being an aristocrat, whose object was to preserve the feudal privileges of the nobility and to maintain the aristocratic supremacy of the Magyar race! Such is the bitter hostility of Bowen to the Hungarian cause,—to Kossuth and his associates,—that he will not plagiarize what the French writers have said in favor of the Hungarians, although he is not ashamed to steal their slanders upon Hungary and its patriotic defenders. In another case, in order to throw discredit upon the government of Kossuth, he pretends to quote from a German work on the history of Hungary; while in reality, as Mrs. Putnam shows, the quotation is not to be found in the German work, but is a mere extract from an anonymous article in the *London Atheneum*. And these are not rare instances at variance with the general character of his articles. I might, if I had time, quote several instances to prove his ignorance of the historical subjects discussed by him, and his perversions of the authorities he pretends to quote. I will read what Mrs. Putnam says in the *Christian Examiner*, of the first of his articles:—

“We are reluctantly compelled to affirm that there is no portion of the article on the ‘War of Races,’ on which the reader can safely rely. We do not exaggerate, and we believe that all those persons who have an acquaintance with the history of Hungary, and who have read the article in the *North American*, will sustain us, when we say that there is hardly a sentence in this article in which an error is not either expressed or implied; and in many portions of it error is so interwoven with error that the baffled critic turns from the task of refutation as from the entrance to an inextricable labyrinth. We are disposed to believe that the absence of any formal and labored confutation of the article on the ‘War of Races’—to which absence the author appeals as a proof of its invulnerability—may be attributed to the herculean labor which the task of correcting all the errors contained in this historical essay seemed to involve, and the great length to which such a confutation must be extended, if the task were thoroughly executed. These errors pervade every part of the article, and are almost as numerous in that portion which relates to those periods of Hungarian history which are most familiar to the

general reader, as in those whose investigation requires a certain degree of research.”

This description is fully justified by the errors she exposed in her article in the *Examiner*.

Sir, before Mrs. Putnam’s reply appeared, a reply to the *North American Review* had been published in New York, from the pen of Count Gurowski, a Polish nobleman of great learning and ability, who is profoundly acquainted with the affairs of Eastern Europe, on the history of which he has published several volumes in French and German. Few men in the new world or the old are better read in European affairs. You, Mr. President, (Mr. Sumner,) can bear testimony to his vast acquirements and profound knowledge of European history. He is an impartial critic, for he is no partisan of the Hungarians and no friend to Kossuth. He says of Bowen’s first and principal article:—

“It is a thick and dark forest of errors in historical, or rather unhistorical quotations, as well as in reasoning. Almost every line requires rectification. Almost all motives assigned to the actions of individuals, as well as to the mass of the people in Vienna, in Hungary, and in the Slavonian countries, are put in a false light, and denote, by the quoted French authorities, perfect ignorance or perfect bad faith. As most of the facts are misrepresented, or shown in the falsest possible light, so almost all the deductions are at least erroneous; and it cannot be otherwise, as a disfigured fact very naturally produces the most false conclusions; and the number of these is infinite, so as to render their rectification impossible.”

Such is the opinion expressed by a critic friendly to Mr. Bowen—for Count Gurowski, at that time, supposed that the Cambridge professor was deceived and misled by the French magazine writers.

Smarting under Mrs. Putnam’s exposure of his gross ignorance, falsifications and misquotations, he came out in two rejoinders in the *Boston Daily Advertiser*. They were scandalously abusive of Mrs. Putnam, accusing her of “vanity,” of “hardihood and recklessness”—of “profound ignorance of history and every other subject—except a knowledge of the Magyar language”—and lastly, of having “deliberately forged historical statements in order to damage his reputation and deprive him of office.” His language towards her throughout his reply was unmanly and disgracefully unworthy of the office which he held. I suppose he thought Mrs. Putnam had travelled out of her woman’s sphere, and that he might, as he did, sneeringly question her claim to the authorship of the article. He did not, however, Sir, descend low enough to call her *Mr. Putnam*. To the member from Danvers, (Mr. Braman,) was reserved the high honor of originating that feeble sneer at a woman. It is probable that the tone and temper exhibited towards Mrs. Putnam by Bowen, in his replies, may have won for him the admiration and support of the member from Danvers. “A fellow feeling makes us wondrous kind.” Bowen will doubtless be highly gratified to learn that there is another man in Massachusetts—and he a member of this Convention—capable of offering an insult to a woman.

Bowen, in his reply to Mrs. Putnam, attempted to defend himself by gross perversions and misquotations of her language, but I have not time to quote these perversions and misquotations. There were eight points in the ancient history of Hungary, on which she had exposed his igno-

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rance, and upon these he attempted a defence. I hold in my hand a review of that defence, from the pen of Mr. Robert Carter, a gentleman of great historical research and ability. These articles, from the pen of Mr. Carter, were first published in the *Boston Atlas*, the leading Whig journal of Massachusetts at that time, under the charge of my friend from Boston, (Mr. Schouler,) who, to his honor be it said, never allowed his columns to be desecrated by defences of European despotism, or libels upon European republicans. Mr. Carter clearly demonstrates, that in his eight points, Mr. Bowen was mistaken, and that in defending them, he has been guilty of the most shameful garbling of historical works, and of almost equally shameful ignorance of historical facts, with which, at least, every *Professor* of history in the civilized world ought to be acquainted.

I will give but one example of the character of this portion of Mr. Bowen's reply. He had stated in his article that the Turks were expelled from Hungary by John Sobieski, King of Poland, in 1683. Mrs. Putnam pointed out that he was mistaken—that they were expelled by Prince Eugene, in 1718, thirty-five years later. Mr. Bowen, in reply, maintained that he was right, and quoted, in proof, a sentence from the first volume of *McCulloch's Universal Gazetteer*, in which it is said, (speaking of the Hungarian nobles,) "So great was their antipathy to the Austrian yoke, that in 1683 they rose, with Tekeli at their head, and called upon the Turks to relieve them from servitude. Austria, however, succeeded by the help of John Sobieski and Prince Eugene, in expelling the Turks from these countries," &c. This was as far as Mr. Bowen thought it prudent to quote. He omitted the conclusion of the sentence, which reads thus: "Austria, however, succeeded by the help of John Sobieski and Prince Eugene, in expelling the Turks from these countries, and they were finally secured to it by the treaties of Carlowitz and Passarowitz, in 1718."

"The character of this transaction," says Mr. Carter, "is easily understood. Mr. Bowen has a controversy with Mrs. Putnam about the date of an important event in history. He states one year as the date, and she states another. He finds in *McCulloch's Universal Gazetteer*, a passage in which both dates are mentioned—the date for which Mrs. Putnam contends, being given as that of the event in question, while the other is introduced as the date of a totally different event. Mr. Bowen quotes that portion of the passage which contains the date for which he was contending, and stopping at a comma, suppresses the sentence which proves the truth of Mrs. Putnam's position!"

Mr. Bowen subsequently copied his reply from the *Daily Advertiser* into the *North American Review* for January, 1851. Sometime in the previous month, Mr. Carter, in the *Atlas*, had pointed out his garbling of *McCulloch*. Mr. Bowen accordingly withdrew the quotation, and explained its withdrawal, by saying that it had been accidentally substituted by "a mistake of his copyist," for another passage from the second volume of *McCulloch*. That is to say, Mr. Bowen's amanuensis accidentally copied a passage from the first volume of *McCulloch* instead of a passage from the second—a very likely mistake, which, it seems, Mr. Bowen did not discover when he read the proof, nor until some weeks after, when it was pointed out by Mr. Carter, in the *Atlas*.

The passage from the second volume, which Mr. Bowen says he meant originally to quote, reads thus:—[Speaking of Turkey under Solymán the Magnificent.]

"At this period, the Turkish empire was unquestionably the most powerful in the world. Nor had this mighty power even then reached its greatest height. Solymán was succeeded by other able princes, and the Ottoman arms continued to maintain their ascendancy over those of Christendom, until, in 1683, the famous John Sobieski, King of Poland, totally defeated the army employed in the siege of Vienna. This event marked the era of their decline."

Now there is here nothing whatever about Hungary, and nothing that throws light on the date of the expulsion of the Turks from that country. It is difficult to conceive for what purpose it was quoted, except to fill an inconvenient gap. Let me, however, ask the attention of the Convention to the whole of the passage, as it appears in *McCulloch*, and not as Mr. Bowen has published it. The point, it will be recollected, is, whether the Turks were expelled from Hungary in 1683, by Sobieski, as Mr. Bowen asserts, or in 1718, by Prince Eugene, as Mrs. Putnam maintained. Here is what *McCulloch* says:—

"The Ottoman arms continued to maintain their ascendancy over those of Christendom until, in 1683, the famous Sobieski, king of Poland, totally defeated the army employed in the siege of Vienna. This event marked the era of their decline." [Thus far Mr. Bowen quoted and then stopped for a very good reason. The next sentence says:] "For a while they continued to oppose the Austrians and Hungarians with doubtful fortune and various success; but the victories of Prince Eugene gave a decisive superiority to the Christians."—Vol. ii. p. 977.

Sir, these are merely examples which I have selected for their brevity out of scores of cases. There is scarcely a quotation in his articles which is not garbled so as to pervert the sense of the author. Mr. Carter says, after a thorough examination and analysis of his articles: "I do not believe there can be found elsewhere in the English language in the same compass, so many blunders, so many falsehoods, so much literary dishonesty."

Mr. President: On the 6th of February, 1851, when the overseers of Harvard College assembled in the Senate-Chamber to act upon Mr. Bowen's nomination for Professor of History, the knowledge of these things, brought forward and proved as they were by persons of eminent ability and learning, and to that day—aye, to this day—unanswered by Bowen or his friends, convinced a majority of its overseers that duty to the literary character of the country, to the reputation and welfare of the university, demanded that they should vote against his confirmation.

His sentiments and opinions, in the judgment of a majority of the board of overseers, unfitted him to be the teacher of American youth. Those sentiments better fitted him to be Professor of History at Vienna, or St. Petersburg, than at Cambridge. Persons of rare learning and unquestioned ability, had proved him to be ignorant of the historical subjects he pretended to be master of, and that he had misquoted, garbled and misstated the authorities upon which he professed to base his opinions. The member from Danvers may question the ability of the members of the majority of the board of overseers, in 1851, to

decide upon the fitness of Mr. Bowen, for the Professorship of History. But of the ability and intelligence of the members of that board, I need not here speak. Twenty-two of them, I think, are members of this Convention, and when I say that the President of this Convention, (Mr. Banks,) the member for Berlin, (Gov. Boutwell,) the member from Bernardston, (Lieut. Gov. Cushman,) the member for Erving, (Mr. Griswold,) the member from Worcester, (Mr. Davis,) the member from Springfield, (Mr. Beach,) the member for Abington, (Mr. Keyes,) and other gentlemen I cannot stop to designate, were members of that board of overseers, I am sure no one will question their ability to judge of the fitness of Francis Bowen for the Professorship of History. If the member from Danvers were present, I would say to him, that these gentlemen were quite as well informed, in regard to Mr. Bowen's qualifications, at the time of his rejection, as were the corporators at the time of his nomination.

That act of the majority of the board of overseers on the 6th of February, 1851, received the approving plaudits of the people of Massachusetts; and, indeed, of the whole country, without distinction of sect or party, except a little coterie of "mutual admiration" friends in and about this city, and that small class of conservatives, whose bigoted and blind fanaticism makes them sympathize with the privileged few everywhere, and renders them the malignant enemies of liberal ideas and liberal men alike in the Old World and in the New.

About the time of Bowen's rejection, he raised the cry that "a grand crusade of the Coaled Democratic and Free Soil parties has been invoked, that they might obtain possession of the government of the State, for the express purpose of depriving him of an honorable appointment, exclusively literary and educational in its character, which he held, and thereby of despoiling him and his family of their daily bread." The Coalition, I will venture to say, is ready to take whatever responsibility may belong to the deed. And, if the gentleman from Boston, or the member from Danvers, consider him a victim of the Coalition; if they wish to take him upon their shoulders, or to put him on the shoulders of their party, they are welcome to the honor of the burden, and still more welcome to its weight.

Mr. GREENE, of Brookfield. I would like to say that if we go on with this debate, we shall evidently occupy the whole day to-morrow upon it; and as it is desirable that we should close the session of this Convention some time this summer, I move the previous question, and I appeal to the patriotism of gentlemen present to sustain it.

The demand for the previous question was sustained.

The question was then taken on the proposition to strike out the words "hereafter granted" and it was rejected.

The PRESIDENT. The question now is on the final passage of the resolution.

Mr. LIVERMORE, of Cambridge. I move a reconsideration of the vote by which the yeas and nays were ordered on the final passage. I think there is no necessity for the yeas and nays.

Mr. BIRD, of Walpole. I move that the convention adjourn.

[Loud cries of "No!" "No!" "No!"]

Mr. NAYSON. I submit that the previous

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HARVARD COLLEGE, &c. — NAYSON — BIRD.

[July 22d.]

question having been ordered, a motion to adjourn is not in order.

The PRESIDENT. The motion to adjourn is always in order.

Mr. NAYSON. The uniform practice, both in this body as in the legislature, has been, that when the main question has been ordered to be put, the motion to adjourn has been ruled out of order.

Mr. BIRD. In order to settle any difficulty in that respect, I will withdraw the motion to adjourn.

The question now recurred on the motion to reconsider the vote by which the yeas and nays were ordered. The motion to reconsider was agreed to.

The question then being on the motion ordering the yeas and nays, on a division, they were ordered—ayes, 125; nays, 35.

The yeas and nays were then taken, and resulted—yeas, 121; nays, 28—as follows:—

YEAS.

Allen, James B.
Allen, Parsons
Allis, Josiah
Andrews, Robert
Austin, George
Baker, Hillel
Bancroft, Alpheus
Bates, Moses, Jr.
Beach, Erasmus D.
Beal, John
Bennett, William, Jr.
Bliss, Gad O.
Boutwell, Geo. S.
Breed, Hiram N.
Brown, Adolphus F.
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Buck, Asahel
Carter, Timothy W.
Caruthers, William
Case, Isaac
Chapin, Chester W.
Childs, Josiah
Churchill, J. McKean
Clark, Ransom
Cole, Lansing J.
Cole, Sumner
Conkey, Ichamar
Crittenden, Simcon
Cross, Joseph W.
Cummings, Joseph
Cushman, Henry W.
Cushman, Thomas
Dana, Richard H., Jr.
Day, Gilman
Dean, Silas
Deming, Elijah S.
Deuton, Augustus
Duncan, Samuel
Dunham, Bradish
Easland, Peter
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Aaron
French, Rodney
French, Samuel
Gale, Luther
Gates, Elbridge
Gilbert, Wanton C.
Giles, Charles G.
Giles, Joel
Goulding, Jason
Green, Jabez
Greene, William B.

Griswold, Josiah W.
Griswold, Whiting
Hallett, B. F.
Hapgood, Seth
Harmon, Phineas
Heath, Ezra 2d.
Hood, George
Howland, Abraham H.
Hoyt, Henry K.
Knowlton, J. S. C.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Little, Otis
Loomis, E. Justin
Marble, William P.
Merritt, Simcon
Monroe, James L.
Morton, Elbridge G.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Newman, Charles
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parker, Adolphus G.
Parsons, Samuel C.
Partridge, John
Penniman, John
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pomroy, Jeremiah
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rogers, John
Ross, David, S.
Royce, James C.
Schouler, William
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spoonier, Samuel W.
Stevens, Granville
Stiles, Gideon
Sumner, Charles
Sumner, Increase
Tilton, Horatio W.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Weston, Gershom B.
Wilson, Henry

Wood, Charles C.
Wood, Otis

Adams, Benjamin P.
Aldrich, P. Emory
Allen, Joel C.
Ball, George S.
Brinley, Francis
Bullock, Rufus
Bumpus, Cephas C.
Crowell, Seth
Crowninshield, F. B.
Eames, Philip
Hayward, George
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.

Wright, Ezekiel

NAYS.

Huntington, Charles P.
Kellogg, Giles C.
Kendall, Isaac
Knight, Hiram
Livermore, Isaac
Lothrop, Samuel K.
Parker, Joel
Parker, Samuel D.
Putnam, George
Reed, Sampson
Stevens, Charles G.
Tyler, William
Wetmore, Thomas
White, George

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Alley, John B.
Alvord, D. W.
Appleton, William
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Barrows, Joseph
Bartlett, Russel
Bartlett, Sidney
Barrett, Marcus
Bates, Eliakim A.
Beebe, James M.
Bell, Luther V.
Bennett, Zephaniah
Bigelow, Edward B.
Bigelow, Jacob
Bird, Francis W.
Bishop, Henry W.
Blagden, George W.
Bliss, William C.
Booth, William S.
Boutwell, Sewell
Bradbury, Ebenezer
Bradford, William J. A.
Braman, Milton P.
Brewster, Osmyn
Briggs, George N.
Bronson, Asa
Brown, Alpheus R.
Brown, Artemas
Bryant, Patrick
Bullen, Amos H.
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Chandler, Amariah
Chapin, Daniel E.
Chapin, Henry
Choate, Rufus
Clark, Henry
Clark, Salah
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Coggin, Jacob
Cogswell, Nathaniel
Cook, Charles E.
Coolidge, Henry F.
Copeland, Benjamin F.
Crane, George B.
Cressy, Oliver S.
Crockett, George W.
Crosby, Leander
Curtis, Wilber
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, John
Davis, Robert T.

Davis, Solomon
Dawes, Henry L.
Dehon, William
Denison, Hiram S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Durgin, John M.
Earle, John M.
Easton, James, 2d
Eaton, Lilley
Ely, Homer
Ely, Joseph M.
Eustis, William T.
Farwell, A. G.
Fay, Sullivan
Fellows, James K.
Fiske, Emery
Foster, Abram
Fowle, Samuel
Fowler, Samuel P.
Freeman, James M.
French, Charles A.
French, Charles H.
Frothingham, Rich'd, Jr.
Gardner, Henry J.
Gardner, Johnson
Gilbert, Washington
Gooch, Daniel W.
Gooding, Leonard
Gould, Robert
Goulding, Dalton
Graves John W.
Gray, John C.
Greenleaf, Simon
Hadley, Samuel P.
Hale, Artemas
Hale, Nathan
Hall, Charles B.
Hammond, A. B.
Hapgood, Lyman W.
Haskell, George
Haskins, William
Hathaway, Elmathan P.
Hawkes, Stephen E.
Hayden, Isaac
Hazewell, Charles C.
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James
Hewes, William H.
Heywood, Levi
Hillard, George S.
Hindsdale, William
Hobart, Aaron
Hobart, Henry
Hobbs, Edwin
Holder, Nathaniel
Hooper, Foster
Howard, Martin
Hunt, Charles E.
Hunt, William
Huntington, Asahel
Huntington, George II.
Hurlbut, Samuel A.

Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jackson, Samuel
Jacobs, John
James, William
Jenkins, John
Jenks, Samuel H.
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kingman, Joseph
Kimball, Joseph
Kinsman, Henry W.
Knight, Jefferson
Knight, Joseph
Knowlton, Charles L.
Knowlton, William H.
Kahn, George, H.
Ladd, John S.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Lincoln, Frederic W., Jr.
Littlefield, Tristram
Lord, Otis P.
Loud, Samuel P.
Lowell, John A.
Laban
Marvin, Abijah P.
Marvin, Theophilus R.
Mason, Charles
Meador, Reuben
Miller, Seth, Jr.
Mixer, Samuel
Moore, James M.
Morey, George
Morse, Joseph B.
Morton, Marcus
Morton, Marcus, Jr.
Nichols, William
Norton, Alfred
Noyes, Daniel
Nute, Andrew T.
Ober, Joseph E.
Oliver, Henry K.
Orcutt, Nathan
Orne, Benjamin S.
Paige, James W.
Paine, Henry
Park, John G.
Parris, Jonathan
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Daniel A.
Perkins, Jesse
Perkins, Jonathan C.
Perkins, Noah C.
Plunkett, William C.
Pool, James M.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, John A.
Rantoul, Robert

Absent and not voting, 270.

So the resolve was passed.

On motion by Mr. FRENCH, of New Bedford, at a quarter before seven o'clock,

The Convention adjourned until to-morrow morning at nine o'clock.

FRIDAY, July 22, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President *pro tempore*, at nine o'clock.

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LIMITATION OF DEBATE, &c. — HALLETT — BUTLER — KINSMAN — ASPINWALL.

[July 22d.

Prayer by the Chaplain.

The journal of yesterday's proceedings was read.

Order to Print.

The following order, submitted yesterday by the gentleman from Pawtucket, (Mr. Tyler,) was taken up for consideration:—

Ordered, That the Committee on Reporting and Printing, be instructed to append to the published Debates, Poole's Statistical View of the Members of the Convention.

To which the following amendment had been moved by Mr. Earle, of Worcester. Add the following words: "with the amount received by each for travel and attendance."

Mr. TYLER moved that the order be referred to the Committee on Reporting and Printing the Debates and Proceedings of the Convention.

The question on this motion was put by the President, and declared to be decided in the affirmative.

Mr. GRISWOLD, for Erving, demanded a count.

Mr. EAMES, of Washington, said he thought it would be better to adopt the amendment, before sending the order to the Committee.

Mr. HALLETT. As one of the Committee, to whom it is proposed to refer this order, I desire simply to make a suggestion.

Mr. ASPINWALL. I rise to a question of order. I believe, Sir, no debate is permitted.

Mr. HALLETT. The gentleman is somewhat premature with his point of order. I rose for the purpose of moving that the order be laid upon the table. I hope we shall have no more printing, and no more expense of that sort. We are already accumulating our expense for printing. I move that it be laid upon the table.

The PRESIDENT. The question was put on the motion of the gentleman from Pawtucket, to refer the order to the Committee, and the Chair decided that motion carried. The gentleman for Erving has demanded a count.

Mr. GRISWOLD. I withdraw the demand.

Mr. KNOWLTON, of Worcester. I move to strike out the word "instructed," so that it shall be a mere matter of inquiry.

The PRESIDENT. The order is merely in the nature of inquiry, and is referred to the Committee on Reporting and Printing.

Limitation of Debate.

Mr. BUTLER moved to take up from the table the order submitted by the gentleman from Medway, (Mr. Brown,) in regard to the limitation of debate.

The motion was agreed to.

The order was read as follows:—

Ordered, That hereafter, no member, except the chairmen of Committees, be allowed to speak longer than fifteen minutes on any one subject, without leave of the Convention.

Mr. Aspinwall, of Brookline, having on a previous day moved to amend, by striking out the words, "except chairmen of Committees."

Mr. WHITNEY, of Boylston. I would ask if the chairmen of the several Committees have made their final reports?

Mr. BUTLER. If I understand the motion of the gentleman from Brookline, it is to except the chairmen of Committees.

The PRESIDENT. The gentleman from Brookline has moved to strike out the words, "except chairmen of Committees."

Mr. BUTLER. I can hardly agree to that motion.

Mr. KINSMAN, of Newburyport. I expressed my opinion the other day, with reference to the passage of such an order as this, both on grounds of common fairness, and in consequence of the fact that some of the most important questions we have to consider, are yet to be considered, and I will state as an illustration, the mode in which the amendments we agree to, shall be submitted to the people. There appears to be a difference of opinion on the subject, if we can trust the declarations of gentlemen here, and unquestionably that diversity of opinion must lead to debate; it ought to lead to debate, and gentlemen ought to have an opportunity to discuss it freely. There are some things so apparent, that it is scarcely worth while to reason about them; and the injustice of limiting the minority to fifteen minutes, while the chairmen of Committees—all of whom are members of the majority of the Convention—are allowed one hour, is in itself so clear, that it seems hardly worth while to debate it. I shall not debate it. I rose simply to call for the yeas and nays on the adoption of the order.

The call for the yeas and nays was sustained—by ayes, 38; noes, 169—one-fifth of those voting being in favor thereof—and the yeas and nays were ordered.

Mr. ASPINWALL, of Brookline. I suppose, Sir, after the intimation of opinion by the gentleman from Lowell, without the slightest reason given for it, in order to convince and thus influence this Convention, it is altogether useless for me to say anything in favor of my amendment. I suppose the gentleman practices upon the principle, that a nod is as good as a wink to a blind horse, and that an intimation from him will carry the Convention to his side. I do not know how it may be; and whether true or not, I shall say what I think ought to be the action of the Convention in regard to this matter. I disapprove, I have always disapproved, whether I have been on the side of the majority or the minority, of limiting debate. I have never, I believe, voted for any such proposition as is now before the Convention. I have never moved the previous question. I have never seen any use in doing so. I have never seen any good effect result from any of these measures for cutting off debate; but I know the Convention is determined to do something in that way; they have already enacted the half-hour rule, applying to all members except chairmen of Committees. I regarded that as exceedingly unjust. It has already, as every-body has perceived, given to the majority of this body the opportunity to have a fuller expression of their views and opinions than is given to the minority. It is giving them great power; they have every means of arranging all matters to suit themselves; the right of coming into the Convention and explaining fully their views, of going into all the argument and reasoning that they may deem necessary in support of their measures; and then they have the power of preventing the minority from giving their reasons for opposing those measures. The rule was bad enough which limited to half an hour the speeches of those opposing the reports of the Committees, and gave to

gentlemen who advocated them, an hour; but it is a little worse now, for it is proposed to limit the speeches of those opposing the adoption of reports, to fifteen minutes, while the chairmen of Committees are to be allowed an hour to present their arguments in favor of such reports. Now, I ask the Convention, whether this is just and equal; whether there is any propriety in the majority assuming the power, as they undoubtedly do, of giving themselves four times the right of speech which they deal out to the minority? If they think so, they will have the privilege of declaring it. I have assumed the privilege of entering my protest against the injustice of such a proceeding, and having done this, I shall trouble the Convention no farther.

Mr. BUTLER, of Lowell. Sir, it is evident what all this means. It is a favorite way—when occasionally a popinjay gets into the Convention, if by chance any should, though whether they do or not I do not mean to express an opinion—in which he endeavors to influence the action of the Convention, by attempting to hold up some one, as doing that which he ought not to do, and endeavoring to excite prejudice against an individual, and by that means to influence the action of the Convention, which he can accomplish in no other way. But certainly, Sir, the gentleman from Brookline has no reason to complain. He moved his amendment, and has had an opportunity to advocate its adoption. I merely stated that I was opposed to it, and that was tortured into the fact that I had expressed an opinion that I control this Convention, simply for the purpose of bringing about a change of action on the part of the Convention, which could not be done by argument. The next movement on the programme was, the gentleman from Newburyport demanded the yeas and nays; and thus gentlemen who have no disposition to take up time themselves, are compelled to see the time wasted by taking the yeas and nays. Gentlemen who profess to wish to do no wrong, but to discuss the high principles involved in the questions that are presented, choose to have an hour spent in taking the yeas and nays. Very good. They have the power; let them create delay if they will. They say they never saw any good arise from attempting to cut off debate. It is true, there is little gained by it; because, when a factious minority choose to create delay, they are fruitful in expedients for that purpose, by dilatory motions, by getting up and speaking to questions that are not pertinent to the subject under consideration. When they choose to take that course, of course you cannot limit debate. There is no means of suppressing faction in this world; there never has been, and probably never will be.

Sir, I do not propose to argue this question. We have argued it sufficiently. The chairmen of two Committees have had an opportunity to occupy an hour each upon it. And if any gentleman wishes to debate it, I will give up my portion of the time. I have no desire to say a word. I do not, therefore, see any occasion for an attack being made upon me; but if it is made, perhaps gentlemen will find that the time has gone past when an attack can be made with impunity; that while I allow a sick man to attack me without a reply, I may have occasion to twist the neck of some well man, if they do not let me alone.

Mr. ELY, of Westfield. In view of the manner

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in which debate has been carried on for the last few days, I think the less we have of it the better; I therefore move the previous question.

Mr. ASPINWALL, of Brookline. I trust I may be allowed to say a few words.

The PRESIDENT. The question is: Shall the main question be now put.

The demand for the previous question was seconded, and the main question ordered.

The question was then taken on the pending amendment, viz.: that moved by the gentleman from Brookline, (Mr. Aspinwall,) to strike out the words, "except chairmen of Committees," and it was decided in the affirmative.

So the amendment was adopted.

Mr. EARLE, of Worcester. I wish to inquire whether, if this order be adopted, it will require a vote of two-thirds for its suspension?

The PRESIDENT. The Chair is of opinion that it is in the nature of a rule, and will require two-thirds.

Mr. EARLE. If so, I am satisfied.

Mr. KEYES rose and addressed the Chair.

The PRESIDENT. Debate is not in order.

Mr. KEYES. I had no intention to debate. I wish to ask if an amendment is in order?

The PRESIDENT. It is not in order.

Mr. KEYES. I was going to move to strike out the words, "without leave."

The PRESIDENT. No debate is in order.

A MEMBER. I wish to know what the amended order will mean?

The PRESIDENT. It is not for the Chair to explain its meaning. The previous question still applies, and the question now is on the adoption of the order as amended.

The order, as amended, was adopted.

Amendments to the Constitution.

Mr. MORTON, of Taunton, moved that the Convention resolve itself into Committee of the Whole, for the purpose of considering the resolves in relation to the mode of submitting to the people, for their approval or rejection, future amendments to the Constitution.

It is, said Mr. Morton, a subject of considerable interest; and it is of some consequence that it should be disposed of as early as possible.

Mr. GRISWOLD, for Erving. Is the motion debatable?

The PRESIDENT. The Chair is of opinion that debate may be entertained.

Mr. GRISWOLD. I hope that this motion will prevail at this time. There are some subjects on the Orders of the Day, that may be disposed of in a short time, and they are matters which ought not to be delayed. I trust we shall now proceed to dispose of them. And I will say, farther, that I suppose—I know, in fact—

Mr. BRIGGS, of Pittsfield. Is this motion debatable?

The PRESIDENT. The Chair is of opinion, upon reflection, that it is not.

The question was taken on the motion of the gentleman from Taunton, and it was decided in the negative.

On motion of Mr. CUSHMAN, of Bernardston, the Convention proceeded to the consideration of the Orders of the Day, the first subject being the resolves in relation to

The Council.

The question being upon their final passage.

Mr. CHURCHILL, of Milton. I rise to detain the Convention but a single moment, for the purpose of proposing an amendment, which I do upon consultation with many eminent and leading men of the Convention, of all parties, whose approbation or assent to this proposition, I am happy to say I have received. I respectfully ask the attention of the Convention to this amendment while I read it, that they will consider it for a moment, and they will perceive that there can be no objection to it, even if it has no great virtue in it. It is to add an additional resolution, as follows:—

Resolved, That it is expedient to amend the Constitution as follows, to wit: The legislature may provide by law that public notice shall be given of all applications to the Governor and Council, for the remission of the sentences of persons imprisoned for crime.

It will be perceived that it is not intended, by this amendment, to limit, or restrict, or impair, in any way, the exercise of that power hereafter, or to cast any reflection upon the manner in which it has been exercised heretofore. The power to which that amendment refers is one of the highest, most important, and most delicate exercises of sovereignty in the Commonwealth. It touches upon the life and liberty of the subject. It reviews and reexamines the long and expensive investigations of your courts, and may, in proper cases, reverse their decisions. I do not wish to open, in any way, the debate which has already been had upon the subject of the Council. I do not suppose that the Convention desire to open that debate, and therefore I shall not give any lengthy reasons for this amendment. A similar provision exists in the Constitution of the State of New York; and it is well, in calm times in this Commonwealth, to adopt such rules as will tend to our protection and safety in times of excitement and danger; for, although there may not have been, hitherto, any abuse of the pardoning power—as to which gentlemen differ widely—we may have in this Commonwealth such difficulties as have occurred in New York, and Pennsylvania, and other States; and, in such case, this provision will enable the legislature, in some manner to look after the exercise of that power. It does not make the granting of a pardon dependent upon the giving of notice, but it simply allows the legislature, if it shall see fit to do so, to legislate upon the matter of notice for such applications. I believe that every gentleman will see that this may be a useful and practical amendment, and that there can be no danger, whatever, in its adoption.

Mr. BOUTWELL, for Berlin. I wish to say, only, that I entirely concur in the object of this amendment, proposed by the gentleman from Milton, (Mr. Churchill). I think it is a proper one. It leaves the matter in this form: if at any time the legislature shall see fit to declare, by law, that public notice shall be given of the intended application of convicts for a remission of sentence, they may do so; and I think that no executive can object, under any circumstances, to such notice. I hope, therefore, that the amendment may be adopted.

Mr. GRISWOLD, for Erving. I dare say, that this amendment may pass; and as it is to be left with the legislature, it makes it less objectionable. I should be reluctant to disagree in a matter of this sort, with the gentleman who has

just taken his seat; but if I were a member of the legislature, I should oppose such a proposition in that body; and, therefore, I think it my duty to vote against it here. I suppose the object of the amendment is to bring the government officers in to oppose the pardon.

Mr. CHURCHILL. No such object is intended. It is left to the legislature to provide for the giving of such notice as they may see fit; but it is not to bring the government officers in to oppose a pardon.

Mr. GRISWOLD. Then I want to know what the object is? A convict has ordinarily a hard enough chance. He is generally poor and without means—often without friends; and it is difficult enough for him to gain access to the Council. I cannot, therefore, see any object in this amendment, except to notify the government officers that they may come in and oppose a pardon. It seems to me that it is well enough as it is now, and that the chances are against the convict. I have not reflected upon the question, but with my present views I shall oppose it.

Mr. BOUTWELL. If the Convention will allow me, I will state a case within my own personal experience which will satisfy gentlemen that it is well enough that the public, and especially the prosecuting officers and the judges, should know that such application is made; for it necessarily happens that the hearings are very much *ex parte*. No one will contend that a convict should be released without a just and proper claim upon the clemency of the government. Now, it happened in the case to which I refer, that the Council recommended a convict to the executive clemency. I wrote to the judge who tried the case, and he furnished such information as satisfied me that the pardoning power ought not to be exercised. Now, it is not usually convenient for the executive to go out of his way to ascertain the facts which may be in the possession of individuals, and which may not otherwise come under his notice.

Mr. WHITNEY, of Boylston. I hope that this amendment will not be adopted, because I see that it will open the whole question of pardoning and condemning criminals. I think the reasons last given are sufficient to show us that it does open this question. Here is a case where the decision of the executive was determined by facts coming from the officers of the law. This is one case; and may there not be a hundred cases where a man may lose his pardon from the same cause? As the gentleman for Erving has said, the chances are against the criminal; and after a man has had his trial they ought to leave him alone with the pardoning power, and not with the power of the law. Why should the law officers intervene to prevent a pardon, if, after consideration by the pardoning power, the executive should deem him worthy of a pardon? They have all the means of information that they ought to have, and therefore I am opposed to this amendment, because it opens up before the Convention the whole question again.

Mr. LORD, of Salem. I think, Mr. President, that there has really been sometimes in the Council-Chamber a misapprehension as to what the pardoning power is. I have been accustomed to believe that a pardon implied that the person pardoned had been guilty of some offence; that you cannot pardon an innocent man; and I think that all this discussion would have been avoided,

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and the true theory of a pardon would have been sustained, if we had made this provision, that no pardon should be granted upon the ground that the party suing for a pardon was wrongfully convicted, but that it should be the duty of the legislature to provide a remedy in all such cases by a judicial tribunal.

It seems to me that such a provision in the Constitution as that would cover the entire difficulty. The Government and Council represent the people just as much, and rather more than the district-attorneys do. They represent the public wholly upon this matter of pardon, and the district-attorneys have nothing to do with that, and have nothing to do with the question whether a person ought to be forgiven. If a person is to be pardoned, upon the ground that he is not guilty, then the district-attorney has something to say about it, and not otherwise. Therefore, it seems to me, that if we leave the matter of clemency to the executive, who represents the people of the Commonwealth, we do well. If we provide that no pardon shall be granted on the ground of a wrongful conviction, we shall also do right, at the same time, to provide that the legislature should make a proper remedy for such cases.

Mr. KEYES, for Abington. I saw this amendment before it was offered, and I had one reason for not opposing it. The other day, when the subject was before the Convention, it did not seem to me that there was any substantial ground presented for any action in regard to the matter. Therefore, I then opposed even what I should consider a proper motion, on the ground that it might confirm a false opinion which was abroad in the community, viz.: that the Council were too lenient, and too loose in their action, and that they have been disposed to throw open the prison doors without reason. It was on that ground alone that I opposed the proposition then. Now, I do not want to keep up the opposition, because if carried too far, it might tend to confirm the opinion that the Council wished to hide their acts, and felt guilty, and were afraid of exposure. I do not believe that; there is no truth in it. As far as this can be adopted on proper principles and for proper purposes, I will not oppose it, because any assistance the Council can obtain from either side, is what they seek and desire, and such information they have never sought to avoid. I think the reasons of the gentleman from Salem (Mr. Lord) are pretty important. This matter of pardoning on the ground of a wrongful conviction of the court, is right, because the courts may make mistakes. Within the last twelve months, sentences have been passed by a judge of this Commonwealth, upon two convicts, one being sentenced to the State Prison for three or four years, and the other to the House of Correction for three or four months; whereupon the juries that tried those cases were so thunderstruck at the disproportion of the sentences to the nature of the crimes; and believing that the one sent to the State Prison should have gone to the House of Correction, and the one sent to the House of Correction, should have been sentenced to the State Prison, that they went to the judge, and told him if he did not reverse his sentences they would make a noise about it. He did so. I could not swear that this is so. I state it upon hearsay, and do not vouch for its accuracy; but have reason to believe the statement correct. From

such a case we see the necessity of the pardoning power.

I rose simply to make this explanation. If the Convention deem it, under the circumstances, necessary to adopt this provision, from the fact that it introduces a system by which farther information can be gained, I do not see fit here publicly to oppose it, though I think it is perfectly unnecessary, as all the means necessary to find out the facts of each case are, under the present system, put in requisition.

Mr. TRAIN, of Framingham. Were I quite sure of the feeling of the Convention, in regard to this matter, I would not occupy one moment of its time. But, as I am not quite sure, and am a little afraid that the Convention may vote down the amendment, I hope I may be pardoned for making a few suggestions. If it were not a foregone conclusion, I should be happy to aid in lopping off and out of the Constitution, what I consider a useless portion of the government of the State, to wit: the Executive Council. But that has gone by, and therefore I will not trouble anybody with any views of mine upon that point. But I believe this to be a matter of importance, because, notwithstanding the arguments of my friend for Abington, (Mr. Keyes,) and those of other gentlemen who have addressed the Convention heretofore, I believe that the pardoning power has been exercised in a manner most prejudicial to the interest of the State. If gentlemen will look at the document which has been furnished us, upon the motion of my friend from Lowell, (Mr. Butler,) they will find that the number of pardons granted for the last ten years, averages nearly one for each week. Now, Sir, either the pardoning power has been exercised in a manner unbecoming and improper, or else the trial by jury is a mockery, and courts of justice a farce; because it cannot be true that it should be the duty of jurors to convict, and courts to sentence, and the duty of the Governor and Council to pardon, almost in the same breath. At this very term of the court of common pleas, in the county of Middlesex, I understand that they have tried five individuals, who have been tried and sentenced before, within the last three years, and who have been pardoned within that time, and come back again, to use the expressive language of another gentleman, for the lawyers to have another lick at.

Now, it is for the Commonwealth to protect the interests of society, by taking care of those who violate its laws, and, if you desire that the best influence should be exercised upon society, you should adopt two principles. In the first place it should be settled, that conviction shall certainly follow the commission of a crime, and, in the next place, that criminals should understand, that as certainly as they are convicted, they shall serve out the time of their sentence. In this way you have an influence exerted over that portion of society which commit crimes; but, under the sickly sentimentality which some gentlemen in this Commonwealth cultivate, the man who commits a crime is a man of rather more importance than an honest man. These are general principles which ought to be laid down.

Nobody believes but that the Council and Governor undertake to exercise their powers in good faith, but the trouble has been that they have granted pardons in cases where notice has not been given to the court, and the prosecuting

officers, who were familiar with all the circumstances of the case; that they have granted pardons upon hearsay testimony, without the formality of a trial, without the solemnity which is thrown around a judicial investigation, and have allowed their feelings to be wrought upon, until they believed the applicant had been wrongfully punished, or that he would be a better man, if discharged. We all desire to have the pardoning power preserved, but we desire to have it properly exercised. The amendment contemplates that when an application shall be made for the exercise of the pardoning power, the legislature, if it shall find it necessary, shall require the pardoning power to give notice to those who may be supposed to be better acquainted with the case, and from whom they can obtain more reliable information than they can possibly get from the friends of the criminal, or from any other source.

Let me say here, that I do not concur in the insinuations which have been thrown out here, upon the manner in which the judges of the courts perform their duties in passing sentences upon criminals. As far as I know, the courts have performed their duties faithfully, and have found no obstacle but what has been thrown in their way by the pardoning power. I know of no State in which the law is administered more faithfully and more justly than in Massachusetts. The reformatory power in the courts, is exercised more effectually and efficiently, and more regularly there than elsewhere. I hope the amendment will be adopted for the reasons I have suggested.

Mr. BRIGGS, of Pittsfield. I see no great objection to this amendment, though I do not see any necessity for it. If gentlemen apprehend so much danger to the Commonwealth from the exercise of the pardoning power, that some check should be placed upon it, I should think it well to confer that power upon the legislature, though not for the reasons alleged by my friend who has just set down. I do not concur in what seems to be his intimation, that while the duties of the courts are performed with a proper regard to the public interests, the duties of the Council-Chamber are not performed in that manner. I beg leave to express my opinion as to the performance of those duties, with one exception, to which it is not proper for me to refer. I do not believe it can be shown that during the whole history of this government, there has been any abuse of the pardoning power. I have no doubt that cases occur frequently, from the imperfection of human judgment and human affairs, in which the power has been exercised where it ought not to have been, but never under circumstances which tend to show that that branch of the government have had a disposition to, or that they have, infringed upon the duties of the courts, or interposed any obstacle to the carrying out the judgments of the judicial tribunals. There is no motive for such a course in this world. Why, in Heaven's name, should they do it? Who are those people who apply to them for pardon? They come without friends, and without money. They are poor and helpless. It has been already said that their cases are frequently brought before the executive by the officers of the prison. I wish gentlemen could see the records of the doings of the pardoning power, and read the history of the cases presented to them from time to time, and I think they would somewhat change their opinions

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upon this subject. But, says the gentleman, they follow up suddenly, and frequently annul the decisions of the court, and release convicts from their judgments. Yes, Sir, they do; but they never do it, when in their judgment there is not sufficient reason for interposing in that way. A few days since, I heard of a case which occurred in an adjoining county, and that is only one of many of a similar character, though not exactly like it. Some boys were arrested for petty offences, and sent to the House of Correction, and among those boys was one who was only eight years of age. He was tried and sent to the House of Correction without any notification to his parents. There the poor little fellow was, moaning and crying from morning till night, and wetting his pillow with his tears, because he had been taken from his parents and sent there. The case was brought before the Council, by the keeper of the House of Correction, and I understand the pardoning power interposed. What kind of a pardoning power would that be which would not interpose under such circumstances? It is in such cases as these, of sentence to the House of Correction, and in other cases where the time of sentence has nearly expired, or when the health of the prisoner is failing, that the pardoning power is most frequently exercised. It is, in these latter cases, exceeding proper, that the criminal should have some little daylight break in upon his heart, giving him some reason to feel that there is one portion of the government of the Commonwealth which regards him with humanity and kindness, and which is willing to remit the few remaining days of his imprisonment. Who can tell how much influence such a course may have upon the convict who has been confined for months and years. They go out feeling that the government is not an incorrigible tyrant.

It will be found, on consulting the records, that there are many more cases where the courts and prosecuting officers are consulted, than gentlemen are aware of. The case mentioned by the gentleman for Berlin, (Mr. Boutwell,) is one of that kind. In looking over a few cases the other day, though with a different object in view, I found that about one-half of them were cases where the counsel was consulted. One of those cases was that of a man who was sentenced from the county of Franklin, to the State Prison for life. The report states that at the time of the conviction, the government attorney assured him that he would aid him if he behaved himself, and when an application for pardon was made by a number of citizens, the prosecuting attorney did interpose, with other citizens, in his favor.

As I said before, and repeat now, I do not believe that it can be found, in looking over the history of the Executive Council, that any abuse has existed in the exercise of this power. That there have been mistakes, I have no doubt at all.

The gentleman from Salem, (Mr. Lord,) has alluded to a class of cases, where persons have been wrongfully convicted. Now, by law, there is a limit to the time within which a person must apply for a new trial, and when that time has expired, there is no remedy for a person in prison under sentence. What should the executive do in such cases, when it is shown beyond reasonable doubt that the person has been wrongfully convicted, and the day for moving a new trial has passed by? It would be more than injustice for

the executive to refuse to interfere. It would be inhuman!

Mr. LORD, of Salem. I ask the gentleman from Pittsfield to allow me to say, that a part of my suggestion was that the Governor and Council should not pardon upon the ground of erroneous conviction, but that the legislature should extend the time within which a new trial may be granted, in order to provide a remedy for such cases.

Mr. BRIGGS. I entirely concur in the gentleman's suggestion, but I submit, that until the legislature make provision for extending the time for granting a new trial, the Governor and Council should be allowed, technically, to pardon such persons. Until the legislature make that provision this will be the only remedy which can be exercised.

Mr. FRENCH, of Berkley. I hope I shall not be considered out of order if I remind the Convention that we are to adjourn to-morrow, for I believe we have voted to do so.

SEVERAL MEMBERS. O, no!

Mr. FRENCH. Then I am mistaken; but that was the Report of the Committee appointed upon that subject. But, Sir, if we are going to take up the time of the Convention in debating questions of minor importance—for the mover of this amendment himself says it is not a matter of much importance—I think we had better send home for our winter clothes, [a laugh,] for we shall not be likely to get through before winter.

Now, it seems to me that this pardoning power must be deposited with somebody—it must be left with some branch of the government, and I know of no better power to leave it with, than where it has been left heretofore. I think the Governor, with the advice of his Council, will be able to decide correctly upon all matters of pardon. I know it is the nature of man to be fallible, and that in some instances even with all the wisdom of the Council, the Governor may make mistakes.

But, Sir, I do not desire to discuss this question. I want that the question should be disposed of, in some way, without farther debate. I hope the amendment will be rejected.

[Cries of "Question!" "Question!"]

Mr. KEYES, for Abington, addressed the President, and was recognized.

Mr. ADAMS, of Lowell. I rise to a question of order. The gentleman for Abington has spoken two or three times upon this question, and upon that ground I claim the floor.

Mr. KEYES. I will yield the floor to the gentleman, with pleasure, if he desires to speak.

Mr. ADAMS. I have no wish to consume more of the time of the Convention upon this subject. I move the previous question.

Mr. KEYES. I was legitimately entitled to the floor, but having before spoken upon this subject, I yielded it, with great pleasure, to the gentleman from Lowell to speak, but not to move the previous question, and I do not understand that the gentleman, under the Rules, can take the floor from me for any such purpose.

The PRESIDENT. The delegate from Lowell, (Mr. Adams,) and the delegate for Abington, (Mr. Keyes,) rose simultaneously, but, inasmuch as the gentleman for Abington had tried two or three times to get the floor, the Chair awarded it to him. The gentleman from Lowell then claimed the floor upon the ground that the gentleman for Abington had already spoken upon the subject under consideration. Supposing that the gentle-

man from Lowell wished to speak upon the question, the Chair, therefore, awarded the floor to him, upon that ground, as he was compelled to do under the Rules of the Convention, and the gentleman then moved the previous question. The Chair believes that is a correct statement of the case.

Mr. LORD, of Salem. Before the President decides, definitely, the question of order, I desire to call his attention to the 23d Rule, which is the following:—

"No person shall speak more than twice upon one question, without first obtaining leave of the Convention; nor more than once until other members who have not spoken, shall speak, if they desire it."

Under this Rule, any member who has once spoken, must yield to another, if he desires to speak, but I do not suppose he is obliged to yield to him to make a motion.

The PRESIDENT. The Chair will again state, that he supposed the delegate from Lowell had a right to claim the floor if he wished to speak, the gentleman for Abington having once spoken upon the question. He, therefore, awarded it to the gentleman from Lowell, supposing that he wished to address the Convention; he, however, is constrained, under the circumstances, to rule the motion made by that gentleman to be out of order.

Mr. KEYES. I wish to say only one word. I did not intend to have troubled the Convention again upon this subject. I was very anxious that this question should be disposed of without debate; and although this is a subject in which I have taken some interest, I have expressly avoided saying anything which should elicit debate.

But the gentleman from Framingham, (Mr. Train,) has seen fit to come out with one of the same sort of speeches which we have heard—not only upon a former occasion during the debate on this question, but which we have heard outside of this body—and such as I think, ought not to be made anywhere. I can see no reason why the gentleman should make such speeches, for I believe him personally to be one of the kindest hearted men in the Convention, and I can only account for it on the ground of the butcher business in which he has been engaged. I can think of nothing else which should prompt him to rise and make such speeches.

Sir, I undertake to say, that these prosecuting officers and judges, whose business it is to convict and sentence criminals, are not the proper men to be applied to for opinions in relation to the pardon of those convicts. Having once expressed their opinions as to the nature of their guilt, they have some pride in the matter. They do not like to have their decisions reversed. If he is a judge and has given his decision, upon a full knowledge of the circumstances connected with the trial, which has resulted in the incarceration of a man in prison, he is not willing to turn round and say that his sentence was too severe, and that the convict should be liberated. It is the nature of men to have faith in the cause they are obliged to maintain. An illustration may be found in a debating society, where a man taking the wrong side of a question for the sake of argument, defends and discusses it until he ends in believing that to be right, which, at the outset, he honestly believed to be wrong. And so it is with advocates who argue against what they know to be

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the plainest evidence; they argue themselves into the belief that what they are supporting is right.

Now, Sir, these very judges upon the bench, in charging the jury, generally argue the question in such a way as to indicate pretty clearly what their opinions are in relation to the guilt or innocence of the accused, and in nine instances out of ten, their opinions thus given, determine the verdict of the jury, when half the time any member of the jury is as good a judge of what is justice and equity as the judge himself. The idea that judges never make mistakes is a false one. You cannot go into any county court in the State, and examine the decisions through a single term without finding great mistakes committed. There is not much reason or common sense in many of their sentences, and that every-body knows. I do not mean to say that the judges mean to give wrong decisions, but any man who sits upon the bench feels differently at one time from what he does at others. I have suffered from dyspepsia long enough to know that sometimes a man may feel as if he would strangle half the world, if he could get them by the neck, [laughter,] and at others, as if he would shower blessings on the whole race. I believe the judges perform their duties conscientiously, and as well as they are able to, but they are not infallible.

But, as I said in the outset, it is no purpose of mine to oppose this amendment. If people think it is necessary, let them have it. But I cannot subscribe to requiring these men, who, if not hangmen, are only one remove from it, and who, by means of their profession, have acquired to some extent, the dispositions of butchers, to give their opinions upon the propriety of exercising the pardoning power.

Mr. BATES, of Plymouth. When the discussion first commenced upon this question, I was in favor of the amendment of the gentleman from Milton, (Mr. Churchill). But when I heard the argument of the gentleman from Framingham, (Mr. Train,) I was opposed to it, inasmuch as it put it upon the ground that the Council were a set of scoundrels who were unfit for, or incapable of taking care of the interests of the State, with regard to matters committed to them. But I am opposed to continuing this debate farther. It may be, if it were to continue, that arguments might be presented which would lead me to vote in favor of the amendment, and I therefore move the previous question.

Mr. UPTON, of Boston. I have an amendment which I desire to offer, and I also desire to occupy not more than two minutes in explaining it. If the gentleman will withdraw his motion for the previous question, I will renew it before I set down.

Mr. BATES. With that understanding, I withdraw my motion for the previous question.

Mr. UPTON. I move to strike out the second resolution as it now stands. It is the following:

Resolved, That it is expedient so to amend the Constitution as to provide that the record of the proceedings of the Council shall always be subject to public examination.

Now, Mr. President, one single word to explain my object in making that motion. These resolutions provide that your Council shall sit in judgment upon criminals—that is to say, the question of pardon is to come before them. They sit in public, but still the records of their proceedings,

in every case, are to be made subject to public examination.

Now, Sir, in the case of an examination before a jury, of a criminal offence, if there is any difference of opinion among the jurors, where the person is not convicted, the opinions of those jurors who were in favor of conviction are never made public. Yet it is proposed to provide that the proceedings of the Council shall not only be open, but that the record of their proceedings shall be kept open for public examination, so that, if there is a difference of opinion among the councillors upon a question of pardon, any one, from a personal or other motive, can go to your Council-Chamber, and ascertain how each councillor voted. Now, Sir, that is contrary to the principles and spirit of our institutions. You open the door for any person entertaining feelings of hostility towards any particular councillor, to carry them into effect, by ascertaining from the record what were his votes in relation to applications for pardon, and using those votes to secure his own private ends. You open the door for revenge, if you please. Why should the opinions of jurors, as to the criminality of a person upon whom they are called to decide, be kept from the public, and the opinions of a councillor, who is called upon to decide the same question, upon an application for pardon, be made public?

I hope the resolution will be stricken out; and now, in accordance with my promise, I move the previous question.

The previous question was seconded, and the main question ordered to be put.

Mr. BRIGGS, of Pittsfield. I do not wish to say one word upon the question before the Convention; but, having heard that I made an erroneous statement in relation to one of the unfortunate young men to whom I alluded when I was before up, I wish, in justice to his friends, to correct the statement.

The PRESIDENT. The previous question having been ordered, the gentleman from Pittsfield can only proceed by unanimous consent.

There was no objection made, and

•Mr. BRIGGS proceeded. I alluded to a young man by the name of Learned, in Worcester County, who, upon the recommendation of many of the citizens of that county, was pardoned; and I stated that he turned out to be unworthy, and that he had since been tried and convicted for another offence in the State of New York.

Since making that statement, a gentleman tells me he has learned that the young man has, within a few days past, died in the State Prison in the State of New York, but that before he died, satisfactory evidence was produced, to show that he was wrongfully convicted; that the governor of New York was satisfied of that fact, and sent him a pardon; but that that pardon reached the prison-house two hours too late; and that in his dying moments the poor fellow protested his innocence of the offence for which he was convicted.

Sir, that young man may have a mother, he may have a sister, or some friend, who may see in print, or in some other way learn, what I said in relation to his case. I desire, therefore, to take it all back, for of all things, I would not do injustice to any human being placed in such a situation, or wound the feelings of his friends. I understand that the evidence was satisfactory that he was wrongfully convicted.

The question was then taken on Mr. Churchill's amendment, and there were—ayes, 135; noes, 115.

So the amendment was adopted.

The question then recurring upon the motion of Mr. Upton, of Boston, to strike out the second resolution, it was taken, and the motion was not agreed to—ayes, 97; noes, 164.

The PRESIDENT. The question now is upon ordering the resolves, as amended, to their final passage.

Mr. HALLETT, for Wilbraham. I move a reconsideration of the vote whereby the previous question was ordered. I desire to say one word as a reason for so doing.

Mr. EDWARDS, of Southampton. I rise to a point order. I would inquire of the Chair if it is in order to move a reconsideration of the previous question after we have proceeded under the operation of that previous question and taken votes?

Mr. HALLETT. I withdraw my motion.

Mr. GRISWOLD, for Erving. There is one vote taken here with which I am dissatisfied, and I will venture to move a reconsideration of the vote by which the amendment of the gentleman from Milton (Mr. Churchill) was adopted.

Mr. SCHOULER, of Boston. I rise to a question of order. My point of order is that there cannot be a reconsideration now, after the previous question is ordered.

The PRESIDENT. The Chair is of the opinion that the motion to reconsider is not in order; that no motion to amend or reconsider can be in order, the main question having been ordered.

Mr. SCHOULER. The gentleman can move a reconsideration after we have got through with the resolves.

The PRESIDENT. The question now is upon ordering the resolutions to their final passage.

Mr. GRISWOLD. I had supposed that the motion I made was in order; but as it has been ruled out of order, I call for a division of the question.

The first resolve was then read, as follows:—

Resolved, That eight councillors be elected by the people in single districts, each district to consist of five contiguous senatorial districts.

The question was taken, and the resolution was agreed to.

The second resolution was read, as follows:—

Resolved, That it is expedient so to amend the Constitution as to provide that the record of the proceedings of the Council shall always be subject to public examination.

The question was taken, and the resolve was agreed to.

The third resolution was read, as follows:—

Resolved, That it is expedient so to amend the Constitution as to provide that no councillor, during the time for which he shall be elected, shall be appointed on any commission, or to any place, for which he shall receive any compensation whatever, other than that which he receives as councillor.

The question was taken, and it was agreed to. The fourth resolution was read, as follows:—

Resolved, That the legislature may provide by

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law that public notice shall be given of all applications to the Governor and Council for remission of the sentence of persons imprisoned for crime.

The question was taken, and a division being called for, there were—ayes, 129; noes, 135.

So the resolution was not agreed to.

Mr. HALLETT, for Wilbraham. I rise for the purpose of moving a reconsideration of the vote just passed.

The PRESIDENT. The motion will go into the Orders of the Day for to-morrow.

Mr. BOUTWELL, for Berlin. I rise to a question of order. I wish to know whether the motion can be made at this time?

The PRESIDENT. The motion cannot be made except by general consent, unless the Orders of the Day be first laid upon the table.

Mr. BOUTWELL objected.

Mr. HALLETT moved that the Orders of the Day lie upon the table.

The question was taken, and the motion was not agreed to.

Preservation of the Records.

The PRESIDENT. The next matter in the Orders of the Day is No. 6 in the calendar, being the resolves on the subject of the preservation of the records. The question pending is upon their final passage.

The resolves were read, as follows:—

Resolved, That, at the close of the session, the Secretaries of the Convention deposit the original journals, together with the papers of the Convention, in the office of the Secretary of State.

Resolved, That William S. Robinson prepare an index to the journal, and procure two thousand copies of the journal and index to be printed and bound, on such terms and in such manner as shall be approved by the Committee on the Preservation of the Records, and that he be paid four dollars a day for his services therein.

Resolved, That his Excellency the Governor be requested to draw his warrant on the treasury for such expenses incurred in the execution of the preceding resolves, as shall be approved by the Committee on the Preservation of the Records.

Resolved, That the Secretary of the Commonwealth be requested to distribute copies of the journal to each member of the Convention, and to all persons and public bodies mentioned in chap. 2, sec. 2, of the Revised Statutes, excepting members of the legislature.

The PRESIDENT. The question is upon ordering the resolves to their final passage.

Mr. BRIGGS, of Pittsfield. I wish to make an inquiry in regard to this matter. I am informed that the mode of doing this business in the House of Representatives is to pay a certain sum, say one hundred or one hundred and fifty dollars, for the work. If that has been the practice heretofore, I wish to inquire what reason there was for departing from it in this case? I merely ask for information.

Mr. BIRD, of Walpole. The Committee understood that the practice had been to pay four dollars per day for services of this kind rendered by the clerk; but I have been informed by gentlemen here that the practice has been to pay a round sum, one hundred or one hundred and fifty dollars, as the case might be.

Mr. BRIGGS. I have no choice about it. I merely wanted the information.

The question was taken on the resolutions as reported by the Committee, and they were agreed to.

Elections by Plurality.

The PRESIDENT. The matter next in order is No. 7 upon the calendar, being the resolutions upon the subject of elections by plurality and majority. The question pending is upon their final passage.

The resolutions were read, as follows:—

Resolved, That it is expedient to provide in the Constitution that a majority of all the votes given shall be necessary to the election of a governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general of the Commonwealth: *provided*, that if at any election of either of the above-named officers, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be governor.

Resolved, That in all the elections of senators and councillors, the person having the highest number of votes shall be elected.

Resolved, That in the election of representatives to the general court a majority of all the votes given in shall be necessary to the election at the first ballot: *provided*, that in case of a failure of election on such ballot, the person having the highest number of votes at the second or any subsequent ballot, shall be elected.

Mr. HOOPER, of Fall River. I move the previous question.

Mr. DANA, for Manchester. I hope the previous question will not be sustained, for I have an amendment which I desire to propose.

Mr. SCHOULER, of Boston. I hope the previous question will not be pressed, because I shall feel myself under obligation to move a reconsideration, and I do not think we shall gain any time by such a motion. I do not intend to discuss this matter, but I intend to move the same amendment which I offered the other day. The gentleman for Manchester has also expressed a desire to move an amendment. I do not know what it is, but I think that opportunity should be afforded to any gentleman to move amendments. I can assure the gentleman from Fall River, (Mr. Hooper,) that I do not intend to occupy any time, but merely to offer my amendment. If the previous question should be sustained, and no opportunity given to offer amendments, I shall move a reconsideration. I call for the yeas and nays upon the previous question.

The yeas and nays were ordered.

Mr. HOOPER, of Fall River. I will withdraw the motion for the previous question.

Mr. DANA, for Manchester. I propose to amend the resolves by striking out all after the word "that," in the first resolve, and inserting the following:—

That in the election of all officers required by this Constitution to be elected by the people, except town officers and representatives to the general court, the person having the highest number of votes shall be deemed elected. In the election of town officers and representatives to the general court, a majority of votes shall be required, unless otherwise provided by the legislature.

I wish to take a few moments of the time of the Convention to suggest a reason or two in favor of this amendment. I said, day before yesterday, when the subject of the judiciary was up, that I hoped that whatever had been settled by a test vote would be treated as settled; and that I would

not bring forward any amendment on the subject of the plurality, if the amendment on the subject of the judiciary could also be dropped; but as that subject was reopened, I feel myself at liberty to bring forward this amendment.

The Convention will allow me to suggest to them the state of this question now. The officers whom the people elect will be divided into three classes: first, those chosen by towns, including representatives. Now, are we not pretty much all agreed, as the votes show, that they shall be chosen still by majorities, and at the same time, that the hands of the legislature shall not be tied, so that if towns think it expedient to have the right to vote by plurality, they may do it. Now the objection to the Report of the Committee is, that it ties the hands of the towns. They cannot vote on the plurality principle on the first trial, if they wish to, without amending the Constitution. My amendment is this: that in the town meetings they shall vote upon the majority rule, but that the legislature may, when they desire it, untie their hands and allow them to vote by the plurality rule. That is the first class of cases; and the reason why I think it expedient that towns should vote by the majority rule is, that they are deliberative assemblies, and can vote as many times in a day as they please, or adjourn. I suppose that we pretty much agree that it is best to leave them to the majority principle, with power in the legislature to alter it.

With regard to the second class of cases, we are all agreed, as the votes show; that is, in the county and district elections, including councillors and senators, the plurality rule ought to prevail. My amendment, and the Report of the Committee, therefore, coincide in that respect. Then, Mr. President, is it not true that, after all, there is but one point of disagreement here? Notwithstanding all the discussion we have had, when we come to get at the bottom of the matter, is it not true that there is but one point of disagreement here? And that point of disagreement is far less, too, I apprehend, than gentlemen suppose; because, on that point—that is, relating to the election of governor, lieutenant-governor, and other general officers—the majority principle is abandoned. Yes, Sir, the majority principle is abandoned. There is no difference, on that point, between the friends of the majority principle and the friends of the plurality principle; because it is agreed, on all hands, that there shall not be a second trial. Is not that so? Is it not agreed here, by the friends of the majority, as well as by the friends of the plurality, that there shall be no second trial for these officers? If there is no second trial, then the majority principle is abandoned. The only question, then, is, whether, in case there is no majority, we shall take the plurality rule, or leave it to the legislature. If I am not right in that statement, I would like to have some gentleman say why I am not right. The votes have shown that we do not intend to have a second trial anywhere but in towns. No second trial for the State officers, no second trial for the councillors, no second trial for the senators, or for any of the county or district officers.

Well, if there is no second trial, the majority principle is abandoned; and all the discussion on the subject of majority and plurality is entirely irrelevant. Then the real question is, whether, in case you have no second trial, and there is no majority to elect the general officers, the election

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should be by the legislature or by the plurality rule I take it that the plurality principle is nearer the majority principle than the vote of the legislature can be. I would ask the friends of the majority principle to look at the position which they assume, when they sustain that Report. In case they sustain the majority principle, and there is no election by the people, they leave it for the House of Representatives to choose two out of the three highest, and that House of Representatives is not based upon numbers. Is there any majority principle in that? The House of Representatives is not based upon numbers, and yet a friend of the majority principle leaves it to the House of Representatives to select two out of three, and then he is to be chosen by the Senate. And how is the Senate chosen? Not by a majority but by a plurality. Now, where are the friends of the majority principle on that Report? If there is not a choice at the first trial, they will not allow a second trial; and they then leave it to the House of Representatives to select two, that House of Representatives not being based upon numbers. They then leave it to the Senate to make the final choice, the Senate being based on a plurality. That throws out the majority principle entirely.

The real question, then, is not between a majority and plurality, but between a majority and the legislature, if you cannot get the majority. That is the real question; and I say if you cannot get the majority, take the plurality. That is the most democratic, the most republican, and comes nearest to the majority principle.

The objections to trying the question in the legislature are numerous. The legislature ought not to be elected with reference to choosing a governor, but for a very different purpose. In choosing a governor on this floor, we are liable to the influence of the arrangements made in committee rooms, of coalitions formed here which are not so desirable nor so dignified as those formed at the polls. If we are to have them I would rather have them formed at the polls than in the committee rooms.

That is all I propose to say on the main question. I think it raises the issue fairly.

I wish to say one word in reply to the gentleman for Abington, who did me the honor to pay me a higher compliment on this subject than any he had paid me before—and I am indebted to him for two or three compliments—for all of which I am really obliged to him, because they had the evidence of being sincere, as everything has which comes from him. But this compliment exceeded them all. He said that I purposed to revive the dead Whig party. I did not know that he attributed to me the power of working miracles before; but it is quite true, that with the countenance of the gentlemen for Berlin, (Mr. Boutwell,) the gentleman from Springfield, (Mr. Beach,) and the gentleman from Lowell, (Mr. Butler,) the gentleman for Otis, (Mr. Sumner,) the gentleman from Charlestown, (Mr. Frothingham,) and some others, I did try to revive the Whig party, if the plurality will revive it. I wish that when a majority cannot be obtained, and we cannot have a second trial, to say that the people shall elect by a plurality.

It has been said by some Whig gentlemen, that the purpose of that first resolution is to enable certain parties to govern the State; and by other gentlemen—the gentleman for Abington among others—that those who favor the plurality prin-

ciple, do it to enable another party to govern the State. Now, I wish to put the question to my Democratic friends whether they have so little faith in their principles, so little confidence in their star, as to sit down in despondency, in the belief that the Whig party is always to be the popular party in this Commonwealth; whether, with a popular New England man president, who had a majority of the voters of Boston in his favor, with the prestige of almost unbroken success on their side throughout the Union, they will sit down in despondency in the belief that the Whig party is always to be in the ascendant here? I wish to put the question to the gentleman for Abington, who is a member of an "unhealthy organization,"—and better be unhealthy than be dead, for while there is life there is hope,—whether the party to which we belong has so little faith in its principles as to believe that we are never to prevail; whether, with principles which both the other parties have recognized as true; within ten years; and with principles which almost all the leading public men in this State have recognized within ten years, at some time or other, to be true; whether, with principles in support of which he can point to resolutions passed unanimously, or nearly unanimously, by the legislature of this State, within ten years; he will sit down in despondency, and make his legislation in the belief that his party will never be the dominant party? I would ask him whether the necessity of having more votes than both the great national parties together, has not been a discouraging fact in our history? Whether it has not operated so, and whether, under the plurality rule, it would not operate otherwise?

But, I ask pardon of the Convention for suggesting any considerations like these. I do it in reply—and I wish the Convention to bear me witness that I do it in reply—to charges made, that gentlemen are governed by party motives. I wish to show that those motives are too unsound for any to be governed by. No man can tell who will be in the plurality here next November, and certainly not, a year from next November; because as the parties are now constituted, it is hard to say what a day, and much more what a year, will bring forth; and in settling these great constitutional questions we are not far-seeing enough, and I trust we are too honest, to be governed by speculations upon the future state of parties. I believe the plurality principle is a political necessity. I think the resolve of this Committee shows it to be so; for this Committee have abandoned the majority principle, let me say it again, in everything but the towns; and the only question now, is between the legislature and the people. That is the only question; and it seems to me, that in a question like that, the principle is clear; and, as for party success, we must trust to Providence for that.

Mr. KEYES, for Abington. The gentleman for Manchester, says I have paid him two or three compliments. If I have, certainly they were given in sincerity. I do not know but I ought to balance the account, and say something on the other side. At any rate, after the long contest had the other day, when there was a full house; when we talked about ending debate on this subject; when we took it up, item by item, and discussed it thoroughly and understood every part of it, and voted in detail on the whole of it; I supposed that ended the whole matter, if anything

ever can end a matter in this House. Unless there is a limit somewhere, how shall we know when we are beaten, and when victorious; where is to be the end? It has been said of some of our brave and popular generals that they never knew when they were beaten; and it seems the gentleman for Manchester is in the same category, after the contest the other day, when we made a fair fight and the Report was victorious; that ought to have been the end of the debate. If, therefore, anybody under the circumstances should be permitted to introduce amendments, it should not be the enemies, but the friends of the Report. I have no sympathy with persons who attempt to amend and prepare for the people articles which they utterly oppose from beginning to end, and which they mean to oppose forever. That is not the way; it is not natural that they should care anything about the condition of this bantling, only to try to have it go forth in the most monstrous shape that it can.

Now, Sir, the gentleman for Manchester is the last whom I should suspect of improper motives; and I have no wish to arraign the motives of anybody, for we cannot see the heart; but it is a little strange that he should be so anxious for the adoption of a system so utterly opposed to all the sentiments of his whole life—a system which, if it should prevail, would break down the old landmarks of the Constitution and utterly revolutionize the government. Sir, if this policy should be adopted, it would be absurd to call this a republican government—there is no such definition of the word in any of the dictionaries, Latin, Greek, French, or Sanscrit. I trust that if this Convention has arrived at the period when it can justify itself in limiting speeches to fifteen minutes, it can assume authority in other respects. Although originally opposed to the previous question, still, I regard this as a matter which has been fully discussed and settled by the Convention; and the only attempts which are now made to make a change, are by its bitterest enemies in all respects; and, therefore, I think the time has now come to put the screws on.

Mr. DANA. If the gentleman will allow me, I would like to ask him one question. He says that if we adopt the plurality rule instead of the majority rule, there is no republicanism. I want to ask him what remains of the majority rule in that Report?

Mr. KEYES. I am perfectly content to say, nothing remains; but then, if he thinks that this is all plurality, why does he not vote for it? If it is all plurality, what more does he want? These plurality men are not satisfied with that; but if his argument is good for anything, they are entirely unjustifiable in making any objection to it at all. It is said that we have surrendered nothing to that side; but, Sir, it seems to the gentleman for Manchester, that we have surrendered the whole. I am glad that he has reminded me of that point, for I had nearly forgotten it, although I took a note of it at the time. Mr. President, we have surrendered almost everything, and yet they are not satisfied unless they get more than the lion's share. Now, I ask him again, if this is a good plurality system, why is he not satisfied with it? What does he want more? What he seems to desire is a mere formality, and he ought to be willing to submit to a fair compromise, for the harmony of the Convention, which is almost equally divided on the subject.

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Now, I am strongly in favor of the majority system; and, Sir, we have the gentleman's own arguments in reference to all other subjects, in its favor; the history and experience of this country is in its favor; the history of every country that is not disgraced and dishonored, is in its favor. Sir, if I know anything about politics, I know that the effect of the plurality system is to degrade, to demoralize, and dishonor any people, or any government, where it is adopted. I say that this change which is proposed, is one of the most radical character; and it was so considered by the united Whig party two years ago; and their change, in this respect, has neither been by reason, or common sense, or justice. It has been for a purpose—I do not charge anybody with improper motives, or with any motives at all—as I said before, I do not profess to look at the heart; the motives may have been good, or they may have been bad; I do not care what they were, I only look at the surface of things; but I know, and every man here knows, that there are Democrats in Massachusetts who have done nothing else but work in aid of the Whig party; they want to keep the Democratic party conveniently small, so that they, and their friends may absorb all the spoils which fall to the State. But men who call themselves Democrats, vote upon the other side; that particular class of men to which he alluded, and some of whom he pointed out, are, at heart, in favor of this, and yet have voted all the time in aid of the Whig party. Now, I do not wish to act in such company, however distinguished the men may be. I do not suppose that any gentleman can find himself in such company on the ground of reason, or common sense, or conscience. I beg to be understood that I charge no improper motives upon any one upon this floor; but the grand argument which I would now impress upon the minds of this Convention is, that this thing has been discussed over and over again, and it is time that the discussion was brought to a close. I hope, therefore, that we shall take up the items one by one, and if it be possible to gain a victory upon this Report, that we shall stand by it under all circumstances.

Mr. BIRD, of Walpole. Mr. President: I move to amend the Report by striking out the third resolution, and substituting in lieu thereof the following:—

Resolved, That it is expedient so to amend the Constitution as to provide that a majority of the votes shall be necessary for the election of representatives to the general court, until otherwise provided by law.

I offer this amendment, Mr. President, principally because something of the kind is necessary, in order to make this proposition at all of the character of a compromise. A great deal has been said about compromise in this resolution; for one, I must say, in relation to that, that I do not see much of a compromise in it; and I never could give my support to such a resolution as this upon the ground that it was a compromise.

I do not know as anybody has told us, in the course of this debate, what the compromise consisted in. It has been intimated, that it was a compromise which was concocted in an eating-house, or that some arrangements was made there which foreshadowed the final result here. All that I have to say in relation to that matter, is, that I know of no such arrangements, and, least

of all, in connection with this matter. The charge, that the order of business here is the result of caucus arrangements, is far from complimentary to the majority; for, if such arrangements are made, nobody adheres to them.

I do not regard these resolutions as being any compromise at all, as they give absolutely nothing to the friends of the majority system. They provide that the governor and other State officers shall be chosen by a majority at the first ballot; but that if there is not a majority at this popular election, then they are to be chosen by the legislature. In the present state of parties in this State, these six State officers will not be chosen by a majority of the popular vote at the first election. This gives us nothing at all; because then the election is given to the legislature. The county and district officers are all to be elected by a plurality; and the representatives to the general court are to be chosen by a majority at the first trial, and the plurality system at the second; and this is what they call a concession to the friends of the majority system! Sir, it is no concession at all. Every-body knows that it is a fact, that the election of representatives in a majority of towns, is not ordinarily made at the first ballot. I do not say that it is not made on the first day, but not at the first ballot. Now as a party man, if I am going to have the plurality system at all, I want to have it at the first ballot rather than the second. I do not want any second trial by plurality for representatives to the general court.

But I do not look at this matter in a party light at all. I want to establish in our Constitution, some sort of recognition of the majority principle; and, unless we adopt the amendment which I have proposed, I think we shall not have it. Although I should prefer, personally, that the majority rule should apply to a larger number of officers than even this amendment will include, still I am willing to go with our friends who are in favor of the plurality rule, as a matter of compromise. I ask nothing unreasonable in this compromise; but simply that you will give us a chance to elect our representatives to the general court by the majority system; and, if afterwards, the people, through the legislature, shall decide that it is better to apply the plurality rule to the election of representatives, I will be willing then to yield, and give that up too. I say that this is what I consider a fair compromise. We give you all the State officers, councillors, senators, judges of probate, county commissioners and commissioners of insolvency, and all county and district officers; and, all that we ask, is simply the concession that we may retain the majority system for the election of representatives to the general court.

I should have been glad to have adopted the rule indicated by my friend from Melrose, (Mr. Gooch,) the other day; and that is, that in the election of the law-making power, a majority vote should be required in all cases; but, in the election of administrative officers, who were not to make laws, but merely to administer them, the plurality system should be adopted. I considered that as a very good rule, and a fair compromise, that the governor, lieutenant-governor, senators, and representatives—for I do not care much which rule you apply to the secretary, treasurer, auditor, and attorney-general, whether they are chosen by plurality or not—should have been chosen by the majority system; but I am willing to concede

even more than that. I am not willing, however, to go farther than the amendment which I have now submitted, indicates. Until the people shall decide that the plurality rule shall be adopted, I am unwilling to yield the majority principle. I want to hold on to that, to the extent that we shall at least have one branch of the legislature—one branch of the law-making power, which is to choose the governor under certain circumstances—elected by the majority principle.

But I will not go into this matter at length. If gentlemen are not disposed to yield us this one point—of applying the majority principle to our representatives—I do not suppose they can be argued into it by anything which I can say. I will add, however, that if we cannot secure this recognition of the majority principle in the Constitution on this one point, rather than to go for the Report as it stands now, I would go for the plurality rule clean through from top to bottom. Rather than accept the proposition of the gentleman for Manchester, I would give up entirely, and let the plurality principle be applied to everything. This amendment, which I have offered, is submitted in a spirit of compromise, and I am willing to go more than half way for the sake of harmony; but, if we cannot agree upon a fair compromise, in God's name let us at least have a principle, or something that looks like a uniform rule, to stand upon.

Mr. GOOCH, of Melrose. I wish to submit an amendment to the amendment proposed by the gentleman from Walpole; and with the addition which I propose, I shall be in favor of his amendment. I move to add, at the end of the amendment, the following proviso:—

Provided, that no law on this subject shall take effect until two years after its passage.

Mr. DENTON, of Chelsea. I rise to a question of order. I will inquire if the gentleman for Manchester did not propose an amendment to the resolution, and if the gentleman from Walpole did not propose an amendment to his amendment?

The PRESIDENT. The Chair will state, for the information of the gentleman, the position of the question. The delegate for Manchester moves to amend by striking out the resolution and inserting another resolution. The delegate from Walpole moves to amend the part to be stricken out, which takes precedence of the motion to strike out. The vote must first be taken on the amendment proposed by the delegate from Walpole, to amend the part which it is proposed to strike out; and the delegate from Melrose moves to amend that amendment, which is in order.

Mr. GOOCH. The reason why I propose the amendment which I have submitted, is this: I think, that by the adoption of the amendment proposed by the gentleman from Walpole, together with my amendment, the matter will be placed where it ought to be, in the hands of the people. It will be placed so that the people shall have control over it. No one legislature can have entire control over the matter, but it will be put in a position so that if one legislature sees fit to change the present rule to the plurality rule, and the people see fit to ratify that action, it can be done; and otherwise it cannot be done. I am willing to leave the matter in this position. If the people desire that the majority principle may be continued for the election of their representa-

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tives, then, Sir, with this provision, they have power to accomplish their object whenever they choose to do so. If they send to the legislature men who pass a law making a change to the plurality system, and if that measure is not repealed by the subsequent legislature, then it goes into effect as a law of the Commonwealth, and the plurality rule is established. It takes it out of the hands of any political party, and places in the hands of the people; because, if the legislature pass a law changing the majority rule, then, Sir, the people, if they do not approve of the change, can send men to the next legislature who will repeal the law making the change. If the two amendments are adopted, it requires two years to carry the law into effect, and another legislature must intervene before it can take effect. Then, Sir, if a change takes place, it obtains the sanction, not of one legislature merely, but of two successive legislatures; and the sanction also of the people, because the members of the second legislature will be chosen, knowing that the matter might be altered or changed by the subsequent legislature; and of course, if the people are opposed to it, they will elect members to the legislature who will put the matter right, and leave it in such a shape as the people desire to have it stand. I hope the amendment which is presented by the gentleman from Walpole, and the amendment which I have moved to that amendment, may both be adopted.

Mr. HOOPER, of Fall River. I moved the previous question, in the outset, in the hope that this Report, as presented here, would satisfy all parties. It is manifest that there is a difference of opinion among those who generally act together in this Convention, and it is necessary that something should be conceded on both sides. I am in favor of the plurality system throughout. I have been so from the beginning, and I am so still; but I find other gentlemen are opposed to it. There are certain instances in which I am desirous of having it applied more than in others, because the convenience and the wishes of my constituents require it. Now, Sir, I am willing to give up something, a part, to obtain the remainder—I am willing to give up what the Report has given up—the election of those officers who are to be elected by the whole people at large. And I can the more readily concede this, because the principle is in accordance with the one which has been suggested by the gentleman from Manchester, (Mr. Dana,) and other gentlemen here—that the legislature, or those persons who are to be elected by the people at large, can exercise those delegated powers as well as, and perhaps better, if their doctrine is true, than the people themselves. He goes for having the governor, who is elected by the people at large, appoint the judges. Others contend that this is an election by the people. Now, if this be so, why is it not as well for the legislature, elected by the people of the State, to elect those officers named in the Report, to be elected by them in a certain contingency? It is a business they have been accustomed to do in part, that is, to elect a secretary, treasurer, and auditor, and a governor and lieutenant-governor, frequently. Now, I am willing to let the whole matter rest where the Report of the Committee leaves it, and sustain that Report, as the only safe ground on which we can stand, under existing circumstances.

But it is proposed, on the other hand, to change

the election of representatives and town officers. That is a point, of all others, which I wish to retain. It is the one in which my constituents feel the most interest. There I wish to have the plurality system applied. I should prefer to have it in the first instance; but I am willing to concede something even there.

Now, this Report is the Report of a Committee which was appointed expressly with the view of making a compromise report upon this matter. Gentlemen will recollect that one Report that was brought in, recommended the plurality system throughout. That Report was in part accepted, and in part rejected. A Committee was appointed to draw up a report incorporating the different views which had been expressed. They—the Committee—supposed they had done this; and now I hope that gentlemen will stand upon the Report as it is. I am willing to stand upon it, for one; but if this amendment is adopted, I shall be constrained to vote against that Report as a whole. Let it therefore stand as it is, and I will go for it. I think it is the only safe ground we can take.

Mr. HURLBUT, of Sudbury. Mr. President: On a former occasion, I expressed my views upon this subject. Then, I attempted to show that the majority principle was the only true one. My convictions are the same to-day. Sir, I am not prepared to stand upon this Report, and for this reason: we are called upon to compromise; and what does that imply? Why, that two or more parties disagree, and that each shall surrender something. When this question was under discussion before, so nearly were the Convention balanced between plurality and majority, that neither party were willing to press the matter. For this reason, it was, Sir, that a new Committee was appointed, with the understanding that a different proposition should be submitted, recognizing the two principles; not that one should lose all, and the other gain everything; but that each should yield to the other—that there should be mutual concession. And now, Sir, what have they presented us? A plan by which plurality must elect every department of the government. I submit, Sir, that there is no feature of compromise in the whole bill. There is running through each resolve the cry of "give, give." Sir, I am prepared to yield one-half, yes, more than that, much more, if need be; but I cannot surrender everything; and I would much prefer to remain silent in my seat, did I not believe gentlemen to be deceived in this matter. I apprehend, Sir, that the third resolve has quieted the fears of gentlemen; that they do not fully understand its operation. It is for this reason, that I rise, to save, if possible, the principle of elections by majority from complete and perpetual ruin.

Sir, let us examine the several resolutions in their order. The first proposes that the governor and lieutenant-governor shall be elected by majority; but, Sir, who does not know that we are to have but one trial, and in case there is no choice of State officers, provision has been made to elect them on this floor. And who does not know, too, that the people have failed to elect such officers in years past, and in all probability will fail to do so in years to come? Have the friends of the majority principle anything to expect, then, from such an arrangement? Certainly not. It must then depend upon the manner of choosing

representatives whether your State officers are elected by majority or plurality. And how is it in regard to county officers? Why, we accede to the opposition the right to elect on the first ballot, and by plurality. Now, then, we come to town representation, and how, I ask, do the Committee propose to elect? By plurality, most clearly—and I appeal to every honest gentleman present, if it be not so? True, they say we may elect by majority, if we can, on the first ballot. Sir, the first ballot is only the bringing forward of candidates; and frequently, perhaps I may say generally, gentlemen who are to lead off in the several parties are not named till declared by the chair. Then for a second trial, and *that* is to decide. The party then which happen to have a plurality of voters present, though it be a small minority in the city or town, *must be triumphant*. Are gentlemen prepared for this? I trust not. Let us not be deceived. If gentlemen intend to go for plurality, let it be done fairly, openly, manfully. I can understand how gentlemen may vote on that principle. I can understand how they may vote for majority, too, and I can see with what propriety both parties may meet on a common platform of compromise; but, Sir, I do not understand why we should adopt these resolutions, which acknowledge neither plurality or majority, and are wanting in every important particular of a fair and honest compromise.

Sir, the Report is without principle. I want a compromise, or else I want to vote upon principle, and only upon principle. I am prepared to vote for the amendment of the gentleman from Walpole, because we surrender everything but town majorities, and if we can secure that to our towns, we have a compromise; not such as in my humble judgment we had a right to expect, but the best we shall be likely to obtain, at this late stage of the bill. Should that amendment fail, then I will vote for that of the gentleman from Manchester, which, in my judgment, is preferable to the resolutions on your table; and should that fail, then, Sir, I shall go for the majority principle entire. It seems clear to my mind, that if we fail to sustain the first amendment, all is lost. Yes, Sir, everything. Not a vestige of principle remains; there is not a single piece of broken plank in the old ship big enough to place your foot upon.

Sir, I know not how others may act; but for myself, I see only one course to pursue, and that is the straight course. I do not say that I will have the whole, or nothing. No, Sir. But I do demand something. No gentleman has attempted to overthrow the great majority principle only on grounds of expediency. Sir, what weight ought such arguments to have? It might be expedient to establish a despotic government, for ought they show to the contrary. Certainly, it would be more convenient oftentimes; not half the machinery would be necessary to carry it on. And for such a reason are gentlemen ready to make the exchange? "Trust it not, Sir, 'twill prove a snare to your feet." In the hands of the people—the majority of the people—our institutions are safe; place them wherever else you please, and they are in danger.

Mr. STETSON, of Braintree. I regret that I feel it my duty to address the Convention again upon this question. I do not now propose to argue the question, because the Convention are tired of it. I suppose, that in the long and able

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arguments that have been made upon this bill, beginning about the 20th day of May last, and occupying the attention of the Convention at that time for nearly five days, and then upon taking the question the majority being nearly balanced by the minority, that we would have definitely settled it before this. What I mean by the majority is this: that upon certain questions, there is a bare majority, and upon others, a majority one way at one time, and another way at another time, a vacillating sort of majority, with which the Convention is not satisfied, and of which, Sir, I venture to say, that the records of no Convention which ever yet met together upon this continent, will show the like, as the votes will show during the last days of that discussion. Now, Sir, we have spent two or three days more in discussing this matter, as reported by this new Committee. It was given out by the leaders of this Convention, that a Report was to be brought in which would be acceptable to all. Well, Sir, after several weeks' delay, this bill was brought in, and was but very faintly advocated by the chairman of the Committee. Its provisions, and its excellencies, were left to be developed by other means than those at the disposal of the chairman of the Committee.

Now, Sir, I will ask, if the time which has been spent in this session of the Convention, is to be charged upon a majority of its members? I believe, as one of the progressives, that the blame of some little portion of the delay rests upon myself. But, Sir, the leaders of this Convention have declared, from time to time, upon this floor, that they were not strenuous about carrying anything which the people did not seem to desire; that they would not be strenuous in maintaining any measures, if they could be carried without their assistance. The gentleman from Lowell, (Mr. Butler,) the other day, said he had no desire to be pertinacious in regard to obtaining measures to suit himself. [Laughter.] If he could not get what he wanted, why he would take just what the Convention would give him. He was very humble, and everything was very satisfactory to him. Very well: the plurality question came up the other day, upon its final passage; and I do not know where the gentleman from Lowell was at that time; but another question came up in relation to the election of judges, on which it was understood that he was to speak; and, I believe he did speak in a very humble manner [laughter] and gave his support to the question of seven years' appointments; but when the Convention ruled to change the term to ten years, the gentleman was off; he would not support the bill. [Laughter.] No, not he; he would not support it. He entered his protest against it upon the record, all because he is not pertinacious in regard to any measure which he deems for the interest of the Commonwealth! [Laughter.] Now, Sir, I went for that proposition, because the term of ten years was substituted for that of seven years. I voted for it on that ground, and should have voted against it on the other; so that in one sense, the gentleman from Lowell and myself agree—to differ. Sir, I doubt if you can produce a precedent on record, of such vacillating legislation, as will hereafter be found to have taken place here, when the reports of our proceedings are fully made up. And, on which side is it, Sir? Why, Sir, upon the side of our own party; on the side of those who call themselves progressionists, dividing

from time to time, and each claiming the lion's share. I know that it is said, that there are no parties here. In one sense, perhaps not; but there is a party here who wish to take another party under their particular care, because it has been a declaration of the Free Democracy for years—and they have stated it upon this floor—that the Democratic party itself had no character; and the reason why they wished to close with the Democratic party was, that they might take them under their care, and give them a character. [Laughter.] Now, far be from me any such character as they will give me, from taking me under their care. I do not wish to be taken under the wing of the Free Democracy, unless they will exhibit some straight-forwardness of purpose; some manly, open and independent character, whereby they may exist as a party and maintain it; that is, maintain it by a course of action which shall give the people some confidence that they are acting upon principle. And I am free to admit myself, that I believe that such legislation as has been had in this body is disreputable; and if I understand anything of the character and feeling of the people of Massachusetts, they will never sanction the tergiversation of this body. [Laughter.] Now, when this comes before the people, I think they will judge of it, and investigate it, and I hope they will understand its character. If they feel confidence in, and sanction all the doings of this Convention, they are made of more pliable materials than I have thought the Yankees have heretofore been made of. I do not believe there is such pliable materials in the Yankee character. Sir, the changes which have been made upon this floor, from time to time, by the leaders of the Free Democracy of this body, and by those who are called the true Democracy, have been such, that I think had any spectator been in the gallery, viewing the doings of this Convention, they could not but suppose that the brains of some of such leaders were hung upon a weathercock. It seems to me that certain members have lost sight of the purposes for which they were sent here. They appear to have but one purpose, and that is, the making of political capital for themselves, and to lose sight entirely of the objects, or the purposes for which this Convention was called.

Now, Sir, I have not spoken to the question, and I stated I should not. I did not pretend to, but I want to speak to the question, now, for one moment, and that is to say that after a full and explicit declaration, by a larger number of the members of this Convention than have voted upon any one question which has been taken by it, on this plurality question; after it has been fully decided, by a vote of 193 to 188, I supposed that this body would not again revive this discussion. Now, I will ask from what quarter does this revival come? It comes from one quarter; and that is from the quarter which pretends to hold the balance of power, and who hold the whole sovereignty of this State, or pretend to do so, in their own hands. And, Sir, they say they will go for anything except for electing representatives by plurality at the second trial. I suppose the Convention are in possession of the fact that not less than fifteen or twenty amendments have been offered to this resolution, and which have been voted down by large majorities; and yet this portion of this Convention, my own portion, in part, who have the care of the State upon their

shoulders, what do they do? Lengthen out debate, bring up every sort of amendment, and put them to the question in all stages of the debate, from the beginning to the end of the chapter. And after that they move a reconsideration at every stage which will admit of it.

Now, Sir, I claim that this Convention has acted very consistently; that is, that they have voted every way, up and down, perpendicularly and triangularly. [Laughter.] And, Sir, if they have not voted enough let them vote this resolution down, because I am in favor of getting as much as I can in regard to plurality. I know it is little; but mind you, what we have got, if not voted down, is something which the people in the country would like to have. That is, all except one party, because it treads upon its toes, and they have no kind of consideration for the State, and no consideration for anything except their own interest and their own party. These are the facts, and you see I am willing to say all I have to say, and keep nothing back. I hope and trust, that if this Convention has any principle left at all, they will retain that little by saving this bill from utter destruction by the Free Democracy of this Convention.

Mr. WALKER, of North Brookfield. I am very glad that the gentleman for Manchester, (Mr. Dana,) has declared so frankly, as I understood him, that he has made his motion in regard to this subject, because the judiciary question was decided contrary to his wishes.

Mr. DANA. With the permission of the gentleman, I desire to say a word in explanation. I hope the gentleman from North Brookfield is the only one who misunderstood me. I know he misunderstood for otherwise he would not have misrepresented me. I said, the other day, when the judiciary question was proposed to be taken up, I moved to lay it upon the table, and expressed a hope that the Convention would sustain the motion, and treat all decided questions as by-gones. I said that if they would lay that upon the table, I would not bring up my motion on the subject of plurality, but would treat that as by-gone. But the Convention refused to lay that upon the table, and did reconsider and revise their action upon the subject of the judiciary. That dissolved me from my offer not to bring that motion. I stated this morning that I felt no longer bound not to bring forward my resolution. I made the statement in order to explain the reason why I had not adhered to my offer.

Mr. WALKER. I hear the gentleman's explanation, and am willing he should have all the advantage it will give him. I know he was particularly sensitive in regard to the judiciary; and I suppose if I were a young lawyer, with fine prospects, admirable abilities, and strong conservative tendencies, I should be in favor of the judges being appointed for life. But since I am not, I have no such opinion.

Now, as to the measure which is under consideration. The gentleman's resolution is to upset all that has been done heretofore. I supposed that we had made a compromise, and that upon that we probably would stand. For the motion which has been made by the gentleman from Walpole, (Mr. Bird,) I shall vote, because that is right, and what he proposes to do should be done; and if that is not carried, then I shall vote for the Report of the Committee, and hope

Friday,]

ELECTIONS BY PLURALITY.—WALKER—ELY—CROWNINSHIELD.

[July 22d.

it will be sustained, so that we shall not be compelled to go over the whole thing again. But I cannot concur with those gentlemen who say that if they cannot get what they want by way of amendment, they will vote for plurality all through. I do not understand how gentlemen can do any such thing. If they believe it is wrong in principle, I do not see how they can vote for it in part or in whole. I am satisfied that it is wrong in principle; that, from my observation, and from all that I have seen and heard, the effect of it is pernicious, and only pernicious, in its operation, and therefore I cannot go for it anywhere, or anyhow. I submit to it, if necessary, but I cannot consent to it.

Mr. ELY, of Westfield. I regret to make the motion I am about to make, but feel compelled, by a sense of duty, to make it. I do not wish to cut off any amendment, but I do wish to cut off this debate, of which I believe this Convention is sick. Therefore, I move the previous question.

The question was taken on the motion for the previous question, and there were—yeas, 172; nocs, 44.

So the previous question was ordered.

Mr. ABBOTT, of Lowell, called for the yeas and nays upon the amendment offered by Mr. Bird, and they were ordered.

Mr. CROWNINSHIELD, of Boston, called for the yeas and nays upon the amendment moved by the gentleman for Manchester, (Mr. Dana,) and they were ordered.

The question first recurring upon the amendment offered by the gentleman from Melrose, (Mr. Gooch,) it was put, and decided in the negative.

So the amendment was rejected.

The question next occurred upon the amendment offered by Mr. Bird, and the yeas and nays being taken thereon, there were—yeas, 187; nays, 166—as follows:—

YEAS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, Joel C.
Allen, Parsons
Allis, Josiah
Alvord, D. W.
Austin, George
Ayres, Samuel
Ball, George S.
Bartlett, Sidney
Barrett, Marcus
Bates, Moses, Jr.
Beal, John
Bennett, Zephaniah
Bigelow, Jacob
Bird, Francis W.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Bradford, William, J. A.
Bronson, Asa
Brown, Artemas
Brown, Hammond
Brown, Hiram C.
Brownell, Joseph
Bryant, Patrick
Burlingame, Anson
Butler, Benjamin F.
Cadby, Henry
Caruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Henry
Churchill, J. McKean
Clark, Henry

Clark, Ransom
Clarke, Stillman
Cleverly, William
Crane, George B.
Cressy, Oliver S.
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
DeWitt, Alexander
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Edwards, Samuel
Fay, Sullivan
Fellows, James K.
Fiske, Emery
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney

French, Samuel
Gale, Luther
Gardner, Johnson
Gates, Elbridge
Gilbert, Wanton C.
Gilbert, Washington
Giles, Charles G.
Giles, Joel
Gooch, Daniel W.
Gooding, Leonard
Graves, John W.
Greene, William B.
Griswold, Josiah W.
Hadley, Samuel P.
Haggood, Lyman W.
Haggood, Seth
Hathaway, Elzathan P.
Hayden, Isaac
Hazelwell, C. C.
Heath, Ezra, 2d
Hewes, James
Hillard, George S.
Howard, Martin
Howland, Abraham H.
Hunt, Charles E.
Huntington, Charles P.
Hurlbut, Moses C.
Jacobs, John
Kendall, Isaac
Kimball, Joseph
Kingman, Joseph
Knight, Jefferson
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Lawrence, Luther
Lawton, Job G., Jr.
Lincoln, Abishai
Little, Otis
Loomis, E. Justin
Marble, William P.
Marvin, Abijah P.
Mason, Charles
Meador, Rueben
Merritt, Simeon
Morse, Joseph B.
Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nichols, William
Nute, Andrew T.
Ober, Joseph E.
Orne, Benjamin S.
Packer, E. Wing
Paine, Benjamin

NAYS.

Adams, Benjamin P.
Aldrich, P. Emory
Allen, James B.
Alley, John B.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Bancroft, Alpheus
Barrows, Joseph
Bartlett, Russel
Bates, Eliakim A.
Beach, Erasmus D.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Edward B.
Bliss, Gad O.
Bliss, William C.
Bradbury, Ebenezer
Braman, Milton P.
Breed, Hiram N.
Brewster, Osyma
Brinley, Francis
Briggs, George N.
Brown, Adolphus F.
Brownell, Frederick

Easland, Peter
Eaton, Lilley
Edwards, Elisha
Ely, Joseph M.
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Frothingham, R., Jr.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Green, Jabez
Griswold, Whiting
Hale, Artemas
Hale, Nathan
Hall, Charles B.
Hammond, A. B.
Harmon, Phineas
Haskell, George
Haskins, William
Hawkes, Stephen E.
Hayward, George
Heard, Charles
Henry, Samuel
Hersey, Henry
Heywood, Levi
Hinsdale, William
Hobart, Aaron
Hobart, Henry
Holder, Nathaniel
Hood, George
Hooper, Foster
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Hunt, William
Huntington, Asahel
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kellogg, Martin R.
Kinsman, Henry W.
Knight, Hiram
Knight, Joseph
Kuhn, George H.
Leland, Alden
Lincoln, Frederic W., Jr.
Littlefield, Tristram
Livermore, Isaac
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marvin, Theophilus R.

Miller, Seth, Jr.
Mixer, Samuel
Monroe, James L.
Morey, George
Morton, Marcus
Newman, Charles
Noyes, Daniel
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Park, John G.
Parker, Adolphus G.
Parker, Joel
Peabody, George
Perkins, Daniel A.
Perkins, Jonathan C.
Plunkett, William C.
Pomroy, Jeremiah
Preston, Jonathan
Putnam, George
Putnam, John A.
Read, James
Reed, Sampson
Rogers, John
Sargent, John
Schouler, William
Sikes, Chester
Sleeper, John S.
Souther, John
Stacy, Eben H.
Stetson, Caleb
Stevens, Joseph L., Jr.
Stevenson, J. Thomas
Talbot, Thomas
Taylor, Ralph
Tilston, Edmund P.
Tilton, Horatio W.
Train, C. R.
Turner, David
Tyler, John S.
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wenks, Bradford L.
Walker, Samuel
Warner, Marshal
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
White, George
Wilder, Joel
Wilkins, John H.
Williams, Henry
Williams, J. B.
Winn, Jonathan B.
Wood, Charles C.
Wood, Nathaniel

ABSENT.

Abbott, Alfred A.
Allen, Charles
Appleton, William
Baker, Hillel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Beebe, James M.
Bishop, Henry W.
Blagden, George W.
Brown, Alpheus R.
Buck, Asahel
Bullen, Amos H.
Choate, Rufus
Clark, Salah
Cole, Sumner
Copeland, Benjamin F.
Curtis, Wilber
Davis, Robert T.
Dehon, William
Easton, James, 2d
Eaton, Calvin D.
Gardner, Henry J.
Greenleaf, Simon
Hallett, B. F.
Hewes, William H.
Hobbs, Edwin
Hoyt, Henry K.
Huntington, George H.
Hurlbut, Samuel A.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Johnson, John
Keyes, Edward L.
Knowlton, Charles L.
Ladd, John S.
Lord, Otis P.
Marcy, Laban
Nayson, Jonathan
Norton, Alfred
Osgood, Charles
Parker, Samuel D.
Parsons, Samuel C.
Payson, Thomas E.
Prince, F. O.
Rockwell, Julius
Royce, James C.
Sampson, George R.
Sheldon, Luther
Sherman, Charles
Stevens, Charles G.
Storrow, Charles S.
Stutson, William

Friday,]

ELECTIONS BY PLURALITY.—HATHAWAY—LORD.

[July 22d.]

Sumner, Charles
Sumner, Increase
Taber, Isaac C.
Thayer, Joseph
Tower, Ephraim
Tyler, William
Viles, Joel

Absent and not voting, 66.

So this amendment was adopted.

The question then recurred upon the amendment offered by Mr. Dana, and the yeas and nays being taken thereon, there were—yeas, 169; nays, 132—as follows:—

YEAS.

Adams, Benjamin P.
Aldrich, P. Emory
Andrews, Robert
Aspinwall, William
Atwood, David C.
Austin, George
Bancroft, Alpheus
Barrows, Joseph
Bartlett, Russel
Bartlett, Sidney
Beach, Erasmus D.
Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Jacob
Bliss, Gad O.
Bliss, William C.
Braman, Milton P.
Broed, Hiram N.
Brewster, Osmyn
Brimley, Francis
Briggs, George N.
Bullock, Rufus
Bumpus, Cephas C.
Burlingame, Anson
Carter, Timothy W.
Chandler, Amariah
Chapin, Chester W.
Childs, Josiah
Clarke, Alpheus B.
Coggin, Jacob
Cogswell, Nathaniel
Cole, Lansing J.
Conkey, Ithamar
Cook, Charles E.
Coolidge, Henry F.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Dana, Richard H., Jr.
Davis, John
Davis, Solomon
Dawes, Henry L.
Dennison, Hiram S.
Doane, James C.
Dorman, Moses
Easton, James, 2d
Eaton, Lilley
Ely, Homer
Eustis, William T.
Farwell, A. G.
Foster, Aaron
Fowler, Samuel P.
French, Charles H.
Frothingham, R'd, Jr.
Gilbert, Wanton C.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Green, Jabez
Griswold, Whiting
Hale, Artemas
Hale, Nathan
Hall, Charles B.
Hammond, A. B.
Harmon, Phineas

Warner, Samuel, Jr.
Waters, Asa H.
Whitney, James S.
Wilkinson, Ezra
Wilson, Milo
Wilson, Willard
Woods, Josiah B.

Schouler, William
Sikes, Chester
Sleeper, John S.
Souther, John
Stevens, Granville
Stevens, Joseph L., Jr.
Stevenson, J. Thomas
Strong, Alfred L.
Talbot, Thomas
Taylor, Ralph
Thomas, John W.
Tileston, Edmund P.
Tilton, Horatio W.
Train, Charles R.
Turner, David
Tyler, John S.

Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
White, George
Wilbur, Daniel
Wilder, Joel
Wilkins, John H.
Williams, Henry
Wood, Nathaniel

Powers, Peter
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Ross, David S.
Sanderson, Amasa
Sherril, John
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spoonier, Samuel W.
Stacy, Eben H.
Stevens, William
Stiles, Gideon
Swain, Alanson
Taft, Arnold
Thayer, Joseph

Thayer, Willard, 2d
Thompson, Charles
Tilton, Abraham
Tyler, William
Underwood, Orison
Wallace, Frederick T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
Whitney, Daniel S.
Wilbur, Joseph
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Ous
Wood, William H.
Wright, Ezekiel

NAYS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, Joel C.
Allen, Parsons
Alley, John B.
Allis, Josiah
Alvord, D. W.
Ball, George S.
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beal, John
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Boutwell, George S.
Booth, William S.
Boutwell, Sewell
Bradford, William J. A.
Bronson, Asa
Brown, Hammond
Buck, Asahel
Butler, Benjamin F.
Cadby, Henry
Caruthers, William
Case, Isaac
Chapin, Daniel E.
Chapin, Henry
Churchill, J. McKean
Clark, Henry
Clark, Ransom
Clarke, Stillman
Cleverly, William
Cole, Sumner
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
DeWitt, Alexander
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel

Abbott, Alfred A.
Allen, Charles
Allen, James B.
Appleton, William
Ayres, Samuel
Baker, Hillel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bishop, Henry W.
Blagden, George W.
Bradbury, Ebenezer
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Bullen, Amos H.
Choate, Rufus
Clark, Salah
Copeland, Benjamin F.
Curtis, Wilbur
Davis, Robert T.
Dehon, William
Eaton, Calvin D.
Fiske, Emery
Gardner, Henry J.
Greenleaf, Simon
Haskins, William
Hobbs, Edwin
Huntington, George H.
Hurlburt, Samuel A.
Hyde, Benjamin D.

ABSENT.

Ide, Abijah M., Jr.
Johnson, John
Keyes, Edward L.
Knowlton, Charles L.
Little, Otis
Marcy, Laban
Marvin, Abijah P.
Nayson, Jonathan
Norton, Alfred
Parker, Samuel D.
Parsons, Samuel C.
Payson, Thomas E.
Prince, F. O.
Rockwell, Julius
Royce, James C.
Sanderson, Chester
Sheldon, Luther
Sherman, Charles
Stetson, Caleb
Stevens, Charles G.
Storror, Charles S.
Stutson, William
Sumner, Charles
Sumner, Increase
Taber, Isaac C.
Tower, Ephraim
Turner, David P.
Viles, Joel
Vinton, George A.
Whitney, James S.
Wilkinson, Ezra
Williams, J. B.
Wilson, Milo
Woods, Josiah B.

Absent and not voting, 68.

So the amendment was not agreed to.

The question then recurring upon ordering the resolves, as amended, to their final passage, Mr. HATHAWAY called for the yeas and nays thereon, and they were ordered.

The PRESIDENT. The gentleman from Salem, (Mr. Lord,) has asked for a division of the question, and that the question be taken separately upon the several parts thereof.

Mr. LORD. In order to avoid any imputation of an intention to take up the time of the Convention, I will withdraw my call for a division of the question, and have the vote taken upon the whole at once.

The question then being upon ordering the resolves, as amended, to their final passage, and the yeas and nays being taken thereon, there were—yeas, 181; nays, 120—as follows:—

YEAS.

Abbott, Josiah G.
Adams, Shubael P.

Allen, James B.
Allen, Parsons

Friday,]

ELECTIONS BY PLURALITY, &c. — FAY — GRISWOLD — HALLETT.

[July 22d.

Allis, Josiah
 Alvord, D. W.
 Ball, George S.
 Bancroft, Alpheus
 Barrett, Marcus
 Bates, Eliakim A.
 Bates, Moses, Jr.
 Beach, Erasmus D.
 Beal, John
 Bennett, Zephaniah
 Bigelow, Edward B.
 Bird, Francis W.
 Bliss, Gad O.
 Booth, William S.
 Boutwell, George S.
 Boutwell, Sewell
 Bronson, Asa
 Brown, Adolphus F.
 Brown, Artemas
 Brown, Hammond
 Brownell, Frederick
 Brownell, Joseph
 Bryant, Patrick
 Butler, Benjamin F.
 Cady, Henry
 Caruthers, William
 Case, Isaac
 Chandler, Amariah
 Chapin, Henry
 Churchill, J. McKean
 Clark, Henry
 Clark, Ransom
 Clarke, Stillman
 Crane, George B.
 Cressy, Oliver S.
 Crittenden, Simeon
 Cross, Joseph W.
 Cushman, Thomas
 Cutler, Simeon N.
 Davis, Charles G.
 Davis, Ebenezer
 Davis, Isaac
 Dean, Silas
 Denton, Augustus
 DeWitt, Alexander
 Dunham, Bradish
 Durgin, John M.
 Eames, Philip
 Earle, John M.
 Eastland, Peter
 Eaton, Calvin D.
 Edwards, Elisha
 Edwards, Samuel
 Fay, Sullivan
 Fisk, Lyman
 Foster, Aaron
 Fowle, Samuel
 Freeman, James M.
 French, Rodney
 French, Samuel
 Gale, Luther
 Giles, Charles G.
 Gooch, Daniel W.
 Gooding, Leonard
 Graves, John W.
 Green, Jabez
 Greene, William B.
 Griswold, Josiah W.
 Griswold, Whiting
 Hadley, Samuel P.
 Hall, Charles B.
 Hallett, B. F.
 Hapgood, Lyman W.
 Hapgood, Seth
 Harmon, Phineas
 Hawkes, Stephen E.
 Heath, Ezra, 2d
 Hewes, James
 Hewes, William H.
 Hobart, Henry
 Holder, Nathaniel
 Hood, George
 Howard, Martin
 Howland, Abraham H.
 Hoyt, Henry K.
 Hunt, Charles E.
 Hurlbut, Moses C.

Kendall, Isaac
 Kimball, Joseph
 Kingman, Joseph
 Knight, Jefferson
 Knowlton, J. S. C.
 Knowlton, William H.
 Knox, Albert
 Ladd, Gardner P.
 Lawrence, Luther
 Leland, Alden
 Lincoln, Abishai
 Loomis, E. Justin
 Marble, William P.
 Mason, Charles
 Meader, Reuben
 Merritt, Simeon
 Moore, James M.
 Morse, Joseph B.
 Morton, Elbridge G.
 Morton, Marcus, Jr.
 Morton, William S.
 Nash, Hiram
 Newman, Charles
 Nichols, William
 Nute, Andrew T.
 Ober, Joseph E.
 Orne, Benjamin S.
 Osgood, Charles
 Packer, E. Wing
 Paine, Benjamin
 Parris, Jonathan
 Peabody, Nathaniel
 Pease, Jeremiah, Jr.
 Penniman, John
 Perkins, Jesse
 Perkins, Noah C.
 Phelps, Charles
 Phinney, Silvanus B.
 Pierce, Henry
 Pool, James M.
 Powers, Peter
 Rantoul, Robert
 Rawson, Silas
 Rice, David
 Richardson, Daniel
 Richardson, Nathan
 Richardson, Samuel H.
 Ring, Elkanah, Jr.
 Rockwood, Joseph M.
 Ross, David S.
 Sherill, John
 Sikes, Chester
 Simmons, Perez
 Simonds, John W.
 Smith, Matthew
 Sprague, Melzar
 Spooner, Samuel W.
 Stacy, Eben H.
 Stevens, Granville
 Stevens, Joseph L., Jr.
 Stevens, William
 Stiles, Gideon
 Swain, Alanson
 Taft, Arnold
 Thayer, Joseph
 Thayer, Willard, 2d
 Thomas, John W.
 Tilton, Abraham
 Tilton, Horatio W.
 Turner, David P.
 Tyler, William
 Underwood, Orison
 Wallace, Frederick T.
 Wallis, Freeland
 Walker, Amasa
 Ward, Andrew H.
 Warner, Samuel, Jr.
 Waters, Asa H.
 Weston, Gershom, B.
 White, George
 Whitney, Daniel S.
 Wilbur, Joseph
 Wilson, Henry
 Wilson, Willard
 Winn, Jonathan B.
 Winslow, Levi M.
 Wood, Charles C.

Wood, Nathaniel
 Wood, Otis

Woods, Josiah B.

NATS.

Adams, Benjamin P.
 Aldrich, P. Emory
 Allen, Joel C.
 Andrews, Robert
 Aspinwall, William
 Atwood, David C.
 Austin, George
 Barrows, Joseph
 Bartlett, Russel
 Beebe, James M.
 Bell, Luther V.
 Bennett, William, Jr.
 Blagden, George W.
 Bradbury, Ebenezer
 Braman, Milton P.
 Brewster, Osmyn
 Brinley, Francis
 Briggs, George N.
 Bullock, Rufus
 Bumpus Cephas C.
 Carter, Timothy W.
 Chapin, Chester W.
 Chapin, Daniel E.
 Coggin, Jacob
 Cogswell, Nathaniel
 Conkey, Ithamar
 Cook, Charles E.
 Coledge, Henry F.
 Crosby, Leander
 Crowell, Seth
 Dana, Richard H., Jr.
 Davis, John
 Davis, Solomon
 Dawes, Henry L.
 Denison, Hiram S.
 Doane, James C.
 Dorman, Moses
 Easton, James, 2d
 Eaton, Lilley
 Ely, Homer
 Farwell, A. G.
 Fowler, Samuel P.
 French, Charles H.
 Gilbert, Wauton C.
 Giles, Joel
 Gould, Robert
 Goulding, Dalton
 Goulding, Jason
 Hale, Artemas
 Hale, Nathan
 Hammond, A. B.
 Hathaway, Elnathan P.
 Hazewell, Charles C.
 Heard, Charles
 Henry, Samuel
 Hersey, Henry
 Hillard, George S.
 Hobart, Aaron
 Hopkinson, Thomas
 Houghton, Samuel

ABSENT.

Abbott, Alfred A.
 Allen, Charles
 Alley, John B.
 Appleton, William
 Ayres, Samuel
 Baker, Hillel
 Ballard, Alvah
 Banks, Nath'l P., Jr.
 Bartlett, Sidney
 Bigelow, Jacob
 Bishop, Henry W.
 Bliss, William C.
 Bradford, William J. A.
 Breed, Hiram N.
 Brown, Alpheus R.
 Brown, Hiram C.
 Buck, Asahel
 Bullen, Amos H.
 Burlingame, Anson
 Childs, Josiah

Hubbard, William J.
 Hunt, William
 Huntington, Asahel
 Jackson, Samuel
 James, William
 Jenkins, John
 Jenks, Samuel H.
 Kellogg, Giles C.
 Kinsman, Henry W.
 Knight, Hiram
 Kuhn, George H.
 Ladd, John S.
 Lawton, Job G., Jr.
 Lincoln, F. W., Jr.
 Livermore, Isaac
 Lord, Otis P.
 Lothrop, Samuel K.
 Loud, Samuel P.
 Lowell, John A.
 Miller, Seth, Jr.
 Monroe, James L.
 Morey, George
 Morton, Marcus
 Noyes, Daniel
 Oliver, Henry K.
 Orcutt, Nathan
 Paige, James W.
 Park, John G.
 Parker, Adolphus G.
 Peabody, George
 Perkins, Daniel A.
 Perkiels, Jonathan C.
 Plunkett, William C.
 Pomroy, Jeremiah
 Putnam, George
 Putnam, John A.
 Read, James
 Reed, Sampson
 Rogers, John
 Sampson, George R.
 Sanderson, Amasa
 Sargent, John
 Schouler, William
 Sleeper, John S.
 Souther, John
 Stevenson, J. Thomas
 Talbot, Thomas
 Tileston, Edmund P.
 Train, Charles R.
 Turner, David
 Upham, Charles W.
 Upton, George B.
 Walker, Samuel
 Warner, Marshal
 Weeks, Cyrus
 Wetmore, Thomas
 Wheeler, William F.
 White, Benjamin
 Wilder, Joel
 Wright, Ezekiel

Fiske, Emory
 Fitch, Ezekiel W.
 Foster, Abram
 French, Charles A.
 Frothingham, R., Jr.
 Gardner, Henry J.
 Gardner, Johnson
 Gates, Elbridge
 Gilbert, Washington
 Gray, John C.
 Greenleaf, Simon
 Haskell, George
 Haskins, William
 Hayden, Isaac
 Hayward, George
 Heywood, Levi
 Hinsdale, William
 Hobbs, Edwin
 Hooper, Foster
 Huntington, Charles P.
 Huntington, George H.
 Hurlbut, Samuel A.
 Hyde, Benjamin D.
 Ide, Abijah M., Jr.
 Jacobs, John
 Johnson, John
 Kellogg, Martin R.
 Keyes, Edward L.
 Knight, Joseph
 Knowlton, Charles L.
 Langdon, Wilber C.
 Little, Otis
 Littlefield, Tristram
 Marcy, Laban
 Marvin, Abijah P.
 Marvin, Theophilus R.
 Mixer, Samuel
 Nayson, Jonathan
 Norton, Alfred
 Absent and not voting, 118.

So the resolves were ordered to their final passage.

Mr. FAY, of Southborough, moved that the Orders of the Day be laid upon the table.

The motion was agreed to.

Leave of Absence.

Mr. FAY, from the Committee upon Leave of Absence, reported:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 22, 1853.

The Committee on Leave of Absence report, that leave of absence be granted to Mr. Meader, of Nantucket, and Mr. Cummings, of Ware, for the remainder of the session.

For the Committee,

SULLIVAN FAY, Chairman.

The Report was accepted by the Convention, and agreed to.

Amendments of the Constitution.

Mr. GRISWOLD. I move that the Committee of the Whole be discharged from the farther consideration of the resolves upon the subject of future amendments of the Constitution, and that they be placed in the Orders of the Day next after the resolves upon the subject of the lieutenant-governor.

Mr. HALLETT. I hope the motion will not prevail, and that the gentleman will not press it. I do not see why we should not have the right to pursue the same course in relation to this subject, that we do as to all others. No subject which has come before this Convention, has been taken out of the Committee of the Whole, until the Committee of the Whole has seen fit to report it back to the Convention. I regard this as the

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most important fundamental proposition that we can put into the Constitution. It will be very easy, at the proper time, to move to go into the Committee of the Whole, and then take up the subject, consider it, and then report it to the Convention.

Mr. GRISWOLD. I supposed I had the concurrence of the gentleman for Wilbraham, but I see I have not. The Convention will recollect that we have been in the Committee of the Whole as many as three or four times upon this subject; and it seems to me that we might as well take the remainder of the discussion upon it in the Convention, as to go into Committee of the Whole again. I think that would be a saving of time. I did not make the motion to prevent the gentleman from offering an amendment, but because I thought we might dispose of it in that way sooner than we otherwise could.

On motion of Mr. WALKER, the Convention, at five minutes before two o'clock, P. M., adjourned until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

The Convention resumed the consideration of the Orders of the Day, the next item being the resolves on the subject of the

Lieutenant-Governor,

The question being on their final passage. They are as follows:—

ART. 1. There shall be annually elected a lieutenant-governor of the Commonwealth of Massachusetts, who shall be qualified in the same manner with the governor; and the day and manner of his election, the qualifications of the voters, the return of the votes, and the declaration of the election, shall be the same as in the election of a governor.

And the lieutenant-governor shall hold his office for one year next following the first Wednesday of January, and until another is chosen and qualified in his stead.

ART. 2. The governor, and in his absence, the lieutenant-governor, shall be president of the Council, but shall have no vote in Council; and the lieutenant-governor shall always be a member of the Council, except when the chair of the governor shall be vacant.

ART. 3. Whenever, by reason of sickness or absence from the Commonwealth, or otherwise, the governor shall be unable to perform his official duties, the lieutenant-governor for the time being shall have and exercise all the powers and authorities, and perform all the duties of governor; and whenever the chair of the governor shall be vacant, by reason of his resignation, death, or removal from office, the lieutenant-governor shall be governor of the Commonwealth.

The question being taken, it was decided in the affirmative.

So the resolutions were passed.

Spécific Payments.

The next item on the calendar, being the Report of the Committee on Banking, that it is inexpedient to insert in the Constitution any provision on the subject of the suspension of specie payments by banks, was taken up for consideration.

The Report was concurred in.

Unrestricted Representation.

The next item, being the Report of the Committee on the House of Representatives, that it is inexpedient to insert in the Constitution a pro-

vision, declaring that towns and cities may be represented by any citizens of the Commonwealth, was taken up for consideration.

The Report was concurred in.

Quorum of the House of Representatives.

The resolve relating to this subject, was next taken up. The question being on inserting "one hundred" in place of "a majority of the members," as the number which should constitute a quorum.

The amendment was adopted, and the resolve as amended, passed to a second reading.

Pay of Officers.

The resolve on the subject of the pay of the officers of the Convention, was next taken up, the pending question being on its final passage.

The resolve was passed.

Termination of Debate.

On motion of Mr. CUSHMAN, of Barnardston, it was ordered, that debate on the resolves on the subject of future amendments to the Constitution, cease in one hour after the Convention shall again go into Committee of the Whole on that subject.

Constitutional Conventions.

On motion of Mr. CUSHMAN, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

On the resolves on the subject of Conventions for amending the Constitution, Mr. Griswold, for Erving, in the chair, the pending question being on the amendment proposed by the gentleman for Wilbraham, (Mr. Hallett).

The amendment was read by the Secretary.

Mr. HALE, of Bridgewater, gave notice that he should offer an amendment to the third resolve of the original Report, as soon as he could get the floor for that purpose.

Mr. HALLETT, for Wilbraham. I have explained this proposition at some length, upon a former occasion, and I do not mean to go over any ground that I can possibly avoid. I desire, simply desire, to ask those members of the Convention, who, in the first week of our existence here, authorized the election of a member for Berlin, and proclaimed the constitutionality of this Convention, beyond the power of legislative action or repeal, whether they mean now to conform to that doctrine, in making this Constitution, or whether they intend to deny it?

The proposition, as it has been reported by the Committee, does not conform to that doctrine; for the reason that it makes it dependent upon the action of the legislature, whether the people shall have a Convention in future, or not. Neither does the proposition of the gentleman from Boston, (Mr. Giles,) who has very honorably maintained the principle, meet that issue, because it says the people may meet, according to their will, *legally expressed*; but, when you come to carry out the phraseology, you find that the will of the people "*legally expressed*," must mean a declaratory act of the legislature.

The second proposition of the gentleman from Boston in relation to holding a Convention every twenty years, is also objectionable, for the reason that it makes the people elect delegates and hold a Convention, whether they desire it or not. Now,

I do not suppose we want a provision that shall compel the people to hold a Convention, until they have declared their wish to hold one. These are my objections to the propositions of the gentleman from Boston, though in other respects, I agree with the general proposition he has laid down.

Now, Sir, I desire to remark, in relation to the proposition which I have had the honor to present, and which is now before the Committee for their consideration, that it has been concocted after a good deal of deliberation, and after consultation with a good many gentlemen who wish to meet the difficulty presented in this question, which is, in fact, the Rhode Island question as to the right of the people to make their own Constitutions. It is a question involving the doctrine whether the sovereignty is with the people or with the legislature; and the proposition I have presented, is one which, I think, I can satisfy the Convention, meets the question fully.

The proposition now before us is this: that at the general election, in 1873, and every twentieth year thereafter, the people shall give their votes upon the question whether there shall be a Convention to be held in conformity to the Act of 1852? If there are any town meetings held in 1873 for the election of governor, then the same rules and regulations which apply to that election will also apply in taking this vote. These votes are to be received, returned, counted, and declared, and if there be found a majority in favor of calling a Convention, then your Constitution will declare that to be the will of the people, and a Convention must be held accordingly. The delegates are then to be chosen the first Monday of the March next ensuing, and are to meet at the State House on the first Wednesday in May ensuing, with all the powers, and under the same regulations, as are provided in the Act of 1852.

There you have the whole matter in your Constitution, entirely independent of the legislature or any other power, to repeal it or interfere with it in any manner. It is to be in conformity to the Act of 1852, which, as we all know, provides that the delegates shall be chosen in the same manner precisely as the representatives are chosen; so that if there are members of the House of Representatives chosen under the Constitution, there will be delegates to the Convention chosen in the same manner. This Act also provides for the promulgation of the Constitution to the people, and for every proceeding, precisely like the Act under which the Convention of 1820 was called. Now, this Act has, during the last forty years, grown into common law; and there need be, therefore, no apprehension that it will not be quite sufficient to meet the wants of the case twenty years hence.

The first resolution proposed to be adopted, provides for submitting the question to the people every twenty years; and if gentlemen want to give the people the power to call a Convention which it is not in the power of the legislature to repeal or to interfere with, here is such a provision.

The next resolution provides that the legislature shall have power to submit the question whether there shall be a Convention at any other time than at the regular period of twenty years. The present legislature have no power to call a Convention. It is not in the Constitution. They assumed the power under the authority of that

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provision, which says the legislature may pass laws for the general welfare; but we surely do not mean that the legislature shall pass laws or submit propositions which are not authorized in the Constitution, in future. We want to place the question of the constitutionality of the legislature to call a Convention beyond a doubt, by placing a provision directly to that effect in the Constitution; and here it is in this second resolution. Well, Sir, when the legislature puts out a proposition for calling a Convention, and the people accept it, do you want to place it in the power of the next legislature to come in and upset all the people have done? We denied that doctrine here in this Convention; we said that the legislature had no right to repeal what a former legislature had done, after the people had given vitality to the proposition by their acceptance of it. But, Sir, what said the learned gentleman from Boston, (Mr. Choate,) when the Convention had the Berlin matter under consideration, on the 12th of last May. Let me quote from the remarks of that learned gentleman:—

“I repeat it, then: the historical fact is, that the people expressed themselves in favor of a Convention, and there they paused. What does that pause imply? This exactly—that they thereupon leave it to their actual legislature, under the existing Constitution, to go on, in its own way, on its own responsibility, and to make a law or laws, by which the popular vote for a Convention may be carried out. Under that repose, under that inaction of the people, after that manifestation of their will in that general form, it became a matter for mere law in its ordinary course, to devise and enact details; and thereupon the legislature made a law of details; amendable, like any other law, by another legislature; their successors amended it, and under the law thus amended, we are here to-day.”

That is the view taken by the gentleman from Boston; that when the legislature put out this proposition, and the people said “yes,” it was simply saying that they would have a Convention, and that they then left it to the legislature to regulate its details, and that therefore, it being a simple law, a subsequent legislature might amend, or might repeal it.

Now, what does the still more learned, though not so eloquent, gentleman from Cambridge, (Mr. Parker,) the able professor of Harvard College, say? In what way did he meet our arguments in support of the validity of this Convention? He said:—

“What is the consequence of this? Just the whole matter in dispute, Sir. I do not understand the honorable member for Wilbraham to maintain that this Act is a part of the Constitution, or that it stands as an amendment to the Constitution; but he says that it is something which the legislature cannot touch, because the people have acted upon the subject. Well, Sir, if I am correct in what I have said; if it stands as a law of the legislature; if it was a law of the legislature in its inception, and is nothing more than a law of the legislature still, notwithstanding, by its terms, it required the answer of the people before the last part of it should take effect, and have any efficacy at all; if it stands, like other laws of the legislature, as a constitutional law, then, Sir, it is in the power of the legislature, just like other laws. The people of this Commonwealth have constituted the legislature their agents, for the purpose of enacting laws, and for the purpose of repealing laws.”—

Again, he says:—

“I say it was legally competent for the legislature, at the time they modified that law, to have repealed it totally, so far as it stood a law upon the statute book, to have put an end to all farther action under it. It might have been done legally. I do not say that a revolution might not have occurred in consequence of such a proceeding; that is another thing. I am aware, Sir, that such a disregard of the will of the people might justify a resort to force; but that is another thing. As a law upon the statute book, having the force and vigor of a law upon the statute book, and no more, the legislature have the same power over it which they have over any other law, and they might have repealed it if they had seen fit to do so. Why did they not do it? Because they ought not to; because it was not proper, under the circumstances, that they should exercise that power, and they exercised their power in a way that they did think proper. I maintain farther, Sir, and I am willing to place myself upon the issue, that this Convention sits here to-day under that as a statute law, and nothing more; and the legislature being still in session here, may constitutionally and legally put an end to the existence of this Convention as a body assembled under the Constitution and under law, before that session closes. [Sensation.]”

Here the reporter well says, “sensation.” There was a sensation. When the learned professor announced that the legislature then in session had the power, by a repeal of the Act calling the Convention, to turn us out of doors, there was a great sensation in this body. But now, when we come in here and propose a remedy for such a state of things occurring in the future, the only sensation it produces seems to be to have the subject disposed of as soon as possible. Sir, ought we to leave the Constitution without some provision clearly defining what are the powers of the legislature upon this subject? When a learned professor of law comes in here, and, with his legal reputation, asserts that the Convention are mere puppets in the hands of the legislature, to be turned out of doors at the pleasure of our masters, it follows, if you pass only the provision reported by your Committee, that the Convention intends to legalize the argument; for if the legislature are to pass a law to provide for a Convention, it follows that they merely pass a law which any subsequent legislature may repeal; and if it be so, does it not place the Convention in the hands of that subsequent legislature? We held, in the Berlin argument, that if the legislature submitted a proposition for holding a Convention, to the people, which the people accepted, by their votes of yea upon it—then it was not a repealable law, but the will of the people collected, and that a subsequent legislature could not touch it or repeal it. But if you take the proposition as it stands in the Report of the Committee, which leaves it for the legislature to submit the proposition to the people in the first place, and then leaves it to the legislature to provide for holding the Convention, it will also leave it in the power of the legislature to repeal the Act calling the Convention, if they think proper. Do gentlemen mean to do that? I think not. Now, my substitute says that the question shall go to the people as a whole. If the people vote affirmatively upon it, there is an end of the matter. The Convention lives. The action is complete, and the legislature can usurp no power whatever over it.

Then, the third clause provides for the general security of the right of the people to hold a Convention, merely negating any concession of that right, and that, I think, covers the whole ground.

Now, Mr. Chairman, there is a very high legal decision upon this point, which we must either resist by force of arms hereafter, or we must amend our Constitution so as to preserve this right, which the court practically has denied, or give up the right of the people to hold Conventions without the previous consent of the legislature. We must amend the Constitution, in order to secure the people against that decision of the United States court. We must do it, or the people have lost the power of calling a Convention without the consent of the legislature. Unless you put this or a similar provision in your Constitution, you recognize the doctrine of the United States supreme court, that the people have lost the power of calling a Convention, without the consent of the legislature. I state this point distinctly, from the record. A case arose in the supreme court of the United States, in 1849, which will decide the matter now before us, against the people, unless we make provision to the contrary. The case in point has occurred where there were two governments in existence, as there were in Rhode Island; one a government of the freeholders, which persisted in holding its power against the people, under the old Charter of the King of England, and the other a Constitution and government framed by a Convention called by a large majority of the whole voters and of the whole people—where there were two Constitutions and two legislatures; and there the question was, which was the legal government? Well, Sir, how did they proceed? The advocates of the people's government went before the court and showed that a majority of seven thousand of the people of Rhode Island had voted in favor of that new Constitution, and they offered to produce the testimony or deposition of every voter, in proof. But what did the supreme court say to that? They said, all that might be very true, but it could not be admitted as entitled to any weight in deciding the question, because there was no law and no Constitution under which that vote was taken. There was no authentic Act by law to collect the will of the people, and therefore the people could never legally show they had any will!

That was the argument of the counsel for the charter government against the people, and it was an argument which the court evaded, by disclaiming jurisdiction, while at the same time they virtually affirmed it, and thus assumed that there must be some law or some constitutional provision to collect the will of the people, or they cannot speak. The will of the people is supreme, they all say, whenever you find it out; but in order to find it out, you must get a grant of a previous law from the legislature, or put some provision in your Constitution to collect it. If you have no such law, the will of the people goes for nothing. They can, in fact, have no will. Hence, unless you put into your organic law a provision to collect the will of the people, it is all nonsense about making government, that you read in the Bill of Rights; and the courts and bayonets will put it down if you move a step. Now, do we wish to have a Constitution that is liable to any such legal construction? Why, Sir, if the person had been president of the United States, who failed of being elected in 1852—if General Scott had been president of the United States, the law by which this Convention is sitting here to-day would have been repealed by the legislature

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of last winter, who went as far as they could go, without resort to arms; and if the people had undertaken to have elected their delegates, and those delegates had met here in the State House, the governor of the Commonwealth, who, in his message, declared the Convention unconstitutional, or at least of doubtful constitutionality, would have called upon the president of the United States, and officially informed him that there was an insurrection here, and the army and navy of the United States would have been sent here to put it down, and we should not have had a Convention, unless we fought for it. That is what the supreme court of the United States have adopted as the rule of the judicial power following the political power. It all depends upon who is president.

Now, do you want to leave posterity in the same condition, subject to the military despotism of a president of the United States? If you do, say so. Say it fairly, out and out, and provide that the people shall hold Conventions only according to the sovereign will of the legislature, and strike that unmeaning article about the right to frame government, out of the Bill of Rights.

Now here is a principle which was laid down by the United States court, though dissented from, in effect, by the learned judge, now no more—Judge Woodbury—but carried out by the majority of the court. It is a principle which would leave us nothing but simple revolution, to reform or change government, under our present Constitution. They admit, the judges admit the power of the people, but how do they say it must be exercised? I read from Howard's Reports of the Supreme Court of the United States, the note of the points in the two cases of "*Martin Luther vs. Luther M. Borden, et al.*," and "*Rachel Luther vs. Borden.*"

"At the period of the American Revolution, Rhode Island did not, like the other States, adopt a new Constitution, but continued the form of government established by the Charter of Charles II., making only such alterations, by acts of the legislature, as were necessary to adapt it to their condition and rights as an independent State.

"But no mode of proceeding was pointed out by which amendments might be made.

"In 1841, a portion of the people held meetings, and formed associations which resulted in the election of a Convention to form a new Constitution, to be submitted to the people for their adoption or rejection.

"The Convention framed a Constitution, directed a vote to be taken upon it, declared afterwards that it had been adopted and ratified by a majority of the people of the State, and was the paramount law and Constitution of Rhode Island.

"Under it, elections were held for governor, members of the legislature and other officers, who assembled together in May, 1842, and proceeded to organize the new government.

"But the charter government did not acquiesce in these proceedings. On the contrary, it passed stringent laws, and finally passed an act declaring the State under martial law.

"In May, 1843, a new Constitution which had been framed by the charter government, went into operation and has continued ever since."

I now read from the opinion of the court, as far as it can be said to be an opinion, delivered by chief justice Taney:—

"No one, we believe, has ever doubted the proposition, that, according to the institutions of this country, the sovereignty of every State resides in the people of the State, and that they may

alter and change their form of government at pleasure. But whether they have changed it or not, by abolishing an old government, and established a new one in its place, is a question to be settled by the political power. And when that power has decided, the courts are bound to take notice of its decision and follow it."

Again, it is said in that report, as a consequence of the above:—

"If it be asked, what redress have the people, if wronged in these matters, unless by resorting to the judiciary, the answer is, they have the same as in all other political matters. In those they go to the ballot-boxes, to the legislature, or executive, for the redress of such grievances as are within the jurisdiction of each; and, to such as are not, to Conventions and amendments of Constitutions. And when the former fail, and these last are forbidden by statutes, all that is left in extreme cases, where the suffering is intolerable, and the prospect is good of relief by action of the people without the forms of law, is to do as did Hampden and Washington, and venture action without these forms, and abide the consequences."

Now, Sir, I do not want that the people of Massachusetts should hereafter be compelled to resort to any such measures as that; and I have, therefore, submitted this series of provisions, recognizing the right of the people to alter and amend their Constitution without any previous action, or subsequent interference of the government. There is the whole argument. I have not time to dwell any longer upon this subject than to say that the doctrine of the supreme court of the United States, and many very eminent and learned lawyers of this State is, that the people cannot take the first step in reforming the Constitution, or holding a Convention, unless they get a grant of an act from the legislature, or incorporate such a provision in their Constitutions as is here proposed; and that if they move without that first step emanating from the legislature, unless it is provided for in detail in the Constitution, they move in rebellion or revolution. This provision, then, wholly independent of legislation, is the only peaceful mode of reaching that result. There is no inconvenience that will follow from it whatever. It gives you all you desire, for reforming the Constitution, and there leaves it. I do earnestly hope that there will be no hesitation on the part of the majority of this Convention, in placing that amendment in the Constitution, if they mean to stand upon the principles that moved the people to call this Convention, and thereby to recognize, in the organic law, practically, as well as by a theory which the courts construe away, the legitimate, inalienable, and operative sovereignty of the people.

Mr. BURLINGAME, for Northboro'. Mr. Chairman: Since our sittings commenced, we have had under consideration a great number of grave questions; questions involving the power of this Convention, derivative, and inherent; questions touching the quality of a legislative enactment; questions touching the nature of a fundamental law; questions as to how these differ, how one transcends the other, as the Creator transcends the creature. But I maintain that this is the grandest question, in some respects, upon which we have been called to pass since our deliberations commenced; and yet we have but one hour, in which to consider it.

As I differ upon this subject, from some gen-

tlemen who have preceded me, I wish to have that difference known. I wish to give some reasons, to show why we ought to adopt the amendment, proposed by my friend for Wilbraham, (Mr. Hallett). And preliminary, I start with the great doctrine, that the people are the source of power. I hope the Committee, when I say this, will not tremble, because they may fear a speech upon abstractions. When I say the people are the source of power, I mean the term "people" shall include every human being in whom the good God has breathed the breath of life. If it is admitted that the people are the source of power—and anybody who denies this, Mr. Webster said, must argue without an adversary—then the next question is, how shall this power flow forth from the people into practical government? In the first place, as the people cannot act in their primary capacity, it is necessary to delegate their power; and in the absence of government, and when it has been overthrown by revolution, they must act by spontaneous movement, according to their common sense, and according to the measure of their civilization. They must delegate their power, and they must clothe their agents with authority, and charge them with the great duty of giving their collected will expression in a Constitution. When they have done this, and when the work which these agents may do, shall have been accepted by the people, it becomes the fundamental law of the state.

Now, we have the machinery of government. According to the delegate system on the American principle, that the people are the source of power, how shall we put it into operation? Necessity gave birth to another American idea—the representative system. The representative is inferior to the delegate, in that he is charged with the duty of performing ordinary legislation; and all he does, he must do under, and in obedience to the Constitution, which the delegates, representing the will of the people, have made. We have, then, two great American systems upon the American principle—that the people are the source of power. So far, I suppose we all go along together. Here, our paths must separate. The question now arises, how are the people to charge their fundamental law, when it is thus established? There are two schools in this country, and this is the doctrine of one of them: inasmuch as the people are the source of power, inasmuch as the people are sovereign, inasmuch as that sovereignty cannot be alienated by them, in such a manner that it cannot be resumed when the safety of the state shall require it, then, I say, it is for the people to determine in what manner, and at what time, they shall change their fundamental law. That is the doctrine of one school—the Democratic school—and it is the doctrine to which I give my hearty assent. On the other hand, there is another school in this country, and there always has been, and there always will be, probably, which, while it admits in the abstract, that the people are the source of power, and are sovereign, yet denies the right to that sovereign power, practically to act in a sovereign manner.

The doctrine of this party was stated most clearly by Mr. Webster, in the great Rhode Island case, with the power of statement peculiar to that man. This is the doctrine of that party, as stated by him: the collected will of the people is sovereign—as sovereign, he said, as the will of the Czar of Muscovy, when it is ascertained, and

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this is his rule for ascertaining it. The will must be collected legally, by some rule prescribed by previous law. Do you not see, at a glance, that a wide ocean rolls between these two doctrines? One places the power to initiate a change in the fundamental law, in the legislature; and the other places it with the people.

One is the doctrine as laid down by the allied sovereigns at Laybac, when they contended that all reforms must proceed from the ruler; and they had the impiety to say that they had the Divine authority for withholding or granting, all rights and privileges, from, and to, the people. The other is the American doctrine, born here on this continent, on board the Mayflower, a little more than two hundred years ago, when it fluttered its weary wing into Massachusetts Bay. The other is as old as tyranny; it has stained a thousand years with its crimes, and cannon may be thundering to-day on the banks of the Danube, in its defence. Gentlemen may say that you can leave this matter safely to the legislature. They say when the people wish a change of their laws, the legislature will understand it, and will submit the question to the people. It has become convenient, I confess, in this country, to allow the legislature to collect the popular will, and that mode will probably be adhered to. But suppose the legislature refuse to collect the popular will, then what are you to do? You say it will not refuse. I say it may, and there is a precedent that it will sometimes do so; I refer to the case of Rhode Island. There the people struggled for sixty-five years, to get a change of their Constitution, but the power being in the hands of a few landholders, the legislature refused perpetually to act. They were driven to act outside of the Constitution. They collected the will of the majority of the legal voters, and seven thousand majority of the adult male population; but then the court, subsequently, when the case was tried, said it could not take evidence of these irregular proceedings.

There happened to be, at that time, as the gentleman for Wilbraham said, an accidental president in the chair at Washington; and, what is of much more consequence, he had at his right ear a man with brains enough to have made ten thousand such accidental presidents, belonging to the opposite school upon this subject; and by his advice the president of the United States instructed the officers of the United States government to sustain the old government in Rhode Island; and when this was done—when the United States came with its whole power—the arm of democracy in that State was unnerved; though if one gun had been fired, the whole country might have rallied to its defence. It may be better that they yielded—that they bided their time, and sought a peaceful solution of their difficulties. In the case of Michigan, when that hardy Democrat, General Jackson, occupied the chair of state, the territorial government refused to call a Convention, and the people assembled in their counties; they elected delegates; they had a Convention; they made a Constitution; they inaugurated a government under it. The government of the United States sent a governor there, but they did not heed him; they laughed him out of the State, and he has never been heard of since. Then they applied to the general government for admission into the Union—at that time I was a resident of the State—General Jackson commended the

course pursued by us, and the Democrats of the United States Senate, twenty-seven in all, under the lead of Old Bullion, backed up the conduct of the people of Michigan, and she was admitted as a State; and I remember with what pride I saw her beautiful banner unfurled for the first time, bearing the somewhat boastful motto, though veiling it under a dead language: "*Si quaris Peninsulam amaram circumspice*," which freely rendered, is, "If you seek a beautiful peninsula, look around you." I have now stated the two opposing doctrines, and I have given you two precedents illustrating them.

You have in the Rhode Island case the decision of the supreme court, inclining to the federal side upon this subject. Yet, in the face of all this, gentlemen may say that there is no necessity for incorporating such a provision as is here proposed, into the Constitution; that it is enough to acknowledge that the people are the source of power; that they are sovereign; but I say it is of no earthly use—and I say this, having reference to the decision of the supreme court in the Rhode Island case—unless you determine how this sovereignty shall exercise that power. It is because of these things, that I am in favor of the amendment proposed by the delegate for Wilbraham, (Mr. Hallett). I desire to incorporate into the fundamental law, I desire to put into the unbending text, something that shall be so clear and certain upon this subject that there cannot be any constitutional doubt about it; so that we shall not hold our Conventions upon any such accidental circumstance, as whether General Scott or Franklin Pierce happens to be president of the United States; so that we shall not have held over us, *in terrorem*, the opinion of a supreme court in this State, ready to give the benefit of that doubt to the doubter. I am, therefore, in favor of placing in the Constitution, in substance, the amendment of the delegate for Wilbraham (Mr. Hallett).

The first part, if I understand it, executes itself. If the selectmen of any town refuse to receive my vote, or the vote of any man, they are liable to punishment. The second part of the resolve clothes the legislature with the power of submitting to the people the proposition for a Convention. It does not limit the people, but only the servants of the people, as the people cannot limit themselves. It gives the legislature power to submit the question to the people, and that will be its warrant for acting; and when the question is submitted, and the people have voted, that closes the question as far as the legislature is concerned. Then men cannot come here in the face of this language and say that they have a right to repeal that enactment or fundamental law of the people, and force the people of Massachusetts into revolution. By adopting this proposition, we shall have a peaceful and proper mode by which we can change our fundamental law. The last part of the proposition is of more importance, it may be, than all the other propositions.

It declares, clearly and distinctly, the doctrine of the democratic school for the first time in Massachusetts; that the people are the source of power; that they cannot alienate that power; and that it is for them to determine at what time and in what manner they will change their fundamental law. Men may say that it is not necessary to declare this great right of the people. That it exists. Then I submit that it was not

necessary to have the Magna-Charta, the Bill of Rights, or Declaration of Independence. I say it is necessary, when the people have achieved a right, to put it into the unbending text, so that men who believe in law merely because it is law, will not deny it, and so that others may stand by it because of its merits.

I do not wish to prolong my remarks. I have taken up too much time already, but it seems to me this is the most important question, in some respects, that we have had before us. I am earnestly desirous that the proposition of the delegate for Wilbraham, (Mr. Hallett,) in some form, should pass.

Mr. HALE, of Bridgewater. This question, Mr. Chairman, has assumed more importance than was contemplated, I apprehend, by the Convention, when they decided to limit the discussion to one hour. I believe three-fourths of that time has already expired; taken up by two gentlemen in favor of the amendment proposed by the gentleman for Wilbraham, which he stated the other day was a vital one to be decided by this Convention. I presume that the Convention do not desire to determine this question under the discussion which has been had. I therefore move that the Committee now rise and report progress, for the purpose of moving a reconsideration of the vote limiting the debate to one hour. I trust that the Convention will see the propriety of adopting that course, so as to give some opportunity, at least, to discuss a question of this magnitude.

The motion that the Committee rise was not agreed to.

Mr. HALE. I now propose, if it is in order, to move an amendment to the third resolution. I do not propose to discuss it. I move to strike out the word "majority," wherever it occurs, and insert the words "two-thirds."

The language of the resolution is, "a majority of the whole number of senators and representatives." That, I suppose, would be a majority of the whole number assembled in Convention. I propose to strike out the word "majority" and insert "two-thirds," so that it will be two-thirds of the senators and of the representatives.

Mr. BRIGGS, of Pittsfield. Does not that open up the whole question?

The CHAIRMAN. I suppose it does.

Mr. BRIGGS. I concur in the view taken by the two gentlemen who have preceded me, in the idea that this is an important question, and one which we ought to enter upon with great gravity, and candor, and consideration. We propose here, as in other parts of the Constitution, not only to bind ourselves, but to bind those who shall come after us, and prescribe the manner in which that sovereign will of the people, that has been so often alluded to, shall be exercised. The Report of the Committee—and I very much regret that the chairman is not here—prescribes one mode of obtaining future amendments of the Constitution. The gentleman for Wilbraham, (Mr. Hallett,) prescribes another mode. What are they? The first prescribes that in twenty years from this time, and in each succeeding twenty years, the question shall be submitted to the people, "Shall there be a Convention to revise and alter the Constitution?" that if the people so determine, their legislature—their legislature—shall call a Convention in such manner as they shall deem wise and proper. Lest under any circumstances the

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legislature should fail to do its duty, the second resolution, provides the manner in which that purpose shall be accomplished. Then there is a third resolution, that provides that the legislature may propose amendments to the people, there being a majority in favor of it for two successive years, and that the people shall act upon these propositions; and, if adopted, their amendments shall become part of the Constitution of the Commonwealth.

The gentleman for Wilbraham provides, by his amendment, that once in twenty years the people shall be called upon to vote on—what? Mark, Sir,—and I call upon every gentleman who hears me, to mark and note in what respect we propose to hold the opinions of those, and the rights of those, that shall succeed us,—not merely that they shall have a Convention, but shall have a Convention to be held, not as their legislature may prescribe, but as the legislature of 1852 have prescribed. That is the regard which is had for the opinions and rights of the people. Sir, with one effort it is proposed to do what, so far as I know, never has been done by any body like this—to incorporate into a Constitution, the fundamental, lasting law of your land, an entire statute. What becomes of the will and independence of that people of whom my young friend from Northborough discoursed so eloquently? You may have a Convention if you will have it according to the law of 1852. And, perhaps there is a construction of this provision which makes it include the amendment of that law passed last winter. The gentleman did not mean to do that; but, perhaps, by a construction of that Constitution, as courts construe statutes, it might perchance impose upon the people the duty of holding the Convention according to both statutes; for one is an amendment of the other, and, in law, a part of the statute. Now, shall we do this? I appeal through you, Mr. Chairman, to every delegate who hears me, whether he intends, by his vote here, to impose upon those who shall succeed us when we shall be silent in the grave, a condition that if they want a Convention to amend the Constitution, it shall be held according to, and in compliance with, a statute of Massachusetts passed in 1852? Sir, was such a thing ever heard of? I hope gentlemen will pause before they undertake to lay such a burden as this upon those who are to come after us. I say nothing of the wisdom of that statute, or otherwise. That is immaterial. It may be the wisest statute ever passed; but, if succeeding generations want a Convention to alter their Constitution, provide for them the greatest facilities to get it; but in Heaven's name leave to them and their own legislature to provide in what manner they will have it, and how it shall be brought on; leave open before them, in the broadest possible manner, every right and every facility to call a Convention and alter their Constitution in any mode they please; but do not undertake to impose upon them a statute—an entire statute—with all its provisions, as one of the conditions under which that Convention is to be held.

The gentleman points to a provision here as to the number of delegates that towns shall be entitled to, not exceeding the number of representatives to which each town or city was entitled last year. So, Sir, of all these provisions, as I said before—I do not care what they are—was it ever heard from the beginning of free governments to this time, that a Convention should undertake to

impose upon those that should come after them, not only that they should have a right to have a Convention, but how that Convention should be called, by whom the delegates should be chosen, and all the arrangements about it? And, yet, Sir, here you have it; and you have it from a gentleman who proclaims over and over again his regard for the sovereign rights of the people; and he proposes to protect the sovereign rights of future people by providing that they shall never have a Convention except they comply with the statute of 1852. Well, gentlemen, in the name of reason, in the name of that liberty of which gentlemen talk, in the name of that sovereignty before which they bow, I ask whether you will do this?

Then, Sir, the gentleman's amendment provides that each legislature, every year, may, if they choose, put the question to the people, whether they will have an alteration of the Constitution. Well, Sir, that is providing facilities by which every change of party, every swelling political wave that changes the administration of the government of the State, may lead to a call upon the people to say whether they will alter their fundamental law. If you think that better and wiser, than to have the legislature propose amendments between these periods of twenty years, I am content with it.

Mr. HALLETT. Will the gentleman allow me to ask, whether I understood him to say that we do not allow the legislature to pass amendments?

Mr. BRIGGS. No, Sir. It allows the legislature to submit to the people the question of a Convention every year. It says:—

The foregoing resolution shall in no wise restrain or impair the reserved right of the people, in their sovereign capacity, at all times to alter and change their Constitution and frame of government.

In the name of common sense, what does this mean? Here you say that once in twenty years, about half way in a generation, the question shall be submitted to the people, whether they will have a Convention. Then you provide that their legislature may put the question annually to them, and then you resolve that by their reserved sovereignty they shall have this right. What does that mean? I confess I do not know. In raptures, almost, my young friend, (Mr. Burlingame,) breaks out in encomiums, in unknown strains, upon this new declaration of the rights of man. For the first time on this earth, I understood him to say, this right is embodied in a Constitution. Sir, I commend to my young friend to look into that glorious old Bill of Rights, drawn up by a man—no summer soldier, or summer patriot; drawn up by a man under sentence of a government against which he had rebelled; drawn up by a man and passed by a body of men who had been baptized in blood, and whose patriotism was purified by the fires of the Revolution—a man, Sir, who, when he penned that declaration, and that Bill of Rights, knew not whether he should suffer as a traitor, suspended between the heavens and the earth, or receive from future generations the gratitude of freemen. See whether this man, and those who acted with him, had any such conception as this:—

"Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit,

honor, or private interest of any one man, family, or class of men; therefore, the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it."

Sir, what are the last few words of that third resolution, but an echo of these glorious sentiments, these great principles of human rights, planted as deep, and as firm and everlasting as the granite rocks of the native town of their author? What else is it? And yet this amendment is declared to be the first proclamation of these noble sentiments. And in what manner does my young friend, and my friend for Wilbraham, propose to carry out this provision? Why, Sir, that those who are to succeed us may have a right to alter or amend in any manner they please, the Constitution and Frame of Government? No, Sir, no; they may have a right to call a Convention if they will do it in the manner prescribed in the statute of 1852; and not in any manner that they shall please. But they may vote on the question whether they will have a Convention according to the act of 1852. And this is carrying out the principle that they may alter and amend the Constitution when and how they please.

Sir, this is a great question. I will not go into the question at all whether the people are the fountain of power. Sir, who doubts it? I could not discover where my young friend drew the dividing line between the different opinions of what he calls the two schools, held in this country, notwithstanding the keenness of my young friend's remark, unless this was it—

[The hour for closing debate having arrived, the remarks of the gentleman were, at this point, interrupted.]

Mr. HALE, of Bridgewater, modified his motion so that a majority of the Senate and two-thirds of the House of Representatives should be required to ratify the amendments to the Constitution.

The question being taken upon the motion of Mr. Hale, as modified, it was not agreed to.

Mr. HALLETT modified his amendment by adding after the words "March next succeeding," the words, "in conformity with the law then in force for the election of representatives," so that the clause would read as follows:—

And thereupon delegates shall be chosen on the first Monday of March next succeeding, in conformity with the law then in force for the election of representatives, and such delegates shall meet in Convention in the State House on the first Wednesday of May succeeding, in the same manner and with the same authority as is provided in the second, third, and fourth sections of said Act.

Mr. SIMMONS, of Hanover, moved to amend the substitute proposed by Mr. Hallett as an amendment, by adding thereto the following:—

And it shall be the duty of magistrates and persons in authority, to verify and recognize the proceedings of all meetings of the people holden for that purpose, to the end that the will of the majority may be ascertained and obeyed by the constitutional authorities.

The question being taken on this amendment, it was not agreed to.

Mr. UPTON, of Boston, moved to amend the resolve, by striking out the words "1873, and in

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each twentieth year thereafter," and inserting in lieu thereof, the words "1858, and in each fifth year thereafter."

The question being taken on this amendment, it was not agreed to.

Mr. SARGENT, of Cambridge, moved to amend the resolution, by striking out the words "1873, and in each twentieth year thereafter," and inserting in lieu thereof, the words "1860, and in each tenth year thereafter."

The question being taken, upon a division, there were—ayes, 48; noes, 178—so the motion was not agreed to.

Mr. COLE, of Cheshire, moved to amend the resolution by striking out, after the word "Constitution" in the tenth line, the following words: "in conformity to the provisions of the Act of 1852, chapter 188, relating to the calling a Convention of delegates of the people, for the purpose of revising the Constitution," so that the resolution, as amended, would read as follows:—

Resolved, That it is expedient to provide in the Constitution, that a Convention to revise or amend this Constitution, may be called and held in the following manner. At the general election which shall be in the year eighteen hundred and seventy-three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes to be received, counted, returned and declared, in the same manner as by law is provided in the choice of general officers at such election; upon the question, "Shall there be a Convention to revise the Constitution?" and if it shall appear, by the returns made, that a majority of the qualified voters throughout the State, who shall assemble and vote thereon, are in favor of such revision, the same shall be deemed and taken to be the will of the people of the Commonwealth, that a Convention should meet accordingly, &c.

The question being taken upon the amendment, it was not agreed to.

Mr. HALE, of Bridgewater, moved to amend the resolution, by striking out the last clause, as follows:—

The foregoing provisions, shall in no wise restrain or impair the reserved right of the people in their sovereign capacity, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

And inserting in lieu thereof, the following:—

And the right of the people at all times, to amend their Constitution of Government, by Convention, or otherwise, according to their will, legally expressed, shall never be restrained or obstructed in this Commonwealth.

Mr. PARKER, of Cambridge. As the order which has been adopted precludes farther debate, I will ask whether the Chair gives the privilege of inquiry for the purpose of ascertaining construction? If I may be allowed, I wish to make an inquiry as to the effect of the amendment which is proposed by the gentleman for Wilbraham; but if not, I must reserve my inquiry until the next stage.

The CHAIRMAN. The Chair thinks that no debate will be in order.

Mr. PARKER. If no debate is in order, I desire to know whether that precludes an inquiry?

The CHAIRMAN. It depends very much upon what the inquiry is.

Mr. PARKER. The inquiry relates to the construction of the amendment—the effect of it.

The CHAIRMAN. The Chair thinks that would lead to debate, as it would require an answer.

The question being then taken on the amendment proposed by Mr. Hale, it was not agreed to.

The question then recurred on the amendment of Mr. Hallett, being to substitute his resolution as modified, for the resolutions reported by the Committee, and the resolution was read.

The question being taken, on a division, there were—ayes, 158; noes, 101—so it was agreed to.

Mr. BUTLER, of Lowell, moved that the Committee rise, and report the substitute to the Convention, with a recommendation that it ought to be adopted.

The motion was agreed to.

The President *pro tem.*, having resumed the chair of

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The chairman, Mr. Griswold, for Erving, reported that the Committee of the Whole had had under consideration the Report of the Committee and resolves on the subject of amendments to the Constitution, and that they had instructed him to report the same back to the Convention, with amendments. The Committee of the Whole had amended the Report, by striking out the second resolution, and, afterwards, by substituting another in lieu of the remaining resolutions.

The question was first stated on concurring with the Report of the Committee of the Whole, to strike out the second resolution, as follows:—

Resolved, That it is expedient farther to provide in the Constitution, that, whenever the legislature shall fail to submit to the people, at the periods designated in the foregoing resolve, the question of calling a Convention for the purposes indicated therein, the qualified voters in State elections, in the several cities and towns, may, at the next general election thereafter, and upon notice of such failure by the Secretary of the Commonwealth, whose duty it shall be to issue such notice, proceed to vote upon said question as though it had been propounded by the legislature; and if, upon a return to the Governor and Council, of the vote so given, it shall appear that a majority have voted in favor of the proposition, the Governor shall forthwith issue his proclamation, calling upon the voters of said cities and towns, at meetings legally warned for that purpose, to elect delegates to such Convention; the time and place for holding its session, being expressed therein.

The question being taken, the amendment of the Committee of the Whole was concurred in.

The question was then stated, on the next amendment reported from Committee of the Whole, being to strike out all the resolves reported by the Committee on Amendments and Enrollments of the Constitution, and to insert in lieu thereof, the resolution submitted by Mr. Hallett.

Mr. BRIGGS, of Pittsfield, moved to amend the amendment, by striking out the following words in the tenth, eleventh, twelfth, and thirteenth lines, viz.: "In conformity to the provisions of the Act of 1852, chapter 188, relating to the calling a Convention of delegates of the people for the purpose of revising the Constitution," and also, by striking out the following words at the close of the same paragraph: "same manner and with the same authority as is provided in the second, third, and fourth sections of said Act," and inserting in lieu thereof, the fol-

lowing: "manner to be provided for by the legislature, to be chosen at said election," so that the latter part of the paragraph, as amended, would read as follows:—

And, thereupon, delegates shall be chosen on the first Monday of March next succeeding, in conformity with the law then in force for the election of representatives, and such delegates shall meet in Convention in the State House on the first Wednesday of May succeeding, in the manner to be provided for by the legislature, to be chosen at said election.

Mr. BRIGGS asked for the yeas and nays on this amendment, and they were ordered.

Mr. UPTON, of Boston. The Convention seem to have determined to adopt this substitute which was introduced by the gentleman for Wilbraham; and although I had the honor to be a member of the Committee which reported the original resolutions, the chairman of which is not now in his place, I do not propose to inflict any speech on the Convention. I should have liked to have referred, for the information of the Convention, to the Constitutions of several of the other States, in regard to this subject; and principally for the purpose of showing to this body, that it is proposed to insert into the Constitution of Massachusetts—if the amendment of the member for Wilbraham is adopted—something which is contained in that of no other State in the Union. The Report of the Committee, which I hold to be better than the substitute, states the question to be proposed to the people: "Shall there be a Convention to revise the Constitution, and amend the same?" That is the simple question to be submitted to the people; and the other matter of fixing the proper basis of that Convention, is to be left to the legislature; and I appeal to the members of this Convention, whether it is not best to leave the basis to the legislature. Whenever it is determined that it is necessary to call a Convention, the legislature for the time being may submit the question to the people: "Shall there be a Convention to revise the Constitution, and amend the same?" They will also have the power to put the question of basis, which they might do in two forms, thus: Shall the delegates to the Convention be chosen in the same manner; that the then existing House of Representatives is chosen; or shall the delegates to the Convention be chosen by districts made by dividing the senatorial districts, by a representation, in one word, of the people of the Commonwealth, and not of town corporations, for the purpose of revising the Constitution of the Commonwealth? That is the question, and that is the whole question. The Report of your Committee covers that ground, and it also covers another ground—that is, in regard to future Conventions, whether you shall have a representation of town corporations, and town corporations merely; whether one-fourth part of the people of this Commonwealth, representing a majority of the House of Representatives shall say, that hereafter in this Commonwealth, no Convention shall ever be called, unless they give their free will and assent to the same; or whether the matter shall be left to the whole people of the Commonwealth to decide, through a majority of the people, represented by a majority of the legal voters of the Commonwealth. That is the question. And when my friend from Michigan undertakes to tell us what the State of Michigan did, why did he not tell us

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that the representation in that State is by the people assembled in districts? I say, Mr. President, that as a delegate in this Convention, I am ready to meet that question, and I am ready that our Constitution shall be amended so as to have the question submitted every year to the people: "Does our Constitution need amending?" And, if they decide it does, let a delegation of the people—not a delegation of the town corporations of the Commonwealth—but a delegation of the people of the Commonwealth, here assemble and prepare the necessary amendments. I say, Sir, that the Report of your Committee covers the democratic ground, and the only democratic ground; it leaves the question open, to be submitted to the people. First, submit the question, whether a Convention shall be called; and then, what shall be the basis upon which your delegates shall be chosen? But, if it is proposed to say to the people of this Commonwealth, that the delegates to that Convention shall be chosen on the basis of the House of Representatives, and on that basis only, then it will not be a Convention called on democratic principles, but it will be a representation of town corporations, and not of the people. As a member of the Committee, I feel bound to define my position, and having done so, I take my seat.

Mr. BUTLER, of Lowell. I am sorry, Sir, that the gentleman from Boston should have undertaken to have started off upon the idea that this was a foregone conclusion, and that it really was a case for the exhibition of heat and temper, rather than the exhibition of argument. He spoke so rapidly, under his excited feelings upon the subject—and doubtless he was well excited in view of the tremendous consequences which he foresees—I say he spoke so rapidly, that I somewhat doubt whether I exactly understood him. If, however, I did understand him, it was to this effect: that if we pass this amendment as it came from the Committee of the Whole, we shall provide that the Constitution shall be hereafter amended by the towns; in other words, that the towns are to elect delegates to any future Convention which may be held. If that is really so, it would be a pretty strong argument, I grant; and I think the Convention would go with him. If he really thinks it is so, I do not blame him for the heat which he has manifested. I should get hot myself; I should warm up considerably, if that were the case. But, the difficulty is, that the gentleman does not seem to have read the provision with due care. It provides that in each twentieth year the question shall be submitted to the qualified voters of the State, whether we shall have a Convention in a certain manner, to revise the Constitution; and if they say that we shall, then the delegates shall come together on the basis of representation, as it shall then be established. Well, Sir, if the people in the mean time shall have thought that the basis is an unjust one, they will undoubtedly adopt another basis—perhaps the district system.

Mr. UPTON. I will ask the gentleman whether, by this amendment, whenever a Convention shall be called, it will not be called upon the basis which we now establish; and whether that is not a basis of town representation, and not a representation of the whole people of the State?

Mr. BUTLER. It will undoubtedly be called upon the basis which we have now made. It will be submitted to the qualified voters; and if

they should, in the mean time, say that this system of town representation is so intolerable as not to be borne, they will, undoubtedly, propose to change it, and refuse to endure it any longer. Then the delegates will come together, and the majority of the whole people will alter the Constitution. Town delegates may propose this or that; but unless it is a proposition which to the whole people seems necessary to be adopted, it cannot become a provision in the Constitution. How shall we stand then? The whole people will have adopted the Constitution, which cannot be altered but by the whole people. And now if the people should adopt this form of government, that form will stand till when? Why, Sir, till the whole people get ready to alter it. And if all the towns should agree but one, and that one town should contain a majority of the population, it cannot be changed until the majority in that town agree to it. It is a majority of the whole people. The gentleman shakes his head as if he did not believe it. I should like to know how it can be otherwise? You cannot have a Convention till the majority of the people say so; and when they do say so, then a Convention can come here and sit as long as we have done—very much too long, I fear, for the good of the Commonwealth—and then, after all, it is the whole people who must make any change in the Constitution.

Mr. UPTON. Will the gentleman from Lowell allow me one word?

Mr. BUTLER. O yes, Sir; a thousand, if you choose.

Mr. UPTON. I only mean to say, that by a corporate representation, you cannot get the opinion of the whole people through their delegates. It is a town system of representation, and not a system based upon population. That is what I mean to say. It provides that the delegates shall be chosen under a town representation, and not by the whole people of the Commonwealth.

Mr. BUTLER. The difficulty under which the gentleman is laboring, is, in the first place, that he mistakes the temper of the Convention for his own, [a laugh,] and in the second place, that he mistakes the fact, that the people live in towns. What is a commonwealth? It is not at one time a commonwealth, and at another time a town. A commonwealth is made up of towns. There is no commonwealth without towns. Strike out of existence all the towns, and there will be no commonwealth here. The difficulty of the gentleman is, that we do not provide, in some way or other, a district system of representation.

And now I have got at what the gentleman wished. When he made the amendment which seemed to me to be altogether more progressive than even that of my friend for Northborough, when he proposed that we should have a Convention in 1858, and every fifth year afterwards, I understand what he wants to get at; he is in hopes of getting some district system by which he can so alter the Constitution as to get a complete district system for all time to come. I saw what he was after—like the nurse that wanted to kill the child in her arms by stuffing it with sweet-cake. He professes to be conservative; but, Sir, I am a great deal more conservative than he is. He is one of the conservatives of the "Young American" people, while I am getting to be an "Old Fogey" on this question!

Sir, I see no difficulty in this matter whatever. We must make some basis of representation. The

Commonwealth must be represented, and represented in a way which the Convention say is the proper one, or else the people will not be represented at all. If the amendment is adopted, and the Constitution accepted by the people, we shall then have a Constitution under which the people of the Commonwealth agree to live; and it will remain in that form until a majority of the people agree to alter it, and that is all there is of it.

Now, one word upon the amendment of the gentleman from Pittsfield. If I understood it, it is the same amendment which was offered by the gentleman from Cheshire, except that it provides that the legislature shall fix upon the manner in which the Convention shall be held.

Mr. LORD, of Salem. I desire that the gentleman from Lowell would allow me to ask him whether, if a Convention is called in 1873, there might not be just as many delegates as there are in this Convention, chosen from the same localities, whatever the population of these localities may be at the time? On reading carefully the proposition of the gentleman for Wilbraham, I think he will come to that conclusion.

Mr. BUTLER. I had thought so. It struck me in the same way that it seems to have struck the gentleman from Salem, until I looked at it more carefully. It provides that "thereupon the delegates shall be chosen on the first Monday of March next succeeding, in conformity with the provisions of law for then electing members of the House of Representatives." I do not know that I quote the words exactly. I speak from memory; but that is the substance of the amendment, at any rate. It will be as "*then*" in force; so that it must be exactly as the House of Representatives is based in 1873, and every twenty years thereafter; and if there is anything wrong about this, the legislature will have a right, each year, to ask the people to call a Convention together, until they get it righted; so that if this great wrong has been done, which has excited my friend from Boston so much, he can get it righted by the people, between now and then.

Now, Sir, I was going to refer for a moment to the amendment of the gentleman from Pittsfield, who seems to have adopted the child of the gentleman from Cheshire, probably because he had none of his own. And what is it? It is a proposition that the legislature shall prescribe the mode in which the Convention shall be called. If the people agree that a Convention shall be called, then I believe that the legislature is to prescribe the manner in which it is to be called. I believe I have got it right.

Mr. BRIGGS. The proposition is, that it shall be held in a manner provided by certain sections of that law.

Mr. BUTLER. I want the Convention to see the exact difference between the two propositions. The proposed amendment provides, that after the people have called a Convention, it shall be held in such a manner as the *then* legislature shall provide. This proposition is to have a Convention in a given manner, whether the legislature are willing or unwilling; that we should have just such a body as this, always, of course, with more talent and ability, and temper, which they will get so much better twenty years hence; but we are to have just such a body, constituted and held just in the same way as this body is.

Now I understand this to be the radical difference between the two propositions: one of them

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puts into the fundamental law that the Convention shall be held without a reference to the actual powers that be, so that no question of license law, or fugitive slave law, or one law or another law, or presidential election; or so that no bolting out of a small faction, on this side or on that side; so that, in short, no extraneous influence can put an accidental majority into the legislature, which shall have any power to control the action of the people; so that the same thing shall never again be witnessed in this Commonwealth, which we saw here last winter; that it shall be among the things that were, never to be seen again—that of the legislature assuming the power to interfere with the whole people in regard to their Convention. That is the exact difference, if I understand it, between the two propositions. One is to provide, by the fundamental law, irrepealable, and not to be construed away by anybody, not to be touched by any legislature; such as cannot be interfered with by any legislature; in a Convention of the people, whenever they will—it to have, in fact, what we have now in theory, the *vox populi* second only to the *vox Dei*—that the legislature shall not interfere. That is just the difference which I wish to impress upon the Convention, and then I have urged all I wish to say upon the proposition of the gentleman from Pittsfield.

Now, I take it that every man who desires that the legislature hereafter may have power to interfere with the will of the people upon a call for a Convention, will vote for the amendment of the gentleman from Pittsfield. Every man, on the other hand, who desires that future Conventions shall be, as I trust and believe this to have been, above and beyond the reach of any legislative action, will vote for the proposition as it stands. Sir, it is quite plain that we can get here and express the will of the people without the interference of the legislature. Why do we want the legislature to tinker upon the matter? When the people have spoken and said that they will have a Convention, why do we want the legislature to prescribe the means, or to refuse to prescribe the means, by which it shall be held? Why should we give them the power to say: "You may have a Convention, but that Convention shall sit upon the top of the Hoosac Mountain, or underneath it, if you please." Why give them the right to say: "You shall have a Convention; but, if you do have it, you shall sit without any pay; you shall sit having about you the safeguards of the law. You shall have a Convention, but every one who comes to it shall come in a particular way, and be dressed in a particular uniform, and march through a particular line of sentinels, and come in at a particular door." Some gentleman near me whispers that no legislature will ever be so foolish as to do such a thing as that. Sir, to what extent the folly of the legislature may carry them, the gentleman from Salem and myself would not disagree in saying—on whatever else we might disagree—that that point was without a limit. We should probably disagree as to the side on which that folly would exist, but we should not disagree as to the fact that it might be without a limit. I should be of opinion that the legislature which would coolly discuss the basis of the regulations under which delegates should be chosen—and I will commend to the consideration of gentlemen here, the legislative caucus of last winter, where the question of complying with the peo-

ple's will was discussed, and only defeated by a majority of five—I say, after that, no man can say to what extent the folly of the legislature may go, and we are only to put safeguards about it. Suppose that five had voted the other way, where should we have been now? We should have been sitting here, but under the strong hand. I do not wish to leave anything to the future legislature, and, therefore, I am constrained to vote against the proposition of the gentleman from Pittsfield, (Mr. Briggs).

Mr. LORD. When I arose to make the inquiry of the gentleman from Lowell, I was not aware that the proposition had been modified, and I agree with him, that with that modification, the representation in the Convention would be according to the basis of representation existing at the time when the Convention would be called. But it becomes us to look and see what that basis is. Is that a representation of the people as it now stands? Now, Sir, we have adopted a mode of representation in the House of Representatives, and that plan would not have been carried, in my judgment, except for the plausible speech of the distinguished delegate who represents Berlin, (Mr. Boutwell). It was put in that speech, that this was not a representation of the people, but that it was a representation, to some extent, justified as a compensation for the mode of fixing the basis of the Senate; that the Senate should have been based upon legal voters, instead of being based upon population; and that being the case, it became necessary to make the House of Representatives such—no, I will not do the gentleman for Berlin the injustice to say it, because he did not undertake to justify it upon that ground—but he said it was not quite so bad, considering that it might be looked upon as a compensation.

Now, Sir, the great question which presents itself to us here, is this: shall we, by a constitutional enactment, provide that the next Constitutional Convention which is called, shall not be composed of persons who shall represent an equal proportion of people? Shall we provide here in the Constitution, as matter of fundamental law, that the people of this Commonwealth shall not be equally represented in the Constitutional Convention? That is the question. There is no man that pretends that the people are equally represented in the House of Representatives, upon the basis which we have fixed. Now, shall we say, as a matter of constitutional law, that when the people speak, they shall send delegates who do not represent the people equally? And, Sir, I want to know, with that amendment adopted—and I think it will require the astuteness, not only of the gentleman from Lowell, (Mr. Butler,) but also that of the gentleman for Wilbraham, (Mr. Hallett,) to tell me—what representation those sixty-four towns are entitled to in that Constitutional Convention, when they are not entitled to half a representative each in the House of Representatives?

Mr. SIMMONS, of Bedford, (in his seat). Entitled to somebody here half the time.

Mr. LORD. The gentleman near me says they may have somebody here half the time.

A VOICE. Six-tenths of the time.

Mr. LORD. So it is. I accept of the amendment. We are providing here, not by hasty legislative act, a fundamental law which shall fix the basis upon which all future Conventions shall be called; because, Sir, I submit that no Conventions

can be called hereafter, except by force and violence, unless it is called according to that basis to which I have referred; for the very provision which says that the legislature may call a Convention in other years besides the years which the Constitution provides, says, also, that it shall be called in the same manner, and upon the same basis. Therefore, you can get no law through the legislature, except in violation of the Constitution, that does not provide that the people shall not be equally represented in a Convention, which undertakes to report a constitutional amendment to the people. And, Sir, the argument which the gentleman from Lowell makes, that there is no Convention to be called without a majority of the people in favor of it in the first place, and no amendment to be adopted unless a majority of the people concur in it afterwards, is of no force whatever; because, if that has any force, why not say that the county commissioners of the county of Berkshire shall have the power, in the first place, of submitting amendments to the people, because, unless the people choose to ratify them they do not become a part of the Constitution? The difficulty is, we cannot get an amendment before the people, if you make a constitutional provision which does not provide for an equal representation of the people. How else can we get amendments before the people? The people of this Commonwealth this day demand equal representation; but they cannot get it, and why? Because the people are not equally represented here. Should every man in it, from every quarter of this Commonwealth, demand equality of representation, you will not let them vote upon that question. Why? Simply because you do not represent the people. The majority of this Convention is chosen, as every-body knows, and as has been charged over and over again, by a third part of the legal voters of this Commonwealth. Then, how are the people to amend the Constitution, if you are not to allow them to speak in Convention?

Now, Sir, it is pretty unimportant, in my judgment, whether the gentleman from Lowell, (Mr. Butler,) and myself, think the legislature will act foolishly or not. I think, as Constitution makers, we are bound to presume that future legislatures will act according to the Constitution; we are bound to presume that the people will select such agents and such representatives as will properly carry into effect their views. I have no such distrust of the people as to suppose that they will send up here representatives who will not conform to their will. If they do, the evil is only temporary, because the same constituency which sent them up, can instruct them while they are here,—unless we have taken that good old provision from the Constitution, and I hope we have not,—and if they do not like their doings while they are here, they can send others to take their places. Now, I say, it is entirely unimportant how gentlemen who will be so little known in 1873, and so little cared for at that time, as the gentleman from Lowell, (Mr. Butler,) and myself, think the legislature will manage if they have the power. I do not, however, propose at all to enter upon the discussion of that point.

I think, Sir, if our fathers had told us, in 1820, that we should not have had a Convention unless we had delegates chosen just as they should prescribe, that once in a while we should hear it said that it was not in the power of one generation to

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undertake to bind down and enchain their successors and posterity to all future times. I think it would have been said here, and said with a great deal more force, and certainly with a great deal more truth, than many things which have been advanced here politically, that if they had undertaken to say that when the people chose, through their constituted organ, to select a Convention to revise the Constitution, they had not the power to say how they should be represented. That would have been a "fossil," indeed, which thirty years ago should have undertaken to say to us of to-day, that we should not have a Convention unless we should stick to the old property qualification in the voter and in the delegate. Suppose, in 1820, that the Convention had said, that hereafter no Convention should be called, except by a majority of those voters who had a freehold estate, should not we have called that a "fossil"? that they had undertaken to bind their successors, and that they had no such power?

Sir, I do not profess to be remarkably progressive, but I hold that in making a Constitution, we should exercise such powers as we have; not only to make a Constitution which shall meet the exigencies of the day, but one which, according to human judgment, and so far as we can bring human foresight to bear upon it, shall meet the exigencies of the future. But to undertake to say that our successors, when we are slumbering, and the mould "shall have gathered upon our memories, as it will have gathered upon our tombs," shall not have a Constitutional Convention, or a Constitution, unless they take them according to the opinions of those who, living in 1853, profess to be wiser than those who may come after them, is, in my opinion, a great mistake. I am willing to declare that the people have a right to have a Convention. There is no difficulty in the people's having a Convention when they want it, and there is no difficulty in putting that into the Constitution.

Mr. PARKER, of Cambridge. I proposed, while this subject was before the Committee of the Whole, if it had been in order, to make an inquiry for the purpose of ascertaining the true construction of the proposed amendment. Having no opportunity at that time, under the rules, I desire now to call the attention of the Convention to it as adopted and reported by the Committee, with the same view. It provides that in 1873, and in every twentieth year thereafter, the question shall be submitted to the people "Shall there be a Convention to revise the Constitution in conformity to the provisions of the Act of 1852, chapter 188, relating to calling a Convention of delegates of the people, for the purpose of revising the Constitution?" That is the question which is to be submitted to the people, and upon that their vote is to be required. If they vote in the affirmative, then there are certain other provisions.

Now, Sir, the Act of 1852 contains, among other things, a provision that in case the answer shall be in the affirmative, the inhabitants of the Commonwealth, "*now* entitled" (that is, entitled in 1852,) in any one year to send one or more representatives to the general court, shall, on the first Monday of March, &c., elect one or more delegates, not exceeding the number of representatives to which each town or city "*was* entitled in the last year," (that is, in 1852); and it provides "that at a meeting of the inhabi-

tants for that purpose, every person entitled to vote for representatives in the general court, shall have the right to vote in the choice of delegates; and the same officers of the several cities and towns shall proceed in such election, as they *now* proceed in the election of representatives to the general court, and that the votes shall be received in the same manner as *now* provided in case of representatives to the general court; and that the same laws *now* in force regulating the duties of town and city officers, shall apply and be in full force and operation as to all meetings held under this Act," &c. The inquiry which I wish to make is, whether, as a matter of legal construction, if this question is submitted to the people, and they answer in the affirmative, they will not have responded that the Convention should be called precisely according to the terms, and under the terms of the Act of 1852; whether all the provisions of that Act, and all the references made by that Act, to other laws in force at that time, will not become stereotyped, and be part and parcel of the Constitution, so that reference must be made to them in 1873, and in every twentieth year thereafter, in order to ascertain how the delegates are to be chosen, and their number, and the laws which shall govern their election? If I understand the true construction of this clause, it makes all the provisions of the Act of 1852 a part of your constitutional law upon this subject, and more than that, it makes all the acts referred to in that Act—all the existing laws which were in force for the election of delegates to this Convention—also a part of the Constitution; so that sixty, eighty, or one hundred years hence, if this clause shall still remain, the people must refer to the Act of 1852, and hunt up the laws then in existence to which that Act refers, before they can know how to proceed in calling their Convention. Well, Sir, as this amendment was originally submitted by the gentleman for Wilbraham, all the proceedings were to be in perfect conformity with that Act. It provided that if the people voted to call a Convention, the delegates should be chosen on the first Monday in March, next succeeding, and that they should meet at the State House, on the first Wednesday of May next succeeding, in the same manner and with the same authority as is provided in the second, third and fourth sections of said Act—that is, according to the provisions of the Act of 1852.

But the proposition was modified afterwards in Committee, and another provision inserted, which is substantially this:—

Thereupon, delegates shall be chosen on the first Monday of March next succeeding, *in conformity with the laws then in force for the election of representatives.*

Now, Sir, I wish to know how far this provision will or will not be in conflict with the question put to the people, and answered by them? Will the election, if made in conformity with the laws then in force for the election of representatives, be made as the people have willed that it shall be done, by answering the question submitted to them in the affirmative? If it will not, then these two provisions are in conflict with each other. The people say they will have a Convention according to the Act of 1852, with all its references to other acts then in force; whereas a subsequent part of the same proposition requires that the Convention shall be called, and delegates

chosen, in the manner then provided for the election of representatives.

If there be this conflict, then I would inquire which part is to stand? Is a construction to be put upon the question submitted to and answered by the people, to make it conform to this subsequent provision, or is a construction to be put upon that subsequent provision, to make it conform to the question?

But there is something more here which seems to me to need explanation. This modification which has been inserted, makes the latter part of the provision read in this way:—

And, therefore, delegates shall be chosen on the first Monday of March next succeeding, in conformity to the laws then in force for the election of representatives, and such delegates shall meet in the State House, on the first Wednesday of May succeeding, in the same manner, and with the same authority, as is provided in the 2d, 3d, and 4th sections of said Act.

Now, can this provision stand with all its parts, in consistency with each other, or is the first portion of it, which was originally drawn in conformity with the question to be put to the people, in conflict with the modification which has been made, so that the election of delegates must be in accordance with the then existing laws, and yet in conformity with the Act of 1852?

Again, the first part of the amendment provides that, "at the next general election which shall be in the year 1873, and in each twentieth year thereafter, the qualified voters shall give in their votes," &c. Now, the qualified voters in State elections, according to the provisions which it is proposed to incorporate into the Constitution at this time, will not be, or may not be, persons of the same description as those who were the qualified voters in 1852. If the amendment which you have already adopted is ratified, the payment of a tax will not be required to qualify a person to vote. This amendment will, therefore, provide that one set of voters, all persons qualified by residence, &c., whether they have paid a tax or not, may vote upon the question: "Shall there be a Convention held according to the provisions of the Act of 1852?" But, in the choice of delegates, the election being according to the provisions of the Act of 1852, and the laws then in force, another set of voters, those only who have paid a tax, can vote. So that you will submit to one class of men the question whether a Convention shall be called, and to another class of men, the choice of delegates to the Convention.

These are questions of legal construction, and before the Convention proceeds to make this proposition a part of the Constitution, they should be satisfactorily answered.

Mr. BIRD, of Walpole. I have not much to say upon the subject before the Convention, except that I shall call for a division of the question when the vote is taken. I am willing and desirous to vote for the first proposition of the gentleman from Pittsfield, (Mr. Briggs). I do not like to vote against the proposition of the gentlemen for Wilbraham, (Mr. Hallett,) because I generally agree with him upon matters of democratic principle, but I am not willing to incorporate into the fundamental law of the Commonwealth, a provision which shall bind the people in 1873 in relation to the details of calling a Constitutional Convention. The Act of 1852 worked very well

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last year; it might not work so well twenty years hence.

In relation to the other part of the amendment presented by the gentleman from Pittsfield, I hope it will be withdrawn, or if it is not, that it will be rejected. I understand the gentleman is not particularly tenacious about retaining the latter part of his proposition, and I would, therefore, suggest that all after the word "succeeding," be stricken out. That clause of the proposition would then read:—

And thereupon delegates shall be chosen on the first Monday of March next succeeding, in conformity with the existing laws, in relation to the House of Representatives; and such delegates shall meet in Convention in the State House on the first Wednesday of May succeeding.

I would omit the remainder of the paragraph. It will then provide that the question of calling a Convention shall be taken every twenty years; and if there be a majority of the people of the State in favor of calling a Convention, then the delegates shall be chosen on the first Monday of March next succeeding, and they shall meet in the State House the first Wednesday of May next succeeding.

Gentlemen may say that with the proposition left in this shape, the legislature in the mean time, then in session, may pass acts virtually repealing the calling the Convention, or such as will render their meeting extremely difficult. Now, Sir, I have no fear of that. I believe that when we have provided in our organic law that the question shall be submitted to the people, whether there shall be a Convention called, and when a majority of the people have voted in the affirmative, no legislature will be found to contravene the will of the people. I do not think we need make any provision to prevent it. Certainly, while the memory of the last legislature lives, no future legislature will try the experiment. I therefore hope the first part of the amendment of the gentleman from Pittsfield will be adopted, and the last part stricken out.

Mr. HALLETT. In regard to the suggestions made by the learned gentleman from Cambridge, (Mr. Parker,) I am very glad he has shown that by applying his astute mind to the criticism of this proposition, it results in producing nothing against it. If the learned gentleman were now upon the bench, and a question of the constitutionality of this provision should come before him, and no stronger reasons could be adduced to prove its invalidity than he has suggested against the proposition, he would have too much respect for public sentiment and for justice, to decide otherwise than in favor of its fair construction. He objects, very technically, that there is something said in the Act of 1852, about the laws "*now*" in force, and, therefore, the construction must apply to the laws in force in 1852. Why, Sir, he might just as well have gone back to the Act of 1820 for holding a Convention, for there was something said in that Act about the laws "*now*" in force. In this resolution now under consideration, it is provided that the election of delegates to a Convention in 1873, shall be carried on in conformity with the laws "*then*" in force. That construes and applies the law to 1873. The Act of 1820 is the same—*verbatim*, almost—as that of 1852, which has answered every purpose now, after a period of thirty-three years; and yet

when we talk of using it for twenty years more to call Conventions, in the same general manner, gentlemen try to terrify us by apprehensions of binding the people to carry into effect in 1873, a law of 1853.

The learned gentleman from Cambridge, (Mr. Parker,) represents these provisions, the law of 1852, and the contemplated action of 1873, as being in conflict with each other, and wants to know which we will take. I can see no difficulty or doubt in the matter. I should like to ask any judge upon the bench, whether, if he had a statute before him declaring that such a thing should be done in accordance with the law "*now*" in force, that is, in 1820 or 1852, and also a plain constitutional provision before him, saying that the same thing shall be done in accordance with the law "*then*" in force in 1873, which he would take, the "*now*" of 1852, or the "*then*" in the constitutional provision? I think it is too plain to need an explanation.

The rule of construction is, that the Constitution is the paramount law, and is to be so construed as to carry out the will of the people, as the law-making power expressed in their Constitution, and to make all the provisions of law conform to that. Now, what do we propose to enact in this provision? Simply a constitutional provision by which the people can hold a Convention, without being tied down to ask the consent of the legislature, subject to the arrogant assumption that the legislature can repeal the law calling a Convention, and send the delegates home. I have studied this subject for five years. Its importance in elementary government, cannot be over estimated. Have other gentlemen, who object here, studied it? If they have, let them show me that they understand it, and mean to guard the rights of the people against the usurpations of a legislature, and I will take their opinions. It is a very important matter, I admit; but I cannot see the judgment or propriety of gentlemen who have scarcely spent a thought upon the subject, endangering so great a protection to the people, by hasty suggestions, all of which go to take this inherent power away from the people and give it to the legislature. If they have examined it,—and they are just as capable of examining it as I am,—I am willing to defer to them; but if they have not examined a question so delicate and difficult, they are no more competent to point out what should be done, than they would be to navigate a ship to California, without having studied the art of navigation for an hour.

As regards this technical question, of construction, I apprehend no man who desires to secure the object I have in view, will fairly, soberly, and honestly, have a moment's difficulty with regard to it. The only question before us is, will you so amend your Constitution as to provide a fundamental organic law for holding Conventions, which executes itself, without the aid of the legislature; or will you lay down the principle that the people can amend their Constitution only through the previous consent of the legislature? That is precisely the question upon which we are called to act. And here is the basis of a provision for the new Constitution, that will execute itself without the aid of the legislature; and I undertake to say, the people, when they want another Convention in twenty years, will find no difficulty at all in construing it. None whatever.

Let me assure those who are sincerely in favor of the rights of the people in this respect, that they will find no difficulty from the lawyers, and none from the judges, when we once get it into the Constitution; but before we get it there, all manner of troubles, and all manner of doubts, and all manner of technicalities, will be thrown in the way of its adoption by the Convention, and by the people. I never knew or read of an instance where the people were struggling to get back their lost rights, either through a Constitution, a legislature, or a government, in this country, or under the despotisms of the old world, but there were found lawyers who fear the ignorance of the people, and were always interposing difficulties, raising technicalities, and placing every possible inconvenience in the way, until the people have, in many instances, become alarmed, or embarrassed, and been driven from their rights. I conjure the friends of the great rights of the people in this Convention not to be alarmed at the difficulties which have been attempted to be thrown around this provision. I tell them there is no difficulty in relation to the matter at all. The simple, plain proposition, is, that the towns which are entitled to send representatives to the general court in 1873, if the people of the Commonwealth decide to hold a Convention, will elect delegates to the Convention in conformity with the law then in existence for the election of representatives. The resolution of amendment says: "in conformity with the law *then* in force," and whatever is the law then in force with regard to representatives, it will apply to delegates to the Convention. I should like to extend it still farther, but that might fail; and if it is not explicit enough, you may add the basis in the year when the valuation of estates was last settled.

The same idea is already twice expressed in the amendment; but in order that it may be so explicit that no lawyer can give it a wrong construction, I propose, at a proper time, to offer this amendment, or what is equivalent to it. I think the construction is perfectly clear as it now stands, and I can see no reason for anything farther. But I would omit the reference to the Act of 1852, and incorporate all the powers of the Convention, which is the same thing, even if it should take up a dozen pages in the Constitution, for the purpose of securing the rights of the people, rather than that those rights should be lost, and the calling of a Convention be placed in the power of the legislature, for want of a proper construction of the Constitution. I want it to be so explicit that there can be no getting round it; for if we fail here, there will be no meetings of the people in Convention for generations to come. I want the people should have the power of amending their own Constitution as they may see fit, without doing it—as the United States court has declared they must—with a rope round their necks. Our Bill of Rights says that "the people alone have an incontestible, inalienable, and indefeasible right to institute government, and to reform, alter, or totally to change the same." Now, Sir, that is a fundamental right which overrides all limitations upon the part of the people, and I want to make provision in this Constitution so that they may exercise it; for it amounts to nothing more now, as the supreme court of the United States have evasively decided in the Rhode Island cases, than simply saying that the people may do it, if

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their legislature and their court, and the president of the United States will let them; but if they undertake it without the consent of their rulers, they are to be hanged as rebels.

The gentleman from Cambridge says that if we insert this provision in the Constitution, we deprive the people of the right of amending their Constitution in the way they would like hereafter; when he knows that means they cannot amend it without a law, and thus he joins in that very cry which has come to us from the supreme court of the United States, from federal lawyers, from every man opposed to the practical sovereignty of the people, who has taken up this subject, and who contend that the people shall not amend their Constitution without the legislature will give them permission! The gentleman says farther, "do not insert this provision, because you are undertaking to say what the people in 1873 shall do towards amending their Constitution!" But what can they do without it, according to his doctrine? If we do not incorporate such a provision into our fundamental law, he maintains, the United States court maintain, and all lawyers who deny the people's sovereignty in practice, hold, that at the first step the people take for calling a meeting for a Convention, or for depositing votes for delegates, the legislature has the power to pass an act declaring it a riotous proceeding; and the military, and the army and navy of the United States may be called out to put it down. Now, instead of the revolution of blood which the learned gentleman from Cambridge, (Mr. Parker,) allows the people as their only remedy, I want a revolution of peaceful change, when the people desire to reform government; and for the sake of securing that object, now denied by the judges and lawyers, I desire to see incorporated in the Constitution the amendment I have offered, or one to the same effect, for I go for the substance only.

For the sake of the present generation, for the sake of the reaffirmation of a great truth now denied, and for the sake of posterity, I hope it may be inserted in this Constitution as a fundamental law, and become a precedent for all people who mean to guard their inalienable rights against constructive usurpation.

Mr. PARKER, of Cambridge. I misunderstood the gentleman for Wilbraham, (Mr. Hallett,) or he misunderstands me. I certainly have given no indication of any wish to confound the people with technicalities. If that was my desire I should leave this provision to be adopted, and leave the people to be confounded in their attempts to ascertain its meaning. On the contrary, I desire if possible, that whatever provisions are inserted in the Constitution, shall be so free from technicalities that there will be no doubt respecting their meaning, and no difficulty in readily understanding them. I have opposed nothing, nor have I advocated anything. I rise merely for the purpose of pointing out for the consideration of the members of the Convention the language as it stands, and to inquire what construction is to be placed upon it; indicating, perhaps, the opinion that the response of the people to the question sent to them, if that is to be regarded as the effective thing in the calling of the Convention, will confine the number of delegates and the manner of choosing them to the mode provided by the Act of 1852; and then adding the inquiry whether there had been anything inserted

in the proposition which provides for a different rule of representation; and if so, whether that was not contrary to the question submitted to the people, and their response, and to other provisions immediately connected with it?

The gentleman speaks of the Act of 1820, and says that the language of the Act of 1852 is identical with that of the Act of 1820. What of that? There is nothing in the Constitution referring to the Act of 1820, and it is not proposed to insert anything referring to that Act. The point of the inquiry is, what will be the effect of this provision referring to the Act of 1852, if inserted in the Constitution? The Act of 1852, as I said before, required the election in 1853 to be according to the provisions of the laws then in force. It has been contended here that the response of the people to the question in the Act of 1852, "Is it expedient that delegates be chosen?" &c., adopted all the provisions of that Act in such a manner, that whether regarded as a law or as a "proposition," the legislature could not change them at all; that the response of the people gave life and efficacy to the Act; and that it was not in the power of the legislature to modify it. I contended that the legislature had such power, and power to repeal it, because it was but a law; and that the vote of the people being merely that it was expedient that delegates should be chosen without any declaration respecting time or manner, had no operation to change the character of the Act itself; and I am ready to stand by that opinion, notwithstanding all which has been urged against it.

But if this provision is made a part of the Constitution, the legislature cannot repeal or modify it; and if the question is put whether a Convention shall be called in a particular manner, and answered in the affirmative, the effect of that response may be conclusively to determine the mode and manner. Then comes the question, is the provision referring to the laws in force at the time, for the election of representatives, consistent with such a response? And farther, is that provision consistent with what is immediately connected with it, viz.: that delegates shall be chosen to meet in Convention in the same manner as is provided in the 2d, 3d, and 4th sections of the Act of 1852.

Mr. HALLETT. Does it say that they must be chosen in the same manner as by the Act of 1852? I will ask the gentleman if the 2d, 3d, and 4th sections of the Act of 1852 are inconsistent with this provision? whether they do not relate to the meeting and the powers of the delegates?

Mr. PARKER. The gentleman introduces another question of construction. The 2d section of the Act of 1852, has nothing in relation to the meeting of delegates in Convention, or their powers; and I think that it relates exclusively to the manner of their choice. I ask, then, whether the last part of the proposition, as amended, is consistent with itself; and whether the whole proposition must not be construed together in such a manner, that the elections will have to be made in conformity with the 2d section of the Act of 1852, and whether the new matter introduced, providing for conformity with the laws in force at the time, for the election of representatives, must not be rejected on account of its inconsistency with the other provisions. It only shows that we are involved still farther in difficulties respecting

the construction and meaning of this proposition.

Mr. BRIGGS. I suppose the Convention will hardly take the vote upon this question to-night. I move, therefore, that the Convention do now adjourn.

The question was taken on the motion, and it was agreed to.

So the Convention adjourned until to-morrow at nine o'clock, A. M.

SATURDAY, July 23, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President *pro tempore*, at 9 o'clock.

Prayer by the Chaplain.

The journal of yesterday's proceedings was read.

Report from a Committee.

Mr. BATES, of Plymouth, from the Committee on Reporting and Printing, submitted the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 23.

The Committee on Reporting and Printing, to whom was referred the subject of reporting and publishing the proceedings and debates of this Convention, have considered the same and report: Inasmuch as much of the labor of printing, publishing and binding the Reports will not be completed until after the Convention shall have closed its labors, the Committee recommend the adoption of the following resolution.

For the Committee,

M. BATES, JR., *Chairman.*

Resolved, That the Committee appointed to superintend the publication of the reports of the debates and proceedings of this Convention, be authorized, in connection with the President and State Auditor, to allow the accounts for such service, and the Governor is hereby requested to draw his order on the treasury for the payment of the same.

The resolution was ordered to a second reading to-morrow.

Judicial Tenure of Office.

Mr. BUTLER, of Lowell. I ask leave to introduce a resolve, which I will move to refer to the Committee of the Whole.

The resolve was read as follows:—

Resolved, That all judicial commissions which shall issue to any person from and after the first day of August, in the year one thousand eight hundred and fifty-three, shall confer no greater tenure of office than the term of ten years.

Mr. BUTLER. The Convention having adopted a resolution that hereafter the term of judicial office shall be ten years, and having adopted another rule, to wit: that all judges now in commission shall hold their offices for life, and as this Constitution cannot be adopted and go into effect until some future day, the office of the resolve which I have now introduced, is to do what must be done by design, or happen by accident, to wit: limit the term of office of those judges who may receive their commissions before the Constitution goes into effect. By a well-known rule of construction, the term would refer

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to the day on which the Constitution shall go into effect, or be ratified by the people, as for example, say the first day of January next. Now suppose that between this and the first day of January, three or more of the judges should die or resign; then, Sir, we must, as in the case of judge of probate, appoint some live young Whig, I suppose, who might outlive all of us. To avoid this, I propose this resolution; and I hope it will meet the concurrence of all those who wish to deal fairly in this matter. And now that I am upon this topic, let me say a word concerning the judge of probate for Essex County.

The PRESIDENT. The Chair must interrupt the gentleman. It is not in order to discuss the general question of the judiciary upon this motion, but only the propriety of referring this resolution to the Committee of the Whole.

Mr. BUTLER. I desire to show the necessity for the adoption of this resolution; and I intend to ask a suspension of the rule, so that, dispensing with the formality of sending it to the Committee of the Whole, it may at once pass to a second reading. And without meaning to say anything, of course, against the present judiciary, supposing they would do as all others would under like circumstances, I say, suppose either from accident, or necessity, or design, there should be a vacancy, and nothing should be done to alter the tenure of office while this Convention is going into effect, how would the matter stand? In one of the States of this Union, when an alteration was made in the Constitution of the State, which provided that the commissions of the then existing judiciary should expire, and that they should not be eligible to reappointment, but that new judges should be appointed to hold office for twelve years, an old and shrewd judge resigned his commission just before the Constitution took effect, so that he was no longer judge, and as soon as it went into operation he was reappointed, and had twelve years more added to his judicial life, and actually died in office.

Mr. HOPKINSON, of Boston. He must have been a Democrat.

Mr. BUTLER. I suppose he must have been for this reason, that he had all the qualities of mind to make a good Democrat, except, perhaps, honesty of purpose. He had great ability, and if he had had honesty, he would have been a good Democrat. I move you, Sir, that the rule be suspended, and that this resolution be put upon its second reading.

Mr. SCHOULER, of Boston. I do not know as I understand the intent or purpose of the resolution which has just been submitted by the gentleman from Lowell; and I desire to ask that gentleman, whether he intends to incorporate that resolution into the Constitution, or whether it is to be a law outside of that instrument? I should like to know if we have any right to make laws in this Convention? By the Constitution of the State it is required, that the Senate and House of Representatives shall make the laws; and as I understand this resolution to be no more nor less than a law, I want to be informed from what quarter this body obtains the power to act upon it? If the gentleman intends to incorporate it into the Constitution, it is another matter. I should like to hear the resolution read once more.

The resolution was accordingly read.

Mr. SCHOULER. I would inquire if it is not of the character of an *ex post facto* law? It

does not propose any amendment to the Constitution,—for we have already acted upon that part of the Constitution, relating to the judiciary,—but is distinctly in the shape of a resolve, and must be acted upon as a law.

Mr. BUTLER. With a view simply of replying to the gentleman from Boston, I would say, that I have submitted this resolve to the best lawyers of the Convention, and they have been unanimous in the expression of their sentiments in its favor; and, if necessary, I will call on any one of those gentlemen to say, whether any such difficulty exists, as has been suggested by my friend.

The PRESIDENT. The Chair would inform the gentleman from Lowell, that all debate upon this question is out of order, although explanations may be allowed to be made.

Mr. SCHOULER. As I desire to examine this subject more particularly, I ask that the resolution may be placed in the Orders of the Day, for to-morrow.

The PRESIDENT. The question is on the motion of the gentleman from Lowell, to suspend the rules.

The question then being taken upon the motion to suspend the rules, it was, upon a division—ayes, 141; noes, 52—decided in the affirmative.

The question then recurred on the motion of Mr. Schouler, to place the resolution in the Orders of the Day, for to-morrow, and it was decided in the affirmative.

Submission of Amendments to the Constitution to the People.

On motion by Mr. CUSHMAN, of Bernards-ton, it was

Ordered, That the Committee on Reducing Amendments to the Constitution to a suitable form to be submitted to the people, be requested to prepare an Address to the people to accompany the Revised Constitution.

Orders of the Day.

On motion by Mr. GRISWOLD, for Erving, the Convention proceeded to the consideration of the Orders of the Day, the first item being the subject of

Amendments to the Constitution.

The pending question being on Mr. Briggs' amendment to the amendment of the gentleman for Wilbraham, (Mr. Hallett).

Mr. BRIGGS, of Pittsfield. I said, last evening, when I moved an adjournment, that I wished to say a few words upon this subject; and I now embrace this opportunity of presenting a few thoughts for the consideration of the Convention, assuring them that I will occupy but a few minutes of their time. The gentleman from Lowell, (Mr. Butler), and the gentleman for Wilbraham, (Mr. Hallett,) said, that the issue presented upon the amendment I offered, was this: whether the question should be left open without any provision, as to the manner in which the Convention should be called, the manner in which it should be conducted, or whether we should settle these matters. I agree with these gentlemen, so far as my proposition is concerned, that this is the precise point, and they met that point manfully and directly in their arguments. As to the character of the existing law of 1852, its meaning, and the construction which should

be given to it, the gentleman for Wilbraham, (Mr. Hallett), and the gentleman from Cambridge, (Mr. Parker,) differ widely. Then let me ask in the outset, would it be wise to incorporate into the Constitution a law about which legal gentlemen upon this floor differ, and which is to be binding upon the people in all future time? I do not dispute that it may be right to provide, in the most general, clear, and positive terms, that the legislature hereafter may yearly, if they please, submit the question to the people; and that once in twenty years the people shall, without the interference of the legislature, vote directly upon the question whether they will have a Convention or not; but I do not think it wise or just, that they shall be compelled to vote, whether they will have a Convention or not, formed in a particular way, under a law which has been made by a legislature years and generations past; and that they shall not be left themselves to make their own provision, through their own legislature, chosen by themselves. I do think, as I said before, that it infringes upon that great right which the gentleman for Wilbraham is so anxious to preserve; and it confines the people down to a particular form in which they shall vote upon the question of calling a Convention. It says to them, you may have a Convention if you choose to vote for having it called in a specified manner, and under a law regulating the particular mode in which that Convention is to be organized. It seems to me if gentlemen will reflect upon the subject, they will see, that it is infringing upon the rights of those who are to follow us. It is placing chains and fetters about them so far as the mode of calling a Convention is concerned, and so far as concerns all the steps which the legislature must take in regard to it. Is it right so to do? The amendment I have offered, proposes to leave this subject open. It proposes to do substantially, what the Report of the Committee proposes to do. I say while I prefer my own amendment, or that of the gentleman from Cheshire, (Mr. Cole,) to the other amendments which have been offered, I should much prefer to take the resolutions reported by the Committee, which it seems to me, present the matter clearly, distinctly, and simply, of submitting the question to the people, whether they will have a Convention; and if they decide to have it, a legislature chosen by themselves shall pass all the necessary measures in order to carry out that expression of the people.

Then, Sir, as I said before, I do not understand precisely what my friend for Wilbraham means by that portion of the Bill of Rights which he has appended to his proposition. He says, in reference to my reading of the Bill of Rights here, that I seemed to have overlooked the fact that that Bill of Rights furnishes no means for carrying itself out. What does his amendment do? It provides two modes in which the people may have an opportunity to vote on the question of calling a Convention; a specific mode for calling a Convention, and then it declares that this shall not be an infringement of that reserved, sovereign right, which the people have to alter, amend, or change their form of government as they please.

Well, Sir, if he means by that, that it shall be an effective, operative proposition, what is it? He has provided two modes for calling a Convention, and then declares that shall have no effect

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whatever; that the people are not bound by it. They may regard, or disregard it. They may rise up in their sovereign capacity, and constitutionally too, and amend the Constitution in any manner which they see fit. As I have often said, I believe in the sovereignty of the people, in their right and power to do as they please; and those people have a right to make a Constitution, and when they have made that Constitution they are bound, all the people of the State are bound by the Constitution which they make, until it shall be altered, changed, or abolished, in just such a mode as they shall provide that it may be altered, changed, or abolished. Is this an infringement of the sovereignty of the people? Sir, what do you want of a Constitution? It is, to be sure, to provide a government; but that government is to make laws, and those laws are to bind the people who have made the Constitution, and who will be the law-makers. And all the people, as well as every individual of the people, are bound by the laws made in conformity to the Constitution, are bound by that Constitution itself, which they have adopted and confirmed. And, whenever the people, whether in a republican government, or a despotic government, take the matter into their own hands in a way not provided in the Constitution, and undertake to change the Constitution, whether by the peaceable mode of the ballot-box, or amidst the clash of arms, it is a revolution. And, whenever the people choose to have a revolution, they may have one if there are enough of them to carry it through. But, we propose to do things differently; we are a constitutional people as well as a free people.

Now, Sir, the proposition of the gentleman provides, that the *legal voters* shall, at stated periods, express their wish upon the subject of a Convention; but his last proposition is, that the *people*, whenever they please, may as they please, amend, change, or abolish their government. Does he mean by that clause the legal voters, or does he extend his proposition farther, and go with my young friend who spoke yesterday, (Mr. Burlingame,) and say that the people include every human being in whose bosom God has planted a rational and immortal soul?

Sir, the Rhode Island case has been referred to — a case in which my friend for Wilbraham has been once a legal actor, and which he has studied deeply, and made himself acquainted with the great principles of freedom applied to it. The Rhode Island case is precisely this: the legal voters of Rhode Island refused to alter their Constitution; but a large class of citizens of Rhode Island, from whom this privilege of voting was withheld by the existing Constitution, took it into their own hands, with a portion of the legal voters, to change their government; and they did it *pro forma*, and organized a government. That was the time when it was said, that the accidental president interposed against liberty, and in behalf of the existing government. That question was taken up to the highest tribunal in the land — and, let me tell my young friend, a Democratic tribunal — and they declared, what? They declared the great principle, that the regularly constituted constitutional government could not be overthrown, except through constitutional and legal means.

Now, suppose that the legislature intermediate between these two periods of twenty years, should refuse to put the question to the people, and that the *men* of Massachusetts, not the legal voters

alone, but these thousands and thousands of foreigners who are daily coming in among us from the land of oppression and wrong, should take it their into heads to say, this is our home, we have come here to live, we do not approve of your naturalization laws; we are men, and the moment that we tread your soil we claim the right to participate in your government. Now, suppose a sufficient number of legal voters join with them to make a majority of the men of Massachusetts, and they should rise up in their majesty, and reform and alter our government, and take possession of it through their appointed officers. Would that be a legal government? Does the gentleman mean, by his declaration of rights, to embrace such a case as that?

Sir, another case has been alluded to, the case of Michigan. Little territorial Michigan undertook to form a State government — unlike anything which took place in Rhode Island. Michigan was a territory of the United States. Formerly the mode of forming a State government in a territory, was this: congress passed a law authorizing the people of the territory to choose their officers and organize a government. But in later times that ceremony has been omitted; and the people, self-moved, in these territories, chose their officers, appointed their delegates, framed their Constitution, and then went and asked to be admitted as a State into the Union; and if they had conformed essentially with the requisitions which had theretofore been observed, congress uniformly has admitted them into the family of States. That was the case with Michigan. My young friend paid a compliment to that sturdy old veteran and patriot, Gen. Jackson, and contrasted him with the accidental president, in the case of Rhode Island. He represented him as interfering and leading little Michigan, from her territorial condition, and placing her among the family of States. Sir, my young friend is a little mistaken about this matter. Gen. Jackson had nothing more to do with admitting Michigan into the Union, or forming her Constitution, than Bolivar, in South America. I remember something about that, and how little Michigan came to congress with her representatives and senators —

Mr. HALLETT. I wish to correct one statement of fact, if the gentleman pleases, at this point. I understood the gentleman to say, that a majority of the people of Rhode Island, did not vote for forming a new Constitution.

Mr. BRIGGS. I stated that there was not a majority of the legal voters.

Mr. HALLETT. Yes, Sir; there was a majority of the legal voters, and of the male population. There was a majority of three thousand freeholders, and a majority of the population.

Mr. BRIGGS. Then I was mistaken on that point. I remember when little Michigan came and knocked for admission, and I remember when the door was slammed in her face for many long weeks, if not months. And, I can tell you why it was so. It was so, because the three great States that lay south of her, claimed a portion of her territory, and refused to vote for her admission, until that question was settled. And what was the result? With the same lawless thirst for territory, and disregard for rights and law, that those despots of the European continent manifested when they cut up and divided poor mangled Poland, they persisted in their rapacity until they accomplished their purpose. I remember on an

occasion of a debate on that question, of hearing that "old man eloquent," that just and great man who now sleeps at Quincy, say upon this question: "How stands it, who are the parties? On the one side are twenty-seven representatives from three States, holding more than thirty electoral votes in their hands, and all the force of this great republic, demanding territory from Michigan. On the other hand, stands the little territory in point of numbers, with one delegate on this floor, with a voice, but without a vote, and the principles of eternal justice on his side. But, Sir, such are the indications here, that no one can doubt what will be the result." And what was the result? Michigan was shorn of a portion of her fairest territory; it was cut off and given to the spoilers, and then Michigan was permitted to come into the Union. That is not a case at all parallel in support of the case which my young friend so eloquently advocated on this floor.

Now, without going into the question as to the difficulty which will be encountered by the construction to be put upon the law which it is proposed to incorporate into the Constitution, let me ask you — for we all have one interest in this matter; few of us who act here will ever be concerned in another Convention such as this; the white and whitening heads around me admonish us that most of us, before that twenty years shall come, will have passed to our account — then let me ask each of my associates here, if he thinks he is authorized to impose conditions upon those who are to come after us, as to the mode and manner in which they may hold a Convention?

Sir, there is another difficulty. What do we propose to do? Sir, what are the provisions of the law which we intend to incorporate here? Who knows what they are? Who can rise up and tell us what he is voting upon when he votes to adopt this provision, which requires that when the people wish to call a Convention to alter their Constitution, they shall do it in conformity with a certain law, and of course, in conformity with all the laws which that refers to? Who is there who can rise up and tell us what the law proposes to do in its specific provisions? We know what the proposition of the gentleman is outside of that law. Suppose a gentleman should vote for this, and it should be adopted into the Constitution; when his constituents meet on the first of November and they call on him to know why he voted for this amendment, and ask him what he voted for, when he voted for the law of 1852, can he tell them? Then they may inquire, why did you vote for it? Suppose my constituents ask me, why did you vote against it? did you know what it is? I should say no. I voted against it because I held that we had no right to impose any such conditions, as binding upon succeeding generations in calling a Convention, and I did not care what its provisions were, whether wise or unwise. But my objection was, that we had no right to impose such conditions; that I preferred the course marked out by the Committee who reported the resolution before us, that we should put the question to the people whether they would have a Convention, and if they chose to have one, they could judge quite as well as we can, what sort of law they wanted to govern it, and much better; and, therefore, I voted against it. But those who vote for it, can give no such reason.

As I have said before, I should prefer the prop-

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osition of the Committee to the amendment. The amendment which I offer, only restores the amendment of the gentleman for Wilbraham, to the form of the original proposition of the Committee.

Mr. FRENCH, of New Bedford. I simply wish to say, that I am in favor of the proposition of the gentleman for Wilbraham. I desire that there should be incorporated into the Constitution an article that will enable the people to have a Convention without the interference of a subsequent legislature.

Being reminded, yesterday, by the gentleman for Wilbraham, (Mr. Hallett,) that if another party were in power at Washington, that if General Scott had been elected, this Convention might not have had the opportunity of revising the Constitution, and, remembering the effort that was made by the late legislature to repeal the Act calling this Convention, and, remembering also, the opinions which have been expressed upon this floor, of a distinguished gentleman in this Convention from Cambridge, (Mr. Parker,) that the legislature, even after we had assembled, had a right to repeal that Act under which we were convened, and send us home, or turn us out of doors, I think it is worth while that we should incorporate something into the new Constitution, that will obviate that difficulty in future. We know the reverence that some very learned and distinguished gentlemen in this country have had, for law and power, when it was on their side of the question, and how they have expressed themselves with regard to it when it was opposed to them.

In the campaign of 1840, what did we witness? A large and powerful party coming into that contest with this motto upon their tongues and upon their BANNERS: "Peaceably if we can, forcibly if we must." They entered into that contest, and their organs and their speakers put forth these sentiments: we will appeal to the ballot-box once more, and if that is not successful, then blood will flow.

We will appeal to the ballot-box this time, and if we do not succeed, blood will flow. That was the language of speakers high in authority in the United States; that was the doctrine which they put forth. They went on to say that the administration had "ruined the country." I will quote their language, Sir. "We will make one more appeal at the ballot-box, and if that does not prove successful, we will march to Washington and drive out these marauders by force." Do gentlemen deny that? If they do, I will put in the proof. Now, Sir, when we are revising our Constitution, remembering these things, I ask you, Sir, if it does not become us to put the citizens of Massachusetts beyond the reach of such men and such a party. Therefore, Sir, let us incorporate into this Constitution a self-acting clause, as it is termed, not for the purpose of putting limits upon the people, as has been remarked by the gentleman who preceded me, but for the purpose of enabling the people to have a Convention to revise their Constitution if they wish, accidental legislatures or accidental governments which may be in power to the contrary notwithstanding.

Now, Mr. President, the simple proposition is this: shall we put into the Constitution an article that will enable the people, in a plain, legal, constitutional manner, to have a Convention to revise their Constitution, without reference to the

party that may be in power at the time? That is the length and breadth of it; and I earnestly desire that every gentleman will weigh this matter—remembering the past, and casting his imagination forward to the future—and on this occasion do something; yes, Sir, do just that which shall retain—or rather leave where we find it—in the hands of the people, the power to call a Convention to revise, alter, or abolish the Constitution that we may form for them, should they accept it, without the interference of any subsequent legislature—any subsequent body of men, acting as a party, or as a State or General Government.

Mr. DAWES, of Adams. I think, Mr. President, that we are in danger of overdoing this matter. I, for one, am disposed to go for the largest liberty; but, Sir, I cannot go quite so far as the gentleman for Wilbraham is desirous of going. We are told by him, and the gentleman for Northborough, (Mr. Burlingame,) that there are two schools of politics in this matter; one is the school to which the gentleman says he belongs, of those who desire to give force to the will of the people, no matter how it is expressed; and the other is the school which would give the will of the people force when legally expressed. The one has charms about it which attracted my friend for Northborough and the gentleman for Wilbraham; but the other strikes them as horrid. I have nothing to say about those schools, but I think this discussion has developed the fact that there are two more schools; and, for my own part, I wish to have it put upon record to which of these schools I belong. One of these schools is of those who say that we must take care of posterity, and the other school believe in letting posterity take care of themselves. For one, I prefer to let posterity take care of themselves; I am desirous of letting them have the largest liberty, untrammelled by any restrictions of our day and generation; and when we shall have provided in the Constitution that we shall submit to the people, that the people may call a Convention just when they please, to alter their Constitution, I think that we shall have done all that can be expected of us by those who shall come after us. But, Sir, when we undertake to provide for them the form and the method of their proceeding, and say that all the wisdom that is to be hereafter in Massachusetts, is to be as nothing in comparison with the wisdom which existed in 1852 or 1853, I think we are going a little too far. We provide in one part of this resolution that the people shall vote on a call for a Convention just when they please; and then we also say that they shall vote on one once in twenty years, whether or no. This reminds me of the clergyman who made an appointment in this manner: "On the next Sabbath I shall preach in this place, Providence permitting; and I shall preach here two weeks from this time, whether or no!" [Laughter.] Let us content ourselves with providing in the Constitution that the people shall have the right to alter their Constitution by a Convention if they please, and just when they please; and having provided that, what in the name of reason is the use of saying that every twenty years they shall, whether they will or not, assemble and vote whether they will have a Convention according to a particular form? Do our friends distrust the people that are to come after us? It seems to me that this is all lip-service. Why, Sir, of all the gods men worship, no one is put off with so much pharisaical outside show and lip-service, as this god, the

people. Men have been continually getting up—I do not mean here, particularly—and calling on the people, saying, "Lord, Lord, have we not prophesied in thy name; and in thy name cast out devils; and in thy name done many wonderful works?" Have we not done this and done that for the dear people? Sir, if we let the dear people alone, they will take care of themselves. Are gentlemen afraid that in twenty years from this time, the people will be so contrary that they will not do as they have a mind to? For my own part, I am willing to trust them. When we provide that they shall have a Convention, I am not afraid that any legislature that shall come after us will trouble them. This very cry of our friends the last winter, that the legislature had an idea in their minds that they would trouble the Convention, as my friend for Northborough will remember, raised "the rattling thunder of the people about their ears, and brought down an avalanche of indignation upon them." Why, Sir, it scared them almost out of house and home, when the people rose in their majesty. Now, are our friends afraid to trust the people or the legislature who shall come after us? If the people want a Convention to amend their Constitution, we can here provide for that in the Constitution which we submit to them. When that is done, I am willing to risk them, and rest there. I would like to see the legislature that would attempt to interfere with the voice of the people, thus expressed. That, Sir, is a phantom that cannot be raised. We know what awful consequences, a few months ago, within the recollection of all of us, visited those against whom the cry was raised, though false, that they intended in the legislature, to interfere with the will of the people in respect to this Convention. But, Sir, is it any worse—supposing they should attempt it—is it any worse for the legislature of 1873 to undertake to control this matter, than for us to control it by the Act of the legislature of 1852? Is the legislature of 1852 all that is left? Are they the only minds that can provide for arranging the necessary details of a Convention? But, to go back to what I said in the first place, what is the need of going farther than this, and saying that for all coming time the people of this Commonwealth, whenever they like it—on the first Monday in November, or the first Monday in June, if you please—when they shall have so voted, may have a Convention to alter their Constitution? If you are going to direct that they shall do it so and so, you might as well undertake to provide that the gentleman who now presides over this body, shall be the president of the next Convention, or that my honorable friend for Wilbraham shall represent Wilbraham then! There is a great variety of details into which there is just as much propriety, and necessity for entering, as there is that we should enter into the details that we are providing for in this resolution. Take the four first sections of that Act; and what do they provide for? Why, Sir, they branch out into details, and ramifications of every kind.

I want to know by what sort of patent right this legislature of 1852 had the exclusive monopoly of deciding the method in which the Constitution shall be amended. And this is declared by those who say that they want to set the example here. They say that this is the first time and the only time that they shall have; if they omit to do it then, they omit it forever to say that

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the people shall alter their Constitution as they please. Now, Sir, the only way to provide that the people shall alter their Constitution as they please, is to say so. The only way to make it secure and certain that the people may alter it by a Convention, untrammelled by legislative action, is to say so; but do not, in the very voice in which you say so, require them to do it in a particular form, for fear that the legislature chosen by the same votes that shall call the Convention, may do what it was so falsely said that the legislature of the past winter entertained a serious idea of doing, but were frightened out of by the voice of the people. Sir, I belong to that school—if my friend from Lowell will permit me to say so—that school of “live young men” who are willing to let posterity take care of themselves when they want a Convention, and are not troubled about the way they will do it. My impression is, Sir, that we are not the wisest body that ever assembled, or that ever will assemble. I apprehend, Sir, that there may be such a thing as a legislature in 1873, as wise as the legislature of last year, and that it is among the possibilities that there may be a Convention in that year, as wise as this Convention. When we shall have prepared and submitted to the people a Constitution that shall answer the exigencies of 1853, and meet the present wants of the people of this State, we shall, it appears to me, have accomplished all for which we have been sent here. We shall have done our duty and may be permitted to lay off the robes of office and meet the welcome, “Well done! good and faithful servants.” But, Sir, if we undertake to make a Constitution, not only for to-day, but for all coming time, and to put into our Constitution of to-day that whoever undertakes hereafter to improve upon it, shall do it in a particular form, it seems to me that we are departing from the programme which has been alluded to so often here. We do not find any such authority as this laid down there; and we shall have gone beyond our commissions if we trouble ourselves about those who are abundantly able to take care of themselves. I think we have provided already the method of revising the Constitution hereafter. We simply say that the people of this Commonwealth shall have power, at all times, when they shall so choose, to amend their Constitution by a Convention or otherwise, as shall be legally provided. If anybody desires to have the Constitution amended illegally, he might wish a farther provision. I think it is just as much as we can do to meet the exigencies of the present time, without troubling ourselves at all about what those who shall live twenty years from this time shall think ought to be done, or the best method of doing it.

Mr. SIMMONS, of Hanover, obtained the floor, but gave way to

Mr. GRISWOLD, for Erving. I understand, Mr. President, that gentlemen who have charge of this subject, are preparing and intending to submit some modification of the substitute upon which we are now acting; and if this proposition is to be modified hereafter before it shall finally be adopted, it seems to me that we are merely discussing an irrelevant issue, and the time which we spend in discussing the subject now may therefore be lost. I rise, not for the purpose of entering into debate, but for the purpose of moving that the farther consideration of this subject be postponed until Monday next, at ten o'clock,

in order to give the friends of this measure time to put their views into such shape as may be acceptable to the Convention.

Mr. NAYSON. I desire to say a single word, Mr. President, in reference to the motion just made by the gentleman representing Erving. I understood the gentleman to suggest as a reason why this subject should be postponed, the fact that gentlemen who were supposed to have this matter in charge, had agreed to a modification of the proposition now under discussion, and that sufficient time had not elapsed to allow that modification to assume a definite shape to be presented to the Convention. I wish merely to say, that if the remark of the gentleman for Erving was understood to apply to the chairman of the Committee to whom that matter was referred, or to any members of that Committee, the gentleman is mistaken in his supposition. I wish to say in justice to my colleagues upon that Committee, that so far as I have been able to ascertain, the views which that Committee have presented, and which are contained in document No. 75, are still entertained without any change by that Committee. Although the Committee of the Whole has seen fit to substitute for that Report the proposition submitted by the gentleman for Wilbraham, the members of the Committee have not changed their views, nor is there any probability that any such change will take place in the future discussion of this subject. I do not mention this as a circumstance of any importance, but merely in order to prevent a false impression being derived from the remarks of the gentleman for Erving. So far as I have been able to observe, the Committee concurred entirely in the Report, and whatever may be the ultimate action of the Convention in regard to it, no change has taken place in the mind of any single member of that Committee.

Mr. GRISWOLD. I wish simply to state that I did not allude to the chairman of the Committee, nor to any members of that Committee. I believe the proposition now under discussion is the substitute proposed by the gentleman for Wilbraham. I referred more particularly to him and to those who were in favor of his proposition.

Mr. HALLETT. I understand the suggestion of the gentleman for Erving to be, to postpone the consideration of this question until ten o'clock, on Monday. If there is any difficulty in the minds of gentlemen as to the people having a right to change the Constitution, without reference to the legislature, so that they suppose that anything else can be presented, so as to give them that power, I have no objection to this postponement. I have no doubt, however, that the resolves, as they stand now, are perfectly practicable, and involve a principle, which I believe the Convention is disposed to adopt. But, if gentlemen are alarmed at the provisions of these resolutions, I have no objection to their postponement until Monday next, when we may, probably, have a fuller house. If, on the other hand, a majority of the Convention present think that the Convention is ready for the question, I should like to have it taken now, so that the matter may be finally disposed of. I think, upon full examination, the resolves will be found to be perfectly satisfactory.

The motion to postpone the farther consideration of the resolutions, until Monday next, was agreed to.

Quorum of the House of Representatives.

The Convention next proceeded to the consideration of the resolve on the subject of a Quorum of the House of Representatives; the question being on the final passage of the resolution,

Mr. DUNCAN, of Williamstown, moved to lay the Orders of the Day upon the table.

The motion was rejected.

Mr. SCHOUER, of Boston, moved to amend the resolution, by striking out the words “one hundred,” and inserting the word “sixty,” so that sixty members should constitute a quorum.

The amendment was not agreed to.

The resolution was then finally passed.

Counting and Recording of Votes.

Mr. DUNCAN, of Williamstown, submitted the following resolution:—

Resolved, That the Constitution ought to be so amended as to make provision for securing, assorting, counting, and recording of votes, uniformly, in the elections of all officers throughout the State.

The resolution was referred to the Committee of the Whole.

Motion to Reconsider.

Mr. HALLETT, for Wilbraham, moved to reconsider the vote of yesterday, by which the Convention passed the resolutions in relation to the Council.

The motion was placed among the Orders of the Day.

Committee on the Preservation of the Records.

Mr. DANA, for Manchester, asked to be excused from serving on the Committee on the Preservation of Records, being upon two other Committees.

The request was granted, and Mr. Hazewell, of Concord, was appointed, by the Chair, to supply the vacancy thus created in that Committee.

Banking.

Mr. GRISWOLD, for Erving. I move that the Convention resolve itself into Committee of the Whole, on the resolves on the subject of Banking.

The motion was agreed to, and the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Butler, of Lowell, in the chair.

The resolutions were read by the Secretary, as follows:—

Resolved, That it is expedient to insert into the Constitution articles providing

1. That the legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any charter bank; but corporations may be formed for such purposes, or the capital stock of charter banks may be increased, under general laws.

2. That the legislature shall provide by law for the registry of all notes or bills, authorized by general laws to be issued, or put in circulation as money; and shall require ample security for the redemption of such notes, in specie.

Mr. FROTHINGHAM, of Charlestown. Mr. Chairman: I will not waste words in urging before this Committee that the subject of the currency is one of great magnitude. It is suffi-

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cient to say that it is a question of so large a character, that I willingly would have avoided the duty of meeting it, and have seen it in the hands of others. But gentlemen whose good opinion I value, did me the honor to request me to bring this matter to the notice of the Convention; and as, in view of the action that was thought to be necessary, only a portion of the great question would have to be reviewed, and as the principles of this portion were simple in their character, and, as I apprehend, as to the action contemplated, could be easily and successfully defended, I agreed to comply with the request. Hence resolves on this subject were introduced. These were referred to a Special Committee. This Committee has on it gentlemen of much experience in banking, who take one side or the other of this question. After much deliberation, they, with great unanimity—I may say that only three voted against its adoption—agreed to the Report that is now under consideration.

And, in the first place, the action recommended by the Committee does not propose to interfere with existing banks, only so far as to prevent, by special acts, an increase of their capital stock, but it leaves them to be dealt with by the legislature. In the next place, in relation to an opinion prevalent among the members, allow me to say, that the prior action of the Convention, in the matter of the formation of corporations, does not, I apprehend, so much as touch the main and vital point of this Report.

The Report of the Committee proposes to prohibit the legislature from granting special charters for banking purposes, and to prohibit the increase of the capital stock of any chartered bank by any special act; but to allow banks to form, or the capital stock of banks to be increased, under general laws. It proposes, also, to make it obligatory on the legislature, in any general laws they pass in reference to the issue of circulating notes, to require ample security that such notes shall be redeemed in specie. These are the propositions; and the question is, shall they be incorporated into the organic law of the Commonwealth?

The consideration of these propositions opens up the whole question of the currency. To treat this elaborately, it might, perhaps, be considered not only not irrelevant, but proper and even necessary, to go somewhat over the history of banking in the old world, and show how it has been in times past, and how it exists there to-day. But this is not essential to the purpose of explaining the views of the Report, and will be passed over. And it might not be deemed out of place, to trace somewhat at length the footsteps of banking in our own country, and view it as it has been in the different States from the adoption of the Constitution down to the present time. It would be no hard task to go over the many speeches and statistical tables, on this topic, and present pregnant facts to show our large experience in banking. But this, too, is not necessarily connected with the question immediately before the Committee. But the same remark will hardly apply to the history of paper issues in our own Commonwealth. It may be deemed almost a dereliction of duty not to go minutely over this history. But a brief glance at this past, and a remark upon it, are all, however, considering the time allotted, that I shall venture to attempt.

• Review the currency question here, on this

soil, from the commencement of colonization down to the adoption of the present Constitution, and it will be found that there has been every variety of experience, in the use and the abuse of a paper circulation. For a generation our fathers got along with a variety of articles for money, among which figured the simple wampumpeage of the Indians. Then came the attempt, in 1652, to supply coin from their own mint. A private bank was proposed in 1685. In 1690 the colonists first set the example, in their province bills, of a paper issue, which they kept up for sixty years. To this succeeded the famous silver scheme of the merchants, and the no less celebrated land bank scheme of speculators. And this colonial experience was ended, in the paper issue during the Revolution. Surely here is material for a history of no small interest, and one that might be scanned with no little profit. Here are, indeed, most useful lessons. But I shall not go over this detail.

Take next what immediately concerns the action of to-day—the origin and progress of our present system of banking—or the history of paper issues from 1780 to our own time. A brief sketch is all that time will allow me to make. It was amidst the suffering and ruin occasioned by the existing paper money that the present system of banking commenced. Let those who think that this suffering was light, go into an investigation of the matter. Look at the record; look at the facts that are there to be found, and say whether the suffering was light or not. The State commenced chartering bank capital here in 1784, first with the old Massachusetts Bank, and then with the Union Bank in 1792. In 1802, the banking capital was \$2,225,000. In 1816 it was \$11,475,000. In 1829, it was \$20,420,000. In 1837, it was \$38,250,000. In 1852, it was \$43,270,000; and in 1853, it is \$53,830,000, with a power of issue equal to \$67,000,000. Such is a glance at the progress of banking, and the existing capital in banking in this Commonwealth.

And in reference to the whole of it, commencing with the commencement of Massachusetts history and coming down to our own times, it may be remarked, that whatever may be the benefits that accrue to commerce and to the community from paper money in all its various kinds, Massachusetts has experienced those benefits. And whatever evils there have been in the world, whatever robbery of labor, whatever the mercantile community have experienced in the matter of fluctuations—all the evils have been experienced here on the soil of Massachusetts. Take, for instance, the period before the adoption of the Constitution. We had our continual and periodical reversions in trade; and they were almost invariably traced, directly or indirectly, to the emission of paper. Take the experience we have had since the adoption of the Constitution, and who is there who will not admit that our commercial interests have been put in jeopardy by the enormous inflations, and, at times, by the alarming insecurity of our paper issues? Need I quote the melancholy statistics of 1837? Need I quote later or earlier similar statistics? Is not this fact admitted by one and all? In reference to this experience of Massachusetts alone, allow me to quote the words of one whose words are apt to be regarded, even by those who may not take the same view of this matter that the Committee take, and apply them to it. It was in 1844 that

Daniel Webster said, in one of his remarkable speeches:—

“We are well instructed by experience—let us not be lost to experience. Let not all the good, all the comforts, all the blessings, which now seem in prospect for all classes, be blighted, ruined, and destroyed, by running into danger which we may avoid. The rocks before us are all visible—all high out of water. They lift themselves up, covered with the fragments of the awful wrecks and ruin of other times. Let us avoid them. Let the master, and the pilot, and the helmsman, and all the crew be wide awake, and give the breakers a wide berth.”

This is an injunction which this Convention may deign to respect.

In reference to the whole of this experience, too, permit me to make another brief remark. I am sure it would surprise even the intelligent members of this Convention, if they would go back and read the communications which have been made, both to our ancient, great and general court, and to our modern legislature, by patriotic men who have been placed at the head of affairs. They have often, from their high and independent and impartial seat of power, discharged their duty to the people of this Commonwealth, in this matter of banking. They have called their attention repeatedly, to the exorbitant paper issues, and recommended the duty of imposing severer restrictions upon them. But I have not time to quote even these to any extent.

Let me refer but to one. Governor Davis, in 1834, only three years before the great bank explosion, gave advice as sound as could be given on the subject of banking, to the legislature. He dwelt on the inadequacy of the specie basis, predicted loss to bill-holders, and recommended “some way of giving greater stability to the local currency.” And what was the effect of that warning? How was it heeded? Let the batch of banks that immediately followed, attest. It fell, like a thrice-told tale upon drowsy ears. It was not heeded by the representatives of the people, when they should have looked to the interests of the people. There is one extract from these gubernatorial messages, that will be quoted, because it seems to meet the present state of things precisely, both as to the danger there was and is, and as to the plain duty there is now, before us. I allude to another gentleman whose name will be received by this Convention, with respect—Hon. Edward Everett; and I refer to what he said to the legislature, in his message of 1838. I ask the attention of the Convention to his few, concise, and true words. It was after the crash of 1837, when millions of bank capital were sunk, and hundreds and thousands of laboring men, and of others, suffered in consequence of enormous deflations. He says, in his message of 1838:—

“In the system on which our banks are conducted, the general soundness of a great majority of them is not inconsistent with the impending insolvency of individual banks, kept up to the last moment by possessing a credit with their associates, and then sinking at once, to the heavy loss of the unwary, and of those least able to bear it. The possibility of occurrences like these ought to be prevented.”

Here is a precise statement of the working of the system, and its dangers; and here, too, is a true statement of the duty of the people. The

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possibility—mind the word—the possibility of occurrences like what then had just been witnessed, ought to be prevented.

Now, let me ask legal gentlemen upon this floor, let me ask bank directors upon this floor, let me ask one and all, to point to a clause upon the statute book that will be efficient to prevent the possibility of future occurrences just like those which we have had in the past of Massachusetts? Are we not just as likely to have them in the future of Massachusetts? There are no such provisions of law. There is no adequate preventive security. There is the same system and the same danger.

Now, assuming that it has been proved, or that it is a fact that cannot be denied, that there has been a great evil in the Commonwealth, I take it there may be a reform work here at least in reference to the future.

If reformers desire to do something, here is an opportunity. They will endeavor to do what can be done to prevent the future occurrence of such evils. And, perhaps, no Convention called to revise the Constitution of Massachusetts, could have been called between the year 1837, and any future time, when this question of the duty of the people, acting in their sovereign capacity, in reference to banks and banking, would not have come up, and would not have been obliged to have been met. How shall this Convention meet this duty? Will they meet it boldly, like men who feel that something should be done to benefit the people, and protect them? Will they meet it like men ready and willing to stand on sound principle, and let consequences take care of themselves? Or will they meet it timidly, and as though they were afraid to trust the people, as though they were not ready for a sound principle and safe practice? That is the question.

And the next thing is, what ought the government to do in its capacity of agent of the people; and what ought the people, acting as sovereigns, to put into their organic law, as guide and direction to their agents, in relation to banks and banking? How shall the Convention meet this duty?

To answer this question properly, it may be well to keep in view two things; one is the trade in money, and the other is the making of money. One is the use of an article as it is, and the other is the production of an article. In other words, it may be well to keep in view, clearly and distinctly, the difference between these two functions of banking, to wit: one that of deposit and loans, and the other that of the issue of bills. Now there may be banks of deposit and loan, of heavy capital, without their having a dollar of issue, and therefore, without the danger of their doing any injury to commerce or to the people. There are banks out of the Commonwealth, for instance, which have a large deposit and exchange business, and which do not issue a dollar of paper money. It is apprehended that the duty of the government in relation to these two species of banks, is widely different.

Take the banks of deposit and loan. Our merchants desire to use a bank for the purpose of placing their money in it for safe keeping. They look around and find an institution which suits them, as to character, locality, integrity of the board of directors, as to prospects of getting facilities for business, and they choose this bank for their accommodation and become depositors in it. The bank acts on this principle, that though the

deposits are liable to be drawn out at any time by the individuals who deposited them, yet that they will not be all drawn out on one day, but that a certain average amount will always be left in the bank. On this average amount they safely make loans, and derive their profits from them. This custom of deposit and loan is carried out by almost all in transactions between man and man. Let the large brokers in State Street, who do a business larger than some of the banks, testify to the extent to which this business of deposit and loans is carried on. Now, is it the duty of the government to come in and guarantee to the individual who lends money in this way to another individual, that it shall be repaid? I think not.

Nor has there been any difficulty in relation to that species of banks. They do not add at all to paper expansion and its varied evils. Take, for an illustration, the Scotch banks, though I am aware that these banks have the power of issue. There has been a system of banking in Scotland for one hundred and fifty years. And it is an established fact, that it has stood through rebellions, through the suspension of specie payment by the bank of England, through all commercial fluctuations; and during all that period the people of Scotland have not lost so much by the failure of banks, as Massachusetts has in one year; to say nothing of other States. And what is a distinguishing feature of the Scotch system of banking? It is the practice of receiving deposits, which has contributed much to make them so safe. They bank, to a very great extent, on existing capital. Now banks of that sort—banks purely of deposit and loan—perform a great and beneficial part in the great business of society. Sound policy requires that they should be interfered with as little as possible. Let this business regulate itself. Therefore, the resolve on your table proposes to leave that deposit and loan business entirely alone. It does not touch it. It proposes no restrictions on it, but leaves it to the legislature; and those who go into it will have all the security which is afforded by the existing laws.

The function of banks on which I next propose to remark, is that of making issues or of supplying a paper circulation, in relation to which there has been and is such endless speculation. It is the peculiar character of this species of credit—the character that law has given to it, that makes the interference of government necessary.

Here it is well to look at things, not theoretically, but practically, and to consider certain questions as settled. It is no longer an open question, whether the State has the constitutional power to authorize a paper currency, for the power is in full exercise. It is no longer an open question, whether there shall be a mixed circulation, composed of paper and coin, for this now mingles in all the daily round of business. Nor is it a question, whether individual credit shall be allowed its natural advantages; that is, whether individuals of established character for personal integrity and pecuniary responsibility, shall be allowed the full benefit of such reputation, to put out their notes to go as money. Existing penalties have long existed that cut off this natural right, and create a different credit, that goes as money. In a word, a system has had full play for eighty years, and every measure tending to reform, should have reference to it.

Here, then, exists, in Massachusetts, as in other States, a species of credit that is made by law

different from individual credit. It is a paper currency, authorized by the State, and which the State considers it to be its duty to watch over and protect. And what is this currency? It consists of notes or bills, payable in specie, at the place of issue, by the power that issues them, without interest, at the will of the holders of them. It is vital that these bills possess this convertible power, and that there should be confidence that this power is a real power. Now, this element of convertibility is acknowledged to be a vital element throughout the world, or wherever sound banking principles are recognized and acted on. And the public good requires that this confidence should be based on substantial foundations; and hence every proper method should be taken to secure an ability to exercise this power. For the people have no choice as to the use of what exists as currency. Every one who does business—and who here does not do business—is obliged to make use of the existing circulating medium, or his business can hardly go on. Thus paper money has become interwoven into the daily transactions of life. With the coin it makes the currency. And this is the life-blood of commerce. If it circulates through the body politic, sound and healthy, it will exercise a sound and healthy influence; if it is corrupt and becomes stagnant, it vitiates the commercial world, and indeed affects the interests of the whole public. This cannot be denied. Hence consists the magnitude of this question. Indeed, the regulation of the currency, or fixing the value of coin, is universally regarded as an attribute of sovereignty; and the emission of paper issues has much to do with this value. Again, I remark, that as to the use of a currency, the people have no choice. They are obliged, of necessity, to make use of the existing supply.

Now, the State has assumed the duty of supplying this currency; but instead of supplying it by itself directly, it delegates this attribute of sovereignty, this power to make money, to private corporations; and it is the connection of these institutions with this delegated power, that furnishes a justification for the whole entangling code of laws, in relation to banks, with which the statute books are filled. There is nothing else that would justify such a code. And the whole purpose of these laws is, to secure the convertibility, at the will of the holder, of a piece of bank paper, at all times, into cash. That is the end and aim of the whole.

Now, need facts be adduced to prove that while, under the present safeguards, this convertibility is obtained in times of prosperity, yet that it has not been secured in periods of commercial revulsion? Need time be spent to prove how much the people have suffered from depreciated paper? Need it be shewn, that in other times than those of commercial revulsion, that in individual cases, this object has not been reached? Indeed, who will contend that this vital point has been guarded as it ought to have been? Who cannot recall, without the aid of statistics, the losses, the enormous evils, that have flowed from a neglect of this point—losses and demoralization experienced in this State alone, to say nothing of what has been seen in other States? It is a lamentable fact, that evidences of the want of proper care on this point are continually multiplying. Within a short time, close by us, in the State of Connecticut, several banks have exploded, and what security have the bill-holders that the bills will

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not depreciate, or even that ultimately they could be converted into cash?

Now, on what principle has the State acted in reference to a proper and efficient security for the convertibility of paper into specie? It has passed certain laws, such as they are,—it would be easy to enumerate them,—but it has left the execution of these laws in the hands of the banks. They determine whether they shall be observed or not. Take, for illustration, one which is considered to be the best of all the laws in reference to banking—that vital law, which requires that there shall be a deposit of fifty per cent. of the capital stock in specie, before a bank can go into operation and issue bills. Is it not well known that it has been, and is, systematically violated?

But, in the next place, if these laws were observed, they would not afford efficient protection, because they do not meet the precise point of security. Besides, they are based upon a wrong principle. The principle ought to be, that when such a high power as that of sovereignty is delegated to individuals or corporations, the State should take into its own hands security that that power will not be abused. It should require a bond for good behavior. This it has failed to do. It leaves the fulfilment in the hands of the banks, and hence it is that there has been so much of insecurity and loss in connection with these institutions.

Now, this second provision in the resolve under consideration, is designed to make it obligatory on the legislature to require security. It proposes to the people to say to the legislature: "If you charter any banks, if you allow any paper money to be issued by the banks, it shall be your duty to require that a register of all such money shall be kept, and that ample security shall be furnished that all such money shall be convertible into specie whenever it may be required." That is in the nature of a simple rule. It leaves all matters of detail entirely in the hands of the legislature. This power is left to devise ways and means relative to what that security shall be.

But, the question may be asked, what does the phrase "ample security" mean? Does it mean that there shall be a deposit of stocks, of real estate, of bonds and mortgages, or of specie in the hands of the authorities of the Commonwealth? The answer is, that it leaves the whole matter to the legislature. We merely say that if they authorize banks to issue bills, they must see to it that they take ample security that the public do not suffer, and are not even liable to suffer, by their issue. I ask if that is not right in principle? Is it asking more than a reasonable and just requirement from those to whom is delegated such a splendid privilege? Is it too much to ask, from currency makers, a bond of indemnity? Such a bond, the honest will not object to giving, while in case of fraud, it ought by all means to be held by the public.

In the second place, this security principle is in accordance with sound commercial principles. It will make the notes issued by banks resemble bills of exchange, by means of which such an immense business is done. Now, what is it that makes bills of exchange, in general, so convenient and safe? Why is it that, comparatively speaking, they perform their office so regularly, without interference by government, and subject only to the laws that govern trade? It is this: because

behind each bill of exchange there is property against which the bill is drawn, and which accompanies it to the place of destination, and the sale of which satisfies the face of the bill. That is the whole of it. It is upon this principle that the whole export and import trade of the country is carried on. It is upon this principle that the immense inland trade along the great lakes, and up and down the Mississippi, and to and from the ports of the Atlantic and Pacific, is carried on. When the total of all this is added up, the amount will be found to be enormous. It cannot be less than ten or twelve hundred millions annually. And all this immense transfer goes on regularly, safely, each bill of exchange continuing to be good as long as the property behind it is good. In this way the bill quietly performs the function of money.

Now, the benefits of bills of exchange, no one will deny. Nor are these benefits counterbalanced by enormous evils, as in the case of bank issues. But why is it that the ruinous fluctuations in trade, and commercial revulsions are never ascribed to the operation of these bills? Whoever hears such mischief laid to their door? Why is it that this cannot justly be done? Here in this country alone, is paper of this sort to an annual sum of a thousand millions of dollars, and yet no one talks of its being an inflated paper. It is because such bills are not all credit. It is because have behind them a basis of value. As long as the property behind bills continues its value, the bills will be good. Hence it is that they cannot be the cause of the fluctuations of trade. Now, compared with the amount of bills of exchange, the paper circulation is small; and yet it is to the working of this, to this paper issue, that these fluctuations and revulsions are almost exclusively and justly charged. This is because these bank issues are based on credit, and not on property. They are based on mercantile paper. Now in this, one piece of property, in its various exchanges as it passes from hand to hand, often becomes the basis of several pieces of discounted paper, each of the same value as the first; or worse still, they are based on accommodation notes, made without the transfer of a dollar of property. Now, can there be any other difference between the two, bank notes and bills of exchange? Bills of exchange have behind them property upon which they are based, while paper money is based upon credit, and often credit extended to its utmost bounds. That is the difference, and that is the only difference between them. Therefore, to make paper circulation as safe as bills of exchange, it is necessary to have it based upon the same principle. If it be required that property, that value, to the amount of the paper circulation issued, shall be deposited, as a collateral bond of security, there will be no more trouble in relation to it. That is the principle upon which the paper circulation of Massachusetts ought to rest. It is a sound principle. It is an impregnable one. Let it be proposed to the people. When they have adopted it and when it comes to be acted on by their agents, they will be secured against the immense losses by this paper circulation such as they have suffered in the past; and if they will look into it and understand it, they will sanction the principle.

And such is the growing demand for bank capital, that the adoption of it, or of some restraint, has got to be a matter of absolute neces-

sity. There is a strong tendency to the creation of bank capital in times of inflation. Such times now exist. In this State, the increase has been very great. In 1851, there were seven millions authorized; in 1853, ten millions. Is it necessary to go into details as to the manner in which this increase is commonly obtained? At the last session, such was the predicted effect of previous grants of capital, eighteen millions of capital were applied for, and ten of it were granted. But who justifies the legislature in granting such an increase? Did the public good demand it? Is this the opinion of our soundest commercial men? Is it the general opinion that this was a wise policy? Is this the language heard on every side, in the streets, in the press of all parties? Then why was the grant made? Because the power of interest was too strong for the resistance of principle. The advocates for a sound policy were powerless before the fearful combination arrayed against them. And so it will be sure to be in the future. The great boon is to obtain the power of issues, and this, too, in such a way that individual credit may be turned into the article called a currency. This paper money is the insane root that takes the reason prisoner. It is this that utters the horseleech cry. The more bank capital of this sort there is created, the more paper issue there is authorized, the greater will be the demand for more. This is the natural law of credit. It is imperious in its demand. Its condition must be complied with. Nothing is more certain than this: that the more paper issue there is authorized, the more there will be called for, and, in fact, obliged to be authorized. That is the developed law elsewhere. That has been the developed law here, on this soil, and from the beginning of the paper career in Massachusetts, down to this hour. Will any say that it will be safe to go on? But how can it be checked? If any mode can be devised to do it, will it not be wise for the people, in their sovereignty, to adopt it?

The only practicable thing that promises to check it, is for the people to make a rule that, in future, their agents, the legislature, when they delegate this attribute of their sovereignty of making money, shall require a bond of indemnity for a faithful execution of the trust. It is to require them to take ample security that what they authorize, and assume to protect, as money, shall, under no circumstances, become depreciated and valueless. Unless the people say to their agents "you shall not allow any more paper money to be issued, unless you take from those you allow to issue it, ample security," you will have this creation of more and more paper money going on, from year to year, until there is another revulsion, another scattering of wreck and ruin, another general burst of indignation, throughout the Commonwealth, against those who have falsified their pledges, and who have proved recreant to the trusts committed to them of protecting the rights of the people.

Mr. Chairman: The advantages of the adoption of the security principle as against the credit principle would be numerous. It would tend to secure for paper issues a foundation of solid capital; it would constitute a salutary restraint against extravagant expansion; it would secure, in its mode of registry, a more careful way of making issues; it would be more safe for the stockholders; it would be more secure to the de-

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positors; it would be more beneficial to the public; it would maintain confidence in the banks in times of peril; it would give to each bank an individual character, and a basis of independence; it would tend to impel an increase of specie; and in its general feature of caution and safety, promote honesty, and thus guard against that demoralization that has so marked the history of banking; while, under general laws, it would deprive banking of its monopoly feature, and would here, as it does wherever the security principle has been tried, allow capital to go into bank business, and out of it, as the wants of trade dictate.

This policy would guarantee the public that paper issues were on solid capital, upon actual value, that could not be disputed. Supposing that the ample security which the legislature would require would be a deposit of value, as a condition for the emission of paper, as it is wherever this principle has been applied, then this would be a requirement which those that issue paper could not evade. They must provide fixed capital before bills can be obtained, and no subsequent mismanagement will be able to scatter this capital, because it will be out of the power of the banks. Nor can the same deposit answer for half a dozen institutions. Now take the law as to specie, and who does not know that this is systematically violated? But those who started such banks, in too many instances, have not been capitalists, but money borrowers. They borrow the very capital on which their banks are established. There is reason to believe that no small portion of late applicants for banks, have been of this class. Take the last application for eighteen millions of bank capital. Who supposes that there was this amount of funds unemployed, and ready to be invested in banks? No one. A portion of it may have been ready for such investment. I do not deny this. It is difficult to determine, however, how great a portion. But few will deny that the balance would have been borrowed capital. Now if the applicants for new banks were required to deposit actual value before they made issues, it would do away with this evil of credit banking.

This policy will be a restraint on bank expansion. That such restraint would be salutary, few will deny; that it would prove a perfect check on expansions, is not pretended. Such an issue has been a great and overpowering evil throughout the whole of our banking experience. It has been this that has fostered speculation, laid the foundation of sudden changes, raising prices one day and lowering them the next day, and thus creating those fluctuations that are the bane of trade. It is this that has created that feeling of insecurity which has existed in relation to banks. Now, upon what calculation is it that banks, with so small an amount of specie, issue such floods of paper? Why, upon the calculation, the hope, the belief, that they will never be called on to redeem this paper in specie—that they never will be required to redeem their obligations. How many banks expect to be called on to redeem its issues, in specie? Is this the principle on which those who are to supply so important an article as currency should act? The calculation ought to be a widely different one. If this Report be accepted, and the people put it in the Constitution, they will lay down a rule that will require a different policy. They will require the banks to make their issues on

the principle that they will, at every hazard, be required to redeem their issues, in specie, and they must make their calculations accordingly. This will make the banks more cautious, and better prepared to meet their issues, when they return upon them. Instead of taking every means to push out their circulation, they will await a legitimate demand for it. Such a restraint could not fail to be a salutary one.

This policy would be more safe to stockholders. The lessons they have received have been severe ones. Let me refer to the millions of bank capital that have been sunk, either by weak or by fraudulent management. Take the immense losses suffered by the badness of mercantile paper in 1837. Would not such a principle as this now advocated, have been a salutary check on the whole of this business? In the first place, the securities could not have been wasted. So much as was represented in bills would, at least, have been secure. Then, in the next place, the means could not have been had to carry on such immense defalcations. In every way in which this can be viewed, this would have proved safer to stockholders. Now who are the stockholders of the Massachusetts banks? The stock gradually passes from first hands into those of actual investors. But these, to a great extent, are not heavy capitalists, the millionaires. I now read from a late report of the bank commissioners of 1851: The total number of shares then, was 411,700; and of shareholders, 25,781. Of these, 6,648 were women, who had 58,548 shares; 2,623 were trustees, who had 46,035 shares; and 333 were guardians, and savings institutions, holding 27,837 shares. The commissioners, on this, remark: "The stock is widely scattered into almost every village in the State; and but a small comparative amount is held by capitalists, or by persons engaged in heavy mercantile operations, in the large towns and cities." But take the case of an individual bank. The directors of the State Bank, in a memorial, in 1836, state that of 80,000 shares, 13,139 were owned in Boston, and 16,861 in the country. The Savings Bank was the largest stockholder. Out of 808 small shareholders, 354 were females. There were held by various societies, colleges, schools, executors, children, and trustees, 8,229 shares, amounting to \$493,540.

These are the persons who are largely stockholders in the banks. These are the persons who pay the bank tax—a tax founded, in my judgment, upon a wrong principle, by which the capitalists get clear of their just amount of taxation, while those who have less means, are made to pay the greater proportion—in a word, a tax upon the industry, the commerce, the best interests of the Commonwealth. These may not be palatable truths, but they are nevertheless truths; and when the community come to understand them, it is hoped there will be a sounder system of taxation adopted.

But to return: Now I ask what system will be, I do not say, be immediately the most profitable, but the soundest, the healthiest, and will furnish to the stockholders of the banks the greatest security; and in the long run, after all, be the most profitable to them and the public. Is it that system which places in the hands of "Richard Roe and John Doe," without security, the privilege to furnish the currency for the people of the Commonwealth, which to-day may be good and to-

morrow may be worthless? Or is it that system which requires a pledge of fixed value to be placed in the hands of the authorities of the State for the redemption of every dollar of paper money issued?

The adoption of this security principle as to paper issues, would produce a great reform with regard to the mode of issue of a currency. Take the existing mode of these issues, independent of security. The State have delegated to the banks the power of supplying the currency of the Commonwealth, and the banks exercise that power at discretion. Now take the revelations of 1836, in relation to this one point of making paper issues, and if anything in the mercantile history of Massachusetts can be found more disreputable than the practices in relation to it, I should like to see it. The facts are of record. Why, there were instances where the president of a bank issued paper without keeping a record of the amount he issued, and at the same time when the cashier issued paper without keeping any record of the amount he issued; so that neither the president knew how much the cashier issued, nor the cashier how much the president issued. Other instances might be adduced where issues were shamefully made. And yet, that paper circulated among the people, and was supposed by them to be issued under the protection of efficient law, and that the State watched it and guarded it! That was the credit which was constituted money by penal laws! Now this was one of the very first evils which the bank commissioners endeavored to remedy. Look through their reports and see if what has been stated is not true to the letter.

This looseness of paper issue was one of the first things they commented upon. What do they say in 1840? These commissioners, by the way, have been independent and honest-minded men, looking out for the benefit and protection of the Commonwealth. These are their words:—

"Two things ought, at least, to be considered indispensable. The evidence of the amount of issues and destructions should never rest upon records made and signed by the cashier alone; and the president of the bank should always have in his own possession, the means of knowing the exact amount of bills of the bank in existence. These precautions are equally important to the bank and the cashier."

Did the legislature then make any law, or have they made any to this day, in relation to the mere form of issue? No. It is a fact that able and competent men have been made bank commissioners; they have been paid thousands of dollars to go into the banks and reveal all the violations of law which occur, and they have made their reports. And committees of the legislature, acting upon the information furnished in this way, have brought in salutary bills, but those bills have been driven out by bankdom enthroned in the halls of legislation. I see before me the chairman of one of the banking committees who introduced an act, considered by an able committee to be necessary to protect the public in relation to banks, and based on a commissioners' report, and I saw that bill, so assailed by the plausible sophistry of bankdom that it was voted down. Now in reference to this very point of loose issue, what do the banking commissioners in 1851 say? These are their words:—

"In many banks, no record is kept by any

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officer except the cashier, of the bills issued, so that if any fraudulent entries are made in the books of the bank in relation to such issues, there is no effectual check to prevent the most injurious consequences, which might be avoided, if the president had, under his personal control, a register of bills signed and delivered by him, and of the balance outstanding."

So the same evil existed in 1851 that existed in 1836! But not a motion has been made, not a step has been taken, to remedy the evil. Now this same looseness, and this same insecurity, have been seen in other places. What has been done in several States of this Union in view of this matter? They have provided that bills which are issued and protected by the State as money, should be obtained from the State auditor, from the State authorities, whether they furnish security or not. The great State of New York a few years ago, passed a law calling in every dollar of money issued by the banks, and requiring it to be replaced by bills registered by the auditor of accounts. In relation to this whole difficulty and danger of bank issues, many of the new States have adopted into their Constitutions provisions protecting the people against fraudulent banking. New York, Ohio, Louisiana, Illinois, Indiana, California, and other States, have found it necessary to protect the people from banking issues—by putting a provision of this kind into their Constitutions. [Here the hammer fell.]

Mr. SCHOULER, of Boston. I have listened with great attention to the remarks made by the gentleman from Charlestown, (Mr. Frothingham,) but I do not intend to make an argument by way of reply, or discuss the question at all. I rise merely to ask whether the resolve passed the other day, and which was reported by the gentleman from Conway, (Mr. Whitney,) which forbids the legislature from incorporating any special corporations for all time to come, does not cover the whole ground presented by the resolution of the gentleman from Charlestown. It seems to me, that the order we have been discussing to-day is altogether unnecessary, because it covers the same ground with that adopted the other day. I would ask the gentleman if the present resolution does not cover the same ground precisely with that passed the other day, prohibiting the legislature from passing any acts establishing private incorporations.

Mr. FROTHINGHAM. Perhaps the gentleman was not present, but I think I alluded to that matter in the outset of my remarks, when I said that in my judgment the action already had by the Convention did not touch the very thing, the vital principle, the core of the whole matter—the principle of security.

Mr. SCHOULER. I supposed it was vital and right to the core of the thing, to prohibit the legislature from making any new banks; and I think the resolution adopted the other day, will have that effect. Two years ago we rechartered all the banks then in existence in Massachusetts, and I believe the gentleman from Charlestown voted for those banks. The same year we passed a general banking law, similar in principle to that which the gentleman has so ably advocated to-day. It was considered a sort of compromise with the bank people; but it is rather singular, nevertheless, that the very legislature which passed this general banking law, also rechartered every bank which was in existence in Massachu-

setts, for twenty years; and the charter of every bank now in existence runs on until the year 1870. As it is, you must remember that we may have one or two Conventions to revise the Constitution before that time arrives; and I would advise gentlemen to keep this matter out of the Constitution. Let us go on as we have done, and not incorporate a provision into the Constitution which will deprive the legislature of chartering any more new banks, thus giving the banks now in existence, a perfect monopoly of the whole business until 1870. The banks that are rechartered, are subject to all the duties, liabilities, requirements, and restrictions, contained in such acts as are now in force, and such other acts as may hereafter be passed by the general court in relation to banks. I, however, do not intend to oppose this resolution, because if I oppose it, it will be very sure to go; neither will I give it my support, because then it might be lost. I have always considered, that, under this general banking law, the whole issue of a bank is founded upon credit, just the same as in banks specially incorporated, only that it is a different kind of credit. Under the general law, what are called state and city stocks are used, but they are merely the representatives of wealth, and are merely notes payable at the expiration of a certain time; so it is with the paper which banks discount. I have no doubt that the notes of certain merchants in this city for \$2,000, are just as good as the scrip or paper of a State. But I did not intend to make a speech, and must close my remarks. I merely rose to suggest that the resolution which we passed the other day, covered the whole ground; and if so, I do not see any necessity for incorporating into the Constitution another provision of a similar character, unless gentlemen desire to make the matter doubly sure, that the banks now in existence shall have a monopoly of the business until 1870.

Mr. HOOPER, of Fall River. The second resolution, the gentleman from Boston, (Mr. Schouler,) will find, embraces a subject which the resolution passed the other day does not touch. The first resolution covers the same ground, perhaps. I wish to offer the following amendment in the shape of a proviso to the second resolution—the most important one now under consideration:—

Provided, that no note or bill of less denomination than \$10, may be issued as currency after the year 1860.

While I most fully concur in the remarks of the gentleman from Charlestown, (Mr. Frothingham,) it appears to me that the resolutions do not go far enough, that they do not remedy the evils which he has pointed out so forcibly, the evils arising from a paper currency.

I would also suggest to him, that the amount of stocks of a character that may be pledged for the redemption of bills, will not, in all probability, be more than sufficient to serve as a basis of a sufficient issue of bills of the denomination of ten dollars and upwards, to answer the demands of mercantile transactions. The suppression of bills of a lower denomination, and a substitution of specie to be used in the minor transactions of business, would go far towards producing steadiness, and remedying those evils. If the banks are to go on as they now do, I think we shall have all the evils over again that have ever

attended the issues of a redundant paper currency.

It strikes me, that our friends of late years have lost sight of what was a few years ago a leading principle with the reform party of the United States, and that was, to infuse into the circulation a larger amount of metallic currency.

We have seen the paper currency constantly increasing, and we have seen the effects of it. We have seen a constant increase in the price of the necessities of life when the currency has expanded, and a corresponding diminution of price when it has diminished, and thus labor has been robbed of its earnings. I say that it has operated constantly to rob labor, and enhance wealth, for labor is always the last to rise, and the first to fall.

In 1830, I think that there were only about sixty millions of dollars (\$61,323,898) of paper in circulation. The necessities of life and the means of living were then cheap. From that period up to 1836, the circulation increased, until it went up to one hundred and fifty millions, in round numbers. What was the effect of this great increase? It was just so much tax upon the labor of the country, collected for the benefit of capital.

If you turn to the statistics of the country, and look at the amount of imports, you will find that they increased almost in the precise ratio of the increase of paper money. The whole amount of imports in 1830 was \$70,876,920. Of cotton fabrics, \$7,862,326; while in 1836 the total of imports was \$189,980,035, and of cottons, \$17,876,087. If you again follow up the statistics you will see the decrease from 1836 to 1840 in about the same proportion, when the paper circulation came down to about one hundred and six millions (\$106,968,572,) and the imports to \$104,805,891; and cottons to \$6,599,330. The importations of the most highly protected articles, such as cottons and woollens, diminished under the decreasing tariff, which was then decreed as being ruinous to the manufacturing interests.

It is thus seen that the total importations decreased in the same ratio in which the paper money decreased, till in 1840 they were, notwithstanding a decreasing tariff, but little more than half what they were in 1836, when the tariff was the highest. The whole amount of imports of the country in 1840, as we have seen, were a little over one hundred and four millions of dollars, and the paper circulation was only about one hundred and six millions of dollars; while in 1836, with a paper circulation of one hundred and fifty million dollars, the imports had run up to the enormous amount of one hundred and ninety millions of dollars.

This shows that the importations decreased under a decreasing tariff, and decreased simply because the paper circulation decreased.

What was its effect upon labor? To my knowledge, laborers in 1836, when they were receiving the highest wages which they had ever been accustomed to receive, were not able to live near as well as in 1840, when the amount which they received for their labor was nominally far less. The amount which they received in 1840 for each day's labor, purchased more of the necessities and comforts of life than in 1836, although the amount nominally was then much less.

What is the state of facts now? The paper

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circulation has been on the increase again ever since 1843, and I suppose at this time, that it is fully equal, here in Massachusetts at least, to what it was in 1836; and you find that the price of everything has risen, and is rising in a constant ratio with this expanding currency; but you do not find that the laboring man can live any better upon the proceeds of his labor now than he could in 1841, 1842, 1843, and I question whether he can live as well as he could then.

Now, it seems to me there should be something to regulate this matter; something to prevent these enormous fluctuations of this circulating paper medium, so that it shall not expand, as it did from 1830 to 1836, from \$61,000,000 to \$150,000,000, and then contract down to \$106,000,000 in 1840, the prices in the same period fluctuating in the same ratio. I know of but one mode of reaching this difficulty, and that is, to infuse into the circulating medium of the country a larger proportion of specie. When this subject was agitated, at the time we were laboring under these great evils, and the independent treasury was put into operation, as a partial remedy, it was urged by our opponents that there was not specie enough in the world to supply a currency, and that for this reason, it was necessary to have a paper medium. They argued that there was not a sufficient supply of specie to meet the demands of a currency, without a most ruinous depression of prices. Supposing that argument to have been good then, which it was not, is it good now? What is the fact? We find that now, we are in the receipt of something like fifty millions of dollars annually, of gold, which is the product of our own territory. There never can be a more favorable time, or a better opportunity of beginning to infuse into the circulation of the country a larger proportion of specie. But for this large production of gold, which simply passes through the country in its transit to the other side of the Atlantic, I do not believe that even now the banks would continue to pay specie for three months. If that supply of gold were to be cut off, you would find there would be a collapse as great and severe as that of 1837. There is every indication of it. Look at the returns as to the amount of specie in the banks, compared with the amount of paper in circulation. Is not the difference as great as it was in 1836? I have not been able to examine the statistics on this point since the subject came up; but my impression is that the disproportion is quite as large now as it was then. The same causes exist now that existed then, over importation produced by high prices, caused by an inflated currency; and, but for the influx of the precious metals which are being sent across the Atlantic to pay balances, you would immediately have a pressure in the money market, and a collapse.

Now, it seems to me this is the proper time to start a reform in this respect, and one which is more demanded for the interest of labor than any other. The value of specie, it is true, will fluctuate and affect prices somewhat, at different times, and in different places; but, like the waters of the ocean, it will always find its true level by the laws of trade; while the paper currency is like the atmosphere above it, subject to whirlwinds and tornadoes continually, and scattering ruin and desolation in its track. If we wish to have business steady, and prices stable,

let us make our currency, for the most part, of value only, which shall fluctuate only as the laws of trade fluctuate, according to the principle of demand and supply. Now is the time to check this evil, and retain a part of the gold which is flowing through the country, and make it a part of the currency which is to circulate from hand to hand.

Sir, in England it was found that the circulation of a paper currency was inconsistent with the best interests of society, producing fluctuations too ruinous to be endured, and they have reformed it, so that at this day no laboring men are ever paid for their services in paper money. They are uniformly paid in specie. I have seen many of those who have been mechanics and laborers in the manufacturing establishments of England, who tell me that they never knew an employer to pay his laborers in paper money. The paper is for the trading and mercantile community, and to such it is a convenience that may well be granted to them. But these extreme fluctuations to which we have been heretofore subjected, have been so ruinous in their effects, that we should be warned for the future. That which has been, will be again, under like circumstances. The great proportion of paper, compared with specie, produced the enormous fluctuations, and the suspension of specie payments by the banks of but a few years ago—evils, to the recurrence of which we shall be continually exposed so long as the present system shall continue to exist. I hope we may adopt his amendment, in order to prepare the way for the change, which I think should be somewhat progressive, so that the community may not be shocked by it, or experience any inconvenience from it. Above all, it is proper that we should commence this reform in Massachusetts, for if we commence it here, we have every reason to expect that other States will follow our example. Massachusetts is doing more at this time than any other State in the Union, to flood the country with paper money. At this very time her banks are scattering their bills all through the West, and particularly those of a small denomination, so as to render nugatory the laws of several of the States against the issuing of small bills, and thereby driving specie out of circulation, and out of the country. Adopt this amendment, and you will remedy these evils. The day is put so far ahead that measures will be adopted to prepare for the change in season to prevent any injury to the public.

Mr. FRENCH, of Berkley. I am in favor of the amendment proposed by the delegate from Fall River. We want something to protect the people. Notwithstanding all the gold and silver that we are now in possession of, we are not worthy to have any other currency than a parcel of shin-plasters. As I observed the other day, you may go out into the city or country, and they will all tell you that they are embarrassed and troubled exceedingly about making change in their daily business. That is right, just as it should be, so long as the people are content to sit still and let the banks control everything. So long as they are satisfied that the banks shall keep them from using any other currency but paper, that is just what the people deserve, exactly, and they ought not to complain.

Sir, let us look a little at the facts about this paper currency which we are compelled to take. If I recollect right, in 1842 we had the highest tariff, perhaps, that we ever had in this country,

and under that tariff more goods were imported into the country than at any other period. And why was it so? Because the expansion of the currency had raised the prices fictitiously, and foreigners were able to come into our country and sell their goods and pay the duties, and still make a fair profit. And that was by the operation of the currency. Why is it that trade is rendered a lottery; that it is not the most prescient man, the man who foresees or looks farthest, who is to be the most successful trader? But the most reckless, the most ignorant of trade, the least qualified to trade, are just as likely to succeed as the men who have the most prescience and the best calculation. Why? Because they are dependent on the fluctuations of the currency for their success. One man purchases his goods on an expansion of the currency, comes home and goes to trading. Another man on the opposite side of the way, goes and purchases his goods on a contraction of the currency. And what is the consequence? He purchases his goods twenty per cent. cheaper than the other one did, and only because of the different states of the currency when the goods were purchased. Now, is this the best currency we can have in our country?

Another objection to this kind of currency is, that it is not a measure of value, and cannot be made so. And I sometimes think that a man never paid his debts with paper money, in his life. It is not a measure of value. A man may pay another man who holds a note against him a hundred dollars. The man is willing to receive it and all is fair; but when the man has got his hundred dollars he has not got his pay. Why? Because it may be worth a hundred dollars, or it may be worth seventy-five dollars, or it may not be worth anything at all. All the transaction between the parties is just the exchanging of the evidence of one debt for the evidence of another. I hope that we shall begin to do something in order that we may get a better currency, for in a mixed currency it always happens that that which is of the least value will displace the more valuable and drive it out. I hope that the amendment of the gentleman from Fall River will be adopted.

Mr. WALKER, of North Brookfield. Mr. President: The proposition before us, according to the resolve reported by the Committee is, "that the legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any charter bank; but corporations may be formed for such purposes, or the capital stock of charter banks may be increased, under general laws."

"That the legislature shall provide by law for the registry of all notes or bills authorized by general laws to be issued, or to be put in circulation as money; and shall require ample security for the redemption of such notes in specie."

I suppose the important principle contained in these resolves is included in the last clause, which "requires ample security for the redemption of such notes in specie."

That is the great idea which, I suppose, the gentleman from Charlestown, (Mr. Frothingham,) has in view, in bringing forward, as the chairman of the Committee, these resolves. Now, Sir, I am satisfied that the measure is a very important one; that we should have a general banking law, and that all the notes issued by banks created by

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that law, should be secured to the public; because Massachusetts has suffered, and especially the poorer class of people, upon whom the loss of broken bank bills principally falls.

The industrious classes are not judges of bank notes or bills, and do not know what banks stand the best. But business men do know. I have been a business man, and I know that the bills of suspected banks are always deposited before the banks close. I know that suspicions arise respecting certain banks in times of pressure, and certain bills are always got rid of by the knowing ones as soon as possible. They are kept in the hands of laboring men mostly, and, consequently, the losses by the failure of a bank commonly fall on that class of people to a great extent. Massachusetts has lost many millions in this way; and yet, we have the best managed banks, on this system, in the whole country.

It seems to me that we should settle the matter now, so that the people shall be, hereafter, secure against the losses so far as any new banks are created. What will be the effect of the proposed measure? Simply this: that banks will be established, hereafter, by those who have money to lend. Now they are generally got up by those who want to borrow money. I hold it to be very desirable, that those who have money should establish the banks, and not those who have not.

I say that losses have occurred because banks have failed from time to time; and what has happened may happen again.

At present, all is fair weather, and these are halcyon days of banking. Never were larger dividends made than during the last year, amounting, on an average, through the State, to almost eight per cent., as is shown by the last bank returns. These dividends are made by the large circulation, and by exchanges charged upon bills discounted, and the advantage of large deposits.

By examining these statistics, we find that the whole circulation of the banks in this State, in September last, was over twenty-one millions; amount of specie, a little over three and a half millions—equal to within a fraction of six dollars in bills, to one of specie. The whole amount of circulation and deposits, was over thirty-six millions, and this amount forms the "immediate liabilities" of the banks, which they may be called upon to pay, at any moment, and to meet which, they have but three and a half millions of specie. And this shows plainly, that the banks owe, on demand, over ten dollars for every one dollar they have in gold and silver. This is the true position of affairs. It may be contradicted, but it can never be disproved; and all the talk we hear about "specie funds," does not alter the matter at all, so far as this question is concerned.

Now, it must be evident to every one that this is a critical state of things. It cannot be otherwise. Any individual who owed thirty-six thousand dollars, all on demand, and had only thirty-six hundred dollars to pay it with, we should say, stood in rather a precarious situation; and yet that is just the position of the banks.

But if we farther look at the several banks, the case is still more striking. Take the last abstract, and you will see how the individual banks stand with regard to specie. As I happen to have my eye on some of the figures relating to the country banks, I begin with one that has twenty-five dollars in circulation to one of specie; the next has sixteen to one; another has forty-four to

one; another twenty-eight to one; and one, I find, has sixty-four dollars in bills, to every one in specie; and including the deposits, this particular bank has over ninety dollars of immediate liability, to every dollar of specie. And the country banks, on an average, have over twenty-two dollars of immediate liabilities, to one of specie.

I know it is said very ingeniously, that these country banks have funds deposited in the banks in Boston. Allow it to be so; but what is the condition of these Boston banks? How much specie can they help the country banks to, in case of need? Let us see. I find that the Boston banks have in circulation two dollars and ninety-eighths cents to one dollar in specie, almost three dollars in bills, to one of specie, besides all their obligations on account of deposits. It seems to me they are not in a very good condition to help their country cousins. If a pressure comes, it will be about as much as they can do to take care of themselves. Some of my friends here are presidents of Boston banks, and know whether I state the truth in this matter or not.

I think, from these statistics, we can distinctly see the basis these banks rest upon; and now the question occurs, what makes them at all secure? Their only present security is, that there is no great demand for specie to ship abroad. We receive from California just about the same amount that is required for foreign shipment, at the present time. By the way, the particular amount of specie thus received does not affect us any more than so much additional amount of cotton or any other export would; for if we had an equal additional amount of cotton to send to England, it would be the same thing to us as sending specie. It merely pays our indebtedness there, and the principal effect upon our currency, of the influx of gold from California, is simply this—it inspires general confidence.

This being the case, what must inevitably happen? Just what has happened hitherto. When the balance of trade does come against us in Europe, we must export our specie from the banks; and when that time comes, how much can we spare? Three millions and a half is all that we have in Massachusetts. Suppose that there is a balance against this country of thirty or forty millions; that may be the case, and that will be the case sooner or later, after all the cotton and other produce we send abroad. Every man knows, who is any financier at all, that this time is coming, and that there will then, of necessity, be a demand for specie to ship to England; and then what will happen? Sir, in an instant, in the twinkling of an eye, the bank discounts will be closed—they will shut right down—they cannot help doing so. I have seen the time that when I went to the bank in Boston in the morning to do business, all was easy and fair in the money market; but before two o'clock there was no discount to be had. What was the reason of it? Why, Sir, information had been received from New York that there was a great demand for specie abroad, and, of course, the New York banks sent right on to Boston for specie, so far as they had claims in the Boston banks. If the Boston banks had out three dollars in paper for one in specie, as they now have, they would feel at once that they must stop all discounts, and bring in all their resources, in order to sustain themselves. What follows then? Money begins to be very scarce, and men who have notes to pay

are turned into the street to hire money at any price at which they can get it—perhaps eight, twelve, twenty, or even as much as thirty per cent. interest—in order to maintain their business reputation and meet their engagements. When money is plenty, these men are tempted to borrow of the banks, and very largely; and when the time of pressure comes, the banks cannot help them, for they are themselves the most feeble members of the community.

Now, I do not blame the bank directors in this matter; they are obliged to take the course they do in self-defence. It is incidental to the system—they cannot help it; but any man can see that it must be a terrible system which produces such results; which allures men to make promises to pay certain amounts at certain times, and when these obligations become due it cannot relieve them. The great plentifulness of money enables speculators to create an artificial rise in property, and induces people to increase their business operations and expenses; but when reckoning day comes, they are left high and dry. Everybody who understands the matter, knows that this is the legitimate result of our present system; and is it not a most pernicious one? The system is so complicated that but few persons understand it, yet it may be resolved into one or two general principles. The leading idea is that our banks have the power to issue their promissory notes as money. Now, if those notes did not exceed the amount of specie held by them, they would be the representatives of real money, or in more scientific language, of value money; because gold and silver possess intrinsic or absolute value, like wheat or cotton, and for the same reason, namely, that they cost labor and are objects of desire, and those two conditions combined always and only give value to any commodity. But the banks do not limit themselves to the issue of an amount corresponding to their specie. They go beyond that limit as far as they dare, and issue their promises, and these constitute credit money. That is the proper term for such money; so, then, our currency is in fact a mixed one, consisting of value money and credit money. Now, when a pressure comes, when specie is wanted for export, what must happen? Why, if all the banks of Massachusetts owe, as they now do, ten dollars for every one dollar they have in specie, they must contract their circulation in proportion. That is, if the Massachusetts banks are called on for one million, they must contract the currency ten millions. This is the great objection to such a currency—the contractions must be so great, so sudden, and so necessarily injurious to the community.

It is, then, the elasticity, or the power of expansion and contraction, which our currency possesses, that makes it at once so unstable, insecure, and pernicious in its character. As certain as there is an expansion, there must be a contraction, and the more plentiful money is at one time, the greater will be its scarcity at another. Natural fluctuations in the currency there must ever be, and like the tides of the ocean, they are salutary; but under our system they receive an artificial extent and intensity that causes the most terrible revulsions and the most disastrous consequences.

Every bank director in this room—and I suppose there may be two hundred of them, more or less—knows that such revulsions under our present system, inevitably come. It has happened hitherto that it has come about once in seven

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years, which seems to be about a monetary cycle. Of course, if we could foresee the exact time, so as to provide against the evil consequences of these revulsions, it would not be so bad; but we can never know the precise time when they will occur. When they do come, however, as I said before, the Boston banks will shut down; and then the pressure will begin to come upon the country banks, and they will stop discounts, too, and when they find themselves hard pushed, the most feeble ones will come down to the Boston banks for assistance, and say, "If you don't help us, we must fail." And the Boston banks, if they are satisfied that such banks are sound, will aid them, because they will know that the failure of one bank injures the circulation and the credit of all; that they have a common interest, and must hold each other up as long as possible. But in spite of all these efforts, if the pressure continues, one after another the rotten banks fail. When there are nearly one hundred and fifty banks, with such a tremendous circulation as the document in my hand shows, I ask, is it possible that some banks will not fail when there comes a crisis? It is not possible that it should be otherwise. Some will fail, and then the people will lose. Now, Sir, to guard against this loss is the object of the proposed measure. I admit, Sir, the banks go on as long as they can; they do not make a general suspension, if they can help it. They all stand together like brothers, not because they love each other so much, but because they have one common destiny. But the event will come at last; for they will all have to stop payment if the crisis reaches a certain point, as has been done at different times heretofore. But up to a certain point they can stand; and in order to save themselves they will sacrifice the business community. The banks can all stand safe and secure so long as they can keep the business community before them to meet the losses; but if there comes a great pressure; if there is a continued run upon them for specie to ship abroad, as there was in 1836 and 1837, the banks cannot keep themselves going, and so they will all stop.

This state of things will return at different intervals, just so long as you allow banks to issue bills without reference to the amount of specie in their vaults. As long as you do not limit them in this respect, it is no sort of use to say that you will not excuse them if they all suspend specie payment together. Sir, you will excuse them; you must excuse them, for when they stop it is the best thing they can do. They ought to stop under such circumstances; and the fault is to be charged to the bad system under which they act.

All these evils are inseparably connected with the system; and I submit, Mr. Chairman, that we have gone on with it as long as we ought to. I do not expect that the whole system is to be done away; I do not expect any reform of that kind at present, so I hope no one will be alarmed on that score. I have made no such intimation. The measure before us is simply one of precaution, for the benefit of the people, and it will hurt no legitimate banking at all. It will not injure any bank which is now in operation, that is certain; and it will merely prevent any future bank being got up by persons who have not got money to loan.

The time has not yet come when we are prepared for a thorough reform on this subject. There is nothing in this world that the people love

so well as they do banks—there is nothing that they like the sight of so well as they do paper money. And paper money, if it is only equal in quantity to the value in money which it represents, is a great convenience; but whatever is over and above the specie in the vaults, is credit money, and all credit money is, in my opinion, a curse. There is no necessity for it at all. We have arrived at an important epoch in the history of the currency. By the discovery of the Californian and Australian mines, large quantities of the precious metals have been added to the circulating medium of the world; and one would suppose that the effect of this ought to be to drive paper money out of circulation; but instead of that, what is the consequence? The more gold that we receive from California, so far as it remains in the banks, the more paper money we have; for the banks, on an average, through the nation, issue about three dollars of paper money for every dollar of California gold they get; and some issue ten or twenty dollars for one, or even forty or fifty, as the case may be. Now, Sir, nothing can be more unwise than such a course. The time never was when there was not specie enough in the world to do the business of the world. Before the discovery of the Californian mines, there were ten thousand millions of gold and silver in the world, only three-fifths of which was in currency; the rest was in plate. This fact shows that there was enough of these metals for the purposes of the currency; for if the people had wanted it in currency, it would have been converted into currency.

In this country we have the worst paper system in the world—I mean the worst voluntary system. Russia has a forced paper money system that may be worse than ours; that is owing to the despotism of the emperor, who has the whole regulation of the matter, and who has forced it upon his people; but, for a voluntary system, ours is the worst in existence. The gentleman from Charlestown alludes to the banks in Scotland, and he says that those banks are safe. They are so, but the system of Scotland is the next worst in the world to ours, because it most nearly resembles ours in being the most liable to expansion and contraction. That is the great characteristic feature of both their system and ours. The currency of New York, one year, was twenty-four millions; the next year it was twelve millions; the next year, eighteen; the next, nine. How can people go on and do business with a currency fluctuating in that way, by the mere expansion and contraction of paper money? This expansion and contraction in the currency insidiously robs the masses of the laboring people of no small share of all they can earn; and this, too, is what ruins so many of our business men. Thousands and thousands of these men are ruined in this way, without knowing the cause. They think, and say, it is owing to "hard luck, or bad times;" but the true reason is to be found in the fluctuation of the currency. A man buys goods when the currency is flush; and if it so happens that he has to pay for them under a contracted currency, he is ruined, unless he is a rich man, and can afford to sustain a heavy loss. Hence, a great proportion of all our failures are caused simply by the expansions and contractions in the currency. I insist, therefore, that this is a great evil, and the greatest evil under which we labor; and the effects of it are seen from the fact that we have more bankrupts, in proportion, in this country, than there are in any other in the

world. We are a nation of bankrupts. I do not mean by this that we are more dishonest than other people, but that our currency system robs the people more effectually, and ruins more of our merchants, than the system of other countries. Scotland is the country where there is the next greatest number of bankrupts, because it is next to us in the fluctuating character of its currency. In England there are less still, because its currency is more stable; and in France fewer still, for the same reason.

The gentleman from Fall River said, that a recent law of parliament, passed, I think, about 1845, has limited the issues of the bank in the manner in which we ought to limit our banks, so that there should be a certain proportion between the specie and the bills. That was a measure of vast importance. I think it was carried by Sir Robert Peel, and it showed the wisdom of the British government. The Bank of England would have failed at a little time previous to this, if it had not been for four millions of specie which it borrowed from the Bank of France; and the British government, seeing that result, and seeing to what great peril the whole currency and commerce of England had been exposed, passed a law establishing a certain proportion between the circulation of the bank and the amount of its specie. That is just what we need here, and what we shall get, I suppose, when we have passed through three or four more revolutions, and the people get their eyes open. I do not expect it now—there is not much chance for it here. The amendment of my friend from Fall River, proposing that no bills of less than \$10 should be issued, is a good amendment; but he might as well expect to get the most absurd proposition in the world carried as that. If he should make a proposition that we should all go home without any pay, he would get about as many votes for it, I presume, as he will get for his amendment. But, notwithstanding that, it is a sound proposition, and one that ought to be adopted, and I shall vote for it. It would not do much good to have a single State adopt it; but if other States would do the same, an important object would be attained. It ought to be a great national movement, and then all these little miserable bank notes might be driven out of circulation. I hold that paper money should never be used by men in paying off their laborers. The gentleman from Fall River has said that paper money is never so used in England, and that is true. You may travel all over that country, and spend months there, without seeing a bank note, as I know by experience.

Now there is, in fact, gold and silver enough for all business purposes; and I should be glad if we could get rid of all these one, two, and three-dollar bills. It seems to me that the wisest course would be, when the people become satisfied of this, to have it provided by the national government, in obedience to the demand of public sentiment, that all bills, under five dollars, should be excluded after the first year; that all under ten dollars should be excluded the next five years, and all under twenty dollars the next five. I think there is no need of any paper money of a smaller denomination than twenty dollars.

I am not disposed to detain the Convention longer; but as the measure has been brought forward, I wished to bear my testimony in favor of it; and I shall be happy to vote in favor of the amendment of the gentleman from Fall River,—

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not that I believe it will be carried, for the time has not yet come, but because I believe it to be right.

Mr. STETSON, of Braintree. I do not purpose to detain the Convention for more than a few moments; and will, even now, give way to any gentleman who is desirous of speaking to the question, especially to any one who desires to speak against the Report of the Committee; because, before I make the remarks I have to offer, I should like to hear what objections, if any, can be urged against it. As yet, none have been urged. The arguments have been all on one side—that is, in favor of the adoption of the Report. As I differ from my friend who has just spoken, in regard to matters of finance, I wish to state my views upon the subject, and to set forth what I understand to be the position of the case. I am not disposed to speak against corporations or charters, of any character. I maintain that corporations may be beneficial; that they have been beneficial; and that Massachusetts has built herself up—the manufacturing interests particularly—by corporations. My position is this: that our laws should be so constructed and framed that any body of persons may associate themselves together in a corporate capacity. The principle of corporations, whether composed of a large or small number of persons, is one and the same thing in itself. A corporation may consist of three or four persons, or it may consist of only two. It may consist of any number of persons incorporated under a charter by the legislature, or of two or three persons united together in a partnership. They are both the same; the only distinction being, that there are some of these bodies corporate who obtain their acts here, that are monopolies, unless the public themselves have not at all times the like privilege of associating themselves together. I maintain, therefore, not that we should restrict the incorporation of any number of persons, but that the matter should be left free in regard to the incorporation of banks as to any other incorporations; and that, I take it, is the question here—whether we will leave persons as free to incorporate themselves for banking purposes as we do in regard to any other business. Now, if I understand this matter rightly, if only a few of these corporations are permitted to exist with special privileges, we say that they are monopolies; and they are, unquestionably so. A chartered bank, as it exists by the terms of any special act of the legislature, or by any provision in the Constitution in regard thereto, is a monopoly. Now, I suppose, the object of the Convention is to do away with all systems of monopoly by throwing the whole matter open, so that, in regard to banking, as to other business, every person may go into it who pleases. After passing a law restraining corporations from injuring private persons, and adopting such regulations as will save the public harmless from the issue of bills, I think that the State has not only done all that it can do, but all that it has a right to do in this respect, under a free government. I contend that banking should be just as free as any occupation in commercial life. It is a trade, if I may so speak, in itself—a science which very few understand. The object of the Report, it seems to me is, that the public may be secured against what the legislature gives these corporations authority to do, in issuing promissory notes; that they shall be secured upon a basis—something

that can be relied upon in case of the failure of a bank. This, I apprehend, is the question, and if so, I confess that I can see no objection to such a purpose.

I maintain that the present system of banking is a growing evil, and that special legislation in regard to this matter is an evil which will in itself bring ruin upon the community—that is, that the system is so involved, being a monopoly, and in no way restrained, so that the State can reach it by any enactment of law. Now, after the State has done all that it can do in regard to preserving the rights of persons, I maintain that the business of banking should be left like every other business in the circle of trade. I hold that this thing will regulate itself. If it is overworked, it will regulate itself, as all other commercial operations do. For all these matters, there is a law that is higher and stronger than any statute that can be enacted to regulate the laws of trade. No law that any legislature can enact, can regulate trade. It regulates itself.

I do not, however, propose to go into this question. I only maintain that paper currency, if so restricted as to be made safe, is a useful currency; and the existence of it, I think, will be perpetuated by the use of it. If it is well restrained and secured, I can see no evil in it. I am not an enemy to paper currency, made and properly regulated by law. It is a useful medium in itself, and its conveniences are felt in every branch of trade. Upon this question, therefore, I do not wish to enter. I only wish to allude to one objection which has been made to the Report, by the gentleman from Boston (Mr. Schouler). I did not hear the whole of his remarks; but as I came into the hall, I understood him to say that the resolution which passed the other day, in relation to acts of incorporation, covered the whole matter. Now, I entirely dissent from that. I do not think that it covers any part of the question, neither do I think the resolutions passed the other day, have any binding effect at all in relation to the subject of banking. I think they are very similar to the provisions of an act which was passed a few years since, being an act to create corporations under general laws. I believe that I opposed that act in the House of Representatives then; I maintained that it was, *de facto*, a special act; that it would be of no binding effect, and would not cure the evil, because it did not cover the matter; and my friend from Boston was willing that it should remain on the statute book, for the very reason that it had no binding effect; that it was merely a dead letter upon the statute book, and, in regard to banking, that it was precisely the same as a special act. A free banking act was passed a few years since, and the argument then was that it would not be used. True, it has not been used, and for what reason? Because the State, in its sovereign capacity, gives a monopoly to certain corporations who have in themselves the power to make twice the money that they could make if they had not the advantage of their special charters. Now, what association of men would incorporate themselves under this free banking act, and submit to be restricted, and give security for their bills, when they could come here and obtain an act whereby they could pledge their credit to any amount they pleased, without any restriction? That law will never be of any avail, till some restriction is imposed by the legislature on these

special corporations; and then all persons who want to commence banking, can do so under a general law, and all will be upon an equality.

My friend from Charlestown read an extract this morning from a speech of the Hon. Edward Everett. With your permission, I wish to read an extract from a speech just previous to the explosion of 1837, which was delivered in this hall by the same able gentleman.

He says:—

“The banks form a class of corporations distinguished from all others, by a privilege of a very extraordinary character. When a company of citizens come before us, and ask to be incorporated as a bank, they ask us not merely to allow them to associate themselves together for the purpose of lending money, but they ask us the privilege of allowing them to associate themselves together in addition, for the power to create money out of nothing—that is, out of blank paper, for their own benefit; equivalent to an outright gift of a sum of money equal to the average amount of circulation after deducting the average amount of its specie on hand. * * *

“The easy indifference with which the legislature has been accustomed to grant these immense bounties, is somewhat singular, considering the scrupulous reserve that is commonly and very properly practised in regard to most other measures involving grants of money. Heretofore, when applications have been made for bank charters, the acts have been passed without hesitation, and very often without debate. * * *

“Sir, I ask whether it can be said with propriety, that a business to which we give these immense bounties, regulates itself? As long as the granting of a bank charter carries with it a bonus of \$50,000, or \$150,000, according to the extent of the circulation, there will never be a failure of applications. If you wish the business of lending money to regulate itself; withdraw from the banks the privilege of issuing notes. There will then be no danger of excess, and you may grant with safety all the charters that may be applied for. But, while the present system is pursued, it is perfectly evident that the banking system never will regulate itself; and that unless we mean to push it to an indefinite extent, we must fix ourselves where it is proper to stop. That we have already reached that point, and that it is high time to stop where we are, and gradually to retrace our steps, if we mean to avoid the danger of the most disastrous convulsions. It may still be inquired with propriety, whether we have a right to bestow this immense boon upon a few of the citizens in preference to all the rest. * * *

“The Constitution provides that no person shall enjoy any exclusive privileges; that all shall be equal before the law. And is it not a privilege to be able to create money for your own benefit, out of blank paper?”

That speech was made at a time when this House granted a large number of charters. I will not detain the Convention farther than to read another extract, and then I shall have done. About the year 1816, when the southern country was under the suspension of specie payments, and at the time when an application was before the House of Representatives for a charter for a United States Bank, John Randolph opposed that application, and he took occasion then to make some remarks which have proved prophetic in regard to the bank. He says:—

“It is unpleasant to put one's self in array against a great leading interest in a community, be they a lot of land speculators, paper jobbers, or what not; but, Sir, every man you meet, in this House or out of it, with some rare exceptions, which only serve to prove the rule, is either a stockholder, president, cashier, clerk, or door-

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BANKING, &c. — FROTHINGHAM — LIVERMORE — HOOPER — PARKER — FAY — GRISWOLD.

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keeper, runner, engraver, paper maker, or mechanic, in some way or other, to a bank. * * * However great the evil of their conduct may be, who is to bell the cat? who is to take the bull by the horns? You might as well attack Gibraltar with a pocket pistol, as to attempt to punish them. * * * A man has their note for fifty dollars, perhaps, in his pocket, for which he wants fifty Spanish milled dollars; but they have his note for five thousand in their possession, and laugh at his demand. We are tied hand and foot, Sir, and are bound to conciliate this great mammoth which is set up to be worshipped in this Christian land. We are bound to propitiate it. * * *

"It is as much swindling to issue notes with the intention not to pay, as it is burglary to break open a house. If they are unable to pay, the banks are bankrupt; if able to pay, and will not, they are fraudulent bankrupts. But a man might as well go to Constantinople to preach Christianity, at to get up here and preach against the banks."

I think that would apply very well to some of the members of our House of Representatives here.

"As to establishing this bank, to prevent a variation in the rate of exchange of bank paper, you might as well expect it to prevent the variations of the wind; you might as well pass an act of congress, (for which, if it would be of any good, I would certainly vote,) to prevent the north-west wind from blowing in our teeth as we go from the House to our lodgings."

This is the precise truth. The whole community is so interwoven in this matter, so interested in it, and the whole State of Massachusetts is so much incorporated into banks, that I think it is high time that we should cut loose from the system of granting special charters, and throw the whole matter open, and let every person be free to bank himself, if he has capital enough, or can obtain it by associating others with him. That is my doctrine.

MR. FROTHINGHAM, of Charlestown. I wish to say one word in relation to this amendment. I agree with what has been said by the gentleman from Fall River, (Mr. Hooper,) as to the principle of it; but I would submit to him, that that is a question which had better be left, after all, with the legislature to settle. It seems to come more appropriately under that rule, than it does within the rule which guides us as to putting in matters into our organic law.

Another thing I remark, it seems to be at variance with the principle upon which the Committee have acted in relation to this matter. It provides that on and after a certain time there shall be no bank bills under a denomination of ten dollars, and therein it interferes with the present privileges of existing banks. The object of the Committee was to leave this matter entirely to the regulation of general laws, and not to put anything into the Constitution in relation to it.

MR. LIVERMORE, of Cambridge. I have but a word to say in regard to this amendment. The effect of this amendment, if adopted, will be, that other States will derive all the benefit from the circulation of small notes under the denomination of ten dollars. In the State of Ohio, the law is that no bill under the denomination of five dollars, shall be issued by any bank of that State. What has been the effect? Hundreds and thousands of dollars of money, in bills of less denomination than that, have been sent from this State within a few months past to pur-

chase produce in that State. Now, Sir, I think if we want to restrain the circulation of our banks, and allow the banks of other States to come in and supply us with our smaller circulating medium, we had better adopt the amendment offered by the gentleman from Fall River. I had intended to say a few words upon the whole question before the Committee, but I do not think it worth while now to take up the time of the Convention.

MR. HOOPER, of Fall River. I should be glad to accommodate gentlemen if I could, but, Sir, the very consequences mentioned by the gentleman last up, furnish the strongest argument in favor of putting such a provision into the Constitution. At this time no State in the Union is circulating so many small bills in other States as Massachusetts. It is a constant source of complaint, and they say they cannot reform the evil so long as Massachusetts is flooding them with small bills. If we commence here, the reform will go on throughout the country, but it cannot so long as Massachusetts continues her present course. I hope the amendment will be adopted.

The question then recurring upon the amendment offered by the gentleman from Fall River, (Mr. Hooper,) it was taken, and there were, upon a division—ayes, 27; noes, 85.

So the amendment was rejected.

The question then recurring upon the adoption of the resolves as reported by the Committee, and being put, it was decided in the affirmative—ayes, 130; noes, 28.

So the resolves were passed.

MR. DAVIS, of Worcester. I move that the Committee rise and report the resolves to the Convention with a recommendation that they do pass.

The question was taken, and the motion was agreed to.

The Committee accordingly rose, and

IN CONVENTION,

The chairman of the Committee, (Mr. Butler,) reported that the Committee of the Whole had had under consideration, according to order, the Report of the Special Committee on the subject of Banking, and had instructed him to report the resolves to the Convention with a recommendation that they do pass.

The Report was accepted by the Convention, and the resolves were ordered to a second reading.

MR. EARLE, of Worcester. I move that when the Convention adjourn, it adjourn to meet on Monday next, at ten o'clock.

The question was taken, and the motion was agreed to.

Reconsideration.

MR. BIRD, of Walpole. I move that the vote by which the Convention carried to their final passage the resolves in relation to elections by plurality, be reconsidered.

THE PRESIDENT. The motion will be entered upon the Orders of the Day for Monday next.

MR. BIRD. I now move that the motion to reconsider be laid upon the table.

The question was taken, and the motion was agreed to.

So the motion to reconsider was laid upon the table.

Sectarian Schools.

MR. PARKER, of Cambridge. It will be recollected, Mr. President, that when the Report of the Committee on Sectarian Schools was under consideration, I read, for the information of the Convention, an amendment which I proposed to offer when the amendment then pending was disposed of, so that mine might be in order. That subject was subsequently laid upon the table, and I desire to offer anew the resolution which I then proposed, somewhat modified, so that it may be laid upon the table and printed.

The resolution is as follows:—

Resolved, That all moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to and expended in no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance, exclusively, of its own schools.

The resolution was laid upon the table and ordered to be printed.

Leave of Absence.

MR. FAY, of Southboro', from the Committee on Leave of Absence, presented a Report, granting leave of absence to Messrs. Bliss, of Hatfield, Taylor, of Great Barrington, and Kellogg, of West Stockbridge.

The Report was accepted and adopted.

Justices of the Peace.

MR. GRISWOLD, for Erving. I move that the Convention resolve itself into the Committee of the Whole upon No. 57 of the calendar, in relation to election of justices of the peace and justices of inferior courts.

MR. BRIGGS. I suggest to the gentleman that the chairman of the Committee which reported the resolves, (Mr. Bishop,) is anxious to be here when that subject is considered, but he is not able to be here now. He feels a deep interest in this matter, and I hope it will not be now taken up.

MR. GRISWOLD. I understand there is no other business that can now be taken up, and I suggest to gentlemen that amendments can be offered at the second reading of the resolves.

The question was taken, and decided in the affirmative—ayes, 90; noes, 52.

The Convention accordingly resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Morton, of Andover, in the chair, and took up for consideration the following resolves:—

1. *Resolved*, That it is expedient to amend the Constitution, so as to provide that the electors of the several towns shall elect, in such manner as the legislature may direct, justices of the peace, whose term of office shall be three years, and whose jurisdiction shall extend throughout the county in which they may be elected; their number and classification shall be regulated by law; they may be removed, after due notice, and an opportunity of being heard in their defence, by such court as may be prescribed by law, for causes to be assigned in the order of removal.

2. *Resolved*, That it is expedient so to amend the Constitution, that the Governor may remove

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JUSTICES OF THE PEACE.—CUSHMAN—HATHAWAY.

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any officer in the former resolves of this Committee mentioned, within the term for which he shall have been elected, giving such officer a copy of the charges against him, and an opportunity of being heard in his defence.

3. *Resolved*, That it is expedient to provide in the Constitution, that, in case of vacancy, by resignation or otherwise, of any state, county, or district officer, whose election is provided for in the Constitution, the Governor shall issue his warrant to the mayor and aldermen of the several cities, and the selectmen of the several towns, to fill the vacancy at the next annual election after it shall happen; and the Governor, with the advice and consent of the Council, may appoint suitable persons to fill vacancies, until an election by the people.

Mr. CUSHMAN, of Bernardston. I move to amend, by striking out the first resolve, and inserting, in lieu thereof, Convention document No. 121, as follows:—

Resolved, That it is expedient to amend the Constitution, as follows:—

There shall be two classes of justices of the peace, viz.:

1. *Trial Justices*, who shall be elected by the legal voters of the several towns, for a term of three years. There shall be one in each town, and one additional for every two thousand inhabitants. They shall have the same jurisdiction, powers, and duties, that are now exercised by justices of the peace, justices of the quorum, and commissioners to qualify civil officers; and such other powers as may be given them, by the legislature.

2. *Justices of the Peace*, who shall be appointed, by the Governor and Council, for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of justices of the peace shall extend only to the acknowledgment of deeds, the administration of oaths, the issuing of subpoenas, and the solemnization of marriages.

I believe, Mr. Chairman, there is a general feeling in the community that the office of justice of the peace has become too common, and therefore too cheap. My object in introducing the amendment, is to create a class of justices that will be of higher character, and possessing a higher degree of intelligence than the present one. By referring to the resolution which I propose to strike out, it will be perceived that it is proposed to elect all the justices of the peace for the term of three years. Now my objection is, that if a sufficient number of justices are elected to accommodate the people, the number elected must, necessarily, be quite large; and if the number elected be not large, there will not be a sufficient number to accommodate the people. I therefore propose that the justices of the peace be divided into two classes; the first to be called trial justices—an office of considerable importance, and to give to it the entire jurisdiction now exercised by justices of the peace, which extends to all cases involving claims to the amount of one hundred dollars, also the right of trial by a jury of six; and also to give them the jurisdiction which is now exercised by justices of the quorum, and commissioners to qualify civil officers. It will be perceived that the office of trial justices will be one of considerable importance, and if elected by the people, it seems to me that the people will be so careful and cautious, that judicious and discreet men will be chosen.

It also provides, that the justices now in

commission will hold their offices during the continuance of their present commissions, and it diminishes their jurisdiction, so that as to all persons appointed by the Governor and Council, and also all those that now remain in office, it shall extend only to the acknowledgment of deeds, the administration of oaths, the issuing of subpoenas, and the solemnization of marriages.

It has been suggested to me, that there should be a clause, authorizing this class of justices of the peace to take depositions. I had supposed that, under the head of administration of oaths, would be included the taking of depositions. If that is not so, I should prefer adding such a clause.

I think gentlemen will see, that by this arrangement there will be a perfect system, one which will work well for the community, and one that can easily be carried out. Therefore, I hope it will be adopted, unless there are some very serious objections to it. I have consulted with several legal gentlemen, and also with others who have been acting justices in the Commonwealth, and they cordially concur in my amendment.

Mr. HATHAWAY. I would much rather that the matter had been discussed when the chairman of the Committee was present. Sir, matters that are worthy of being discussed in Committee of the Whole, and of being incorporated into the Constitution, must be of importance; and, however unimportant we may consider this matter of justices of the peace, I can assure you that the people regard it as a matter of great importance.

The complaint not only has been made, but has been reiterated over and over again upon this floor, and the difficulty has been felt, from time to time, ever since the formation of the Constitution in 1780, that the tenure of the office of justice of the peace was such, that when once appointed, justices could not be removed; and many serious inconveniences have been the consequence of it. Many improper persons have been appointed justices of the peace, or from age and other causes, have become disqualified for the office, and unable, properly, to discharge the duties of the same. Much injustice and wrong have been the consequences, to the people, by continuing them in office after it was known that they were unfit and improper incumbents, or after they had become unable to discharge properly their duties; for there was no power under the Constitution, by which they could be removed, except by impeachment, which is too costly and troublesome a process. It has been said upon this floor, and I think very correctly, that when a justice of the peace once had his commission, no matter how incompetent he might be, and no matter how unfaithful in the discharge of his duties, he might defy the whole power of the government to remove him other than by impeachment. Well, Sir, there is something for which the gentleman from Bernardston has failed to provide, as the proposition, as I understand it, is to strike out the whole Report of the Committee, which carries with it, if the amendment is adopted, the provision in the Report for the removal of these officers.

Mr. CUSHMAN. I only propose to strike out the first resolve reported by the Committee.

Mr. HATHAWAY. I thank the gentleman for the correction; for, as I understood the chair-

man, it was to strike out the resolves reported by the Select Committee, and substitute the resolves submitted by the gentleman from Bernardston, as an amendment or substitute. If the proposition is merely to strike out the first resolve, my objection is, to that extent, removed. But, Sir, there are other reasons, as I stated before, on account of which I am anxious that the chairman and other members of the Committee which reported these resolves, should be here when the subject is discussed; for, however excellent the amendments that are offered, may be, I should like to hear an explanation of the resolves from the chairman, or some member of the Committee. I should like to have them explain why they have made a distinction between the election or appointment of justices of the peace and justices of the police courts, and also, why the distinction between the removal of justices of the peace and justices of these courts. They provide that the justices of the peace may be removed for sufficient cause, although they cannot, in any case, hold their office unless reappointed or reelected, for more than seven years. Justices of the police courts, by the decisions of the supreme court, hold their offices for life, or during good behavior; yet there is no provision made by which they may be removed, however incompetent they may be, nor is there any provision made for their appointment, unless they are to be classed with "inferior courts," and to be appointed by virtue of that expression in the Constitution. And why should you appoint these officers of an "inferior court" with a life tenure, if you limit the tenure of the judges of the supreme court to but ten years?

Now, Sir, I would have these officers made elective. Certainly, if you make your judges of probate elective, the justices of the police courts should also be made elective; nor should their time be longer than the term of the judge of probate. I should like to know from the chairman of the Committee, or from the gentleman over the way, (Mr. Cushman,) if it was intended that the provision for electing the justices of the peace or trial justices, was also to cover the election of justices of the police court? If such was the intention, I think a farther amendment should be made to the amendment proposed by the gentleman from Bernardston. It seems to me that if there are good reasons for electing "trial justices," that there are equally as good reasons for having the justices of the police courts elective, and for no longer term than "trial justices," and certainly such should be the course where their jurisdiction is only exclusive and coextensive with the town or city in which they are elected; which, I believe, is not always, but usually the case. I think there is one instance where the jurisdiction of the justices of the police court extends over two towns. I know, however, of no substantial reasons why they should not be included in the same category with trial justices, as to the mode of their appointment and tenure in office. But, Sir, the Committee who have had this matter in charge, I doubt not, have examined it, and they may be able to give reasons which may be satisfactory, for making a distinction; and hence I am unwilling, at this time, to offer an amendment I have prepared, or to go farther into the discussion of this proposition when none of that Committee are present. It is due to the chairman and members of that Com-

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JUSTICES OF THE PEACE, &c. — HALLETT — MORTON — CUSHMAN — BUTLER — WESTON.

[July 25th.]

mittee, that we should give them an opportunity of defending their Report. For this reason, I am constrained to make the motion which I do now make, that the Committee rise, report progress, and ask leave to sit again.

Mr. HALLETT. I hope that motion will not prevail. I have prepared one or two amendments to the amendment of the gentleman from Bernardston, which I desire to present.

Mr. HATHAWAY. If the gentleman has any amendments to propose, I will withdraw the motion.

Mr. HALLETT. I then have two amendments, which, if incorporated in the proposition of the gentleman from Bernardston, will reconcile me to this plan. As has been stated, by the existing law, according to the decision of the supreme court, the justices of the police courts are recognized as holding a life tenure. Now, Sir, I see no reason why these officers should not be placed on a par with the justices of the peace, so far as their election and tenure are concerned. Certainly, it is hardly consistent to provide, as we have done, that even the judges of the supreme judicial court shall be limited to a term of years, and the justices of the police courts, shall be appointed for life. I therefore move to add as follows:—

Justices of the police courts shall be elected by the legal voters of the several towns and cities wherein such courts are established.

Mr. MORTON, of Taunton. I move to insert in the second paragraph, after the word "deeds," the words, "the taking of depositions," so that the proviso would read:—

Provided, That the jurisdiction of Justices of the Peace shall extend only to the acknowledgment of deeds; the taking of depositions; the administration of oaths; the issuing of subpoenas; and the solemnization of marriages.

Mr. CUSHMAN. I accept that amendment.

Mr. HALLETT. I now move to strike out the whole proviso of the second section, and to insert in its place the following:—

Provided, That the jurisdiction of Justices of the Peace shall not extend to the trial of causes, or the issuing of warrants.

The whole resolve would then read:—

Justices of the Peace, who shall be appointed by the Governor and Council for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of justices of the peace shall not extend to the trial of causes, or the issuing of warrants.

Mr. CUSHMAN. This is a matter for legal gentlemen to settle, I will admit; but it seems to me, that it will not be so plain as it is in the proposition as originally offered. Gentlemen will see, by looking at the section as originally offered, that the jurisdiction of the justices of the peace is made definite and clear. It prescribes distinctly that it shall extend only to the administration of oaths, the issuing of subpoenas, the acknowledgment of deeds, the taking of depositions, and the solemnization of marriages. Now, it seems to me, that if the amendment of the gentleman from Wilbraham is adopted, the jurisdiction, the power, the authority, and the duties of the justices of the

peace will be left undefined. I think, therefore, the amendment to this section had better not be adopted.

Mr. BUTLER, of Lowell. I find my mind very strongly inclined to favor the amendment of the gentleman from Wilbraham, (Mr. Hallett,) for precisely the same reason that the gentleman from Bernardston, (Mr. Cushman,) has given for rejecting it. The amendment of that gentleman makes the jurisdiction of the justices of the peace too definite. It does not allow them to do anything, except to administer oaths, acknowledge deeds, take depositions, issue subpoenas, and solemnize marriages. Now there are a great many other things which the justice of the peace ought to be authorized to do. In the first place, he is to get as near to a riot as he can, and order them to disperse. He is a qualifier of militia officers. But, without going into the detail of these duties, I will merely say, that there are a great many things which it is the duty of the justices of the peace to perform; and which, unless left to the legislature to provide, will be found to create much trouble. For instance, they are to demand pedlars licences. I only call the attention of the Convention to these particulars, to show that there are many things which a justice of the peace should perform, besides those enumerated in the amendment of the gentleman from Bernardston.

Now, the amendment of the gentleman from Wilbraham, leaves the matter of what they shall do, to the legislature to settle; it only prescribes that they shall not try causes or issue warrants. That leaves with them the power of acting as conservators of the peace, the same as the constables, which the amendment of the gentleman from Bernardston would take away from them.

Now, Sir, when defining the duties of an officer like this, I am, as a rule, always in favor of taking away the jurisdiction I do not want them to exercise, rather than of defining that I do want them to exercise. I prefer to say, that they shall not do such and such things, and leave the matter of what they shall do an open question, rather than to say they shall only do such and such things. That is precisely the ground upon which the amendment of the gentleman from Wilbraham is based. It excludes them from trying causes and issuing warrants, but leaves them to do whatever else it is proper for them to do. If you undertake to define precisely what the justice of the peace shall do, there will be something left out which we shall find afterwards will be the occasion of much inconvenience. If there had been a single justice of the peace on the ground, in Charlestown, to have given the firemen orders to go on and quell the riot, at the time the convent was burned, they would have quelled it; and there are very many duties which cannot now be foreseen. I am, therefore, in favor of the amendment of the gentleman from Wilbraham, for these reasons. I am also in favor of the first amendment offered by that gentleman, which provides for the election of the justices of the police courts by the people, as well as of trial justices. I am not aware that the jurisdiction of a police justice is of a higher character than that of a justice of the peace; yet, according to the construction which has been given to the present Constitution, there is no way of getting them out of office. Now, I do not know why a justice of the peace who lives in a city, and has the power to try causes, should be a life officer, any more than a justice of the peace

who lives in the country, and performs exactly the same duties. I am, therefore, in favor of this amendment, which puts the police justices in the same category with the trial justices, making them elective for the term of three years; giving the same power of removal as in the case of other like officers. I think the people in the cities are just as competent to elect their justices as are the people in the country. I know of some places where they would not get elected, but I also know of some places where they would not be reappointed; but I believe, that in the places where they would not be elected they would not be reappointed. I hope, therefore, that the amendments of the gentleman from Wilbraham will be adopted, and that the proposition of the gentleman from Bernardston, as amended, will then be accepted.

Mr. WESTON, of Duxbury. These resolves come from the Committee of which I am a member; but I regret that it is not in my power to make the explanation which has been called for. Having been absent from the Committee when this subject was acted upon, I am unable to give the reasons which governed them in reporting these resolutions. I, myself, was in favor of the general proposition of electing the justices of the peace by the people. But, as I know the chairman of the Committee feels a great interest in this matter, as do some of the other members of the Committee, who are not now present, for the purpose of giving them an opportunity of defending their own Report, I move that the Committee do now rise, report progress, and ask leave to sit again.

The motion was agreed to—ayes, 70; noes, 37.

The Committee accordingly rose, and the President having resumed the chair of

THE CONVENTION,

The chairman reported progress, and asked that the Committee have leave to sit again.

Mr. HALLETT said he hoped that the Committee would not have leave to sit again, but that they would be discharged from the farther consideration of the subject.

The question being upon granting leave, no quorum voted, when

On motion of Mr. BRIGGS, of Pittsfield, the Convention adjourned until Monday at ten o'clock, A. M.

MONDAY, July 25, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President *pro tempore*, at ten o'clock, A. M.

Prayer by the Chaplain.

The journal of yesterday was read.

The Convention proceeded to consider the Orders of the Day, the first item being the subject specially assigned for consideration this morning, viz.: the resolves on the subject of

Amendments to the Constitution.

The pending question being on the amendment of the gentleman from Pittsfield, (Mr. Briggs,) to the amendment of the gentleman from Wilbraham (Mr. Hallett).

Mr. HALLETT, from Wilbraham. I wish to state, in relation to the proposition that was offered

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by me the other day, as a substitute for the original Report of the Committee, that there is now pending to it an amendment proposed by the gentleman from Pittsfield, which is in effect to leave to the Legislature the regulating of the matter of calling Conventions for the revision of the Constitution. If I understand the intention of the friends of constitutional reform, their desire is that Conventions for the revision of the Constitution may hereafter be held when the people desire it, without the intervention of the legislature. And a proposition has been presented for that purpose, in the form of a substitute for the resolve reported by the Committee. Some exception, however, was taken to that substitute, as embodying too fully the Act of 1852, in which Act, there was something relating to the law as it now exists, which in one of the criticisms of gentlemen, was supposed to throw some doubt upon its construction. I must say, in regard to this objection, that it is rather technical than substantial; but at the same time, I wish to avoid technical objections of this sort.

Now, the proposition of the gentleman from Pittsfield, is one which all can understand. It proposes to take the question away from the legislature—to depart from the old doctrine that the people shall not reform their government unless in conformity with an act of the existing powers. Now, it appears to me, the question of adhering to such a doctrine as that, is one that will be very readily disposed of by this Convention. I do not apprehend that it can stand for a moment.

Should the present motion be rejected, I shall then desire to propose several amendments to the resolutions, which I now give notice that I will, at the proper time, present to the Convention for its consideration.

Mr. BRIGGS, of Pittsfield. I stated the other day, that I preferred the first proposition reported from the Committee, to the amendment of the gentleman for Wilbraham; and my amendment was intended to restore that proposition, so far as it was affected by the amendment of the gentleman. It only incorporates into his amendment the principle contained in that first resolve. But, if it should be amended in the way proposed by the gentleman, my impression now is, that I would vote against the amended proposition, for the purpose of going back to the Report of the Committee, which I think is preferable.

Mr. SIMMONS, of Hanover. I am unwilling to detain the Convention at this stage of its proceedings, and will not, with any extended remarks; but I cannot suffer the amendment which has been proposed by the gentleman from Pittsfield, to pass, without saying a few words in opposition to it. It appears to me that by its adoption, we should at once become dependent upon the will of the legislature, whether we should ever have a Constitutional Convention or not. And I ask the gentleman what he would propose to do in case one House should see fit to reject any law which the other might adopt in relation to this subject—for unless the two Houses agree, the whole thing falls to the ground; no Convention can be held, and your State Constitution cannot be amended. But, there is another, and in my judgment, a greater evil than that. Gentlemen must be aware that we have adopted a system of representation which it will be found

allows a minority of the people to control the elections of representatives in the legislature. We shall, therefore, when this evil has increased, when it shall have grown, perhaps enormous; when from less than a minority it shall have descended until it becomes lodged in the hands of a fourth or a fifth, or even a tenth of the people, we are then to be dependent upon the will of a tenth of the people whether we shall have a Convention—whether the Constitution shall be revised. In other words, one-tenth part of the people of the Commonwealth shall have it in their power to say whether they will give up the power they have—whether they will give up the control of the Commonwealth. Well, now has it ever been known, when any set of men had power in their hands which did not rightfully belong to them, that they willingly gave it up? Go back in the history of the world to the earliest times and trace the course of events down to this hour, and where will you find an instance of a party having power who were willing to yield up that power? The Stuarts might have maintained their ground if they had yielded somewhat; but they would not, and it cost them their heads. So too, the Bourbons, who are said never to have learned, and never to have forgotten anything, always yielded when it was too late, and it cost them their throne. It has been so in our times, and in this country. How has it been in the neighboring State of Rhode Island? A very small minority of the people held out in a struggle of forty years or more, during which, they refused to give up the power, and it brought about something like a revolution—an unsuccessful revolution, I admit—but for that revolution, we had, in a great measure, to thank the good citizens of Massachusetts. It was the arms of Massachusetts, loaned by Massachusetts officers, that were used to put down the majority of the legal voters of Rhode Island. Yet, we see men of the same party, men who stood shoulder to shoulder with each other to put down the majority of the legal voters in Rhode Island, we find them now on the other side. And, I say, reasoning from all this, it is dangerous to leave it in the power of the legislature to say, whether or not we shall have a Convention; it is dangerous to leave it to the legislature to say, what shall be the basis of the Convention to revise the Constitution of the State, when a Convention for that purpose shall be agreed upon. But, it is necessary that we should have some provision that will execute itself. I am willing, therefore, that the proposition submitted by the gentleman for Wilbraham, or the proposition submitted by the gentleman for Marshall, (Mr. Sumner,) one or both of them, should be adopted. They would cure a part of the evil. They would go as far as this: that a Convention should be held, whether the legislature existing at the time should consent or not. The objection to the proposition of the gentleman from Pittsfield, (Mr. Briggs,) is, that it leaves to the legislature the power to control the matter. For these reasons, with all due respect for the experience of the gentleman from Pittsfield, I must respectfully protest against its adoption.

But after we have got to that extent,—after we have secured a provision by which a Convention may hereafter be called,—I say this Convention is bound to go one step farther to prevent those who represent but a small minority of the people of the Commonwealth, from controlling the Com-

monwealth in regard to this matter. If we do not, I will venture to say that our descendants will never see anything like equal representation in their government.

And the way in which I would do this, is by adopting the proposition which I submitted in Committee of the Whole, and which was voted down, for the reason that there was no opportunity given to explain it. And lest there should be no opportunity to submit it again, I will state that it corresponds with the proposition of the gentleman for Wilbraham, with the additional provision that all magistrates, justices, and persons in authority, shall recognize all meetings of the people that shall be held for the purpose of revising the Constitution; so that we shall not fall into the evil that the people of Rhode Island did from the earliest times. All writers on constitutional law, from the earliest times down to the present hour, the judges of the supreme court, and amongst them Judge Marshall himself, all recognize the right of the people to amend or abolish their fundamental law. It is true the amendment of the gentleman for Wilbraham embodies that doctrine, though not so strongly as I desire. In Rhode Island, as there had been no legislation on the subject, the courts could not take notice of the movements made by the people to amend their Constitution, though it was known that a majority had voted to amend it. Now I want to avoid this; I want to avoid the possibility of the occurrence of such a state of things in this Commonwealth. Let us require our courts to take notice of such action on the part of the people. And if any considerable body of the people can make out to the satisfaction of the court and jury that a majority of the citizens of the Commonwealth had decided that they would have a Convention in a certain manner, let them have it. If we adopt such a provision, in my judgment, this evil would be wholly cured.

There are many other points that I would like to enlarge upon, but the time allowed me is not sufficient for that purpose. There are many subjects that come before the Convention in which I feel a deep and abiding interest, but this is, perhaps, the greatest of them all. I feel that Rhode Island has suffered, and I feel that Massachusetts has done a grievous wrong in this matter, when she should have done what in her lay to farther a sacred principle of liberty. I hope that this Convention will not adjourn until we have done what shall, in some degree, serve to repair that wrong, or at least prevent its occurrence hereafter.

Mr. UPTON, of Boston. I hope the proposition now under consideration will not prevail, but that the Convention will finally adopt the Report of the Committee, which I think is simple and explicit, and covers the whole ground. I object to the proposition of the gentleman for Wilbraham, (Mr. Hallett,) because it undertakes to establish a basis now for future amendments to the Constitution, and instead of establishing it upon the popular branch of the legislature, the Senate, it proposes to establish it upon the House of Representatives, which is not the popular branch but the representative of corporations. I object, therefore, as a matter of principle, in undertaking to establish here a basis for future amendments to the Constitution, as I regard it as an anti-democratic principle to do so. In all the debates upon this floor in relation to the present basis of representation, it has been admitted that

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the Senate is the popular branch. It has been claimed, and conceded in part, that towns were entitled to a greater representation on account of the concession made that the Senate should be elected upon the basis of population. I object, therefore, to the proposition of the gentleman for Wilbraham, (Mr. Hallett,) because, as I said before, it establishes a basis now for making future amendments to the Constitution, instead of leaving the matter as is proposed by the Report of the Committee, to the legislature. As I understand the gentleman for Wilbraham, (Mr. Hallett,) he submits that proposition as an entire proposition, upon which hereafter to base amendments to the Constitution. By the Report of the Committee, it is provided that amendments may be proposed by the Senate and House of Representatives, and then submitted to the people. It seems to me very important that such a provision should be inserted in the Constitution, in case any clerical errors should be made, or any other errors in the amendments which you should adopt, that would need correction. The proposition of the gentleman for Wilbraham, (Mr. Hallett,) makes no provision for a case of this kind. Under the circumstances I hope, therefore, that the Report of the Committee will be adopted.

Mr. BRADFORD, of Essex. I agree to the principle contained in the amendment of the gentleman for Wilbraham—and I suppose that a large majority of the Convention will agree to it—that the people alone are the sovereignty, that they are the source of power, and that they have power to alter or amend their Constitution without the intervention of the legislature, or any constitutional authority within or without the State. There are some objections, however, to the plan proposed by the gentleman for Wilbraham; and I desire, if it is in order at this time, or when it shall be in order, to propose an amendment to that proposition. As the proposition now before us is a substitute for the proposition of the Committee, I suppose an amendment to that substitute is now in order. If so, I would offer it at this time. If not, I desire to offer it at some future time.

The PRESIDENT. The amendment of the gentleman from Essex is not in order at this time, as an amendment to an amendment is now pending.

Mr. BUCK, of Lanesboro'. As this is an amendment to an amendment, and as it is not in order to propose a farther amendment, I shall therefore call for a division of the question.

The PRESIDENT. The question will first be taken upon the amendment of the gentleman from Pittsfield, (Mr. Briggs,) to strike out the following words: "in conformity with the provisions of the Act of 1852, chapter 188, relating to calling a Convention of the delegates of the people for the purpose of revising the Constitution."

Mr. HALLETT, for Wilbraham. I presume the yeas and nays were ordered upon this question with the understanding that they were not to be taken upon a proposition to which everybody seems agreed, but upon the other parts of the proposition. I move a reconsideration of the vote, therefore, by which the yeas and nays were ordered.

The question was taken upon Mr. Hallett's motion, and it was decided in the affirmative.

So the vote by which the yeas and nays were ordered, was reconsidered.

The question was then taken, whether the yeas and nays should be ordered upon Mr. Briggs's amendment, and it was decided in the negative.

So the yeas and nays were not ordered.

The question was taken upon Mr. Briggs's amendment, and it was adopted.

The question then recurred on the following amendment, to strike out the words "with the same authority as is provided in the 2d, 3d, and 4th sections of said Act," and to insert in lieu thereof, the following: "to be provided by the legislature to be chosen at said election."

The question was taken, and the amendment was rejected—ayes, 77; noes, 105.

Mr. HALLETT, for Wilbraham, moved to amend the first resolve by striking out, and inserting the following:—

1. A Convention to revise or amend this Constitution, may be called and held in the following manner: At the general election in the year one thousand eight hundred and seventy-three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question: "Shall there be a Convention to revise the Constitution?" which votes shall be received, counted, recorded, and declared, in the same manner as in the election of governor; and a copy of the record thereof, shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same, and shall, officially publish the number of yeas and nays given upon said question, in each town and city, and if a majority of said votes shall be in the affirmative, it shall be deemed and taken to be the will of the people that a Convention shall meet accordingly; and thereafter, on the first Monday of March ensuing, meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts, in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives, which the towns, cities, and districts shall then be entitled to elect in any year of that decennial period. And such delegates shall meet in Convention at the State House, on the first Wednesday of May next ensuing, and when organized, shall have all the powers necessary to execute the purpose for which such Convention was called; and may establish the compensation of its officers and members, and the expense of its session, for which the Governor, with the advice and consent of the Council, shall draw his warrant on the treasury. And if such alterations and amendments as shall be proposed by the Convention, shall be adopted by the people voting thereon, in such manner as the Convention shall direct, the Constitution shall be deemed and taken to be altered or amended accordingly. And it shall be the duty of the proper officers, and persons in authority, to perform all acts necessary to carry into effect the foregoing provisions.

Mr. SIMONDS, of Bedford. I would inquire, Mr. President, if it is in order to offer an amendment at the present time?

The PRESIDENT. It is not.

Mr. SIMONDS. I do not propose, Mr. President, to oppose this amendment; but still, I think it is incomplete; and any other measure proposed for amending the Constitution, I think is incomplete, which does not exclude the ninth article of the amendments of the present Constitution.

Why do we wish for a principle in the Constitution, embracing, as this does, the power of the legislature to unmake any Constitution which the people may establish? I suppose that if a principle of this kind is necessary, it is necessary for some beneficial effect; and I would call the atten-

tion of the Convention to this inquiry, whether it has any beneficial effect? It is known that it is a new principle, which originated in the Convention of 1820, for the ostensible purpose of amending the Constitution in unimportant and specific matters, which it was supposed might be done by this mode when it would be inconvenient to get a vote of the people for calling a Convention. But I would ask if the experience of thirty-three years has shown that such a power is needed to make unimportant and specific amendments? The legislature has been called upon four times to act upon this matter; and what have been the subjects to which their attention has been called? There have been only three subjects acted upon, which I contend were of the most important and fundamental character of any in the Constitution, to wit: the third article of the Bill of Rights; the basis of the House of Representatives; and the third one, which I consider less important, relating to the time of the meeting of the legislature. These three subjects are all that it has been found necessary to act upon, since the Constitution was adopted, as amended in 1820.

Now, I submit, that in the experience of thirty years, there has been no occasion for the exercise of this power by the legislature, except in those cases which were of the most vital importance. If this is a necessary principle, we might as well say at once that we have done with holding Conventions; and we will have, then, all amendments submitted through that channel. If this principle should not be retained, and the amendment now offered should go in, then, I submit, that it would be better to leave it entirely to this course. I am in favor of the amendment, because I am opposed to retaining this principle in the Constitution; and I shall vote against every proposition which does not provide against the exercise of this legislative mode of submitting amendments in the future. If the legislature are to have this power, and it is thought proper that they should act as they have done heretofore upon the most important subjects contained in the Constitution, this is leaving all the power to the legislature, and saying, at once, that the voice of the people is properly expressed through their agents, the legislature; now, I would go back to the original ground, and declare that the legislature have no right to interfere with the fundamental law which the people have established by the mode of a Convention. One of these two principles must be adhered to, as a fundamental restraint upon the government. I cannot see the propriety of retaining both of these principles, which are, in my opinion, diametrically opposed to each other in their character. When we consider the nature of the subjects which the legislature have heretofore proposed for amendment, in the exercise of that power, we shall find that it has only been used to effect changes in the Constitution which the people had rejected. This result has been effected by reversing the declaration in the Bill of Rights, which says the people alone have the right to alter and amend the form of government, by introducing another power, which changes that, and says the legislature also have a right to propose amendments to the frame of government. And how does this principle operate? The people can never express in any direct form, an opinion how the Constitution should be amended. They must wait until the legislature propose the amendments in form, as they are to be adopted. Now, according to my

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opinion, the people are the proper power to declare what is necessary for an amendment of our fundamental law. It was on this great principle that our Constitution was formed at first. We have heard it stated in the history of the formation of the Constitution, that the legislature undertook to propose to the people the fundamental law, which the people rejected, and ever afterwards went on and proposed for themselves—until recently—in a legitimate and proper manner, as I believe.

The history of this legislative mode of amendments show, that it has only been used to defeat the will of the people, as previously expressed, on each of the several subjects that have been introduced into the Constitution by that mode of amendment. And the same results may be expected to follow, if that power is retained, judging the future by the past.

It is said this system was adopted by the people in 1820; but it was held out to them that the power of the legislature was only to be used in reference to unimportant matters. This was the argument which was put before them. And now, since the history of the exercise of this power has shown that it has not been exercised in minor matters, but only in reference to important matters, it appears to me that we should now be satisfied that it is not necessary to retain that power, unless we are prepared to show that the legislature is the proper medium through which to express the act of the people.

Mr. CROWNINSHIELD, of Boston. I do not intend to detain the Convention at this late period of the session, to go over again the same matters which I had the honor to present heretofore. I wish to say but a word or two with regard to the objections which I have to this amendment. We all agree that the great mass of the people have the right to frame their Constitution, and alter it at pleasure. Nobody denies that proposition. I think I see the object of the amendment of the gentleman for Wilbraham to be a proposition to carry out, and forever to fasten upon us, what I must call the unjust principle of representation which has been established by a majority of this Convention. We have decided to submit to the people, for their consideration, a proposition to establish a House of Representatives, not upon the principle of equality, but upon an arbitrary, uncertain, and varying principle, and one that, I must say, I think is unfair and unjust; a principle which will give to a small minority of the people, the control of that body.

Now, Sir, the amendment proposed by the gentleman for Wilbraham, contains this proposition: that whenever it shall be determined upon hereafter to call a Convention of the people, that Convention shall be apportioned upon the basis of representation which may then exist. If the people accept the proposition we have submitted to them, then equality of representation is gone, and any future Convention which may assemble under a call of the people, to alter and frame the fundamental laws of the Commonwealth, will by no means represent the people of the Commonwealth. Sir, it is proposed by the system of representation we have adopted, to put the chain upon us of the large cities and towns. I say the chain, Sir. It is taking away from my constituents their just rights to be equally represented; and the proposition of the gentleman for Wilbraham is to rivet this chain upon us forever. What have we seen

here in this body of delegates of the people, in which my constituents are not equally represented with the constituents of many gentlemen on this floor? Here is a Convention of delegates not fully representing the people, and the first thing they do is to go on and propose a basis of representation which is already, under the existing provisions of the Constitution, unequal, vastly more unequal; and we are called upon to adopt a principle for calling a Convention in 1873 upon the same principle of inequality. Where shall we be then, who are now shorn of our just rights? What will become of us then? The next thing, in this progressive age—if this is democratic and republican—will be to have an equal horizontal representation of the corporations, so that some little petty town, in point of numbers—containing three, or four, or five hundred inhabitants—will be as largely represented, and have as many votes, as the city of Boston, which will contain at that time perhaps two hundred and fifty or three hundred thousand inhabitants. And it is just as right and just that they should do so, as to have the unequal representation which we have given them already. These are, in one word, the reasons why I must vote against the amendment.

Upon the question of the expediency of submitting the question to the people every twenty years, whether or not they will have a Convention, I have nothing to say. If it is thought by this Convention expedient to do so, I do not rise to oppose it. But if such a proposition is to be submitted to the people, or any other proposition whereby a Convention is to be called, I will not vote for it unless it contains the great fundamental, essential, eternal principles of a republican government—of justice and equality. If, therefore, the gentleman from Essex, (Mr. Bradford,) has an opportunity to submit his amendment—which, from a somewhat careful attention to it as he read it, I think I understand—I will go for it, because it provides for an equal representation of all the people in any future Convention. This is the first time I have known it contended for, that the municipal corporations of this Commonwealth, and acting as corporations, have a right, or should have a right, to make a fundamental law. Against such a proposition as that, I here enter my earnest and solemn protest. When the gentleman from Essex has an opportunity to bring in his amendment—which does provide for an exact and equal representation of the people in any future Convention—I am willing to vote for it, although it may not be in the precise form which I would make it if I had drawn it up to suit myself.

Mr. DENTON, of Chelsea. I did not intend to express any opinion upon the subject now before the Convention; but the remarks of the gentleman who represents Boston (Mr. Crowninshield) have induced me, in a few words, to reply to the argument he has used with regard to the representation of Boston on this floor. I, Sir, represent a portion of Suffolk County. I take issue with that gentleman on the question of the representation of Boston and the other towns in Suffolk County. Comparing the population of Boston with the population of Chelsea, we find that Boston is more fully represented than Chelsea. Chelsea has a population of near nine thousand, and Boston has some one hundred and thirty-five thousand. Boston is represented on the floor of this Convention by forty-four repre-

sentatives, and Chelsea has but two. Now, I ask the gentleman from Boston, if Boston is not more fully represented than the town of Chelsea? He, I am sure, will not deny this fact. Not only have they more delegates upon this floor, in proportion to their population, than the town I have the honor to represent; but also by the election of those delegates on a general ticket, each and every voter in the city of Boston was entitled to vote for forty-four delegates to this Convention, while the voters of the town of Chelsea, in their representation upon this floor, were only entitled to vote for two. Sir, does this look as if Boston was unequally represented? I think not. Now, Mr. President, these are facts, and no will deny it. Consequently, I say, that Boston is equally, and more than equally represented, and will be, as long as the general ticket system prevails.

And now, Sir, one word in regard to the subject before the Convention—a subject, in my opinion, one of the most important that will be submitted to the people—the rights of the people themselves, whether the people, through their qualified voters, independent of all legislative enactments, shall have the power to call a future Convention, or whether they will delegate that power to future legislatures. That is the question. And, I believe, if the proposition of the gentleman for Wilbraham (Mr. Hallett) should be accepted, it would be precisely what the people want. It gives them the right, without any legislative interference, to hold their future Conventions. Now, Sir, why not submit this proposition to the people? It is a proposition for them to act upon—a question which is of vital interest to every man, woman and child, in the whole Commonwealth, and one which if they adopt, must be by a majority of legal votes cast in the whole Commonwealth, and not by a majority of the towns, or a majority of the representatives of the towns. It is for the people themselves to decide, if this proposition is submitted to them, whether they will accept or reject it. If the people say aye, it will be incorporated into the Constitution, and become a part of the fundamental law of the State. And now, Sir, what would be the effect of this law, provided it should be adopted? It is that the people, in their primary capacity, through their qualified voters, may decide in 1873 whether they will have a Convention for the purpose of revising the Constitution. Then, again, it will require a majority of all the votes cast in the State to call a Convention; and if a majority should decide that the Constitution ought to be revised or amended, why the delegates elected would meet, according to the provision in the Constitution, and transact their business without any of the formula that would be attached if the authority of the legislature was required before the people could themselves act upon the question. This, of itself, is a sufficient reason, in my opinion, why the proposition of the gentleman for Wilbraham should be adopted. It has been objected, by gentlemen opposed to the adoption of these resolutions, that any specified time should be appointed for the holding of future Conventions, that it is taking what properly belongs to the legislature; that they should present the question for the legal voters to decide; and that this Convention is usurping a power that does not properly belong to them, to decide what action may be necessary for the future. Why, Sir, the

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gentleman, in his resolutions, provides that the legislatures may, by concurrent action, present the question of calling a Convention to the people, whenever, in their opinion, it may be expedient; and if the people, by a majority of legal votes, decide in favor, then the Convention will be held accordingly. Thus it will be seen, that whatever emergency may arise, the legislature, if necessary, may submit the question for the final action of the people; while, at the same time, there will be incorporated a provision that, at the expiration of twenty years, without regard to the will of any legislature, and beyond the control of any legislative action thereon, the people themselves, independent of any and all other power, will, by their own votes, determine whether there is a necessity for revising or amending the Constitution.

Then the question is, how shall the people be represented? I can see no other way in accordance with the principles of justice, that they can be represented in that Convention, except by a representation from the several towns; because we have incorporated into the Constitution that every town shall be represented according to the number of inhabitants; and if the inhabitants or legal voters in those several towns say that they wish them to be represented, why, in the name of common sense, should not every town be represented in forming our fundamental laws for the future? Is it not the principle of justice that every town shall be represented in that Convention? I ask if we should disfranchise any individual town from being represented where the fundamental law of the Commonwealth is to be submitted to the whole people? This matter seems to be a very important matter, and at the same time it appears to be a very simple matter. It appears to me that gentlemen have brought in and thrown a mystification around it, which plain, common sense men can see at once is for a specific object. The question, as it seems to me, is simply this: Shall the people, in their primary capacity, have the right, in 1873, without any legislative action on the subject, to assemble through their delegates in a Constitutional Convention? That is the whole matter at issue; and now, all we want to decide is, how shall they be represented? It seems to me to be no more than strict equality and justice that every town in the Commonwealth, whether it contains one thousand inhabitants, or one hundred and fifty thousand, shall be represented in the Convention to form the organic law. I should not have said anything upon this subject, had it not been that a false impression might go before the Convention that the city of Boston has not an equal representation with the other cities and towns in this Commonwealth, while she has forty-four representatives who are sent here by general ticket, which gives her more power than those towns possess which send one, two, or three representatives, according to their population.

Mr. CROWNINSHIELD. I wish to say one word in relation to the remark which has been made by the gentleman from Chelsea, that she has not an equal representation with Boston, in proportion to her population. That is no answer to what I said. I maintain that the city of Boston has not her full share of representation upon this floor. By the last census, there were one hundred and thirty thousand inhabitants in this city, and she is only entitled to forty-four representatives out of more than four hundred, being but little more than one-tenth, while she has a great deal

more than one-tenth of the population of the Commonwealth. It follows, of course, that she has not a full representation.

Mr. HATHAWAY, of Freetown. I concur with the gentlemen who have preceded me, in reference to the inalienable rights of individuals to take part and lot in the government of the State under which they may live, whether it be in this or any other State. I maintain that in Rhode Island or here, there should be a representation, equal as is practicable, of the people. I agree, also, with gentlemen who say that our representation in the House of Representatives is not to be an equal representation of the people; and if this is so, then that the difficulty and "rebellion," (as some characterize it,) in Rhode Island, grew out of the same unjust principle that is incorporated in the proposition which you are about to present to the people as the basis of the House of Representatives in this State. It is a representation of towns, and not an equal, but an unequal representation of the people. Was not that the real difficulty in the Rhode Island case? And is not the same principle of injustice and inequality involved in the proposition of the gentleman for Wilbraham for future Conventions, as the delegates are to be chosen by and to represent towns, instead of the people; and how does his amendment relieve us from that difficulty? His proposition may not be so excessive and barefaced in its unjust operation, as the Rhode Island question was in Rhode Island; but you may multiply and change the forms as much as you please in reference to the Rhode Island matter, and this matter, and after all, this proposition and the Rhode Island difficulty, both settle down upon the unjust principle that man is not equal with man, but that his political weight in government depends on the accident of his "locality." That his mere locality should make him unequal with his fellow-man of another place, both in the formation of an organic law, and in the enactment of ordinary statutes. Was not this unjust principle the cause from whence arose all the tribulation, and trouble, and persecution that they experienced in Rhode Island? Now, Sir, I maintain that the very difficulty and injustice which was involved in the Rhode Island proposition, is involved in these propositions which have been presented, and also in the amendment of the gentleman for Wilbraham, because the representation in our future Conventions is to be by a delegation from the towns, who are to represent the towns, and not the people. You may shift and change the language of the propositions now under discussion as much as you please, but in all their varied forms and colors, there is still the same injustice involved in them which was involved in the Rhode Island matter. The same spots on the leopard still remain; and the color of the Ethiopian's skin, which cannot be changed. There was not an equal representation of man with man in that State; and there is the same trouble here. I speak with great diffidence in relation to this matter, because gentlemen say that my warmth on this subject carried me away the other day, and it may carry me away again. If that should be the case, I hope gentlemen will do me the justice to believe that I mean no offence, as I meant none then. I intend to discuss every question coolly and deliberately in every discussion in which I shall take a part; and I cannot refrain from saying that I used no improper lan-

guage on that occasion, and none has been, or can be, pointed out. Here, then, is the same great principle involved in this question, which was involved in the Rhode Island question. At the time of the Rhode Island difficulty, I was in part a Rhode Island man. Upon that occasion, I was stigmatized as being a "Dorrite," but the principle which I acted upon then, I am yet willing to stand up to and defend, here or elsewhere, whenever it shall be necessary.

Sir, let us for a moment analyze the proposition before the Convention, which has been reported by the Select Committee. It is, that in 1873, you shall have a Convention, and that you may have one at such "other times" as the legislature shall direct. Not that your legislature shall have the power hereafter to say that you may or may not have a Convention, in 1873; but it is positively provided, by the proposition of the Committee, that in 1873, those who have the right of suffrage in this Commonwealth—the voters—shall pass upon this question, whether there shall then be a Convention or not. As to the holding of other Conventions, in "other times," the legislature are to pass upon it. Now, as to the Convention to be held in 1873, I do not perceive any difference between the gentleman's proposition, when you analyze it, and the proposition of the Select Committee. I would not refer to the law of 1852, and make that part and parcel—as the gentleman for Wilbraham proposes to do—of your Constitution, for it is merely a statute law. There are great objections, in my mind, to so doing; and as I am informed—for I was not present—the impropriety of incorporating that Act in, and making it a part of, the constitutional law, was ably and clearly stated, the other day, by the gentleman from Cambridge, (Mr. Parker,) and the gentleman from Salem, (Mr. Lord,) that I will not remark any farther upon it, except so far as one provision is concerned. As I understand the new proposition of the gentleman for Wilbraham, and which he has just now introduced as a farther amendment to his proposed amendment, he now excludes from it the second section of the law of 1852, for the calling of this Convention; but if that is not to be excluded, but to be included, as he first proposed in his amendment, I should like to have him tell me, if he can, whether that section of the Act is so plain that "he that runs may read, and understand it." Is he certain that he understands it? and can he tell me whether those towns that shall be incorporated from 1870 to 1873—if any shall be incorporated—will be entitled to send delegates to the Convention then to be held? I confess, Sir, that in referring to that section of the Act, I cannot tell, for the life of me, whether those towns which have been incorporated since 1850, if they had sent delegates to this body, would or would not have been permitted to be represented, and whether such delegates would have been entitled to seats in this Convention. I presume the members of the Convention will recollect the debate which came up in reference to the admission of the gentleman from Walpole, to a seat here, because a portion of the town of Dedham had been taken off and annexed to Walpole. The question there arose on account of the annexation of a small portion of the territory, and a few inhabitants of Dedham, to Walpole. Suppose that West Roxbury, or any other town that has been incorporated since 1850, had sent a delegate here,

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under the statute of 1852, I want the gentleman for Wilbraham to tell me whether it is perfectly clear, from that law, that such delegate would have, and ought to have been accepted, and admitted to a seat upon this floor? But I understand that this portion of the law is excluded from the gentleman's amendment to his amendment, and therefore I will not pursue that branch of the subject. Permit me, however, to say that the law of 1852 was very imperfectly drawn; that it was almost an exact transcript of the law calling the Convention in 1820; and in consequence of the changes in the Constitution as to representation, and made since 1820, that law was not perfectly applicable to our present condition and wants.

In reference to the remark that fell from the gentleman from Chelsea, in his reply to the gentleman from Boston, (Mr. Crowninshield,) that there will be a disfranchisement of some of the towns, so that they will not have their full share of delegates in the Convention of 1873, let me say that, if the town basis which you have agreed upon shall be adopted by the people, there need be but little fear that any of the towns will be disfranchised, or that the small towns will not then have their full share and weight in the formation of the Constitution. The true question is, will you not then virtually *disfranchise the electors and voters*? Will you not disfranchise men by your proposed inequality of representation in that Convention? The proposition of the gentleman from Essex, (Mr. Bradford,) disfranchises nobody. Every-body who has the right of suffrage, whether he lives in a small town in the country, or in the city, has an equal right, one with another. It is in consequence of these and other difficulties that have presented themselves to my mind, and because I believe that there should be an equal representation upon this floor, of man with man, instead of a representation by corporations, that I am in favor of the proposition of the gentleman from Essex.

Another reason is, that I would not, as has been the case in this Commonwealth, make one man's political power forty-four times greater than that of another, who happened to reside in different locality—no, nor even double. But, by your present proposition, you give a certain amount of political power to an elector in certain districts and towns in the Commonwealth; and a different amount, less or more, to another elector, in other districts and towns. I use the word districts because, in my judgment, it was intended by our fathers, when they framed the Constitution, that these towns should be districts, for the purpose of choosing representatives, as the several counties were to be, and have been, districts for the choice of senators. In one case, a man can vote for several representatives, and in another case he can only vote for one; and it is just so in choosing your delegates for a Convention; in some towns each elector may vote for three, in others only for one. Is that in accordance with the genius and spirit of our government? How is it in regard to the executive department of government? No matter whether I reside in Boston, or in Irving—in Lowell, or in Hull—when I come to vote for the chief executive officer of the government, my vote counts one, and just as much, no more or less, than that of any other elector. No matter what the locality, the representation and political power of every elector is alike, and equal.

The same principle is about to be applied to one branch of your legislature—the Senate. No matter where a man may be located in the Commonwealth, he votes, man for man, and has an equal right—if he is an elector—with every other elector in the Commonwealth. Now, why should you, in choosing representatives to the legislature, or delegates to a Convention, to frame an organic law, still retain a principle which gives a man in one locality, three times the political power which he has in another? The proposition of the gentleman from Essex makes one man equal with another, no matter where he is. It does not do as they did in Rhode Island—give a man who lived in one town great political power, and a man who lived in another, very little, if any at all; and I think that is a good reason why we should adopt the proposition of the gentleman from Essex. The original Report and resolutions of the Committee, it seems to me, stand well enough, provided the principle of the amendment of the gentleman from Essex shall be incorporated into it, and made part of the resolutions, so as to give five, eight, or ten—I do not care what number, provided the Convention in 1873 is not too large—delegates from each senatorial district. Then the representation will be perfectly equal; and there will be no disfranchisement, directly or indirectly, of any man or elector in the Commonwealth. The gentleman from Chelsea talks about the disfranchisement of towns, but let me say that what he terms the disfranchisement of towns, is, to a certain extent, involved in every proposition which we have had before us—except the district system—because all of those towns which contain less than a thousand inhabitants are to be disfranchised five years out of ten. They are, if need be, to be taxed every year, but are not to be represented, upon an average, only every other year; and taxation without representation, or a right to it, when taxed, the friends of town representation call disfranchisement. But the proposition of the gentleman from Essex accomplishes all that can be accomplished; that is, that not a single voter shall be disfranchised upon the occasion of calling a future Convention. Each one and all of the electors are to have equal political power, without regard to towns, cities, or place. Hence, his proposition is more consistent with the principles of a free and equal government than the other, and therefore I go for it.

Mr. ALLEN, of Worcester. I rise to make a proposition, and not to discuss this question. We all agree that the people of this Commonwealth should be at liberty to call a Convention whenever they see fit; but it seems to me that the idea that the people will want a Convention again in 1873, or at any other fixed period of time whatever, is one that we can hardly entertain. The people will want a Convention whenever the condition of public affairs and of public sentiment shall require it; and whether that shall be done at one time or at another time, is something that no person is competent to predict. The people may want a Convention fifteen years from now, and they may have it, and make all the necessary revision of their Constitution at that time; and shall they have another in five years afterwards? Or twenty years hence they may desire a Convention, and five years afterwards a state of things may arise which will render it desirable. Who supposed five years ago that a Convention would

have been wanted now; but in 1852 or 1853 it was thought very desirable that one should be called.

The proposition, as it came from the Committee, has been much modified, and gentlemen in all parts of the House intimate a purpose to modify it still farther. Numbers of gentlemen who have not spoken upon this question, have each, I believe, their separate propositions to offer. In this state of feeling on the part of the Convention, and believing that the subject is not very well digested—believing, also, that it lies before us in a very crude state—I am about to move that it be re-committed to a Special Committee; and in order that no time may be lost, I move that that Committee report some digested plan to-morrow morning, by which the people, twenty years hence, may have a Convention, or whenever else they please.

The motion to recommit was agreed to.

Mr. ALLEN. I beg to say, that having moved this question of reference to a special committee, I desire that I may not be appointed as one of that committee, having other engagements.

Mr. MORTON, of Taunton. I would suggest to the gentleman from Worcester, that the number of gentlemen of which the committee is to consist, should be fixed.

Mr. ALLEN. I believe that that has usually been left to the discretion of the Chair; but in order to make the matter more definite, I move that the committee consist of seven.

The PRESIDENT, after deliberation, named the following gentlemen as the Committee:—Mr. Hallett, for Wilbraham; Mr. Crowninshield, of Boston; Mr. Nayson, of Amesbury; Mr. Sumner, for Marshfield; Mr. Williams, of Taunton; Mr. Alvord, for Montague; and Mr. Simmons, of Hanover.

Mr. CROWNINSHIELD. I ask to be excused from serving, as it will be exceedingly inconvenient for me to attend to the business of this Committee.

Excused.

The PRESIDENT. The Chair, then, will name Mr. Hillard, of Boston.

Mr. HILLARD. I am in expectation of being summoned into court as a witness, and therefore I beg to be excused.

The PRESIDENT. Then the Chair will nominate Mr. Briggs, of Pittsfield.

Mr. BRIGGS. I am upon two other committees, one of them a very important committee, which meets this evening. It will hardly be possible for me to attend to this business, and I ask to be excused for that reason.

Mr. Briggs was excused.

The PRESIDENT. The Chair will name Mr. Lord, of Salem.

Mr. LORD. I was about to say that I am upon a committee which is to meet this evening—the Committee on Revision; and I beg to say that I cannot be in two places at once. If I attend to the business of this Committee, I shall be obliged to neglect that of the other. I think I would prefer to be excused.

Not excused.

Mr. DENTON, of Chelsea. I move a reconsideration of the vote by which this subject was recommitted.

The motion to reconsider was rejected.

The Special Committee finally stood as follows: Messrs. Hallett, for Wilbraham; Sumner, for

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Marshfield; Williams, of Taunton; Alvord, for Montague; Simmons, of Hanover; Lord, of Salem; and Hazewell, of Concord.

Orders of the Day.

On motion of Mr. WESTON, of Duxbury, the Convention proceeded to the consideration of the Orders of the Day, the first question therein being the question of granting leave to the Committee of the Whole to sit again for the consideration of the resolves on the subject of justices of the peace.

The question being taken, leave was granted.

The resolve granting authority to the Committee on Reporting and Printing, and also the resolve on the subject of the Commissions of the Judges were passed over—these resolves being in the hands of the printers.

The Council.

Mr. HALLETT. I do not intend to detain the Convention by saying a single word upon this subject, but it has been suggested to me from many quarters of the House, that there has never been a fair expression of opinion on the subject of the final passage of the resolves in regard to the Council. I have no feeling myself on the subject, but I move a reconsideration of the vote so that the question may be taken by the yeas and nays.

The motion to reconsider was rejected.

Banking.

The Convention next proceeded to the consideration of the resolves on the subject of Banking, the question being on their final passage.

Mr. HALL, of Haverhill. I desire to say a few words upon this question, though I very much doubt whether I can compress what I have to say, within the time allowed, under the fifteen minutes' rule. I may not have time, under that rule, to say all that I could wish, but I desire to notice one or two points in regard to this question, which it seems to me, have not been noticed by other gentlemen who have spoken upon the subject. The Convention may not be willing to hear debate upon this subject, but it appears to me to be one of those questions upon which the Convention ought not to pass too hastily. I believe this question to be of too much importance to the people, to be passed upon hastily, and put into the Constitution even by gentlemen who intend that this Constitution shall be ratified by the people.

Now, Sir, I am in favor, as I always have been, of a limited amount of banking capital. I am in favor of that amount of banking capital which the people of the Commonwealth desire in the pursuit of a legitimate business in the community, and as far as that capital is seeking a *bona fide* investment. It would seem, that some fifteen years ago, the great bulk of the banking capital was owned by the Whigs. At that time I had about made up my mind, from what certain presses and certain men said, that such was the fact; but, as I became acquainted with men and with business, I found that I was mistaken. Sir, this question of banking is not, and never has been, a party question in this Commonwealth. There are Democrats interested in banking capital, and Free Soilers also; and there always have been, although some people may think that it is a mistake. As we find, upon examination, there

are gentlemen who own large amounts of banking capital in this Commonwealth, who are Democrats—gentlemen who are in the management of banks who are Free Soilers and Democrats, so that it is not exactly a party question after all. My friend and colleague from Haverhill, a Free Soiler, every inch of him, (Mr. Hewes,) is president of one of these banks, as respectable a bank as there is in the community. Gentlemen will, therefore, understand, that it is not exactly a party question in the Convention.

I desire to notice two particular points on this question, first as to the security to the bill-holder—

Mr. STETSON, of Braintree. If the gentleman will allow me to interrupt him, I would like to ask him one question.

Mr. HALL. The gentleman from Braintree is aware of the existence of the fifteen minutes' rule, and that, with interruption, a gentleman can hardly be expected fully to express his thoughts in that time, upon an important subject like this.

Mr. STETSON. The gentleman was proceeding to state what parties represented the banking interest. I should like to know how many Whigs and how many Democrats are connected with the bank of which the gentleman from Haverhill is cashier?

Mr. HALL. I suppose I could answer the gentleman, if he is particularly anxious to know from me; but I suppose he knows already, without my informing him. I might ask the director (Mr. Stetson) of the Shoe and Leather Dealers' Bank, [laughter,] how his corporation was divided in this respect. I spoke of the matter as a general question, and said that some years ago it would seem as though all the banks were owned by one party in the Commonwealth. I say that that is not so; and my friend, who is a director in the Shoe and Leather Corporation, understands that perfectly well.

I was proceeding to say, when interrupted, that there were two points on which I desired to speak—one of them a point that my friend from Charlestown labored hard upon—first the security to the bill-holder, and secondly, the practicability or impracticability of a general banking law. I understood the chairman of the Committee to which this subject was referred, to say, that we had no law sufficient to secure the bill-holder. Now I desire to call attention to that point for a moment; and, if I am not mistaken, there are some gentlemen present who will find that there is a great deal more law upon that subject already, than they seem to be aware of. I therefore ask attention to four or five short extracts from these laws, which go to secure the bill-holder. The first extract to which I shall refer, regards the "loss of capital."

"If any loss or deficiency of the capital stock shall arise from the mismanagement of the directors, the stockholders at the time of such mismanagement, shall, in their individual capacities, be liable to pay the same. No one shall be liable to pay a sum exceeding the amount of stock held by him."

This was passed in 1828, and, under this section, gentlemen will see, that when a bank fails, the stockholders are not only liable to the loss of their capital stock, but to a given amount besides. If a man owns ten shares of bank stock, and the bank fails, he is liable for ten shares more.

Another section says:—

"The holders of stock in any bank at the time when its charter shall expire, shall be liable, in their individual or corporate capacities, for the payment or redemption of all bills issued by such bank, in proportion to the stock they may respectively hold at such dissolution."

In that section, gentlemen will see that the stockholders of a bank on winding up its charter, are liable in their individual capacity, *pro rata*, for every bill in circulation. And under this section they are liable for the recovery of damages:—

"Any stockholder of a bank, who shall have been obliged to pay a debt or demand against such bank, may have a bill in equity to recover the proportional parts of such sums as he may have so paid, from the other stockholders."

A bill-holder, therefore, it will be seen, may sue any one stockholder, and, if he does not obtain satisfaction from him, may sue any other one.

Now here is another section as to the liability of stockholders:—

"Any corporation which is, or shall be a stockholder in any bank, shall be liable, in its corporate capacity, to pay any loss or deficiency of the stock of such bank, arising from the official mismanagement of its directors; and also liable for the payment or redemption of all bills issued by such bank, and which bills shall remain unpaid when its charter shall expire, in the same manner as individual stockholders are liable in their individual capacities."

We have the decision of the supreme court to this effect. Now how is it with these corporations? One gentleman said, the other day, that a large amount of this bank capital was owned by women and children. That is true in some senses. If he terms two and a half millions a large sum, it is true. More than one-third of the bank capital of the Commonwealth is owned by savings banks, and other corporate institutions—precisely the class of owners that the bill-holders on a broken bank would desire. I contend, therefore, that in regard to all these points there is law enough. But there is still another law which was passed in 1849, in regard to the individual liability of stockholders. Here is the provision:—

"The holders of stock in any bank, at the time of its failure, shall be individually liable for all bills of such bank, issued and unpaid, in proportion to the stock they may respectively hold."

This is the same provision that was passed in 1828, only a little stronger.

"Now it may be said that the stockholders may know something about the condition of a bank, and in anticipation of a failure, may transfer their stock. But we have also a section in regard to this point:—

"If any shareholder, having reasonable belief that such bank is about to fail, shall transfer his shares to avoid individual liability, such transfer shall be void as respects such liability."

But that did not go quite far enough, and there is still another law. It is this:—

"If any stockholder in any bank, having reasonable cause to believe the bank insolvent, shall within six months before the expiration of its charter, transfer the whole or part of his shares, with intent to avoid his liability for the redemption of its unpaid circulation, such transfer shall be void, so far as respects such liability."

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Now, Mr. President, it appears to me that we have laws enough upon this subject, and decisions affirming the validity of these various laws, by the supreme court of this Commonwealth, and it appears to me that the bill-holder is not in a condition to lose anything.

Now, Sir, the gentleman from Charlestown, (Mr. Frothingham,) read from the Commissioners' Report, and I, also, desire to read one or two sections from the same, because that report contains some very good reading. In the report of 1850, from which the gentleman read, the commissioners, after examining the New York banking system say:—

"That system, however, has been sustained only by continual resorts to the legislature, to modify the laws which regulate it, and it is already apprehended that a deficiency will soon exist, in the requisite amount of public stocks for its basis.

"The system of banking on the security of public stocks, will soon, *we trust*, be impracticable in all the States."

This report is signed by Solomon Lincoln, Joseph S. Cabot, and George S. Boutwell.

Also, after referring to the system of banking in other countries, these commissioners say:—

"One principle, however, seems to be well settled, that a mixed currency, composed partly of gold and silver, and partly of paper, redeemable in specie, on demand, is the most economical, the most convenient, and the most useful, of any yet devised."

I have no doubt that this will be considered as good authority upon this subject.

What farther do the commissioners say, in another report, after having examined the banks for two years? They say:—

"And first, we remark, that the currency of the Commonwealth, so far as it depends upon its banking institutions, is in a sound and healthy condition." The banks are, in the main, carrying out the objects for which they were created, with fidelity to the public and to stockholders. In most essential particulars, they do, with few exceptions, conform to the requirements of the various statutes passed for their regulation. Their practical operation has been such, as to be conducive to the various important interests of the community; and they have generally been managed with so much intelligence and sound judgment, as to render their stock desirable for investment, by a large number of our inhabitants, who, from their position, are obliged to intrust their property, to some extent, to the control of others, for the purpose of procuring from it the income necessary for their support."

Now, Sir, if these banks are working to carry out the purposes for which they were created—and this board of commissioners, composed of men of different parties, say they are—if they are working with fidelity for the public good, it appears to me that we need not change that system of banking, at the present time. After examining, for two years, every bank in the Commonwealth, the commissioners say, in winding up:—

"We have desired to exhibit, so far as in our power, the actual condition of the banks, and their influence 'in providing a currency best adapted to the wants and interests of the people.' We propose no legislation which shall be vital to the system, believing that its continuance is preferable to a change. If we were called upon to frame a new system, some alterations of existing

provisions of law might seem desirable, other than those mentioned by us; yet, as many of our existing statutes have been the subjects of judicial interpretation and decision, and have thus been made, to a great extent, certain in their application, we do not feel inclined to recommend essential changes which would unsettle the law, and raise new questions for litigation."

This is the testimony of bank commissioners, composed, as you know, of gentlemen of opposite political sentiments, after a thorough examination of all the banks in the Commonwealth, for a period of two years.

We have, also, the opinion of the bank commissioners of 1853, which is as follows:—

"The officers having the immediate charge of the institutions were, with the exception of a single individual, sworn or affirmed to the truth of their statements, as authorized by the statute; and the commissioners take pleasure in stating, that the officers of banks generally have rendered every desirable aid to facilitate the investigations, which have been as thorough and satisfactory as the nature of the case seemed to require.

"The results of the examinations of the year, embracing institutions in almost every section of the Commonwealth, indicate, with an approximation to accuracy, the general condition of the banks of Massachusetts. The 'general conduct and condition' of the banks examined have been, with some qualifications, satisfactory to the commissioners, profitable to stockholders, and useful to the community."

This report is signed by Solomon Lincoln, Peter T. Homer, and Samuel Phillips.

Now, Sir, this does not look as though our banking system was in a very dangerous condition, even for the bill-holders.

Some gentlemen predict a reversion in business, and a probable suspension of specie payments by the banks. Well, Sir, I see no good reason for this prediction, at present; my opinion is this: that, as we produce, as a nation, very much more, in proportion, than our indebtedness accumulates, and, probably, shall continue to do so, we need have no fears of a national crisis, such as was experienced in 1837 and 1838, but that in the fact I have named, is our safety. And, as we have a permanent board of bank commissioners, constantly watching the banks, and the Suffolk Bank system, requiring every bank to redeem its bills daily, thereby obliging them to keep at all times prepared to meet their liabilities, together with the personal liability of the stockholders, as I have shown, it appears to me, that there is no danger whatever to be apprehended, so far as our circulation is concerned.

The circulation of bank bills is never what it appears to be by the returns of the banks. These returns are made up at the close of business hours on given days; and when the books of a bank shows its circulation to be \$100,000, the Suffolk, or some other bank, has redeemed, and has in its vault, \$25,000, more or less, entirely out of the hands of the public; and this is probably true of nearly all the banks in the State, which would reduce the actual circulation at least twenty-five per cent.

Entertaining this opinion, and these views, I am opposed to changing the system of banking in this Commonwealth, acknowledged, by everybody, to be the best in the world.

[Here the President's hammer fell, the fifteen minutes allowed by the rule to each member to speak, having expired.]

Mr. KEYES, for Abington. I believe that this question has been pretty well discussed while I have been absent, and probably what I am about to say, may have been said already. But it seems to me this is very much like shutting the door after the horse has run away. I think the gentleman who last addressed the Convention, spoke very sincerely, and I was rather surprised to hear him, and the gentleman from Haverhill, bank men both of them, take the grounds they did. It strikes me it is for the interest of the banks themselves, which are now incorporated, to maintain this provision, because it would secure to them, what I understand the gentleman from Boston said yesterday, a monopoly of banking. What is to be the result of this? The world is not coming to an end yet, or as I once heard it said, by the gentleman from Oxford, the bottom is not going to drop out. Things are to go on in the future, as they have in the past. If an increase of bank capital has been needed for the last twenty years, it will be needed for the next twenty years to come. Now the question is, shall the men who hold the fifty-four millions of bank capital now incorporated, have a monopoly of the business of banking? No, Sir. It has been settled that the present general banking law contains such provisions as will prevent persons taking advantage of it while the special charters exist. The general banking law is good for nothing, practically, alongside of special charters. It was only five years ago that a large portion of the banks came forward, when their charters expired, and had them renewed. Then we passed the Rubicon. The gate should have been shut down at that time, and a provision should have been made then, under which all the banks should have been compelled to come, as they were in New York, under the provisions of the general banking system. The bank system of New York State is the finest in the world, and nobody that looks into it, but will come to that conclusion. But it is stated that the system is impracticable, because stocks enough cannot be obtained as a basis to carry it on. The people of Massachusetts will have additional banks from time to time, as long as this system is in existence, and they will not be quiet and let the present banks have a monopoly of the present system.

Well, Sir, what will be the result? They will come to the legislature and say, if we must have a general banking law, you must give us a general law that will permit us to bank with as much profit as those specially chartered. They will ask for such a law, and they will get it too; and then what will be the consequence? Why, all the private individuals in the Commonwealth, who choose, can go to banking with just the same privileges as these banks with special charters; and the evil, if it be an evil, which now arises from the banks of the Commonwealth being too numerous, will be increased ten fold. If you could do away with the charters of the banks already now in existence, that would place the matter in a different light; but here you have \$54,000,000 of bank capital already in existence, under special charters, which are to exist upon an average for fifteen or sixteen years. About four or five years ago, a very large proportion of the old banks renewed their charters for twenty years. This last year nearly \$10,000,000 more of bank capital was chartered for twenty years. This brings the average length of the charters from

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this time to an average of fifteen or sixteen years; and if you abolish this system of granting special charters, and authorize no banks to be chartered except under the general banking law now in existence, these banks, with their special charters, will have the whole monopoly of the banking business of the State for fifteen or sixteen years. I tell gentlemen that the people will not stand it.

As I remarked, the matter of doing away this old system now, is a very different one from commencing anew. If we were just now commencing a banking system for the State, I might be in favor of this resolution, and vote for a general banking law.

Sir, the gentleman from Oxford has alluded to this State tax upon banks. That gentleman has alluded to the same subject in the same way, several times before, in my presence, in legislative bodies. Now, Sir, it strikes me that this is the most just of all the taxes imposed by the legislature upon the people of Massachusetts. I know of no other instance where, in proportion to the advantage derived, the tax is so small as this. Why not? You give me the privilege of issuing my rags to the amount of \$200,000, upon which I can get an interest of six per cent., and I should be most happy to pay the tax of one per cent. After paying this one per cent. tax, the compensation is more than sufficient to pay me for all the capital I have invested. If men can borrow \$20,000 for a few hours, that is all they want. They can then commence their issues, and scatter them over every State in the Union, although it may be, as has been remarked, that they are secured mainly by the notes of hand of the stockholders. In this way the banks are allowed to circulate much more money than they have capital invested, and, after paying the one per cent. what compensation do they receive? Gentlemen very well know that nearly all the banks in the State are constantly declaring four per cent. semi-annual dividends, or eight per cent. yearly dividends; and therefore, I say, that the advantage derived from their charters, is much greater than the burden imposed upon them in the shape of a tax. If you could check their farther increase altogether, that would be one step towards accomplishing the result you are seeking. But you cannot do it, and it seems to me that one per cent. is not enough for the extraordinary privileges you confer upon them. The system under which we live, has now gone too far to make it in your power to check it without increasing the evil; and, therefore, for anything I can see, you will have to allow the evil—if it be an evil—to go on until it remedies itself. Because I believe if we undertake to check the farther increase of banks, the people will never submit to have these six hundred individuals, of which the gentleman from Oxford (Mr. De Witt) speaks, who own the present bank property, to monopolize the whole banking business of the State for the next fifteen or sixteen years.

Sir, this system of banking that is carried on, although to a certain extent it increases the wealth of the State, and to that extent the industry of all the people in the State, yet is a system which results in gross inequality. It is a system by which a man with \$20,000 capital, by means of trading upon the capital which belongs to somebody else, to California or Australia, receives the profits of \$500,000, without incurring the risk of but one twenty-fifth part of that sum. I say, therefore, it

creates a most extraordinary inequality among people who do business; but yet I do not complain of the system on that account, because the business, the wealth, and even the extravagance of the people to a certain extent, is an advantage to all, even to the poorer classes of the community.

But, Sir, I believe the passage of these resolutions will lead to greater mischief than the present order of things—if it be true that the present order of things does lead to mischief. If it is dangerous to increase the capital of these banks, it will be increased to a greater extent than under the present system; because, according to my view of the matter, it will be exceedingly unjust to allow the banks now in existence to hold a monopoly of all the banking business of the State for the next fifteen or twenty years; and if they do not hold that monopoly, then there must be general banking laws passed, giving privileges in every way equal to those enjoyed by the banks having special charters, so that every-body who chooses can go into the business of banking. I see, therefore, no way of escape from what gentlemen term the evil of the present system, except to allow it to go on until there shall be so many banks established that the business will cease to be profitable, and then the evil will check itself. I hope, therefore, that the resolves will not be adopted.

[Cries of "Question!" "Question!"]

Mr. HOOPER, of Fall River. I move to amend by adding to the second resolution the following:—

Provided, That no note or bill of a less denomination than ten dollars, shall be issued as currency, after the year 1860.

Mr. EARLE, of Worcester. I rise to a question of order. I submit that this proposition has once been voted down by the Convention, and, therefore, it is not competent for the gentleman to offer it again.

The PRESIDENT. Such a proposition may have been offered in Committee of the Whole, but not in Convention.

Mr. HOOPER asked for the yeas and nays upon the adoption of his amendment; but they were not ordered, one-fifth of the members present not voting therefor.

The question was taken, and the amendment was disagreed to.

Mr. HALL, of Haverhill. I do not understand precisely this rule about limiting debate. I desire to say a few words upon the impracticability of a general banking law. I ask the Chair whether it will be in order for me to speak upon that subject?

The PRESIDENT. The rule limits the time to be occupied by any speaker upon any one question, to fifteen minutes. The gentleman from Haverhill spoke out his fifteen minutes, and objection was made to his speaking longer. No motion was made for leave to proceed. If such a motion had been made, the Chair would have put the question to the Convention.

Mr. BROWN, of Douglas. I move that the gentleman have leave to proceed.

Mr. FROTHINGHAM, of Charlestown. I rise to a point of order. I understand the gentleman from Haverhill, (Mr. Hall,) proposes to address the Convention upon the question of the propriety or impropriety of a general banking law.

What has a general banking law to do with the subject before the Convention?

The PRESIDENT. It is competent for the Convention to grant leave to speak upon any subject.

Mr. BROWN, of Medway. The rule limiting debate to fifteen minutes has been adopted by the Convention, and I hope it will be carried out.

Mr. GRISWOLD, of Erving. I desire to say one word upon this motion. I should be very glad to hear the remarks of the gentleman from Haverhill, but it must be evident that if we grant leave in one case, we must grant leave to every other gentleman in the Convention, who asks it, to speak beyond his time, and the rule at once becomes no rule. If this were a nicely balanced question, upon which we needed more light, perhaps I might vote to violate the rule; but from a vote we have already taken, there can be no doubt as to what will be the final result; and for this reason, I shall vote to sustain the rule.

Mr. PLUNKETT, of Adams. I move to strike out the first resolution.

The resolution was read as follows:—

Resolved, That the legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any charter bank; but corporations may be formed for such purposes, or the capital stock of charter banks may be increased, under general laws.

Mr. HALL, of Haverhill. Will it be in order now to speak upon the subject which I indicated a minute ago?

The PRESIDENT. The gentleman is entitled to speak fifteen minutes upon the pending question.

Mr. HALL. This resolve, as I understand it, proposes a change in our banking system. This resolve, which it is now proposed to strike out, provides that "the legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any charter bank; but corporations may be formed for such purposes, or the capital stock of charter banks may be increased under general laws."

Well, Sir, the chairman of this Committee (Mr. Frothingham) spoke his hour upon this subject, and now he turns and asks what the subject of banking laws has to do with the question under consideration. Now it seems to me, that as the general banking law now in existence was framed by that gentleman himself, and that as it was very theoretically and cautiously drawn by him in 1851, when it passed the legislature, it may have something to do with this question. Now it is proposed to change the whole banking system of the Commonwealth, to conform with that general law; and it seems to me, therefore, that the question of a general law is the question, and the whole question for consideration in relation to this resolution. Yet, after talking an hour upon it, that gentleman now very plainly asks, "what has a general banking law to do with this resolution?" But, there was one thing I did not exactly understand. This bill passed the legislature in 1851, with a Coalition majority of forty-six in the House, and of so many in the Senate that you could not find the other party. And yet, that same legislature, with that same majority, during the same session, passed some forty odd special bank charters, granting about \$6,000,000,

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under the old system after that general law passed. The chairman of this Committee understands all that. The explanation of the matter, as near as I can judge, was about this: The gentleman from Charlestown (Mr. Frothingham) wanted a general banking law, and a large portion of his friends did not object to it so long as they could still continue to get their special charters, under the old system.

Mr. FROTHINGHAM, (the floor being temporarily yielded). I rise to make an inquiry. The gentleman from Haverhill, has referred to the granting of special charters in the session of 1851, and he has referred to me as being connected with those proceedings. Now, I ask him to state to this Convention, whether I did not out and out oppose the granting of these special charters; whether I did not oppose the reissue of the old charters, and if I did, whether his statement is correct?

Mr. HALL, (resuming). The gentleman certainly did oppose the granting of these special charters, and I do not say that he did not. I stated that the legislature in 1851, with a Coalition majority of forty-six in the House, and with a majority of so many in the Senate that you could not find the other party, passed acts incorporating banks with \$3,000,000 of capital, after they had passed this general banking law. That is what I said, and I repeat it. It is true, and the gentleman from Charlestown knows it. Yet, that gentleman now comes in here and wants to put into the Constitution a provision which would secure a monopoly of all the banking business in the Commonwealth, to these fifty millions of bank capital which is already incorporated, and to the persons who hold those charters, for the next twenty years.

Now, Sir, I caution those gentlemen who want this Constitution ratified, against putting any such provision into the Constitution. Sir, I do not want the Constitution which we shall adopt, to go before the people with any such provision in it. I believe it would do more to induce the people to repudiate it, than any provision that we shall be likely to incorporate. Now, Sir, the gentleman from Charlestown knows—my friend from Braintree (Mr. Stetson) knows—just as well as I do, that with the present general banking law, the incorporation of new banks which can compete with those in existence, is perfectly impracticable.

Mr. STETSON, (in his seat). I do not know it.

Mr. HALL. Well, Sir, I think I can show the gentleman that it is. In the first place, the statute of 1851 is specific about the stocks you shall be allowed to put in. You may put in United States government stock, which every one knows you cannot buy. You may put in the stocks of the State of New York, which every one knows, is not to be had. Some of it was issued for the purpose of their canal enlargement; but it was all taken up for her own purposes. Rhode Island stock nobody could buy, and I should not want it if I could. I tried as treasurer to collect \$500 there, and could not.

The States of Connecticut, Vermont, and New Hampshire are not issuing any stocks. The State of Maine is not issuing any, and they have \$200,000 in their treasury, arising from the sale of their public lands. We might, in this State, derive as much benefit, had a sale been completed last year,

of our interest in those lands. Massachusetts has not issued but \$200,000 of State stock for the last two years. The towns and cities of the Commonwealth are not hiring money to any amount. If I may be allowed to refer to my own acts, I will say that as treasurer, I sent notices to every city and town of the Commonwealth, asking them to hire the money of the State belonging to the school fund, for any term of years from two to ten, at six per cent., and the amount which could be loaned was only \$93,000 or about \$42,000 a year. This was all the money that was wanted by the towns of the Commonwealth. They are rich and do not want any money. The State has not issued its scrip to any amount, for several years. Suppose the State should issue its scrip to build a tunnel, or suppose at the next legislature or some subsequent legislature, the advocates of the tunnel should come in and say to the bank men, give us five millions loan, and you will get that amount of State scrip upon which to do banking business. What would it cost? Can you start a bank under it? My friend from Braintree, (Mr. Stetson,) who understands the science of this matter, said that banking was a science, and I take it for granted that he understands it, because he is a director in a bank that pays large dividends, and has a good reserve besides. Suppose my friend from Braintree wished to start a bank out at his place with a \$100,000 capital, I desire to know how he may start it under this general banking law. The gentleman would find, if he enters into a calculation upon this subject, that there would be a difference of three per cent., in round numbers, between starting a bank under the general law, and starting it under the other system. In the first place, the stock to be lodged with the auditor must be "equal to a stock of this State producing six per cent. per annum."

Now then, you must buy \$120,000 to get \$100,000 bills, and pay a *premium* of six per cent. if issued in dollar bonds, or fifteen per cent. if issued in sterling bonds, payable in London, as I was offered, as treasurer of the Commonwealth, during the last year, the highest price I have named, by a foreign banker, which will make a difference of interest to begin with, of \$2,100, to which add the interest on \$25,000, which the present system gives you a right to circulate, more than the general law—which is \$1,500, making \$3,600, from which you may deduct the bank tax on three-fourths of the capital, \$750, leaving \$2,850, yearly difference against him, besides, in the end, the entire loss paid as *premium*.

Will he, understanding the science of banking, start a bank under such circumstances? He will do no such thing. I have stated this matter precisely as it exists, and I challenge the gentleman from Braintree, or any other gentleman, to disprove the statement I have made. I say it is an impracticable thing, the idea of starting a bank under that law.

Mr. NAYSON, of Amesbury. I wish to ask the gentleman a single question. If the bank of which he is cashier, which was incorporated at the last session of the legislature, did not petition for an increase of capital?

Mr. HALL. I believe there was a petition of the kind presented, but I did not sign it, and had nothing to do with it. But, if such a charter had been granted us, we could have used it, having now a charter that we can circulate upon, to the

amount any bank can keep in circulation, of the capital of \$500,000, which is entirely a different matter from starting a bank when you want circulation and can get it only under the provisions of the *present* general banking law. And now, one question.

Can the general banking law be amended?

I have been asked this question many times, by my friends, and my answer is this: it can be amended by extending the limit of stocks for investment, and take railroad stocks and bonds, and real estate; and when I name these, and other investments, gentlemen say at once, they do not like them as a basis for banking, because they are a fluctuating and doubtful class of securities. And if this is true, is it desirable to change our present system for one so full of difficulties?

Now I ask gentlemen from all parts of the Commonwealth, to pause and reflect, before voting to deprive yourselves of the privileges enjoyed by your neighbors, unless you pay a difference of three or four per cent., as I have shown, besides losing the premium you must pay to procure public stocks, because when they mature, you only get the face or par value. We have villages growing up in all parts of the Commonwealth, and if they desire banks for the convenience of business, and the investment of surplus capital, by persons preferring this mode of investment, why vote for an untried and impracticable system, that may prevent you attaining the very object which you are so soon likely to need and desire, when we have a system adapted to our wants, and in my opinion, secure?

My impression is, that we should leave this whole subject in the hands of the legislature, and I hope the resolves will not pass.

Mr. DE WITT, of Oxford. The gentleman for Abington (Mr. Keyes) entirely misunderstood me in the course of his remarks, when he alluded to the position I had taken. I say that the banks here are well managed, and that their notes are perfectly good. I desire to say one word in reply to the gentleman from Boston, (Mr. Schouler,) the other day. He said that this general law was carried through a compromise. I say that you could do nothing under this general law, except by way of this compromise. You can no more do without it, than we could send a pound of Dupont's powder through Shadrach's furnace. [Laughter.] The gentleman speaks of monopoly. But the people agreed to give all these various corporations this renewal of their charter. I am a law-abiding man, and I stand by the law, if I can, until it is repealed or modified.

Mr. DUNCAN, of Williamstown. I move the previous question.

Mr. FROTHINGHAM, of Charlestown. So far as the argument is concerned, I have no objections to the previous question, though I should be happy to hear any and every objection which might be made to these resolves. I have not spoken to-day in relation to them, but had marked down several things which had been said by my friend from Haverhill, (Mr. Hall,) and the gentleman for Abington, (Mr. Keyes). I should like to have a few minutes to reply to these gentlemen, because I really think I could reply to them successfully. I would ask the gentleman to withdraw his demand for the previous question, so as to allow me to make a few remarks.

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The previous question was seconded, and the main question ordered.

The PRESIDENT. The question is, first, upon striking out the first resolution, which reads as follows:—

Resolved, That the legislature shall have no power to pass any act, granting any special charter for banking purposes, or any special act to increase the capital stock of any chartered bank; but corporations may be formed for such purposes, or the capital stock of chartered banks may be increased, under the general laws.

Mr. HALL, of Haverhill, demanded the yeas and nays, which were ordered.

The question was taken, and there were—yeas, 99; nays, 158—as follows:—

YEAS.

Abbott, Alfred A.
Adams, Benjamin P.
Aldrich, P. Emory
Alley, John B.
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Barrows, Joseph
Bartlett, Russel
Beal, John
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Edward B.
Brewster, Osmyrn
Brimley, Francis
Briggs, George N.
Bullock, Rufus
Cogswell, Nathaniel
Conkey, Ithamar
Cook, Charles E.
Copeland, Benjamin F.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crownshield, F. B.
Curtis, Wilber
Davis, John
Davis, Solomon
Davies, Henry L.
Deming, Elijah S.
Denison, Hiram S.
Eames, Philip
Easland, Peter
Farwell, A. G.
Fay, Sullivan
Fowler, Samuel P.
Freeman, James M.
Gardner, Henry J.
Gilbert, Wanton C.
Graves, John W.
Hale, Artemas
Hall, Charles B.
Hammond, A. B.
Hayden, Isaac
Hayward, George
Hersey, Henry
Hillard, George S.
Hinsdale, William
Hopkinson, Thomas
Hubbard, William J.

NAYS.

Adams, Shubael P.
Allen, Charles
Allen, James B.
Allis, Josiah
Bancroft, Alpheus
Barrett, Marcus
Bennett, Zephaniah
Bird, Francis W.
Bishop, Henry W.
Bliss, Gad O.
Booth, William S.
Bradford, William J. A.

Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Clark, Henry
Clark, Ransom
Cleverly, William
Cole, Lansing J.
Cole, Sumner
Coolidge, Henry F.
Crane, George B.
Cressy, Oliver S.
Cross, Joseph W.
Cushman, Thomas
Dean, Silas
Denton, Augustus
DeWitt, Alexander
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Earle, John M.
Edwards, Elisha
Edwards, Samuel
Fiske, Emery
Fowle, Samuel
French, Charles A.
French, Samuel
Frothingham, R., Jr.
Gardner, Johnson
Giles, Charles G.
Gooch, Daniel W.
Gooding, Leonard
Green, Jabez
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Harmon, Phineas
Hathaway, Elthanan P.
Hawkes, Stephen E.
Hazewell, Charles C.
Heath, Ezra, 2d.
Hewes, James
Hewes, William H.
Hobart, Aaron
Hobart, Henry
Holder, Nathaniel
Hood, George
Hooper, Foster
Hoyt, Henry K.
Huntington, Charles P.
Hurlbut, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Kendall, Isaac
Kimball, Joseph
Knight, Jefferson
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Littlefield, Tristram
Loomis, E. Justin
Marvin, Abigail P.
Merritt, Simeon

Monroe, James L.
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Nash, Hiram
Nayson, Jonathan
Newman, Charles
Nichols, William
Nute, Andrew T.
Orne, Benjamin S.
Osgood, Charles
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Pierce, Henry
Pool, James M.
Rantoul, Robert
Rawson, Silas
Rice, David
Richardson, Daniel
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rogers, John
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sheldon, Luther
Sherill, John
Simmons, Perez
Smith, Matthew
Sprague, Melzar
Spoooner, Samuel W.
Stetson, Caleb
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Sumner, Increase
Taft, Arnold
Thayer, Willard, 2d.
Thomas, John W.
Tilton, Horatio W.
Turner, David
Turner, David P.
Tyler, William
Viles, Joel
Vinton, George A.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom, B.
White, George
Wilbur, Daniel
Wilbur, Joseph
Williams, Henry
Williams, J. B.
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wright, Ezekiel

Clark, Salah
Clarke, Alpheus B.
Clarke, Stillman
Coggin, Jacob
Crittenden, Simeon
Cummings, Joseph
Cushman, Henry W.
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, Robert T.
Day, Gilman
Dehon, William
Doane, James C.
Dorman, Moses
Easton, James, 2d.
Eaton, Calvin D.
Eaton, Lilley
Ely, Homer
Ely, Joseph M.
Eustis, William T.
Fellows, James K.
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
Foster, Charles H.
French, Rodney
Gale, Luther
Gates, Elbridge
Gilbert, Washington
Giles, Joel
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Greene, William B.
Greenleaf, Simon
Griswold, Josiah W.
Hale, Nathan
Haskell, George
Haskins, William
Heard, Charles
Henry, Samuel
Heywood, Levi
Hobbs, Edwin
Houghton, Samuel
Howard, Martin
Howland, Abraham H.
Hunt, Charles E.
Huntington, Assahel
Huntington, George H.
Hyde, Benjamin D.
James, William
Johnson, John
Kellogg, Martin R.
Kingman, Joseph
Kinsman, Henry W.
Knowlton, Charles L.
Knowlton, J. S. C.
Ladd, John S.
Langdon, Wilber C.

.. Absent and not voting, 162.

So the motion was not agreed to.

The resolves were then ordered to their final passage, by a vote of 108 yeas to 67 noes.

Termination of Debate.

Mr. WESTON, of Duxbury. I move that debate cease on the resolves upon the subject of the election of justices of the peace, at five minutes before two o'clock.

Mr. LORD, of Salem. Upon a question of such magnitude, and it being uncertain at what time we shall go into Committee, I ask that the question be decided by yeas and nays.

Mr. GRISWOLD, for Erving. This question has already been before the Committee of the Whole, and has been pretty well discussed. It is the desire of the chairman of the Committee that

ABSENT.

Abbott, Josiah G.
Allen, Joel C.
Allen, Parsons
Alvord, D. W.
Andrews, Robert
Appleton, William
Austin, George
Baker, Hillel
Ballard, Alvah
Ball, George S.
Banks, Nath'l P., Jr.
Bartlett, Sidney
Bates, Eliakim A.
Bates, Moses, Jr.
Beach, Erasmus D.
Beebe, James M.
Bigelow, Jacob

Blagden, George W.
Bliss, William C.
Boutwell, George S.
Boutwell, Sewell
Bradbury, Ebenezer
Braman, Milton P.
Brown, Alpheus R.
Bryant, Patrick
Bullen, Amos H.
Bunpus Cephas C.
Burlingame, Anson
Cady, Henry
Carter, Timothy W.
Caruthers, William
Chapin, Chester W.
Choate, Rufus
Churchill, J. McKean

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the matter should be taken up now, as he desires to leave this afternoon.

Mr. LORD. I have no objection to taking up the question now, but my objection is to saying beforehand, that a matter shall not be discussed at all.

Mr. WESTON. I will withdraw the motion I made.

Appointment.

The PRESIDENT. The Chair will announce the appointment of Mr. Upton, of Boston, as a member of the Committee to whom the subject of Future Amendments to the Constitution has been committed, in the place of Mr. Hazewell, of Concord, who is excused from serving.

Election of Justices of the Peace.

On motion of Mr. WESTON, of Duxbury, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Morton, of Andover, in the chair, upon the subject of the election of justices of the peace. The pending question being on the adoption of the amendment proposed by Mr. Hallett, to insert, after the word "shall," the words "not extend to hearing and trying of causes, or the issuing of warrants in criminal cases."

The amendment was adopted.

Mr. HALLETT. I wish to suggest another amendment, which seems to me to be proper to carry out what now exists. I understand the third proposition has been stricken out, relating to justices of the quorum. It is obvious that you must have them, or else you must call upon other justices to swear persons out of prison. I move, therefore, to strike out the line, "there shall be two classes of justices," &c., and also to strike out the word "who," in the second paragraph, so that it will read, "trial justices shall be elected," &c., instead of "trial justices, who shall be elected;" and in the second paragraph, it will read, "justices of the peace shall be appointed by the Governor and Council, for the term of seven years," &c.

Mr. BISHOP, of Lenox. The amendments proposed are a departure, in a good degree, from the Report of the Committee. The Committee, in the first place, reported in favor of the election of the justices of the peace; and for the reason that these offices are local, in some sense, and would be chosen in the towns where the individuals called upon to make the choice would understand better their just qualifications, than any other power. Then it was proposed that after the election should have been made,—after provision was made for their election and for the tenure of their office,—that the legislature should have the farther control over this matter, that they should just specify the number to be chosen and determine upon the grade; or, in other words, whether there should be justices of the peace of two distinct grades; that they should determine the classification of these officers.

Now, Mr. Chairman, I regard it as proper that this matter should be left to the legislature; that it should not be fixed unalterably by any constitutional provision. I think we go far enough when we provide for the election of justices of the peace, and when we determine their tenure. The legislature should determine their number; and if it is necessary to fix a classification, the legisla-

ture should determine that classification. It is proposed by the amendment reported by the Committee, that there be a specific number, to be ascertained, in the first place, by the number of towns, and in the second place, by the number of inhabitants; each town to elect a justice of the peace, and a justice to be elected for every additional two thousand inhabitants. That may be convenient. I see no very serious objection to it; but, still, in many places, most unquestionably, a fewer number of justices than that would subserve the purposes of the community. And in many places there might be required a larger number than that. In many places there is very little litigation, and they would not have occasion for the services of a justice of the peace very often, and perhaps not once in a year, and that, too, in a town where there is a great number of inhabitants. In other places there might be a great deal of litigation, and a larger number of justices might be required. Now, that this matter should be left for the legislature to determine, we regarded as reasonable.

In regard to grades, we thought proper that the subject should be left to the legislature. I know of but two grades of justices of the peace. I mean by justices of the peace, those officers who have a right to hold a court, and who are authorized to determine controversies between individuals, or between individuals on one side and the State upon the other. Those two classes are, first, justices of the quorum; second, the ordinary justices of the peace. In this Commonwealth, the class called justices of the quorum has been maintained ever since the establishment of the Commonwealth. Whether it be necessary to retain the distinction any longer, it will be proper for the legislature to determine, and for this reason. Their introduction was a matter of necessity originally. There were a great many duties assigned to justices of the peace; that officer was appointed in England by the crown. The justices became very numerous, and it became convenient, if not necessary, that important, arduous, difficult, and perplexing duties should be assigned to these officers; and a higher grade of justices was called for, of men somewhat acquainted with the laws, men of sound judgment, and when perplexing questions were presented for the decision of two or more of the justices, one or more of this higher grade of justices was selected, to be associated with the ordinary justices, and, by that mode, sometimes difficult questions were settled without a resort to the higher tribunals, and duties difficult of execution were performed by this court. Now, whether this distinction is necessary, I cannot determine. The Committee regarded, that if a different class from the ordinary justices was necessary, the legislature should have the right to create them; or, if they were in existence, to continue them.

It is unquestionably true, that these officers perform duties that never were originally assigned to them. They were, originally, the conservators of the peace. They had little to do, and indeed nothing to do with acts merely ministerial, unless those acts were incident to the discharge of their main duty. They were anciently chosen by the people, or by the freeholders convened by the sheriffs. They exercised nothing but criminal jurisdiction, and I believe that in England to this very day, they exercise no civil jurisdiction;

that is, they try no civil causes. But there have been duties devolved upon this class of officers, which have rendered their multiplication almost necessary, and the greater part of their duties have become ministerial and administrative; and that, I apprehend, has occasioned the difficulties of which there has been so much complaint.

Now justices of the peace—and I wish to retain that name, for if officers of another character are to be created, if commissioners are to be appointed to execute merely ministerial or administrative duties, I choose that they should receive the right appellation—justices of the peace are judicial officers; all justices of the peace, by the very force of the term, are judicial officers. There are justices of the court of the king's bench, justices of the court of common pleas, of the supreme judicial court, and a variety of tribunals administered by individuals denominated justices; and the term implies a judicial power.

Now that has been the great difficulty, and the subject of complaint; it is the multiplication of justices of the peace to such an extent, that it became, or was regarded as necessary, some few years since, to create a distinct class of justices called trial justices; and to them was assigned all the judicial duties proper; and that is a reason for not making the proper distinction. Justices of the peace not only exercise judicial power, but they exercise an immense number of ministerial powers; and the ministerial duties which have been devolved upon them, have been the occasion of their multiplication.

A justice of the peace is desired in a community where there is no litigation at all; and an application is made for his appointment. It is contemplated that he will exercise only certain specific duties, that he will act, not as a judicial, but as a merely ministerial officer. No litigation whatever occurs in the community from which proceeds the application for his appointment as a justice of the peace; and he is appointed a justice of the peace, for what? To take the acknowledgment of deeds; for in every community where there is any business transacted, there are conveyances of real estate, and an officer authorized by law to take an acknowledgment of deeds is necessary. He is appointed for another purpose in this community: to issue appraisers warrants, to appraise the inventory of deceased persons, to administer a great variety of oaths which are required to be administered to individuals assuming trusts. This individual is appointed for that purpose. He never contemplates exercising any judicial powers; and it is not contemplated by those who solicited his appointment, that he shall sit in any civil or criminal case whatever; and the commission is granted for no other purpose in the world than for purposes of convenience, that he may perform those ministerial acts which the convenience of the neighborhood require. In that way the justices of the peace have been multiplied; in that way justices of the peace have been created who were not competent for the appropriate duties of justices, the holding of courts and the trying of criminal and civil causes. Neither the legislature nor the executive, nor anybody else is to blame for the multiplication of these justices, and for the difficulties which these frequent appointments have created; for a justice of the peace, when once appointed, is compelled by the Constitution and by his oath, not only to perform those duties for which his appointment

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was sought, but to perform other duties. His commission directs him to keep the peace; he is denominated as a person assigned to keep the peace; and if a complaint is made to him, it is not for him to determine whether he will receive that complaint and issue a warrant upon it or not; but he is bound by his oath, and by the Constitution, and by the trust which he has assumed, to issue his warrant; and however incompetent he may be to try any question brought before him, however difficult the questions which may arise in the course of that trial, he is bound to proceed with the trial; and great complaints have been made in consequence of that matter.

Now, the Committee propose that the legislature shall designate the number of justices to be appointed; that the legislature shall determine their classification, because the number may vary from time to time; and I regard it as improper, or at least as unwise, to fix by the Constitution any definite number—to say that no greater number than such as is prescribed, shall be appointed.

[The time allotted under the rule, expired.]

SEVERAL MEMBERS. Go on! Go on!

Mr. BISHOP. I am opposed to special privileges. If there is a general rule I shall abide by it.

The question was then taken on the amendment proposed by the gentleman for Wilbraham, (Mr. Hallett,) and it was agreed to.

Mr. HALLETT. I desire to make an additional amendment to the second proposition, by inserting after the words "justices of the peace" the words "justices of the peace and the quorum, justices throughout the Commonwealth, and commissioners to qualify civil officers," shall be appointed, &c.

Mr. LORD, of Salem. I would ask the delegate representing Wilbraham, whether he has observed that the same resolution provides that trial justices shall have the same jurisdiction, powers, and duties, that are now exercised by justices of the peace, justices of the quorum, and commissioners to qualify civil officers; and if he has observed that, I would inquire whether the change which he has proposed does not involve the necessity of striking out a part of the first resolution?

Mr. GRISWOLD, for Erving. I would ask the gentleman from Salem if there is any objection to that—if it will not give them the same jurisdiction?

Mr. LORD. I should have objection to the multiplication of justices of the quorum and justices to qualify civil officers. I think the number specified as trial justices is enough for all purposes. I should have had objection to the amendment of the gentleman for Wilbraham, which was adopted; for I think it was hardly understood by the Convention, when the question was taken, what it was that they were adopting. I desire to call the attention of the gentleman to it, to see whether he intends to have these officers provided for in the first section. I do not mean to enter into any argument on the subject at all.

Mr. GRISWOLD. The objection which is raised by the gentleman from Salem is valid to this extent: it does multiply the number of officers who would have jurisdiction upon the subjects that justices of the quorum and commissioners to qualify civil officers have. If we preserve these officers, I see no objection to striking out the words "justices of the quorum and commis-

sioners to qualify civil officers" from the first section, inasmuch as it is comprised in the other amendment, and limiting the jurisdiction of trial justices to the jurisdiction which justices of the peace have. At the proper time I will move to strike out those words which I have indicated.

The question being then taken on the amendment of Mr. Hallett, as modified, no quorum voted.

Mr. EARLE moved that the Committee rise, and report to the Convention that no quorum was present; which was agreed to, and the Committee accordingly rose.

IN CONVENTION.

The President having resumed the chair, the chairman, Mr. Morton, of Andover, reported that the Committee of the Whole had had under consideration the subject of the election of justices of the peace, and had made some progress therein, but had come to no conclusion thereon, and finding themselves without a quorum, had instructed him to report that fact to the Convention.

On motion by Mr. EARLE, the Convention then adjourned until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock, P. M.

Leave of Absence.

Mr. FAY, of Southborough, from the Committee on Leave of Absence, reported that leave of absence for the remainder of the session be granted to Mr. Henry, of Prescott, and Mr. Gale, of Heath.

The question being taken on the adoption of the Report, it was decided in the affirmative.

Justices of the Peace.

On motion of Mr. BUTLER, of Lowell, the Committee of the Whole was discharged from the farther consideration of the resolves concerning the election of justices of the peace.

On motion of Mr. BUTLER, of Lowell, the Convention proceeded to the consideration of that item on the Orders of the Day relating to the subject of the

Commissions of Judges.

The resolve was read, as follows:—

Resolved, That all judicial commissions which shall issue to any person from and after the first day of August, in the year one thousand eight hundred and fifty-three, shall confer no greater tenure of office than the term of ten years.

Mr. BUTLER moved to amend by inserting the tenth day of August instead of the first.

The amendment was agreed to, and the resolve was ordered to a second reading.

Fifteen Minutes' Rule.

Mr. LORD, of Salem, moved that the rule by which speeches are limited to fifteen minutes be rescinded.

Mr. LORD. I make this motion, Sir, as a matter of duty, not supposing that it will prevail. But, Sir, I feel bound to do it, from several circumstances. Last Saturday a subject was reported to this Convention, or considered in Committee of the Whole. The chairman of the Commit-

tee from which the report was made, rose and addressed the Convention one hour on the subject. My friend from Boston got up and talked for three or four minutes, not against the resolve at all. Immediately the gentleman from Fall River rose, and addressed the Convention for half an hour; thereupon the gentleman from Braintree occupied his half hour, and the gentleman from Melrose another, all on the same side. These remarks embraced the whole subject of banking. And there is not a gentleman who knows anything about the subject, but who knows that the chairman of the Committee has an exceedingly narrow space in which to explain his views. The subject came up this morning, and a gentleman commenced to speak in opposition to the proposition; he was, however, restricted to fifteen minutes, and was obliged to get a friend to move an amendment, so as to enable him to continue his remarks, under the technicality of having a new question to speak to. Now, such shifts as these are certainly not dignified. Well, Sir, we have on the calendar the subject of the Bill of Rights, and the chairman of the Committee on that subject, I know, cannot present his views within fifteen minutes. Could any other gentleman do so? Here, Sir, we have the subject of justices of the peace, and the chairman of the Committee on that subject got up, but had not entered upon the subject; and when he had exhausted half an hour, he was interrupted; but, being excessively democratic, he said he did not ask any special privileges, and sat down. Now, I suppose there are gentlemen here who desire to speak on the subject of justices of the peace; but every one knows that no man can in fifteen minutes explain his views; he may, it is true, make a suggestion, but it is impossible for him to discuss it. No man can within the time limited by the rule that is now in force. And, I suppose, no man would undertake to discuss the subject without having time enough afforded him to state his premises, even without enforcing them in the slightest degree by arguments or illustrations, and this in relation to a subject possessing so many ramifications.

Now, Sir, I have no objection at all to stopping the work of the Convention just as soon as gentlemen please, but my objection is to making important changes in the Constitution, without allowing any gentleman time enough, even, to state his objections. I have no desire to protract the session of this Convention; and, if gentlemen will abandon their attempts to change the Constitution farther—if gentlemen will abandon their attempt to change the Constitution in regard to this subject of justices of the peace—a subject which I think requires reform more than any other; but, so long as important changes are intended, and we are bound to act on those changes, it seems to me we ought, at least, to have time enough to state our reasons for advocating or opposing such changes.

It is for these reasons that I ask that the rule shall be rescinded, because I know that no man can discuss the subjects submitted.

Mr. WOOD, of Fitchburg. I hope, Mr. President, that the rule will not be rescinded. I have been here from the beginning of the session of the Convention until this late period; and I have been compelled to listen to a great many long speeches, which I thought were wholly unnecessary, until I have become heartily sick of a certain

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vote which we passed here, that all that was said in this Convention should be reported and handed down to posterity in the records of this Convention. I think that order has made more speechifying, and has caused us to spend a great deal more time than we otherwise should, the object being, on the part of speakers, as it seems to me, to perpetuate their names, more than it was to get through with the business which we have been sent here to attend to, in revising the Constitution. I have not taken up much time in making speeches, because I have not been anxious of having my name thus perpetuated; when I die, let me go. But it is not so with many of the members of the Convention; and many of the speeches which have been made, have not been delivered so much for the purpose of enlightening us, as they have been for the purpose of beautifying those pages that are to be read hereafter, as containing the eloquence and the wisdom of this Convention. We have now arrived, as I believe, nearly to the close of our labors here; and the best thing that we can do is, to wind up our concerns as soon as we can and go home. We saw how it was in the debate on Saturday, when another question was under discussion. I wished to speak on that question, and there were probably others in similar circumstances, who had given the matter a careful examination; but one gentleman spoke an hour, another a half hour, and another a half hour, until gentlemen upon the other side had no opportunity to speak at all. The subjects which are now to come before us, have, most of them, if not all, been carefully examined; and then why not limit the time to fifteen minutes? If that is the case, the Convention will not be so impatient, and they will be willing to hear both sides. It is not so much eloquence and oratory that we want as it is substance and sound argument; and if gentlemen will state their points without amplifying so much, we can understand them if there is any substance in their views, and we can act accordingly, without any of these ornaments of rhetoric. There is not a single question which has yet come before us, the points of which could not have been stated in fifteen minutes; but gentlemen want the record of their speeches to go down to posterity, that their children and their children's children may see how their fathers and their grandfathers talked upon these subjects. I am entirely opposed to the proposition to rescind this fifteen minutes' rule; instead of that, I wish we had adopted it much earlier in the session. There are many subjects which have been introduced into the Convention, upon which I have felt deeply interested; but there has not been one upon which, if I had studied it carefully and taken pains to condense my ideas, I could not have stated all the leading points without exceeding a fifteen minutes' speech. So can the gentleman from Salem. I know that that gentleman has a power of condensation; and that he can bring into fifteen minutes the consideration of the most elaborate and complicated question, if he chooses to do so. I see no necessity, therefore, for rescinding the rule in regard to this matter. It is now nearly the end of July; and there was, throughout the community at large, an expectation, when this Convention commenced its session, that it would expire about the first of July. Instead of that, it is now the last of July; and if we rescind this rule, I see nothing to prevent our going on for

another month, or even longer. Sir, there is no need of it. This is a rule that commends itself to all of us. Had I been one of these long talkers, — had I been unfortunate enough to possess the power of eloquence, and had thus been tempted to spread out my thoughts in page after page of the journal of our debates — I should not have said what I have said. Every gentleman knows that I have not taken up much of the time of the Convention; and I have often regretted that our proceedings were so much delayed by the protracted remarks of some of my associates, who use very little power of condensation in expressing their views. I hope we shall try to have a reform in this respect, so as to bring our session to a close. Without taking up any more time, I will conclude by expressing the hope that the rule will not be rescinded.

The question being then taken, the motion was not agreed to.

Election of Justices of the Peace.

Mr. WESTON, of Duxbury, moved that debate on the subject of the election of justices of the peace should cease at four o'clock this afternoon. The motion was agreed to.

Mr. WALKER, of North Brookfield. I move that the Convention now proceed to the consideration of the resolves on the subject of the election of justices of the peace.

The motion was agreed to.

Mr. LORD, of Salem. Is that matter in the Orders of the Day?

The PRESIDENT. Certainly it is.

Mr. LORD. Does the discharge of the Committee of the Whole from its farther consideration place it in the Orders of the Day without any farther action?

The PRESIDENT. The Chair is of opinion that it does. He does not know where else to put it. The question is on the resolves reported by the Committee of the Whole. The gentleman from Lenox, (Mr. Bishop,) is chairman.

The resolves were read as follows:—

1. *Resolved*, That it is expedient to amend the Constitution, so as to provide that the electors of the several towns shall elect, in such manner as the legislature may direct, Justices of the Peace, whose term of office shall be three years, and whose jurisdiction shall extend throughout the county in which they may be elected; their number and classification shall be regulated by law; they may be removed after due notice, and an opportunity of being heard in their defence, by such court as may be prescribed by law, for causes to be assigned in the order of removal.

2. *Resolved*, That it is expedient so to amend the Constitution that the Governor may remove any officer in the former resolves of this Committee mentioned, within the term for which he shall have been elected, giving such officer a copy of the charges against him, and an opportunity of being heard in his defence.

3. *Resolved*, That it is expedient to provide in the Constitution, that, in case of vacancy, by resignation or otherwise, of any state, county, or district officer, whose election is provided for in the Constitution, the Governor shall issue his warrant to the mayor and aldermen of the several cities, and the selectmen of the several towns, to fill the vacancy at the next annual election after it shall happen; and the Governor, with the advice and consent of the Council, may appoint suitable persons to fill vacancies until an election by the people.

Mr. BUTLER, of Lowell. I move the amendment which was presented in Committee of the

Whole, before the Committee was discharged from the farther consideration of this subject. It will be found in Document 121, and was offered by the gentleman from Bernardston, (Mr. Cushman). It is to substitute the following for the two first resolutions, as reported by the Committee:—

Resolved, That it is expedient to amend the Constitution as follows:—

There shall be two classes of Justices of the Peace, viz.:—

1. Trial Justices, who shall be elected by the legal voters of the several towns for a term of three years. There shall be one in each town, and one additional for every two thousand inhabitants. They shall have the same jurisdiction, powers and duties that are now exercised by Justices of the Peace, Justices of the Quorum, and Commissioners to qualify civil officers; and such other powers as may be given them by the legislature.

2. Justices of the Peace, who shall be appointed by the Governor and Council for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of Justices of the Peace shall extend only to the acknowledgment of deeds, the administration of oaths, the issuing of subpoenas, and the solemnization of marriages.

Mr. MORTON, of Andover. I suppose that the object of the amendment offered by the gentleman from Lowell, (Mr. Butler,) is to place the matter precisely as it was when under consideration by the Committee of the Whole. With his permission, I will offer an amendment, which, I think, will better effect that object. It is to strike out of the first resolve the words, "There shall be two classes of Justices of the Peace," and also the word "who," in the next line, and insert after the words "Justices of the Peace," in the second resolve, what I send to the Chair. If amended as I propose, the resolves will stand as follows:—

Resolved, That it is expedient to amend the Constitution as follows:—

1. Trial Justices shall be elected by the legal voters of the several towns for a term of three years. There shall be one in each town, and one additional for every two thousand inhabitants. They shall have the same jurisdiction, powers, and duties that are now exercised by Justices of the Peace, Justices of the Quorum, and Commissioners to qualify civil officers; and such other powers as may be given them by the legislature.

2. Justices of the Peace, and Justices of the Peace and Quorum, and Justices throughout the Commonwealth, and Commissioners to qualify civil officers, shall be appointed by the Governor and Council for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of Justices of the Peace shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

Mr. BUTLER. As the amendment of the gentleman from Andover seems better suited to the object in view, I will withdraw my amendment.

The PRESIDENT. Then the question will be on the amendment offered by the gentleman from Andover, (Mr. Morton).

Mr. ALVORD. I wish to suggest a difficulty in the amendment proposed. It provides that justices shall be appointed by the Governor and Council, and that those now in office shall continue to hold their commissions. Under that amend-

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ment, justices of the quorum, and justices throughout the Commonwealth, may be appointed in any number as justices of trial. You, therefore, lose the benefit of the election of justices of trial by the people; for the governor will have power, indefinitely, to appoint justices for the trial of causes.

Mr. GRISWOLD, for Erving. I move to amend by striking out of the last line but two in the first resolution, as proposed by the gentleman from Andover, the words "justices of the quorum," and also the words "civil officers." If these words are not stricken out we shall have the offices of justices of the quorum, and of commissioners to qualify civil officers, indefinitely extended. I see no way to remedy the evil or to limit it, but by the amendment I have proposed. There are some differences of opinion about this; but I think we had better strike out the words I have indicated. It will prevent the creating of new offices, which is the object, if I understand it, of the gentleman for Montague, (Mr. Alvord,) and will have the justices as they are now, holding their commissions until they expire.

Mr. SCHOULER. I want to ask one or two questions before I can vote on this matter. I want to know whether justices of the peace in cities are to be elected by the district system, or by the whole city? If they are to be elected by the whole city we shall have about seventy or eighty to elect every three years.

Mr. HALLETT, for Wilbraham. I would remind the gentleman from Boston that in the county of Suffolk there is a police court established. Justices of the peace in Suffolk have no power to try causes. All criminal cases that would be investigated by a justice of the peace are to be returned to the police court. This amendment relates to justices of the peace in towns; it cannot relate to any city or district in which there is a police court. The justices of the peace are to be appointed in precisely the same manner as heretofore, except that they are to be limited, all over the Commonwealth, as they are now limited—that they shall have no jurisdiction as a court.

Mr. KEYES, for Abington. I was not here when this question was up before; but it strikes me that, on reading this amendment and hearing the debate upon it, there is something peculiar about one paragraph—that is the paragraph which provides that trial justices shall be elected for each town, and that they are to have jurisdiction throughout the county. Now I should like to know what use there is in that? I suppose the design is comprehended under the general one that the people should elect their judges, but on examination it really seems to me that it is not based upon that at all. Take an instance. Here is one town in the Commonwealth which elects a trial justice. Anybody who has any business before a trial justice may elect whatever justice he pleases, and I may be called upon to answer before a justice that I had no hand in electing. I prefer that the governor should have the right to appoint, for this reason. We all know that offices of this kind are sometimes thrust upon people who do not want them, as a matter of joke, as, for instance, in the case of constables and militia officers. There may be towns which hold this office in contempt, and they may choose a man who is utterly unfit for the office, and that man may be selected by all the towns in the

county to give his decision in cases. I am not lawyer enough to know what jurisdiction a justice of the peace has, although I am one myself; but these trial justices may be so selected, and their known sentiments or predilections may be taken advantage of to the annoyance of individuals, and the subversion of just rights. Suppose, for instance, that a liquor case is to be tried, and a justice living in a remote town from where the case originated is known to entertain peculiar sentiments; the party complaining may go and employ him and drag the defendant from his own home and neighborhood, merely because he thinks he has found a justice that will coincide with his notions of right and wrong in this matter. The object of election by the people will, in this way, be defeated, as they will be subjected to the decisions of justices whom they had no hand in electing.

Mr. DAVIS, of Plymouth. I believe that the gentleman for Abington is mistaken in regard to the object of this amendment. I am sorry to hear that the gentleman from Lenox, (Mr. Bishop,) is so ill to-day as to be unable to be here, and that this question should have come up in his absence. I believe that gentlemen are aware that there is a greater evil than the gentleman for Abington supposes, from the great number of justices of the peace who are appointed by the governor, and who, to a certain extent, have power over the liberty and property of the people of the Commonwealth. I believe it is important that members of this Convention should know that there is a great evil which is felt by the citizens of the Commonwealth, arising from the present system, with regard to the power, jurisdiction, and learning of justices of the peace. It is a matter well known to many gentlemen of this body, who have had much experience at the bar, that persons who are appointed by the governor, as justices of the peace for the purpose of taking the acknowledgment of deeds, or of administering oaths, often take upon themselves to act as judges. They have been found issuing warrants day after day against the same individual, and even engaged in stirring up civil broils in the neighborhood, that they might thus have an opportunity of trying civil cases.

There are numerous cases in this Commonwealth of a like character, and one case has happened within my knowledge. A justice of the peace issued somewhere between fifty and a hundred warrants against two or three individuals in this State, in the course of three months. In each of those cases an appeal was taken, and all of them were quashed when they came to a hearing in the court of common pleas.

I believe it is to prevent this evil, and not from fear, as the gentleman for Abington would have it, that the people will elect certain persons as justices who are weak sisters, as he said, but it is because we know as an actual fact, that among the great variety of persons on whom the governor may feel it necessary to confer a commission as justice, there must be a great proportion little known to the governor; and therefore, the governor is not so well fitted as the citizens of the several neighborhoods, to confer that honor upon the persons who are to execute the duties of that office. I do not believe, either generally, or specially, that the people of the small neighborhoods, as a matter of abstraction, to say the least, will not choose persons fully competent to exer-

cise the duties of that office. It is for that reason that I regret that the motion has been made to except justices of the quorum from the general scope of the first resolve. I hope the present justices of the quorum will continue during the tenure of their commissions, and I do hope that these justices, having the power, as they do have, over the liberties of the people of the Commonwealth, will be elected by the people of the several towns. I know it is a crying evil, about which the citizens in almost every town have something to complain of, that there are persons among them who have the power, and who, either from ignorance or dishonesty, discharge or confine persons within the limits of the county, and who issue writs and give judgments either one way or the other, solely from motives of policy. And, with this view, and merely as an illustration, it will not be out of order to relate an anecdote. I knew in a town not fifty miles from the town which I represent, a justice, now dead, who was accustomed to try cases brought before him by a certain lawyer, residing in his neighborhood. It so happened, at one time, that an action was brought by another lawyer, which was returnable before this justice; and his patron, a lawyer of distinction, appeared for the defendant. In the course of the trial, this lawyer forced the counsel opposed to him, to make amendments from time to time. After those amendments were allowed, the case proceeded. A clear case was made out for the plaintiff, and when the justice came to deliver his opinion, "Well," says he, "I have allowed Mr. so and so to amend several times, and I do not think it is more than fair to give judgment for the defendant."

I hope, Mr. President, that this evil, which in particular cases is a trying one, will be prevented; and I hope we shall prevent it, so far as civil and criminal cases are concerned, and so far as the liberties of the citizens of this Commonwealth are at stake.

Mr. DAWES, of Adams. Is an amendment to an amendment in order at this time?

The PRESIDENT. There is already an amendment to an amendment pending. The immediate question is upon the amendment offered by the gentleman for Erving, (Mr. Griswold.)

Mr. LORD, of Salem. Is not the resolution itself an amendment to the Report of the Committee; and if so, is not this an amendment to the amendment?

The PRESIDENT. The Chair understands, that pending the Report of the Committee, the delegate from Andover, (Mr. Morton,) moved to amend by striking out the first resolve, and to substitute the resolution reported in Document No. 121. Then the delegate for Erving, (Mr. Griswold,) moved to amend the first of these resolutions. That makes an amendment to the amendment.

Mr. LORD, of Salem. I wanted to express some views in relation to this subject, for the reason that I thought there was real necessity for reform. I supposed, if there were any matters in this Commonwealth, which were generally understood by the people of the Commonwealth as needing reformation, those two matters were the police courts and justices of the peace. These, by way of pre-eminence, were matters over all others, in my judgment, which demanded reform.

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Well, Sir, there are some traits of reform in this proposition, which I like. I like the idea of there being two classes of magistrates, the one being trial justices, and the other having some more limited jurisdiction—substantially the jurisdiction suggested by the gentleman from Bernardston, (Mr. Cushman,) when he first made the proposition yesterday to amend, with some qualification. I was dissatisfied with the amendment made in Committee of the Whole, for a reason which seems to be overlooked; and that is, that the trial justices which this resolution provides for, are enough, in all conscience, for all the ordinary purposes which require the exercise of discretion. Where justices are merely to take the acknowledgment of deeds, and do any other mere formal act, which could as well be done by machinery as by a magistrate, there I would let all these justices remain; but where the office requires the exercise of sound and legal discretion, I would have it limited to that class called trial justices.

Now, Sir, I have no objection at all to the election of trial justices. On the whole, I am rather inclined to think that is a good way to elect them. But I do not think it well to elect them without the power of keeping them in if the people want them. I do not think it well to take away from the governor the power of appointment, and yet leave to him the power of removal the instant the people appoint, if he choose to do so. I do not think it well to say that, when the people have elected one of these officers, the governor may put his veto upon him, and say he shall not hold his office an hour. I would just as soon give the governor the power to remove every other officer. Although you put into the hands of the people the power of election, you say, also, that the very day they have exercised that power, the Governor and Council may remove. And that provision extends to judges of probate, sheriffs, commissioners of insolvency, registers of probate, and all other officers who are now appointed by the executive, but hereafter to be chosen by the people. The language, though not precise, still seems to me to include them all, for it says it is expedient so to amend the Constitution, that the governor may remove any officer in the former resolve, by this Committee mentioned. The Committee having made a Report, as to the election and tenure of office, and the Convention having acted upon it, and agreed that the judges of probate and other officers shall be elected for three years, these resolves provide that, notwithstanding what we have done, the Governor and Council may remove them at any time. I do not think it is proper to put the appointing power in one tribunal, and the removing power in another. Such is the effect of this resolution.

I do not think it well to adopt these resolves, as they stand, for another reason. I do not think it well to give to one town the power to elect a magistrate who shall exercise jurisdiction in another town where he cannot get, were he a candidate there, a single vote. It is a very convenient arrangement for a party who wants to dispose of some particular individual whom they do not want among them, and who will agree not to work at home, to place him where he may do all the mischief he does, not at home, but abroad.

It was answered just now, that the police court

was established in the city of Boston. But, that is not a constitutional court, but merely an institution to be made or unmade, at the pleasure of the legislature. It may be changed, and, Sir, the town of Boston, if I am right in this, having one hundred and forty-eight thousand inhabitants, would have to choose seventy-four trial justices, and one more for corporate rights, making seventy-five trial justices, which the city of Boston have to elect every three years. I do not think that a necessary, or proper, or expedient provision.

But, there is another difficulty in these resolves, and that is, that no provision is made for the police court. I am inclined to think that the provision you have already passed in relation to judicial officers, clearly by its terms covers police courts. Now, this provision is entirely nugatory, until we have made provision for police courts.

There is another provision here—though I have not half time enough to mention the objections which I desire to suggest, and at the same time to suggest the remedies to many of them—but there is another provision, and that is, the one which gives the legislature the power to confer upon justices of the peace any authority which the legislature choose to confer upon them. It does not provide a jurisdiction which cannot be altered, not such as is given to them by the present Constitution; but they are to have all such other powers as may be given them by the legislature. I am not willing thus to create a tribunal of this kind, with power in the legislature, to confer upon it any jurisdiction, that it choose to confer. I am inclined to think that real wisdom would suggest the same course in relation to these resolves, that was suggested this morning in relation to the amendment proposed by the gentleman who represents Wilbraham, that they are not in a condition in which they can be matured. It is not for me to do anything more than simply to suggest, that although there is here an object to be obtained, and which I think there is not a single individual here who does not wish to obtain, yet it cannot be accomplished in this Convention. I have suggested some half a dozen objections, without having an opportunity, on account of the fifteen minutes' rule, to suggest a single remedy. There were other difficulties which suggested themselves to me; but of course, as the hour at which the Convention have determined to take the question, is near at hand, I cannot even state them.

Mr. CHANDLER, of Greenfield. It seems to me that there are several points in the resolutions which are objectionable. In the first place, I do not approve of the two classes of justices. It seems to me to be making an invidious distinction, and one altogether unnecessary, the one class to hear and determine important causes; and the other, to administer oaths on common occasions, to witness deeds, &c. Why should such a distinction be made? I believe if you submit the election to the people they will choose those who have common sense, and common information, and who, of course, will be capable to discharge all the duties which appertain to the office of justice of the peace. It seems to me, therefore, entirely unnecessary, and, indeed, even a burlesque upon the the people to suppose, that they will choose a man incapable of performing the duties of the office. And what a burlesque it would be upon the people! A stranger is passing through the town, he calls at a house, and inquires for

your patrician justice, as he has a cause to submit to him. He goes his way. Another stranger comes along, and he inquires for your plebeian justice, as he wants him to marry his daughter. This distinction seems to me invidious and unnecessary.

[Here the President's hammer fell, the hour of four o'clock having arrived, at which time the Convention had ordered the question to be taken.]

The question was taken upon the amendment of the gentleman for Erving, (Mr. Griswold,) to strike out in the first resolve, the words, "justices of the quorum and commissioners to qualify civil officers," and it was adopted.

Mr. DAWES, of Adams, moved to amend by inserting in the first paragraph, after the word "towns" the words "and cities where no police court is, or may be established by law," so that the clause as amended, would read:—

Trial Justices shall be elected by the legal voters of the several towns and cities where no police court is or may be established by law, for a term of three years.

The amendment was agreed to.

Mr. ALVORD, for Montague, moved to amend the second paragraph, by inserting after the word "of," the word "such," and to strike out the words "of the peace."

So that instead of "provided, that the jurisdiction of justices of the peace, shall not extend," &c., it would read:—

Provided, That the jurisdiction of such justices shall not extend, &c.

The motion was agreed to.

Mr. CHAPIN, of Worcester, moved to insert an additional section to the amendment of the gentleman from Andover, (Mr. Morton,) as follows:—

3. Justices and clerks of the police courts in the several towns and cities of the Commonwealth, shall be elected by the legal voters of the several towns and cities, for a term of three years."

The amendment was agreed to.

Mr. MORTON, of Andover, moved to strike out in the last line of the first paragraph, the words, "and such other powers as may be given them," and to insert the words, "subject to alterations," so that the clause as amended, would read:—

They shall have the same jurisdiction, powers and duties, that are now exercised by justices of the peace, subject to alterations by the legislature.

Mr. STEVENSON, of Boston. I would suggest to the gentleman to strike out the words which he proposes, without inserting. The effect of leaving the clause as it now stands, or of striking out and inserting that which he proposes, will be to confer upon the legislature the power to give these officers authority to try the highest causes.

The PRESIDENT. The Chair must remind the gentleman that he cannot debate the amendment.

Mr. THOMPSON, of Charlestown. I desire to know if the motion is divisible, so that the question may first be taken upon the motion to strike out, and then upon the motion to insert?

The PRESIDENT. A motion to strike out and insert is not divisible.

The amendment was then adopted.

Mr. WESTON, of Duxbury, suggested that

Monday,] JUSTICES OF THE PEACE, &c. — FROTHINGHAM — LELAND — SCHOULER — LORD — HALLETT.

[July 26th.

inasmuch as there seemed to be some prejudice against the word "trial," he thought some other word might be substituted; he therefore moved to strike out the word "trial," and insert the word "town," so that it would read "Town Justices," instead of "Trial Justices."

The amendment was not agreed to.

Mr. FROTHINGHAM, of Charlestown, moved to insert, after the word "and," in the third line of the first paragraph of the resolve, the words "may be," so as to make the clause read:—

There shall be one in each town, and may be one additional for every two thousand inhabitants.

The amendment was adopted.

Mr. LELAND, of Holliston, moved to amend by adding to the first resolve the following:—

Provided, that no Trial Justice shall act as such after his ceasing to reside in the town in which he was elected.

Mr. SCHOULER asked the gentleman from Holliston to substitute the following instead of his amendment: Insert after the word "inhabitants," the words "who shall have jurisdiction only in the towns in which they shall reside, and for which they shall be elected." So that the clause, if amended, would read:—

There shall be one in each town, and may be one additional for every two thousand inhabitants, who shall have jurisdiction only in the towns in which they reside and for which they shall be elected.

Mr. LELAND declined to accept the substitute, and the question being taken, the amendment was not adopted by the Convention.

Mr. MORTON, of Andover, moved to amend by striking out the words "each town," and to insert "every such town or city." The clause would then read:—

There shall be one for every such town or city, and may be one additional for every two thousand inhabitants.

The motion was agreed to—ayes, 148; noes, 3.

On motion of Mr. TRAIN, of Framingham, the Convention reconsidered the vote by which the amendment of the gentleman from Holliston (Mr. Leland) was rejected.

The question then recurred upon the adoption of the amendment, which was read, as follows: Add, at the end of the first paragraph, the following:—

Provided, that no Trial Justice shall act as such upon his ceasing to reside in the town in which he was elected.

The question was taken, and the amendment adopted.

Mr. LORD, of Salem, moved to amend by adding to the first section the following words:—

But no Trial Justice shall have jurisdiction in any civil action in which both of the parties shall be inhabitants of towns in the Commonwealth, other than the town in which such Justice was elected.

The amendment was not agreed to.

The question then recurred upon the amendment offered by Mr. Morton, of Andover, as amended, to strike out the first resolve reported

by the Committee, and to insert the following:—

Resolved, That it is expedient to amend the Constitution, as follows:—

1. Trial Justices shall be elected by the legal voters of the several towns and cities where no police court is or shall be established by law, for a term of three years. There shall be one in every such town or city, and may be one additional for every two thousand inhabitants. They shall have the same jurisdiction, powers and duties, that are now exercised by Justices of the Peace, subject to alteration by the legislature; *provided*, that no Trial Justice shall act as such upon his ceasing to reside in the town in which he was elected.

2. Justices of the Peace, Justices of the Peace and Quorum, Justices of the Peace throughout the Commonwealth, and Commissioners to qualify civil officers, shall be appointed by the Governor and Council, for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of such justices shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

3. Justices and Clerks of the police courts, in the several towns and cities in the Commonwealth, shall be elected by the several towns and cities, for a term of three years.

Mr. STEVENSON, of Boston. From the fact that this is a subject which only those acquainted with the law can thoroughly understand, I feel under the necessity of moving to recommit this subject to the Committee which reported it.

Mr. WESTON, of Duxbury. If the subject is to be recommitted, I hope it will be committed to a Select Committee, and not to the Committee which reported it.

Mr. STEVENSON. I will so modify my motion.

The question was taken, and the motion to commit was disagreed to—ayes, 97; noes, 119.

Mr. WHITNEY, of Boylston. After so much information upon this subject, I feel disposed to move, and I do now move, to postpone indefinitely the whole subject.

Mr. BIRD, of Walpole. I move the previous question.

Mr. HALLETT, for Wilbraham. I desire to know whether the motion for the previous question will extend to the second and third resolves?

The PRESIDENT. It will extend to all the resolves under consideration.

Mr. HALLETT. Well, Sir, I desire to say a word, to show why the main question should not be ordered. According to my understanding, if the previous question is sustained, it brings us to a direct vote upon this second resolve, which I do not hesitate to say is the most extraordinary proposition I ever heard proposed to be put into any Constitution. It gives to the governor power to turn every-body out of office in the Commonwealth. [A laugh.] I do not want to give the governor any such powers.

Mr. BIRD, of Walpole. At the time I made the motion, I supposed it applied only to the amendment of the gentleman from Andover, (Mr. Morton,) but if it is desirable to propose amendments to the other resolutions, and they cannot be separated, I will withdraw the demand for the previous question.

Mr. WHITNEY, of Boylston. I withdraw the demand for the indefinite postponement.

Mr. MILLER, of Wareham. I renew the motion.

Mr. HALLETT, for Wilbraham. I move to amend by striking out the second resolution. It is a resolution which gives the governor the power of removing every-body, without any cause whatever.

The PRESIDENT. The motion to amend must be first put, before the motion for indefinite postponement.

Mr. CHAPIN, of Worcester. I move to reconsider the vote by which the Convention refused to recommit this subject to a Special Committee. The reason why I make the motion is this:—

The PRESIDENT. The question is not debatable.

Mr. MILLER. I desire to inquire of the Chair if my motion is not to be considered?

The PRESIDENT. The Chair would inform the gentleman that the pending question is a motion to amend, made by the gentleman for Wilbraham, which must be first put, before the motion for the indefinite postponement. A motion has been made by the gentleman from Worcester, to reconsider the vote by which the Convention refused to recommit the subject of the election of justices of the peace to a Special Committee, which motion the Chair decides to be in order at this time.

The question was taken upon Mr. Chapin's motion, and there were—ayes, 127; noes, 89.

The PRESIDENT. The question now is, upon the motion of the delegate from Boston, (Mr. Stevenson,) to recommit this whole subject to a Special Committee.

Mr. BOUTWELL, for Berlin. I move that the whole subject lie upon the table.

The question was taken, and there were—ayes, 94; noes, 140.

So the motion was not agreed to.

Mr. GRISWOLD, for Erving. I move to amend the motion of the gentleman from Boston, (Mr. Stevenson,) by adding that the Committee be instructed to report to-morrow morning.

Mr. STEVENSON. I accept the amendment.

The question was then taken upon the motion of Mr. Stevenson, and it was decided in the affirmative.

Mr. KEYES, for Abington, moved that the Committee consist of seven.

The motion was agreed to.

Debates and Proceedings.

The PRESIDENT. The next matter in the Orders, is the following resolve, reported by the Committee on Publishing the Proceedings and Debates of the Convention.

The resolve was read, as follows:—

Resolved, That the Committee appointed to superintend the publication of the reports of the Debates and Proceedings of this Convention, be authorized, in connection with the President and State Auditor, to allow the accounts for such service, and the Governor is hereby requested to draw his order on the treasury for the payment of the same.

The resolve was ordered to a second reading.

Announcement of a Committee.

The Chair announced as members of the Special Committee on the resolves concerning the election

Monday.]

BILL OF RIGHTS, &c. — STEVENSON — CHURCHILL — SUMNER.

[July 25th.]

of justices of the peace, the following named gentlemen: Mr. STEVENSON, of Boston; Mr. Butler, of Lowell; Mr. Chapin, of Worcester; Mr. Bartlett, of Boston; Mr. Dawes, of Adams; and Mr. Morton, of Andover.

Mr. STEVENSON moved that the Committee have leave to sit during the session of the Convention.

The motion was agreed to.

Mr. CHURCHILL, of Milton. I have a proposition with reference to the election of justices of the peace, which I ask permission to read to the Convention, and which I ask may be referred to the Committee just appointed.

The resolve was read and referred.

Bill of Rights.

On motion of Mr. BIRD, of Walpole, the Convention resolved itself into

COMMITTEE OF THE WHOLE.

Mr. Schouler, of Boston in the chair, upon the several resolves reported from the Committee on the subject of the Bill of Rights.

The resolves were read, as follows:—

1. *Resolved*, That the Bill of Rights be amended by adding to the eleventh article, as a part of the same, the following words:

"And every person having a claim against the Commonwealth, ought to have a judicial remedy therefor."

2. *Resolved*, That the Bill of Rights be amended by inserting between the 11th and 12th articles, the following additional article, being identical with one now in another chapter of the Constitution, and which more appropriately belongs to the Bill of Rights, viz.:—

"VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months."

3. *Resolved*, That the Bill of Rights be amended in the last sentence of the 29th article, by striking out the words "so long as they behave themselves well, and that they," and inserting, "by tenures established by the Constitution, and;" also, by striking out the words "ascertained and established by standing laws," and inserting, "which shall not be diminished during their continuance in office," so that the whole sentence, as amended, shall read as follows:—

"It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their office by tenures established by the Constitution, and should have honorable salaries, which shall not be diminished during their continuance in office."

4. *Resolved*, That the Bill of Rights be amended, by inserting between the 29th and 30th articles, the following additional article:—

"This enumeration of rights shall not impair others retained by the people, and no powers shall ever be assumed by the legislature that are not granted in this Constitution."

Also the following Minority Reports:—

To amend as follows: And no subject shall be hurt, molested, or restrained in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his profession or sentiments concerning religion.

To add to the 15th article of Bill of Rights the following clause:—

In all trials for criminal offences, the jury, after

having received the instruction of the court, shall have the right, in their verdict of guilty or not guilty, to determine the law and the facts of the case.

Mr. SUMNER, for Marshfield. Mr. Chairman: As chairman of the Committee on the Preamble and Bill of Rights, it belongs to me to introduce and explain their Report. It will be perceived that it is brief, and proposes no important changes. But, in justice to the distinguished gentlemen with whom I had the honor of being associated on that Committee, I deem it my duty to suggest that the extent of their labors should not be judged by this result. It appears from the proceedings of the Convention of 1820, that the Committee on the Bill of Rights at that time, sat longer than any other Committee. I believe that the same Committee in the present Convention, might claim the same preëminence. Their records show twenty different sessions.

At these sessions, the Preamble and the Bill of Rights, in its thirty different propositions, were passed in review and considered, clause by clause; the various orders of the Convention, amounting to twelve in number; the petitions addressed to the Convention, and referred to the Committee; and also informal propositions from members of the Convention and others, were considered; some of them repeatedly and at length. On many questions there was a decided difference of opinion; and on a few, the Committee was nearly equally divided. But after the best consideration we could bestow upon them, in our protracted series of meetings, it was found that the few simple propositions, now on your table, were all upon which a majority of the Committee could be brought to unite. As such, I was directed to present them to the Convention. And here, Sir, admonished by the lapse of time, and the desire to close these proceedings, I might be content with this simple statement.

But, notwithstanding the urgency of our business, I cannot allow the opportunity to pass—indeed, I should not do my duty—without attempting, for a brief moment, to show the origin and character of this part of our Constitution. In this way we may learn its weight and authority, and appreciate the difficulty and delicacy of any change in its substance, or even its form. I will try not to abuse your patience.

The Preamble and Bill of Rights, like the rest of our Constitution, were from the pen of John Adams; among whose published works the whole document, in its original draught, may be found. At the time when he rendered this important service to his native Commonwealth, and to the principles of free institutions everywhere, he was forty-five years of age. But he was not unprepared. The natural maturity of his powers had been enriched by the well-ripened fruit of assiduous study, and of an active life, both of which concurred in him. The examples of Greece and Rome, and the writings of Sidney and Locke, were especially familiar to his mind. The common law he had made his own, and mastered well its whole arsenal of Freedom. For a long time the vigorous and unflinching partisan of the liberal cause in Boston, throughout its many conflicts; then in Congress, whither he was transferred, the irresistible champion of Independence; and then the republican representative of the united, but still struggling colonies, at the court of France; in the brief interval between his two foreign mis-

sions, only seven days after landing from his long ocean voyage, he was chosen a delegate to the Constitutional Convention, and at once brought all his varied experience, rare political culture, and eminent powers, to the task of adjusting the frame-work of government for Massachusetts. As his work, it all claims our regard; and no part bears the imprint of his mind so much as the Preamble and Bill of Rights; nor is any other part authenticated as coming so exclusively from him.

At the time of its first adoption, the Massachusetts Bill of Rights was more ample in its provisions, and more complete in form, than any similar Declaration in English or Colonial history. Glancing at its predecessors, we shall learn something of its sources. First came, long back in the thirteenth century, Magna Charta, with its generous safeguards of Freedom, wrung from King John by the Barons at Runnymede. From time to time these liberties were confirmed, and, after an interval of centuries, they were again ratified, at the beginning of the unhappy reign of Charles I., by a Parliamentary Declaration, to which the monarch assented, known as the Petition of Right, which, in its very title, reveals the humility with which the rights of the people were then maintained. And finally, in a different tone and language, at the Revolution of 1688, when James II. was driven from his dominions, a "Declaration of the true, ancient, and indubitable rights and liberties of the people of the kingdom," familiarly known as the Bill of Rights, was delivered by the Convention Parliament to the new sovereigns, William and Mary, and embodied in the Act of Settlement, by virtue of which they sat on the throne. These, Sir, are the English examples.

Their influence was not restrained to England. It crossed the ocean. From the beginning, the colonists were tenacious of the rights and liberties of Englishmen, and, at various times and in various forms, declared them. Connecticut, as early as 1639; Virginia in 1624, and 1676; Pennsylvania in 1682; New York in 1691;—and I might mention others still,—put forth Declarations, brief and meagre, but kindred to those of the mother country. In the colony of New Plymouth, the essential principles of Magna Charta were proclaimed in 1636, under the name of the General Fundamentals; and in 1672, the inhabitants of Massachusetts Bay declared in words worthy of careful study, that "the free fruition of such Liberties, Immunities, Privileges, as Humanity, Civility, and Christianity call for, as due to every man in his place and proportion, without impeachment and infringement, hath ever been and ever will be, the tranquillity and stability of Churches and Commonwealth, and the denial or deprival thereof, the disturbance, if not the ruin of both."

In the animated discussions, which immediately preceded the Revolution, the rights and liberties of Englishmen were constantly asserted as the birth-right of the colonists. This was often done by formal resolutions or declarations, couched at first in moderate phrase. At the outrage of the Stamp Act, a Congress of Delegates from nine States, held at New York, in October 1765, put forth a series of resolutions entitled, "*Declaration of our humble opinion* respecting the most essential rights and liberties of the colonists." The humility of this language may recall the English

Monday.]

BILL OF RIGHTS. — SUMNER — WILSON — LORD — BOUTWELL — BRIGGS — HALLETT — DANA.

[July 25th.]

Petition of Right under Charles I. This was followed in 1774 by the Declaration of the Continental Congress, which, in another tone and with admirable force, arrays in ten different propositions, the rights which "by the immutable laws of nature, the principles of English liberty and the several charters of compacts" belong to "the inhabitants of the English colonies in North America."

Time's noblest offspring is the last;

and the whole colonial series was aptly closed by the Declaration of Independence, which declared not merely the rights of Englishmen, but the rights of men.

But only a few brief weeks before the Declaration of Independence, Virginia, taking the lead of her sister colonies, had established a Constitution to which was prefixed an elaborate Bill of Rights. This remarkable document, which has been the grand precedent for the whole country, marks an epoch in political history. In all English Declarations of Rights and even in those of the colonies, unless we except the early declaration of the inhabitants of Massachusetts Bay, stress had been laid upon the liberties and privileges of Englishmen. The rights claimed even by the Continental Congress of 1774, in their masculine Declaration, were the rights of "free and natural-born subjects within the realm of England." But the Virginia Bill of Rights, standing at the front of its first Constitution, discarded all narrow title from mere English precedent, planted itself on the eternal law of God, above every human ordinance, and openly proclaimed that "all men are equally free and independent;" a declaration, which is repeated, though in other language, by the Massachusetts Bill of Rights.

The policy of Bills of Rights has been sometimes called in question. It has been said that they were originally privileges or concessions extorted from the king, and, though expedient in a monarchy, are of little value in a republic. As late as 1821, in the Convention for revising the Constitution of New York, doubts of their utility were openly expressed by Mr. Van Buren. But they are now above question. Each new State, ending with California, follows the example of Virginia and Massachusetts, and places its Bill of Rights in the front of its Constitution. Nor can I doubt that much good is done by this frank assertion of fundamental principles. The public mind is instructed; people learn to know their rights; liberal institutions are confirmed; and the Constitution is made stable in the hearts of the community. The provisions in the Bill of Rights are lessons of political wisdom and anchors of liberty. They are also the constant index and scourge of injustice and wrong. In Massachusetts, slavery itself disappeared before the declaration that "all men are free and equal," interpreted by a liberty-loving court.

In the Convention of 1780, the Bill of Rights formed a prominent subject of interest. The necessity of such a safeguard had been pressed upon the people, and its absence from the Constitution of 1777 was unquestionably a reason for the rejection of that ill-fated effort. Indeed, this Constitution was openly opposed because it had no Bill of Rights. In the array of objections to it at the period was the following, which I take from an important contemporaneous publication: "That a Bill of Rights, clearly ascertaining and

defining the rights of conscience, and that security of person and property which every member of the State hath a right to expect from the supreme power thereof, ought to be settled and established, previous to the ratification of any Constitution for the State." Accordingly at the earliest moment—

[Here the hammer of the Chairman fell, and Mr. Sumner took his seat.]

Mr. WILSON, of Natick. I move that the gentleman for Marshfield have leave to proceed.

Mr. LORD, of Salem. I rise to a question of order: whether it is competent for this Committee to change a rule made in the Convention?

Mr. WILSON. The rule of the Convention is, that a person shall not speak more than fifteen minutes, without leave is granted. I take it that it is competent for this Committee to grant leave.

The CHAIRMAN, Mr. Schouler in the chair. The gentleman from Natick moves that the gentleman for Marshfield have leave to proceed; and the Chair is of opinion that it is competent for the Committee to grant that leave.

Mr. BOUTWELL, for Berlin. It seems to me that the decision has been otherwise, and that the rule of the Convention has been interpreted to be in the nature of an instruction to the Committee, like instructions to any other body.

The CHAIRMAN. The Chair will read the rule:—

"Ordered, that on and after Monday next, no member shall speak more than fifteen minutes, on any one subject, without leave."

The Chair is of opinion that the rule is applicable in Committee and that the Committee have a right to change the rule.

Mr. BRIGGS, of Pittsfield. I apprehend we cannot change the rule; but the question is, whether the Committee have the right to grant leave. It struck me that they had not the right, but I think that if the rule is applicable to the Committee we have the right to grant leave.

Mr. HALLETT. Leave may be granted by universal consent, but not otherwise.

The Chairman again read the rule, and stated it as his opinion that leave might be granted by a majority of the Committee.

Mr. ASPINWALL, of Brookline. I think it important that the rule should be decided properly. Whatever the ruling of the Chair may be, I suppose the Committee cannot decide upon an order. That point of order having been raised, it must go into the Convention for a decision.

The CHAIRMAN. Does the gentleman make any motion?

Mr. ASPINWALL. I will make no motion.

Mr. WILSON. I think that either in Convention or in Committee, when the fifteen minutes have expired and the Chairman announces the fact, the gentleman who is speaking cannot go on. His time is out under the rule. But it is competent for any member of the Convention to move that he may have leave to proceed, and it is competent for the Committee to grant leave. I think that is in accordance with the terms of the resolution, and if I were in the chair I should put the question to the Committee.

Mr. LORD. If the motion of the gentleman from Natick is entertained, then I move to amend it so as to add after the words "delegate for Marshfield," the words, "and any other gentle-

men who please to address the Committee on this subject, may be allowed to proceed, notwithstanding the fifteen minutes' rule." That is the same motion I made to-day, and at that time I gave this very case as an illustration. I knew the Committee wanted to hear the chairman of the Committee on the Bill of Rights; I wanted to hear him; I am most anxious to hear him; but I am not disposed to see this invidious distinction made between one side and the other. I have therefore made the motion.

Mr. BRIGGS. I said before, when the question was first propounded, that I thought we had not power to grant leave. The fifty-first rule of the Convention is this:—

"The rules of proceeding in the Convention shall be observed in a Committee of the Whole, so far as they may be applicable, except the rule limiting the time of speaking."

Now, Sir, the rule which you read, applies to the Convention, and does not name the Committee; but this fifty-first rule of the Convention makes it apply to the Committee, so far as it is applicable. Now, on this precise subject, there is as much reason for it here as in Convention. It is applicable by the force of this fifty-first rule. In Convention, when the fifteen minutes have expired, it is in order to move that the gentleman speaking may have leave to proceed. I apprehend, then, that this motion, taken in connection with the fifty-first rule, is strictly in order.

The CHAIRMAN. The Chair would state that he considers this rule, adopted in Convention, as applicable to the Committee, and that the general ruling and practice has been, that each case shall be decided upon its own merits, when it comes up; and therefore the Chair rules that the amendment proposed by the gentleman from Salem, is not in order.

Mr. HALLETT. The motion, as I understand, is for leave to proceed. Now, Sir, no gentleman desires, more than I do, to hear the gentleman for Marshfield; because, as he knows, I have so kind feelings against him. [Laughter.] I meant to say, kind feelings for him; but on one subject my feelings are against him; but they are kind, though strong. We have made a rule to limit debate. We discussed the matter in Convention whether we ought not to except the chairman of a Committee from its application, and we found there would be an injustice in that, which was not suitable, because it was saying that a majority should have more time than a minority. Therefore, it stands as a rule, and for that reason I hope we shall adhere to it, and especially in this particular case. If we adhere to it now, we shall find it more easy to apply it to others. If we apply the rule now, we shall show that we are disposed to carry this Convention through, this week; and I tell gentlemen who have eloquent speeches to make, and itching ears to listen to them, that if we allow this rule to be neglected now, we shall not get through till another week. If this rule is passed over, I pledge myself I will make no more effort to get the Convention through this week.

Mr. DANA, for Manchester. There is a distinction between this order and other orders. All other orders declare that no person shall speak beyond a particular time, without a suspension of the rules, or general consent; but this order which we are now acting under, differs

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from all others, and, I supposed, intentionally, so that no person shall speak without obtaining leave, and so that a majority may grant leave. But under all the other orders, there was required either a suspension of the rules, or unanimous consent. But as this was a special and peculiar order, I suppose the power to grant leave must be in the body itself.

Mr. BIRD, of Walpole. I hope the rule will be enforced. I do not like to say it, in relation to the gentleman for Marshfield, but I think the rule is important, and if we yield in this case, we must yield in all cases; and it will cost us some two or three thousand dollars if we suspend this rule now, by prolonging this Convention.

Now I wish to say, with all respect to the Committee on the Bill of Rights, that if they had reported two or three weeks ago, they would have had the subject before us, and might have had it fully presented. I do not wish to say anything to injure the feelings of the gentleman, or of any member of the Committee; but if they had reported six weeks ago, they might have had an opportunity to get the subject up before.

Mr. GARDNER, of Seekonk. If the gentleman had had leave to proceed, he would have been through before this time; and I move that the rule of the Convention be suspended, and that the gentleman have leave to proceed and finish his remarks.

The CHAIRMAN. The motion before the Committee, is that made by the gentleman from Natick, and the Chair will state that he considers this rule as in the nature of an order, so that it will not require two-thirds to rescind it, but only a majority.

The question was then taken on granting leave, and on a division, there were—ayes, 92; noes, 87.

So the motion was decided in the affirmative.

Mr. BOUTWELL. I move a reconsideration of the vote just taken.

Mr. BRIGGS. I would inquire if a Committee can reconsider?

The CHAIRMAN. The Chair thinks that the motion of the gentleman for Berlin may be entertained.

Mr. BOUTWELL. I make this motion with great reluctance, but I feel it to be most important, for, upon the decision of this question, depends the fate of this Convention. I am sure of that. If the Committee or the Convention shall decide that the gentleman may proceed, I cannot vote against allowing any other gentleman to proceed; and upon that I must stand, for one, whether this Convention sit till the first of August, or the first of September, or the first of October. That is a reason why I am unwilling that a majority, at this crisis in the history of this Convention, shall say whether it shall be indefinitely prolonged or not. I know the gentleman for Marshfield will relieve me from the thought of desiring to do anything displeasing to him, personally, or injurious to his feelings.

Mr. SUMNER, for Marshfield. I am unwilling to seem, even for a moment, to retard the business of this Convention, which, from the beginning, I have sought to speed, and which, I rejoice to believe, I have not perplexed by much speaking. But the rule limiting debate has been heretofore relaxed in favor of the chairmen of Committees, when introducing their Reports, and I regarded this exception as so entirely reasonable, that I did not hesitate to count upon it. The

Committee on the Bill of Rights is one of the most important of this Convention. After twenty different sessions, it has only recently brought its labors to a close, and now its Report is presented for your consideration. It has been charged with delay. Sir, it is not obnoxious to any such charge, and I desired to show that it is not. It was my hope, also, in a simple way, to explain the origin and character of a part of our Constitution—which, at the time of its formation, was regarded as second to none other in importance—that the Convention might appreciate the delicacy with which the Committee had acted, and might judge, then, not merely by what they had done, but by what they had forborne to do, in the way of propositions of amendment. This I owed to my associates on the Committee, and also to the Convention, who had a right to expect an account of our labors. Had I taken the floor merely as a member of the Convention, in the ordinary course of debate, I should have yielded at once to the slightest intimation from any quarter; but I was encouraged by others to feel that, in presenting the Report of a Committee like that on the Bill of Rights, it hardly became me to take counsel of the feelings of reserve which would have controlled me as an individual. But, Sir, this matter must now end. After what has passed, I cannot consent to proceed.

Mr. HOPKINSON, of Boston. It seems to me that there is a peculiar inpropriety in enforcing the rule in this case, not only in reference to the gentleman who has just taken his seat, but with reference to the subject which that Committee have acted upon—I might properly say subjects, for we have had before us at least half a dozen subjects, and any deliberative assembly, if they should attempt to decide upon them on a full discussion of their merits, would have given to each of them more than one day. It is impossible to do justice to any one of half a dozen matters now before the Committee, without more discussion than the rule will admit. If the rule is to be insisted upon, I will inquire whether it will be in order to move to take up one of these subjects at a time? They are large and comprehensive subjects, embracing great principles, and should be settled upon their merits. If it would be in order to take up one of these subjects at a time, we should still find that the rule was stringent enough for all useful purposes.

The CHAIRMAN. All these matters were referred to the Committee, and it is in the power of the Committee to decide in what way they shall be discussed. If the Committee should so decide, one would be taken up first. The question immediately before the Committee is the motion to reconsider the vote whereby the gentleman for Marshfield was allowed to proceed.

Mr. GARDNER, of Seekonk. There is probably no person in this Convention more anxious than I am to bring its labors to a close. I am very desirous indeed that all our business should be completed, and that we may adjourn before Saturday next; but I have listened with great interest to the remarks of the gentleman for Marshfield, and I have heard no speech in the course of the session which I thought was so important as the speech made by that gentleman; and I am very anxious that he should be allowed to proceed. We might make this one exception, and if gentlemen wish that the labors of this Convention should be brought to a close, I will guar-

antee that they can be closed during the present week. We can save the time between now and to-morrow on the discussion of some other question. On many occasions I have desired to speak, not thirty minutes, as the gentleman from Boston suggested, for if I could have had the floor fifteen minutes, I should have been satisfied; but other gentlemen who wished to speak, and who have not used so much of the power of concentration, have occupied the time, and I have myself refrained, being a modest man. [Laughter.] I have refrained; and it is with a great deal of diffidence that I say this. [Renewed laughter.] Now, Sir, I do not wish to have the Convention consume any more time in the discussion of this subject. I hope the gentleman for Berlin will not press his motion to reconsider this vote, but allow the gentleman for Marshfield to go on and finish his eloquent speech; and that after this the rule will be enforced. I do not see any objection to making this exception to the general rule; for it is said that there is no rule without an exception; and if ever there were any good reasons for making an exception, it seems to me that there are in this case. I hope, therefore, that the gentleman for Marshfield will be allowed to go on and finish his speech, even if we are obliged to take tea a little later than the usual hour, in consequence.

The question being then taken on the motion to reconsider, on a division there were—ayes, 84; noes, 82—so the motion was agreed to.

The question then recurred on the motion that Mr. Sumner be allowed to proceed; when Mr. Wilson withdrew the motion.

The question was then stated on the adoption of the Report of the majority of the Committee.

Mr. HALLETT. I desire to inquire if the motion was put that these subjects be taken up separately? I understood the gentleman from Boston to make such a suggestion.

The CHAIRMAN. That was suggested by the gentleman from Boston, but a motion was not in order at that time.

Mr. HALLETT. I desire, then, to make the motion—if indeed I have not a right to call for a division—that each branch of the subject be considered separately. In that way I suppose the gentleman for Marshfield could be entitled to fifteen minutes upon each resolution and each amendment proposed, and he would thus have an opportunity to express his views, in discussing the whole subject indirectly.

Mr. HOPKINSON. I will inquire whether the adoption of the motion of my friend for Wilbraham would open the whole question, so that upon the various portions of the Report fifteen minutes could be taken by each speaker? If so, we are opening a very wide field for debate; and it may occupy not merely one or two days, but a whole week to dispose of the whole matter. I should like to have the decision of the Chair whether the adoption of the motion will open the whole question for discussion or each separate branch of it?

The CHAIRMAN. As all these matters were referred to the Committee together, the Chair is of the opinion that it is but one subject, and that any gentleman who wished to speak, will be allowed only fifteen minutes by the rule, upon all of them.

The question being then taken on the motion of Mr. Hallett, it was not agreed to.

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Mr. BRIGGS. I understand, Mr. Chairman, that it is the right of any member to call for a division of any question, where it is susceptible of division; and therefore, although we take up the whole Report as one subject, each proposition may be considered separately. I think if the Chair will turn his attention to it, he will find that this has been the rule of proceeding in all cases heretofore.

The CHAIRMAN. The Chair will entertain any motion that is proposed, for a division of the question.

Mr. SUMNER, for Marshfield. I think that the business would be expedited by taking up each question by itself; and I believe that the rules and orders would indicate that course. I concur entirely in the remark of my friend from Pittsfield, and I hope we shall take up the first proposition in the Report of the majority of the Committee, and consider that as open to amendment; and when that shall have been disposed of, that we shall proceed to take up the next, and the next, until we dispose of the four propositions in the Majority Report; and that we shall then take up the Minority Report and proceed in the same way.

The CHAIRMAN. The Chair will state that the course mentioned by the gentleman from Pittsfield, is that which the Chair will adopt, unless the Committee shall otherwise direct. The question will be first, on the adoption of the first resolve reported by the majority of the Committee, which will be read by the Secretary.

The resolve was accordingly read, as follows:—

1. *Resolved*, That the Bill of Rights be amended by adding to the eleventh article, as part of the same, the following words:—

“And every person having a claim against the Commonwealth, ought to have a judicial remedy therefor.”

The question being taken, the resolve was agreed to.

The question was then stated on the adoption of the second resolve, which was read as follows:

2. *Resolved*, That the Bill of Rights be amended by inserting, between the 11th and 12th articles, the following additional article, being identical with one now in another chapter of the Constitution, and which more appropriately belongs to the Bill of Rights, *viz.*:—

“VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months.”

Mr. DANA, for Manchester. The Convention will perceive that this article has always been in the Constitution, and it is only proposed to transfer it from one place to another. I now offer an amendment, to add to the article the following words:—

Said writ shall be granted as of right in all cases where the legislature shall not specially confer a discretion therein upon the court; but the legislature may prescribe preliminary proceedings to the obtaining of said writ.

I will state the reasons why I propose this amendment; and I suppose I ought to state that when it was considered in Committee, I failed to obtain a majority in favor of it. The Constitu-

tion says that the privilege and benefit of *habeas corpus* shall be obtained and enjoyed in the most free, easy, cheap, expeditious, and ample manner; but in my experience, I have found it the least free, easy, cheap, expeditious, and ample remedy, which we have. It is the most difficult writ to obtain in Massachusetts. Any man can come to my office, and obtain a writ by which I can attach all the property of any citizen in Massachusetts; by which I can, with an affidavit, arrest the person of any man in Massachusetts, and make him obtain bail to the amount of \$100,000. But the writ of *habeas corpus* is the most difficult to obtain in the whole calendar of writs. This arises from certain circumstances. In England, the writ of *habeas corpus* is, like all other writs, issued at the discretion of the courts; at least such has been the decision of the courts of England, and such has been the practice.

In the Revised Statutes of the Commonwealth, I find the following provisions in regard to this writ:—

“SEC. 1. Every person imprisoned in any common jail, or otherwise restrained of his liberty, by any officer or other person, except in the cases mentioned in the following section, may prosecute a writ of *habeas corpus*, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful.

“SEC. 2. The following persons shall not be entitled, as of right, to demand and prosecute the said writ:—

“*First*. Persons committed for treason or felony, or for suspicion thereof, or as accessories before the fact to a felony, when the cause is plainly and specially expressed in the warrant of commitment.

“*Secondly*. Persons convicted, or in execution upon legal process, civil or criminal.

“*Thirdly*. Persons committed on *mesne process*, in any civil action on which they were liable to be arrested and imprisoned, unless when excessive and unreasonable bail is required.

“SEC. 3. Application for such writ, shall be made to the court or magistrate authorized to issue the same, by complaint in writing, signed by the party for whose relief it is intended, or by some person in his behalf, setting forth

“*First*. The person by whom, and the place where, the party is imprisoned or restrained, naming the prisoner and the person detaining him, if their names are known, and describing them if they are not known.

“*Secondly*. The cause or pretence of such imprisonment or restraint, according to the knowledge and belief of the person applying.

“*Thirdly*. If the imprisonment or restraint is by virtue of any warrant or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand of such copy could not be made; and

“*Fourthly*. The facts set forth in the complaint, shall be verified by the oath of the person making the application, or by that of some other credible witness; which oath may be administered by the court or magistrate to whom the application is made, or by any justice of the peace.

“SEC. 4. The court or magistrate to whom such complaint shall be made, shall, without delay, award and issue a writ of *habeas corpus*, which shall be, substantially, in the form heretofore established and used in this State, except in the cases provided for in the following section; and shall, in all cases, be made returnable forthwith, either before the supreme judicial court, or before any one of the justices thereof, and at such place as shall be designated in the writ.”

Now, the difficulty is, that our courts, notwithstanding the language of the Revised Statutes,

have taken upon themselves discretion in every case, and issue the writ of *habeas corpus* only where they see fit. Every person restrained of his liberty—with the exceptions specified—may prosecute a writ of *habeas corpus* to obtain relief. “The following persons shall not be entitled as of right to demand and prosecute said writ.” Then follows a list of four classes of persons who are excepted—persons confined for treason, felony, &c.; and then the statute goes on and says that application shall be made to the court in a certain manner, and the court before which the application is made “shall issue the writ without delay.” But, following the practice of the English courts, and in apparent ignorance or disregard of our statute, our courts have taken discretion in all cases; and in very many instances in which the writ may be demanded as a matter of right, it is refused. I do not mean to cast any imputation upon our courts for this, but merely wish to have the matter definitely stated in our Bill of Rights, so that there may be no doubt or difficulty in regard to it hereafter. Our courts have taken upon them the right to exercise a discretion as to whether a writ shall be granted upon a petition presented. The court undertake to say that if, upon an examination of the petition, the writ would not be of benefit to the party, they would not issue it. Now, I understand that the principle of the writ of *habeas corpus* is, that the case shall be decided upon the return of the writ. The writ itself decides nothing. It only brings the parties into court; but the question whether or not the party is to be liberated, is to be decided upon the return of the writ. Now, our legislature has said distinctly that in one class of cases the writ shall be granted as a matter of right, without discretion; that in another class of cases there shall be a discretion; that is, when a person is accused of treason or felony, or where he is held to bail in civil actions. But, as I have already remarked, our courts have held that they have discretion in all cases, and undertake to say, in the outset, whether the writ should issue or not. That seems to me to be a violation of a fundamental principle, and I desire to have a provision of this kind put into the Constitution, so that it shall be beyond all doubt that the writ of *habeas corpus* shall be a writ of right. I do not mean to say that the writ should be a writ of right in all cases, but that there should be some exceptions; and therefore I have suggested that it should be so in all cases except where the legislature specially invests the court with a discretion. I have also provided that the legislature may prescribe the form of the oath, and other matters; but that where they do not specify a discretion, and all the forms shall have been complied with, the writ shall be granted as a matter of right. I will not detain the Convention farther than to express my hope that the amendment may be adopted.

Mr. HALLETT, for Wilbraham. If I understand the gentleman for Manchester, his object is to have the court compelled to grant the writ of *habeas corpus*, in a case where it is perfectly plain to the court that the writ should not issue; that is, if a person is held in legal custody, and the evidence of it is brought before the court, and the effect of the examination under the writ would simply be to remand him back again to jail, the court is, nevertheless, to grant the writ of *habeas corpus*. Now it seems to me,

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that that is utterly useless; because the court which grants the writ, has a right to determine whether the writ shall have effect, or not; and if the court is perfectly satisfied beforehand, that the writ will be of no avail to the party, what is the use of issuing it? What possible use is there in dragging a person into a court-room simply for the purpose of having him sent back again to jail? The legislature has provided for this, in regard to every possible occasion on which a man may be confined contrary to law, where it becomes a writ of right, because the only exceptions are in cases where the party is held under some legal process. Now if a party is held under a legal process, should the writ of *habeas corpus* be allowed to issue on the petition of any person who chooses to make the application, and who may be prepared with a force to rescue a prisoner? If a man is in jail for robbery, or murder, or any other offence, and application is made for this writ, the only object that I can see, would be a rescue. The third section of the statute which the gentleman quoted, provides that

"If the imprisonment, or restraint, is by virtue of any warrant, or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused."

So that any judge to whom a petition may be presented for a writ of *habeas corpus* sees the warrant, and thereupon he determines whether that is a sufficient warrant to hold the party, and determines whether the writ should be issued. It seems to me, that if any discretion should be given to a court at all, it is precisely in a case of this sort. I can see innumerable difficulties that would grow out of this amendment, if adopted; more than I have time now to enumerate.

Mr. DANA. One word in reply to the gentleman for Wilbraham. If he will notice my amendment, he will see that I do not say that the court shall grant the writ of *habeas corpus* in all cases. I say that where the legislature has not specifically given the judges a right of discretion, that then the writ may be demanded as a matter of right. Now, if the legislature says that the court shall exercise a discretion whenever a party is imprisoned for treason, or felony, or whenever a party is imprisoned on execution, or *mesne process*; in all these cases, a person will not be entitled as of right. And if the legislature should go a step farther, and describe any other class of cases, and say that in regard to them the court should have a discretion, as a matter of course, the court would exercise it. But in that class of cases in which the legislature thinks they ought not to have a discretion, where they think that the exercise of discretion and delay incident to it, might end in the ruin of the party praying for the writ, in such cases the court must grant the writ, and the gentleman for Wilbraham, (Mr. Hallett,) need be under no alarm; for the granting of the writ does not liberate the party, but merely brings him into court. Now there are many cases in which inconceivable injury may be done by refusing to grant a writ. A party may be carried off beyond your jurisdiction, and thus be left utterly without remedy, while the court is deciding the question on the petition.

In such case, unless you can have your writ immediately, you will be too late. If you are to file

your petition, and to give notice to the opposite party, and go through sundry other forms, by which delay is caused, there are many instances in which your case would be beyond all redress. Let the legislature, therefore, say that the courts shall have discretion in certain cases where the public welfare requires it; and let them leave other classes of cases open, and the courts be obliged, as they now are, to issue the writ. The Revised Statutes are right enough now, as I understand them, upon this subject; but the difficulty is, that the courts have so construed them as to make them powerless. My object is to have a plain provision in the Constitution, so that while the discretion of the judges may be exercised in certain cases, controllable by the legislature, there shall be a general right to demand, and have the benefit of this writ, as of right.

Mr. HALLETT. I do not think the gentleman for Manchester states the matter exactly as it stands. If I understand it, his proposition is a direct proposition to enable persons on petition, to take out of the hands of judicial and ministerial officers, persons who are held there by legal process. Now, I contend that that cannot be done without creating conflicts in jurisdiction, and conflicts of officials, and endless troubles that will arise. As it is now, your courts have discretion. Does anybody suppose that the supreme court of Massachusetts would not issue a writ of *habeas corpus* in a case where a matter of right was concerned, and only a possible case was made out? Nobody can suppose it. I trust, therefore, that we will not disturb this matter, because nothing can be plainer than the law, and the construction of the courts as they now stand; and if you attempt to change them, it seems to me that you at once embark upon a sea of trouble.

The question was taken on the amendment, and a division being demanded, there were—ayes, 85; noes, 22.

So the amendment was adopted.

The question then recurring on the resolution as amended, it was adopted.

The next question was upon the third resolution, as follows:—

Resolved, That the Bill of Rights be amended in the last sentence of the 29th article, by striking out the words "so long as they behave themselves well, and that they," and inserting, "by tenures established by the Constitution, and"; also, by striking out the words "ascertained and established by standing laws," and inserting, "which shall not be diminished during their continuance in office," so that the whole sentence, as amended, shall read as follows:—

It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their office by tenures established by the Constitution, and should have honorable salaries, which shall not be diminished during their continuance in office.

The resolution was agreed to.

The next resolve was then read, as follows:—

4. *Resolved*, That the Bill of Rights be amended, by inserting between the 29th and 30th articles, the following additional article:—

This enumeration of rights shall not impair others retained by the people, and no powers shall ever be assumed by the legislature, that are not granted in this Constitution.

Mr. HALLETT, for Wilbraham. I would in-

quire if the Chair has the original bill before him, as reported by the Committee, as my understanding of the article was, that the word "expressly" should come in before the word "granted." In the printed copy that word appears to be left out.

The CHAIRMAN. The Chair would inform the gentleman that he read the article from the original bill, as reported by the Committee.

Mr. HALLETT. Then I move to insert the word "expressly," after the words "are not;" so that the latter part of the article shall read, "and no powers shall ever be assumed by the legislature, that are not expressly granted in this Constitution."

Mr. SUMNER, for Marshfield. I do not understand that the resolution passed the Committee, in the shape in which it is proposed to be amended by the gentleman for Wilbraham. The resolution as it came from the Committee, was in a different form. It was—"this enumeration of rights shall not impair others retained by the people, and no powers shall ever be assumed by the legislature, that are not granted in this Constitution." And now it is proposed, as I understand, by the gentleman for Wilbraham, to insert the word "expressly" before the word "granted," and I understand him, farther, to suggest that it passed the Committee in that form.

Mr. HALLETT. What I said, was, that I, and other gentlemen of the Committee, so understood it. That was my express understanding of it; but in being copied from the book of minutes it became altered, and the word "expressly" omitted. I am very sure it was meant to be there.

Mr. SUMNER. The Report was made up from the records of the Committee. My impression is, that the matter was discussed in the Committee whether the word "expressly" should be inserted, and a large majority were inclined against it; and, it seems to me, this Convention would make a mistake if they now undertake to go so far as to say that the legislature shall have no powers that are not *expressly* granted in this Constitution. There must be implied powers connected with legislation, and with every legislative body.

Mr. LORD, of Salem. I do not exactly understand the gentleman for Wilbraham, as to his amendment, whether it is meant as a side cut to Hoosac, because if the legislature cannot grant any authority whatever, except such as are expressly granted by the Constitution, we must put into the Constitution a word in favor of Hoosac, or it will not go. [Laughter.]

Mr. HALLETT. The phraseology of this resolution is, that "the legislature shall assume no powers." Now, if this Convention mean anything by this resolution that "the legislature shall assume no powers that are not granted by this Constitution," they mean powers that shall be *expressly* granted, like the terms "public good" and "general welfare." That power is expressly granted. The implication under that power is a different proposition. The legislature are not at all limited in relation to powers granted in the Constitution, but they are limited expressly to powers granted. If you say "powers granted in this Constitution," why then you assume still other things, a higher, or a general power, which may be there without being exactly granted by the Constitution. If I understand anything of republican doctrine, it is opposed to all implied

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powers. We go for express powers. I do not say that the legislature shall do no act not expressly granted in the Constitution, but the amendment of the Committee is, that the legislature shall exercise no power not granted, and my amendment proposes to say "not expressly granted."

Mr. LORD, of Salem. I desire to ask the gentleman for Wilbraham, whether he means that the words "general welfare" is an express delegation of any power which the legislature chooses to consider as being exerted for the general welfare?

Mr. HALLETT. It is an express grant of a general power, and the power goes just as far as expressed in that grant.

Mr. LORD. And just as far as the legislature chooses to consider that it goes, under the phrase "general welfare"?

Mr. HALLETT. No, Sir; that is a different question. That is a state to which the gentleman desires to get—to have a legislature with all powers—an omnipotent legislature. I do not think the people of this Commonwealth desire to have it so understood; and therefore I want to put this beyond the possibility of a question. If you mean anything by the phrase "not granted in this Constitution" you mean "not expressly granted." And what does that mean? Why, that which is not expressed in the Constitution.

Mr. WILSON, of Natick. It seems to me that this whole resolution, which is proposed to be put into the Constitution, is of very little value indeed, and of little importance. And now the gentleman for Wilbraham, (Mr. Hallett,) proposes to amend even this, which I take to be of very little value; for the legislature, under the provisions of the Constitution, which authorizes them to do such things as will promote the general welfare, and under other general terms, can do very many things, and I do not believe that it is of the slightest consequence to put this resolution into the Constitution. But, nevertheless, I am willing to assent to its insertion into the organic law, but not with the word "expressly" in it. I think if that is inserted, we shall have trouble enough in the future to carry on the government of the State. I see no necessity for the amendment, and I hope the Convention will not indorse it.

Mr. BRADFORD, of Essex. I call for a division of the question.

Mr. SUMNER. The question is upon adopting the word "expressly."

Mr. BRADFORD. I ask for a division of the question when it is taken upon the resolution, and move that the question upon the latter clause of the resolve be taken by yeas and nays.

The CHAIRMAN. The motion is not strictly in order now, as the question pending is upon the motion to amend, made by the gentleman for Wilbraham.

Mr. HALLETT. I will relieve gentlemen from the trouble of voting upon my amendment. There is but little of strict construction in this Convention, and I am very apprehensive that we shall have a "general welfare" clause put in stronger than it is in the old Constitution, and I fear that we may lose what there is there, by gentlemen whom I thought were inclined to hold the legislature to some powers, and to make a power of attorney for them, by which we should give them to understand what we mean shall be their

duties. But I see that the purpose is to make a Constitution, and then let the legislature do as they please. To avoid the possibility of such a result, and being very desirous to have some restriction upon the powers of the legislature, I withdraw the amendment, hoping thereby to be able to save the rest.

Mr. NEWMAN, of Bolton. I believe I cannot vote for the proposition reported by the Committee, without some explanation. It appears to me that the resolve is entirely useless, as was remarked by the gentleman from Natick, (Mr. Wilson). The fourth article of section first, of chapter first, of the Constitution, it appears to me, confers general powers upon the legislature. It not only gives general powers, but it makes the government one not of special rights, but of general powers entirely. The end accomplished by the resolve appears to me to be useless, unless we alter the phraseology of the fourth article.

I move to amend by striking out the words—"This enumeration of rights shall not impair others retained by the people; and no powers shall ever be assumed by the legislature that are not granted in this Constitution," and insert in lieu thereof the words: "We declare that everything in this Bill of Rights is excepted out of the general powers of the government, and shall forever remain inviolate," so that the resolve shall read:—

4. *Resolved*, That the Bill of Rights be amended, by inserting between the twenty-ninth and thirtieth articles the following additional article:—

We declare, that everything in this Bill of Rights is excepted out of the general powers of the government, and shall forever remain inviolate.

The question was then taken upon the amendment of the gentleman from Bolton, (Mr. Newman,) and it was decided in the negative.

So the amendment was not agreed to.

The question then recurring upon the adoption of the resolve as reported by the Committee, Mr. BRADFORD, of Essex, renewed his call for a division of the question.

The question was accordingly first taken upon the first clause of the resolution, viz.: "This enumeration of rights shall not impair others retained by the people," and was decided in the affirmative; and then the question upon the second clause, viz.: "and no powers shall ever be assumed by the legislature, that are not granted in this Constitution," and it was decided in the affirmative.

So the resolution as reported by the Committee, was adopted.

Mr. WILSON, of Natick. Here is a series of resolutions reported in different documents of the Convention, all from the Committee on the Bill of Rights. Cannot the Committee rise and report these resolves to the Convention, and have them acted upon, and ask leave to sit again upon the other propositions?

The CHAIRMAN. The Chair thinks that might be done.

Mr. WILSON. Then I make the motion that the Committee rise and report these resolves as amended, to the Convention, with a recommendation that they do pass, and ask leave to sit again upon the other resolutions which have not been acted upon.

The question was taken, and the motion was agreed to.

The Committee accordingly rose, and

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The chairman of the Committee of the Whole, Mr. Schouler, reported that the Committee had had under consideration resolves relating to the Bill of Rights, and had instructed him to report the same to the Convention, with an amendment, with a recommendation that they do pass, and to ask leave to sit again upon other resolves not yet acted upon.

Leave was granted to sit again.

The question first being upon agreeing to the amendment to the second resolve, as reported from the Committee of the Whole, it was put and decided in the affirmative.

So the amendment was agreed to.

The question being then upon the adoption of the resolves as amended,

Mr. LORD, of Salem, said: I suppose it is desirable upon so important a subject as the Bill of Rights, to have the question taken separately upon each resolve.

The PRESIDENT. The Chair would suggest that there is another stage in the passage of the resolves.

Mr. LORD. There is the difficulty. There is a first stage, and there we are not allowed to debate, and when we arrive at the second stage, they won't let us debate, because there was a first stage.

The PRESIDENT. Does the gentleman ask for a division of the resolution?

Mr. LORD. I move that the farther consideration of these resolves, be assigned for to-morrow morning, at ten o'clock.

Mr. HALLETT. I second that motion.

The question was taken, and the motion was agreed to.

Justices of the Peace.

Mr. STEVENSON, of Boston, from the Special Committee to whom was referred the resolves in relation to justices of the peace, reported back the resolves and amendments in a new draft, as follows:—

Resolved, That it is expedient to amend the Constitution so as to provide that

1. Trial Justices shall be elected by the legal voters of the several towns and cities where, at the time of such election, there is no police court established by law, who shall hold their offices for a term of three years.

Every such city or town shall elect one such Justice, and may elect one additional for each two thousand inhabitants therein, according to the next preceding decennial census.

They shall have the same jurisdiction, powers and duties, as are now exercised by Justices of the Peace, which jurisdiction, powers and duties, may be changed by the legislature: *provided*, that no Trial Justice shall act as such upon his ceasing to reside in the town in which he was elected.

2. Justices of the Peace, Justices of the Peace and Quorum, Justices of the Peace throughout the Commonwealth, and Commissioners to qualify civil officers, may be appointed by the Governor and Council for a term of seven years; and those now in office shall continue therein according to the terms of their respective commissions: *provided*, that the jurisdiction of all such justices shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

3. Justices and Clerks of the police courts of the several cities and towns of the Commonwealth, shall be elected by the legal voters thereof, for a term of three years.

4. In case of vacancy by resignation, or otherwise, of any State, County, or District officer, excepting members of the legislature, whose elec-

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tion is provided for in the Constitution, and whose term of office does not expire at the next annual election, the Governor shall issue his warrant to the mayors and aldermen of the several cities, and the selectmen of the several towns, to fill the vacancy at the next annual election after it shall have happened; and the Governor, with the advice and consent of the Council, may appoint suitable persons to fill such vacancies until an election by the people.

Mr. STEVENSON moved that the resolves be laid upon the table, and printed.

The motion was agreed to.

On motion of Mr. BREED, of Lynn, at six o'clock forty-five minutes, the Convention adjourned.

TUESDAY, July 26, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President *pro tempore*, at nine o'clock.

Prayer by the Chaplain.

The journal of yesterday was read.

Distribution of Books.

Mr. MIXTER, of New Braintree, introduced the following order:—

Ordered, that the Clerk of each of the towns in this Commonwealth that have not sent a delegate to this Convention, shall receive, for the use of the town, one copy of the Constitutions of the United States, and one copy of the Debates of the Massachusetts Convention of 1820.

Mr. MIXTER. I introduced this order, Sir, at the recommendation of some of the towns which are not represented in this Convention. It will be seen that those towns which are represented, will be provided for through their delegates; but those which are unrepresented, do not possess the same facility for obtaining copies of these Constitutions. I consider that they are valuable to each one of the inhabitants of every town, and particularly so as books of reference. There are many towns, as is well known, which, though not through any neglect of theirs, are not represented in this Convention. These towns, I think, are as much entitled to these books as any other towns are; and for these reasons, and at their request, I ask the passage of this order.

Mr. WESTON, of Duxbury, desired that the order be laid over until to-morrow.

The order, accordingly, in obedience to the rule, lies over for consideration to-morrow.

Orders of the Day.

On motion of Mr. BUTLER, of Lowell, the Convention proceeded to the consideration of the Orders of the Day, the first subject on the Orders being the resolve introduced by the gentleman from Lowell, (Mr. Butler,) on the subject of

Judicial Tenure of Office.

The resolve was read, as follows:—

Resolved, That all judicial commissions which shall issue to any person from and after the first day of August, in the year one thousand eight hundred and fifty-three, shall confer no greater tenure of office than the term of ten years.

The question being on its final passage.

Mr. BARTLETT, of Boston. I should be glad if the gentleman from Lowell would explain to us the purpose of this proposition.

I will put a case to the gentleman; a case which would be one of some embarrassment, I think: Suppose before this Constitution, which we are now forming, goes into effect—and it cannot do so until after it shall have been voted upon by the people, in November next, or at such time as may be fixed—suppose, in the interim, an appointment of a judge is made, and a commission issues. In what form will that commission be? Shall it be in the alternative? Shall the appointment be for life, unless the alternative be accepted? And I submit to the gentleman from Lowell, whether the object to be attained, makes it worth while to put into the Constitution a fragmentary provision of this description. I hope it will not be made a part of our fundamental law.

Mr. BUTLER. I endeavored to explain the reasons why I introduced this resolve, at the time I offered it, but owing to the limitation of time by our rules, I only partially succeeded. We have agreed that all judges to be appointed hereafter, shall hold their office for the term of ten years. We have also provided that the present judges shall retain their office according to the tenors of their commission. Now, it is evident that this Constitution cannot go into effect until sometime hence, say the first of January, and there will be five months intervening, when, without intimating that any wrong will be done, many of the judges may die, and young men whom we do not now think of, may be put in their places, who will, of course, hold their office for life. It is merely for the purpose of reaching all such cases, that I have introduced this resolution. Almost every one is agreed as to what is its intent and force; but the gentleman from Boston finds two difficulties. He asks: How shall the commissions issue under these circumstances? I reply, they will issue just as they do at the present time. The governor does not know whether this Constitution will go into effect; he acts under the present Constitution, and officially knows nothing of the changes which have been made, until the Constitution we are now amending has been accepted by the people. It therefore has no binding force whatever upon him. I submit it to the legal opinion of the gentleman, that if we should say nothing about the judges, and make no provision for them, whether the commissions they at present hold will not expire immediately upon the adoption of the new Constitution, whether those commissions were granted ten, or fifty years ago? To prevent such an occurrence, we have provided that they shall not expire during their good behavior. So that I do not see that we can do any harm by carrying out what is the intention of the Convention. All that the governor has to do is to issue the commissions under the old Constitution, and then the Convention says that the commission shall have a ten years' tenure.

Now it has been said that this had better not be done; that it is not of sufficient consequence to be put into the fundamental law. Sir, if every man would do just as he ought, we should be in no need of a Constitution, of a law, or of judges; but unfortunately, it has been found since the days of Adam, that men will not do as they ought; and, consequently, need the restraint and guidance of some rule and law. Now, if nobody

would die, if I could be insured that nobody would resign between the present time and the time when this Constitution will, if adopted, go into effect, I would not have introduced this resolution. But I do not wish that the whole judiciary of the State shall be changed in five months, and their places filled by young and inexperienced men, who will be fastened on us for life; especially when I find it authoritatively proclaimed by one of the governor's council, in a paper which he edits called the *North Adams Transcript*, that the only qualification for the office of judge of probate, is that he should be "a live young Whig." It is the official expression of one of the governor's council, published in the *Transcript*, and indorsed by the *Atlas*.

Mr. DAWES, of Adams. Will the gentleman permit me to ask him a question?

Mr. BUTLER. A thousand, Sir.

Mr. DAWES. I would inquire whether he would prefer to have a dead old foggy, or a live young Whig? [Laughter.]

Mr. BUTLER. I explained that the other day. A live young Whig grows naturally into a dead old foggy. One is the green sapling, the other is the dry old tree. [Laughter.]

I will not detain the Convention longer, however. I introduced the resolution for the purposes I have already stated, and it has received the sanction and support of the most eminent legal gentlemen of this body.

Mr. BARTLETT. Then the result is about this: The gentleman from Lowell desires, in maturing this provision, to cover the least possible point of time. I would not say that I do not think that consideration so valuable or important as to make it worth while to take so much pains to accomplish it. The strongest argument, however, in favor of this provision, seems to be the probable abuse of political power. Now, Sir, if the history of the Commonwealth furnishes ground for an allegation of that sort, then the proposition of the gentleman is a proper and wise one. But, Sir, I hardly think any gentleman here will undertake to show that any such danger exists; and I hope, therefore, that the provision we have adopted upon this subject, shall remain where it is.

Mr. WALKER, of North Brookfield. I desire to inquire of the gentleman from Lowell, whether he intends this provision to be inserted as a part of the Constitution?

Mr. BUTLER. Certainly I do. The resolve cannot mean anything else.

Mr. WALKER. I made the inquiry because the resolve is not put in the usual form. It does not state that the Constitution shall be so amended, but it is merely a resolve by the Convention.

Mr. BUTLER. I will accept the gentleman's suggestion, and so modify the resolve. I did not know that it was necessary, like the Dutchman's picture of a horse, to write over it to show that it was a horse. I thought every-body understood what it meant. I do not know what else the Convention have to do, but to amend the Constitution.

Mr. WALKER. I merely suggested that the resolve was not in the usual form.

Mr. BUTLER. I accept the gentleman's amendment.

Mr. DAWES, of Adams. I am glad my friend from Lowell, (Mr. Butler,) has ascertained the authorship of that newspaper article to which

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he alluded. I am glad that he is not disposed to detract from its merits, by charging it upon me, as he did the other day.

I was a little surprised, however, to hear the gentleman object to the appointment of that judge of probate on account of his being a live young Whig, and because I thought the gentleman himself belonged to the "Young America" party. I had heard the gentleman say so much, heretofore, about old fogies, that his speech the other day, and again this morning, has set me to wondering whether he has not, by a death-bed repentance, become an old fogy himself. But now the trouble is, that he is afraid a live young Whig will grow into an old fogy. Now, Sir, although I had nothing to do with the article alluded to, yet I am disposed to stand by it, and, if nothing worse can be found against that appointment, than that it is of "a live young Whig," to believe that it will prove a good one. But I submit, in all candor, whether it is worth while to put an article into your Constitution, about this matter, because a country newspaper has seen fit to give a reason for the appointment of a judge of probate that does not suit the gentleman from Lowell? I submit that is hardly of sufficient importance to be made the ground of a constitutional provision. If my friend from Lowell cannot find graver reasons for bringing forward constitutional provisions, it seems to me it is very much like trifling with the Constitution. I have no objection to the gentleman's being satisfied, and I think there is a fair chance of satisfying us all. For one I shall be satisfied, and I presume my friend from Lowell will be as much so, if we have appointed to the bench of the supreme court of Massachusetts, and to a seat on the bench of the other courts, men qualified, in every respect, to discharge the duties of the office, whether they be old fogies or live young Whigs. That is all I seek for, and, I presume, is all the gentleman is seeking for.

But, I submit further, whether it is worth while to arraign an individual upon this floor, who cannot come in and defend himself? I would ask the gentleman from Lowell, whether it is a mark of that courage which stands out, like the phylacteries of old, upon the brow of the gentleman assuming to be a leader of this Convention, to hunt up, for attack, men who are absent at the safe distance of one or two hundred miles, and make onslaught upon them in this Convention? It seems to me, that if no other consideration would deter from such a course, our time has become too precious. If we wish to go upon such errands, there will be an opportunity after the Convention has adjourned.

Mr. HILLARD, of Boston. The gentleman from Lowell, (Mr. Butler,) did me the honor to consult me, before submitting this proposition to the Convention. I said to him, as I say now, that I think it is no more than the legitimate right of the majority—if they choose to insist upon it. It is in the nature of a provision against a remote contingency; but if the majority of the Convention choose to adopt such a provision, I must say, that they are fairly entitled to do so. The Convention, here and now, have determined that the commissions of the judges shall run for ten years, instead of during good behavior. Thus far it may be considered as an expression of the will of the people, whom we represent. But the people, in their primary capacity, will pass upon this

change. I hope that they will reject it. If they do, that ends the whole matter; this provision included. If they do not, we must consider it to be the will of a majority of the people of Massachusetts, that their judges shall hold their commissions for ten years, and no more. To that expression of their will, when made, I shall bow with submission. In that event, I think that it is a right of the majority now, and here, to provide that the decision of the people in November, if favorable to their doings, shall have a retroactive effect, so as to cover the interval between the action of the Convention and the action of the people; so that no commission issued in the meantime, shall be upon a tenure to which their wishes are opposed. I think it would be an unfair advantage gained by such party as might be in power during such an interval, if a life commission were issued.

This measure is analogous to a well known legal proceeding. We often attach real estate on the issuing of a writ. By that attachment, the estate is held in abeyance, as it were, until the final decision of the cause. If the plaintiff fail to obtain judgment, the attachment ceases, and the estate is released. If he do obtain judgment, the attachment transfers the title. Now, our vote upon the judicial tenure, is analogous to the attachment of real estate on *mesne process*. Whether we are to have judgment or not, depends upon the popular vote in November. But, in the interval, the majority of the Convention have a right to be in the position of the plaintiff, in such a suit. They have a right to say that the commissions of the judges shall be in abeyance in the interval before final judgment.

Mr. CADY, of Monson. I am opposed to the adoption of the resolve before the Convention. I can see no reason for its adoption. Suppose a vacancy should occur in the mean time, before the adoption of the Constitution, under what law would the appointment to fill it, be made? What would be the duty of the governor, whose business it is to make the appointment? What would be the tenure of office? I submit that it could not be left indefinite. It must be either that provided by the old Constitution, or it must be under that which we are now framing. Sir, this Constitution cannot take effect until the people have ratified it; and therefore, appointments made before that time, must be made under the present Constitution. Now, to make a provision changing the commissions of officers thus appointed, it seems to me is, to all intents and purposes, an *ex post facto* law. It seems to me that this provision is entirely uncalled for; and unless I can see some reason other than those which have been thus far presented, I shall vote against it.

[Cries of "Question!" "Question!"]

The question was then taken, and the resolve ordered to its final passage.

Motion to go into Committee.

Mr. MORTON, of Taunton. There is a subject upon your calendar, in Committee of the Whole, which is of some considerable importance, and which has remained there for some time. I presume it will not occupy any considerable time in its consideration, but I desire that it shall be taken up and disposed of. It has by some means been jostled out of its place, so that other subjects which were behind it in their order, have taken

precedence of it in their consideration. I now move that the Convention resolve itself into Committee of the Whole, upon the resolves on the mode of submitting the question of representation to the people.

Mr. BUTLER. If the gentleman from Taunton will pardon me for a moment, there are two subjects which it is very necessary the Committee on Revision should have before them at the earliest possible moment. It will require but a very short time to dispose of them, and then the gentleman can accomplish his object. I hope he will allow these to be disposed of first.

Mr. MORTON. I would inquire if it is not also important to have this subject disposed of, and whether this may not go to the Committee on Revision as well as anything else?

Mr. BUTLER. This is an independent subject; but those to which I have referred, are so interwoven with other subjects that the Committee on Revision can hardly proceed with their work upon those other subjects, until these are disposed of by the Convention.

Mr. BRIGGS, of Pittsfield. I am very anxious that the gentleman from Taunton, (Mr. Morton,) should accomplish his object; but I would say in support of the suggestion of the gentleman from Lowell, (Mr. Butler,) that it is exceedingly necessary that these subjects should go to the Committee on Revision. I would suggest, therefore, that the gentleman from Taunton should waive his motion for the present, with the understanding that when these subjects are disposed of, his matter shall come up next.

Mr. MORTON, of Taunton. If I could be assured that such was the general understanding, I would waive my motion for the present. I have tried on several occasions to bring the subject before the Convention, but have hitherto failed. But with the understanding that it shall come up sometime in the course of the day, I will withdraw my motion.

On motion of Mr. BUTLER, of Lowell, the Convention then resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Nayson, of Amesbury, in the chair, and proceeded to the consideration of the resolve submitted by Mr. Duncan, of Williamstown, upon the subject of

Uniformity of Receiving Votes.

The resolve was read by the Secretary, as follows:—

Resolved, That the Constitution ought to be amended so as to make the provisions for receiving, assorting, counting, and recording of votes, uniform in the election of all officers whose election is provided for in the Constitution.

Mr. DUNCAN, of Williamstown. Mr. Chairman: Called as we are to amend the Constitution, it becomes our duty to make it as perfect an instrument as the language will admit. It is to be the chart by which the political navigators are to steer the ship of state; it is, therefore, necessary that the directions be simple, plain, and intelligible. And for the purpose of giving greater precision to one of its departments, I introduced the resolve for making a uniform provision for the receiving, assorting, and counting of votes, in all elections provided for in the Constitution. If gentlemen will turn to chap. 1, sec. 2, art. 2,

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they will find it the duty of the selectmen to receive, assort, and count the votes, in the presence of the town clerk, who shall make a fair record of the same, in the presence of the selectmen; and now, if we turn to chap. 2, sec. 1, art. 3, we shall find it to be the duty of the selectmen, as in the first instance, to receive and assort the votes, but the duty of the town clerk to count them, and make a fair record of the same, in presence of the selectmen. I admit that a difference so trifling as this seems to be, would not be a sufficient reason for calling a Convention to amend the Constitution; but since it has been taken in pieces, and the separate parts in our hands, I see no reason why each part may not be perfected as far as we are able to do so, that when it is again joined, it shall be as perfect as a whole as it is in any of its parts. The Constitution has been considered—and justly, too—a work of great merit and perfection; but not as perfect as to be entirely free from that species of blunders which has lately been styled Bunsbyisms; for instance, in chap. 1, sec. 1, it reads thus: "The legislative body shall assemble on the first Wednesday in January, and at such other times as they shall judge necessary, and shall dissolve and be dissolved on the day next preceding the said first Wednesday in January," &c. By this provision, a dissolution of the legislature is made obligatory at least one day before it meets. I suppose this error crept in through the loose use of the words "said" and "aforesaid"; they are words of great repute in the legal profession, and have a magisterial sound in professional documents, but are not quite adapted to constitutional perspicuity. And again, in chap. 1, sec. 3, it reads: "Every member of the House of Representatives shall be chosen by written votes, and for one year at least next preceding his election, shall be an inhabitant within the town he shall be chosen to represent, and shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid."

So uncertain was the language, in its meaning, that it was necessary to resort to an opinion of the supreme court to ascertain what intention the framers of the Constitution had in view when they adopted that section. If it be important that we have a Constitution, it becomes equally important that we have one that can be understood by every person without the intervention of a judicial opinion; if we cannot do it, then I opine that our constituents made a mistake in sending us here to meddle with the old one.

For myself, I desire it to go forth as free from doubt and uncertainty as any human Constitution can be. And to bring it right home to the people, I hope the time is coming when it will be published in our school books, that the children of this Commonwealth may early learn its provisions, and estimate the worth of such an addition to our school literature.

The question was taken, and the resolve was agreed to—ayes, 117; noes, 35.

On motion of Mr. EARLE, of Worcester, the Committee then rose, and the President having resumed the chair of

THE CONVENTION,

The chairman reported that the Committee of the Whole, to whom had been referred the resolution in relation to the manner of sorting and counting votes, had had the same under consideration, and

had instructed him to report the same, with a recommendation that it pass.

The PRESIDENT. The question is upon ordering the resolution to a second reading.

Mr. LELAND, of Holliston. We have heretofore introduced a resolution, that state and town officers may be elected by secret ballot. This resolve says: "that the Constitution ought to be amended so as to make the provisions for receiving, assorting, counting, and recording of votes, uniform in the election of all officers whose election is provided for in the Constitution." It seems to me, if we adopt that resolve, we shall get into difficulty, as it will conflict with a provision which we have already adopted.

Mr. ELY, of Westfield. It seems to me this matter is well understood throughout the Commonwealth, and a change would make the matter much worse than it was before. I therefore move an indefinite postponement of the whole matter.

Mr. BOUTWELL, for Berlin. I think that the motion of the gentleman from Westfield (Mr. Ely) ought to be sustained by the Convention. I think that the existing provisions are perfectly plain, and generally well understood. There may be some difference of opinion as to the mode of receiving, counting, and recording votes for the different officers who are to be elected by the people. Whatever those modes are, they are well understood. I think this provision will operate in conflict with some provisions which have already passed the Convention. In addition to that, the Committee on Revision have made considerable progress. Some of their work is in the hands of the printer; but the passage of this resolution, so far as I understand it, will throw a considerable part of it into confusion. This Committee have as much work as they can possibly do, and we should not throw upon them any unnecessary work. I believe the passage of this resolution is unnecessary, that it will lead to a great amount of labor in the Committee, and will be of no possible benefit to the people.

The question was taken upon Mr. Ely's motion, and it was agreed to.

*So the resolution was indefinitely postponed.

Election of Justices of the Peace.

Mr. BUTLER, of Lowell. "I move that the Report of the Special Committee upon Justices of the Peace, be taken from the table.

The motion was agreed to.

Mr. BUTLER. I now move that the rule by which it is required that this subject shall be recommended to a Committee of the Whole, be suspended, and that the resolve be considered at this time.

The motion was agreed to.

The Report of the Select Committee was then read, as follows:—

Resolved, That it is expedient to amend the Constitution so as to provide that

1. Trial Justices shall be elected by the legal voters of the several towns and cities where, at the time of such election, there is no police court established by law, who shall hold their offices for a term of three years.

Every such city or town shall elect one such Justice, and may elect one additional for each two thousand inhabitants therein, according to the next preceding decennial census.

They shall have the same jurisdiction, powers, and duties, as are now exercised by Justices of the Peace, which jurisdiction, powers, and duties,

may be changed by the legislature: *provided*, that no Trial Justice shall act as such upon his ceasing to reside in the town in which he was elected.

2. Justices of the Peace, Justices of the Peace and Quorum, Justices of the Peace throughout the Commonwealth, and Commissioners to qualify civil officers, may be appointed by the Governor and Council for a term of seven years; and those now in office shall continue therein, according to the terms of their respective commissions: *provided*, that the jurisdiction of all such justices shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

3. Justices and Clerks of the police courts of the several cities and towns of the Commonwealth, shall be elected by the legal voters thereof for a term of three years.

4. In case of vacancy by resignation, or otherwise, of any State, County, or District officer, excepting members of the legislature, whose election is provided for in the Constitution, and whose term of office does not expire at the next annual election, the Governor shall issue his warrant to the mayors and aldermen of the several cities, and the selectmen of the several towns, to fill the vacancy at the next annual election after it shall have happened; and the Governor, with the advice and consent of the Council, may appoint suitable persons to fill such vacancies until an election by the people.

Mr. BUTLER, of Lowell. In the absence of the chairman of this Committee, I will simply state that these resolves were reported with entire unanimity by the Committee, as regards all the details. Two gentlemen of the Committee, who are well known to be opposed to an elective judiciary in any form, opposed the election of trial justices, and justices of the police court. With that exception, the entire details were arranged with perfect unanimity by the Committee.

The first resolution provides, as will be seen:—

Trial Justices shall be elected by the legal voters of the several towns and cities where, at the time of such election, there is no police court established by law, who shall hold their offices for a term of three years.

Every such city or town shall elect one such Justice, and may elect one additional for each two thousand inhabitants therein, according to the next preceding decennial census.

They shall have the same jurisdiction, powers, and duties, as are now exercised by Justices of the Peace; which jurisdiction, powers, and duties, may be changed by the legislature: *provided*, that no Trial Justice shall act as such upon his ceasing to reside in the town in which he was elected.

The proviso contained in the last clause, is to prevent a man getting elected as Justice in one town, and then moving into another town where he could not have been elected, to carry on the business of a Justice of the Peace. An amendment was offered here in Convention yesterday, and favored by some gentlemen, that trial justices should have jurisdiction only in the towns where they were elected. There would be infinite mischief arising from such a provision. Suppose, for instance, that a trial Justice of the town is sick. Then no other trial Justice having jurisdiction in that town, if there should be robbery, theft, or murder, the offender must go unwhipped of Justice, because there is nobody to try him, until that trial Justice gets well. Suppose, in a civil case the trial Justice should be interested, or one of the parties interested in the suit, should be a brother, father, cousin, or some other relative of the Justice. There would be nobody in that event, to try the case, because there is no jurisdiction. I

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might enumerate other cases, showing the mischief which would arise from the adoption of such an amendment.

The second clause provides as follows, that

Justices of the Peace, Justices of the Peace and Quorum, Justices of the Peace throughout the Commonwealth, and Commissioners to qualify civil officers, may be appointed by the Governor and Council for a term of seven years; and those now in office shall continue therein according to the terms of their respective commissions: *provided*, that the jurisdiction of all such justices shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

This provision leaves these officers to take acknowledgment of deeds, to marry people, to administer oaths, to take depositions, hear cases of jail delivery, to issue warrants for parish and town meetings, to stay rioters, and to do various other things which have heretofore attached to this ancient and honorable office of the justice of the peace. Some gentleman here have contended that every justice should have the power to issue warrants. I can give you an illustration of how the thing would work. Justices of the peace having an opportunity to issue warrants, go to work and get up cases, so that they may have all the business they want. This thing has been done in one case. It might be done again; and, therefore, it was thought best to take that power away.

The third clause reads as follows:—

Justices and Clerks of the Police Courts of the several cities and towns of the Commonwealth, shall be elected by the legal voters thereof for a term of three years.

Mr. EARLE, of Worcester. I wish to make an inquiry of the gentleman, whether, by the Constitution, trial justices have the same powers with justices of the police courts? If I understand it rightly, they do not, and by acts of legislature establishing some police courts, they have not the same power.

Mr. BUTLER. I thank the gentleman for calling my attention to this matter. Police justices are not known as such by the Constitution, but have been included under the term of judicial officers. Police courts have been established in various towns, and they have everywhere been given the powers and jurisdiction of justices of the peace, with a single exception, and that is in the city of Worcester, which was omitted by a mistake in framing the act. I believe I speak correctly. I know that in Salem, Newburyport, Lawrence, Lowell, and in Boston, police justices have the same jurisdiction to try causes in the county, that justices of the peace have; but by a mistake in the act of the legislature, those officers in the city of Worcester have jurisdiction only over crimes committed in that city. It is better that the legislature should provide a remedy for this single case, than to make any provision for it in the Constitution, as the difficulty can be easily remedied. We were fortunate enough to have upon the Committee a gentleman from Worcester, (Mr. Chapin,) who had that thing in mind, and who agrees in the view which we have taken of this matter. These justices and clerks of the police court are judicial officers of the same class as trial justices, and it was thought best by a majority of the Committee, that they should be elected as trial justices are, and upon that ques-

tion only, was there any division of opinion upon the part of the Committee. The Committee followed out what they conscientiously believed to be the true rule in regard to the election of justices of this character.

In regard to the resolutions contained in document No. 104, which were submitted to us, the Committee agreed that it was best to strike out the second resolution, which reads as follows:—

2. *Resolved*, That it is expedient so to amend the Constitution, that the Governor may remove any officer in the former resolves of this Committee mentioned, within the term for which he shall have been elected, giving such officer a copy of the charges against him, and an opportunity of being heard in his defence.

It was stricken out entirely, because it would seem to give the governor the power to remove every officer in the Commonwealth, from the attorney-general down.

The third resolution, corresponding to the third in the Report of the Committee, Document 104, we reported with a slight amendment.

In case of vacancy by resignation, or otherwise, of any State, County, or District officer, excepting members of the legislature, whose election is provided for in the Constitution, and whose term of office does not expire at the next annual election, the Governor shall issue his warrant to the mayors and aldermen of the several cities, and the selectmen of the several towns, to fill the vacancy at the next annual election after it shall have happened; and the Governor, with the advice and consent of the Council, may appoint suitable persons to fill such vacancies until an election by the people.

This was done so that where there is an elective officer, such as county commissioner, for instance, or district-attorney, who shall be elected for three years, and die in the middle of the first year, the governor might issue his warrant at the next annual election, to make an election to fill the vacancy, and in the mean time, might appoint some one to take the place. That prevents the calling of the people too frequently to make an election, and at the same time secures the ends of justice.

There was a slight doubt in the minds of some gentlemen, as to whether the clerks of the district court were county officers, or the justices; and in order to do away with that doubt, we propose to amend by inserting after the word, "officer," the words, "and clerks or justices aforesaid." That will settle the question, without any farther trouble; for it struck the Committee, that there might be some sharp person who would find that a clerk of a district court was neither a district nor a county officer, and then there might be a question how he could be reappointed in case of a vacancy. The addition of the words which we propose, will cover the case, both of the justices of the police court, and trial justices.

Now, one thing farther. One gentleman seemed to have the belief that there was no way of removing a justice of the peace. I agree with him. I have defended before legislative committees, two or three justices of the peace, and I have prosecuted one or two in my time, and I can only repeat what I said the other day, that the machinery seemed like a sledge-hammer for killing a musquito. It never seemed to hit him. You cannot remove a justice of the peace. A gentleman observed, that the people remove the trial

justices once in three years; and they are subject to impeachment for any gross outrage besides. The people will take care of that. The justices of the peace have little or nothing to do but to marry persons, and they cannot do that without their consent, so that they cannot do much mischief. We leave that as it is. I have to beg pardon for so imperfect an explanation of these matters, as the duty devolved on the chairman of the Committee.

Mr. SIMONDS, of Bedford. I wish to inquire of the delegate from Lowell, whether in the enumeration of the powers of the second class of justices of the peace, they are prohibited from issuing warrants in civil actions?

Mr. BUTLER. The issuing of a writ, Mr. President, if I understand it, is only an incident to the power to try. He cannot issue a writ returnable before anybody else, and if he cannot try the case himself, the writ which he issues will be as innoxious as a last year's almanac; it will do no harm to anybody. I think, that if we take away the power to try and determine a case, we take away the power to issue a writ.

Mr. HUNTINGTON, of Northampton. I would suggest, that there seems to me to be a very material omission here. Supposing these resolutions to be adopted by the people, obviously under the first resolution some time must elapse before the trial justices can act in that capacity. The second resolution provides, that the jurisdiction of all other justices of the peace, shall be taken away. Now, it seems to me there will be an interregnum, a time between the adoption of this amendment, or the ratification of it by the people, and the election of the trial justices, so that there will be no one to issue warrants for the trial of criminals. I do not see why the jurisdiction of the justices of the peace is not taken away according to the phraseology of the second resolution; and I see no manner in which a criminal can be tried in the mean time between the adoption of the Constitution, and the election of trial justices. The second resolution provides, as follows:—

Justices of the Peace, Justices of the Peace and Quorum, Justices of the Peace throughout the Commonwealth, and Commissioners to qualify civil officers, may be appointed by the Governor and Council for a term of seven years; and those now in office shall continue therein according to the terms of their respective commissions: *provided*, that the jurisdiction of all such justices shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

The provision is, then, that they shall have no power to issue a warrant after the adoption of this amendment. It seems to me there should be a clause extending the jurisdiction of the present justices, until the trial justices shall be elected.

Mr. DUNCAN, of Williamstown. Mr. President: I wish to make an inquiry. I wish to ask, if at this juncture, a motion to strike out and insert, would be in order?

The PRESIDENT. It would.

Mr. DUNCAN. Then I move to strike out of this Report all after the words "Resolved, that it is expedient," and insert the following resolution: "That justices of the peace shall be elected by the legal voters in the several towns and cities, as may be hereafter determined by law." Among the reasons which induce me to offer this substitute for the Report of the Committee, is, that it

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simplifies the proposed amendment, and avoids the misconstruction which must necessarily follow the introduction of so cumbersome an article into the Constitution. A short time since, it was urged as an objection to the passage of a report, that its length implied a prodigal waste of money and paper, which the economizing people would reject on the ground of waste. If that argument was entitled to any consideration then, it certainly applies with greater force now. Again, it is in the nature of a compromise, when none was called for, or desired; and instead of getting just what every one wants, a hybrid has been engendered which bears no very striking resemblance to either dam or sire. It reminds me of a schism which took place among the Quakers a few years since, with regard to the personal appearance of his satanic majesty, one party believed him to have horns, and the other, that he was a mooley; so the horns, and the no horns battled each other in a gallant, but unquaker like manner, till at last it was obvious that the matter must be settled, or the society ruined; so they agreed to a compromise. They settled it by voting that the devil was an unicorn; a creature which neither party loved or wanted, but was infinitely better than being foiled by an opponent. It is pretty much so in this case; if this Report is adopted, we shall have what no one precisely wants, and all the consolation we shall have, will be the satisfaction of a compromise.

It will be remembered, Sir, that not many years since, the legislature passed an act authorizing the governor to appoint trial justices, and so repugnant was that act to the people, that the following legislature repealed it almost without debate. It was urged that none but partisans were appointed; and so notoriously true was it, that a trial justice was looked upon as a common nuisance; some exceptions of course, but this was the general feeling. And now, shall we proceed deliberately to reenact a law which was repudiated so soon after its passage, and to perpetuate the same, by making it a finality? It is a reasonable presumption, that in all small towns entitled to but one trial justice, his political stripe will correspond with the local dominant party, and the evil heretofore complained of will be increased. The minority will look upon such justices with suspicion; and how can it be otherwise? for, in the heat of political contests, animosities will be engendered, which will follow the justice in his judicial proceedings, and whether he decides right or wrong, complaint will be made that he leaned to, or from, according to the bias of client or magistrate; and the courts of justice will be looked upon as an inquisition for political martyrdom. And, besides, it makes an invidious distinction between the justices of the peace, which seems to be entirely uncalled for and unnecessary. I submit it to gentlemen, that it is much better to allow the people to regulate this matter themselves, than to propose any half way measure, and give them the alternative of that, or nothing. This Report proposes but one trial justice in a town; and, an additional one depends upon the contingency of numbers. Is it not perfectly obvious that this provision will lead to great practical difficulties, which gentlemen from large towns seem to entirely overlook. A justice of the peace is not a polypus, but a being possessed with the powers of locomotion; it will often happen, therefore,

that he will be absent from home, and sometimes will be prevented through inability, to attend to his judicial duties. Under such circumstances, those who seek justice, at law, will be compelled to migrate from one town to another, till they succeed in overtaking some wandering justice, or, in finding some legal fixture. Another difficulty suggests itself; many small towns have two or three villages within its borders, and often at a distance from each other; and inasmuch as there can be but one trial justice in the town, there will be a strife as to which village shall have him. I can assure you that a justice of the peace in a small country town, is no inconsiderable personage, and the little village which is fortunate enough to have the *squire* within its limits, will naturally enough exalt itself above its less favored rivals. This will lead to animosities, and I have no hesitation in saying, that in all such towns—and there will be many—this provision in the Constitution will be an unfortunate one.

I am decidedly in favor of the proposed amendment—with perhaps a modification, if it should meet the views of the Convention—and it is this: "That no town shall have less than one justice of the peace," and leave it entirely with the inhabitants of the towns to elect as many as they choose. I have not the least doubt but the people can choose men from their midst, to administer justice, much more to their satisfaction than can be appointed by the governor; and there is not the least danger that they will elect more than they want, or less than is necessary. The safest course, in my estimation, is, to let them regulate this question as to how many justices they will have, and I opine that the people have too much good sense to suffer inconvenience, when they have the power to adjust the number of justices to meet their necessities.

Mr. WATERS, of Millbury. The mover of the amendment now under consideration, Mr. Duncan, of Williamstown, has said that these resolutions providing for the election of justices of the peace by the people, were not called for by the people. In that remark, he may speak for his constituents, but he certainly does not for mine. Doubtless, to members representing cities and farming districts, this subject seems to be one of minor importance, and to occupy altogether too much time of the Convention. But I assure all such members, that in some districts, especially in manufacturing districts, there is no subject before us which excites a deeper or more general interest.

The office of justice of the peace, though limited in powers and subordinate in jurisdiction, is one of the most important in the Commonwealth. He stands in the nearest relation to the people of any judicial officer, and in criminal matters, has jurisdiction to a certain extent over all the persons and property of his county. Before him the accused, whether innocent or guilty, are usually first arraigned—before his court, any person is liable at any moment to be summoned to appear, either as principal or witness, and for failure thereof to be committed for contempt of court.

This office, like that of sheriff, is one of the most ancient known to common law. Originally they were chosen in England by the people, from the most sufficient knights, esquires, and lords of the realm, and two or three to each county only were allowed. Then, to be an "esquire" in old England, was an honor worth possessing, and

history informs us that they were mostly noble champions of popular rights. But at length, one of England's tyrants, King Edward II., finding these esquires unsubmitive to his sovereign will, wrested from the people the power of their election, and vested it in the crown; and there, in the crown of England, it has remained full five hundred years, to the present hour. Copying from the institutions of England, we have vested the power of appointing these officers also in the executive. As a natural consequence, the number of commissions granted, has been vastly increased, and the dignity of the office immensely degraded from its ancient estate. A commission is granted to nearly all who apply, to many gratuitously, without regard to their qualifications; and the whole number now holding commissions throughout the State, is about five thousand. As might be expected, from such an army of executive appointments, many very unsuitable, and some perfectly unscrupulous and desperate persons have been appointed, and clothed with magisterial powers over the persons and property of their fellow-citizens. Such persons usually regard the office not so much as one of honor, as of private emolument—a means by which they are to get their living out of the public, at some rate or another. With this view, they readily issue their warrants upon all applications, however frivolous, and at the instigation of personal malice, it may be, on the part of the complainant. By a natural law, action produces reaction, parties are formed, new difficulties and new issues spring up, and the result is a bountiful crop of law-suits, which destroys the peace and happiness of the community around; and while it impoverishes the clients, fills the pockets of the magistrate. Thus, an officer of this stamp, especially if to his other qualifications be added that of pettifogger, as sometimes happens, will manage to keep a whole community in constant commotion, and boiling like a cauldron year in and year out, and that, too, under the sacred but prostituted forms of law and justice. Such a magistrate, though professing to act as a keeper of the peace, is really the greatest disturber of the peace—a piece of injustice—a social sliver which keeps up a constant irritation around, and there can be no peace until he is withdrawn from his position. By him the temple of justice is converted into a mill to grind clients and exact toll. I recollect an instance where a peace-loving citizen was committed to jail by one of these dogberys, for contempt of court, because he refused to proceed in a criminal action after it was all settled; and when he applied to counsel for relief, they told him there was no remedy, for every magistrate was supreme judge in his own court, as to matters of contempt of court. So true it is that

"Man, proud man!
Dressed in a little brief authority;
Most ignorant of what he's most assured,
Plays such fantastic tricks before high Heaven
As make the angels weep."

In the practice of a justice, nothing requires a more careful discrimination and sound judgment, than to decide when to issue, and when to refuse to issue his warrants; for it is clearly as much his duty in some cases to withhold, as in others to grant them.

A young man of my acquaintance, once went to a justice, in high excitement, for a warrant to arrest one with whom he had difficulty. The

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justice heard his story—told him to go home, sleep upon it one night, and come to him the next morning. He did so, and at once exclaimed, "I thank you, Sir, and I thank God, that my request last evening was not granted; for if it had been, I should have been embroiled in a quarrel which might have lasted during my life. Now it is all settled, and we are good friends!"

What a different result would have ensued, had he applied to a justice of the stamp above described.

Various attempts have been made to remove justices of the peace, and though in some instances the most gross fraud, corruption, oppression, and malpractice of various kinds were fully proved, yet no one has ever been removed under our present Constitution, owing to an ambiguity in its provisions as to the manner of removing them,—one construction being by address—the other by impeachment. One of the most remarkable cases of this kind, will be found reported at length in Senate Document, 1850, No. 104. From this, it appears that the citizens of one of the interior towns of the State, finding their peace and quiet constantly disturbed by petty justice courts, and feeling aggrieved by the oppressive decisions of the magistrate, sent to the legislature a petition containing thirty-five distinct allegations, signed by a majority of the voters of the town, and praying for an investigation. This petition was presented in the Senate, and referred to a preliminary committee, to report what court of investigation the Constitution required. This committee decided to proceed by address, and recommended the appointment of a joint committee of the Senate and House, consisting of nine. Such a committee was accordingly appointed, of whom the honorable member from Adams, (Mr. Dawes), was chairman. After a very long protracted trial, in which about one hundred and fifty witnesses were examined, and eminent counsel were heard on both sides, the committee unanimously reported that most of the allegations were sustained—that the respondent had been commissioned as justice of the peace fifteen years, during which he had collected a vast many fines, not one dollar of which had he paid over to the State, as the law required, but appropriated the whole to his own use. Also, that in some cases he had acted both as magistrate and counsel, and received fees for services in both capacities—that he had used his office for gambling, and otherwise conducted in a manner calculated to bring the government and laws into disrepute among the people. Whereupon the committee unanimously adopted the form of an address to his excellency, the governor, to remove said justice from office. When the report came up for consideration in the Senate, a distinguished member of that body, now on the supreme bench of this State, arose and opposed its adoption, on the ground that justices of the peace were not removable by address; and while he conceded fully that the respondent ought to be removed, yet his regard for the Constitution would not allow him to see it perverted for that purpose. Thus, the wishes, feelings, and interests of the petitioners, and the arduous labors of that committee, involving an expense to the State and others of at least two thousand dollars, were all baffled, and fell to the ground, merely from a defect in our present Constitution; and yet some members contend that it needs no amendment. If, with such a strong case, the attempt to remove

failed, it may well be conceded that no attempt can ever succeed. Several others have been made, but they have all proved alike abortive.

In this regard, compare our government with the executive of the United States. When a new administration comes into power, the president sweeps by the board secretaries, treasurers, foreign ministers, collectors and postmasters, by the thousand—all at one fell swoop; and that, too, not because they are dishonest, incapable, or unfaithful, but simply because they do not agree with him in political sentiment.

But here in Massachusetts, there is not power enough in either the executive, judicial, or legislative departments of government, or in all combined, with an expenditure of thousands of dollars, to turn out a petty justice of the peace for the most outrageous frauds, corruptions, and oppressions, committed for fifteen years! Such imbecility on the part of any government is calculated to bring it into disrespect and contempt among the people. It has been said with more truth than poetry,

"For forms of government let fools contest,
That which is best administered, is best."

The adoption of the resolutions now before us will remove most of the evils of the existing system. They reduce the term of office to three years, and make the incumbents elective by the people. The people must be supposed to be better judges of the qualifications of candidates than his excellency, who was perhaps never within the purlieus of the town where they reside. They will be careful to select those who have least inducements to promote litigation, and in whose integrity and sound judgment they have full confidence. This litigation will be checked, both in the number of suits instituted, and in the number of appeals taken. Finally, the office will be restored to its pristine dignity and honor among the people.

MR. CHAPIN, of Worcester. I rise to say one word in relation to our police courts, upon which subject I find a difficulty in the minds of some members of the Convention. There is an act, passed in 1852, which provides that

"The several police courts in the Commonwealth may exercise all the powers and perform all the duties given to and required of Justices of the Peace, by the laws of this Commonwealth, in and for the several counties in which said courts are respectively located."

Now this resolution leaves these courts precisely as they are, without any change whatever. It leaves the matter of the police courts in Worcester County, and in the other counties, precisely where it should be. In reference to the motion which is already made, I have simply to say, that I hope the amendment will not be adopted. It seems to me that this resolution provides, justly and properly, for the wants of the community. The only complaint which has been made in the section of country where I reside, grows out of the *judicial jurisdiction* of justices of the peace. There is and has been no complaint in regard to their ministerial duties. Men have been appointed, have undertaken to try cases, have interfered with their neighbor's property and liberty, who were utterly incompetent to perform the sacred duties which belong to the office of justice of the peace. All we ask, and all the peo-

ple wish, is, that those officers who are to exercise these duties, which are so important to the citizens of the several towns, should be elected by the people of those towns; and although I, for one, do not agree to the doctrine of electing judicial officers when their decisions are to be final, yet in this case I will agree to it. I will go farther, and say that I wish this Convention had power to amend the Constitution of the United States in regard to the election of postmasters. Officers of that kind, who are brought into such intimate relations with the people of the several towns, should be elected by the people. I think we have provided here for precisely what we want; and here, as in all other cases, I wish to have our acts as free as possible from doubt and uncertainty.

MR. LORD, of Salem. I wish to submit an amendment or two, which I will now state. I should like to amend the first resolve by striking out the words "are now exercised by," and inserting the words "now have," after the word "peace," and also by striking out the words "which jurisdiction, powers, and duties, may be changed by the legislature," so that, as amended, that clause will read as follows:—

They shall have the same jurisdiction, powers, and duties, as justices of the peace now have: *provided*, that no trial justice shall act as such upon his ceasing to reside in the town in which he was elected.

The reason suggested by my friend from Andover, yesterday, in relation to this change, that the legislature might have power to diminish the jurisdiction, seems to me not a valid reason for retaining this phraseology, because the power to change is the power to enlarge, as well as the power to diminish. I see no constitutional objection, if that phrase is put there, to the legislature's providing, to put an extreme case, for the trial of the very highest offences by a justice of the peace, who should preside over a jury. I think the legislature have not had power to make the justice of the peace any different officer from what the office was understood to be at the time of the adoption of the Constitution—an office of inferior jurisdiction—and which could not be changed, the office being established and recognized by the Constitution.

MR. DAWES, of Adams. I want to ask the gentleman from Salem, if he will permit me, whether, since this Constitution was adopted, the legislature have not granted or conferred power on justices of the peace to preside at jury trials?

MR. LORD. I think the legislature has conferred power on them to bring in six men, in certain cases, as referees. The gentleman from Wilbraham, the other day, told us that we had improved our institutions which we brought over here from England. Here is an illustration of it: the trial by jury is so changed that we now have three men, or six men, instead of twelve. But, Sir, I never believed that six men made a jury. When the Constitution says that the right of trial by jury shall be preserved, it means a jury of twelve men, not a jury of six men, or of three men, or two men, or one man. Calling in three or four men does not make them a jury, according to the good old ideas of the common law. If the law providing what is called a jury of six, had made the decision of those six final, and allowed no appeal to a real constitutional jury, composed of

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twelve men, I should not hesitate at all to say that such provision was unconstitutional. There was no more right to reduce a jury to six men, than to one man.

Mr. DAWES. I would like to be permitted to ask the gentleman another question. Will he tell me whether, at the time the Constitution was adopted, a justice of the peace had the right to demand of a pedlar whether he had a license?

Mr. LORD. I think it was competent for the legislature, if they chose, to put that power upon them.

Mr. DAWES. That does not answer my question. I understood the premises of the gentleman to be, that the legislature could not confer any new power, except that which justices of the peace had at the time when the Constitution was formed. I understand that there has been a course of legislation ever since the Constitution was adopted, which had the effect to change or diminish the powers of justices of the peace. I understand that to have been the course of legislation; it may have been all wrong. The gentleman can, perhaps, answer me, as in relation to justices of the peace, he thinks the jury trials with six men are unconstitutional.

Mr. LORD. I did not say that it was an unconstitutional provision to make what is called a jury, with six men. I said that it would be unconstitutional if you made their jurisdiction final; and if, in a suit involving more than twenty dollars, you could have no other tribunal than this six-men jury.

Mr. BUTLER. If the gentleman will permit me, I will ask him a question upon that subject. I should like to have him tell me whether the legislature did not pass a practice act, by which a jury of twelve men could be summoned by a justice of the peace in a case of forcible entry and detainer—a jury of twelve men—a jury in every sense of the word, equal in number to the twelve apostles.

Mr. LORD. I am not responsible for an act which the legislature passed in 1851, and repealed again in 1852. I do not propose to consider that at all. And in answer to the suggestion of the gentleman from Adams, I did not say that no change whatever could have been made by the legislature—no duties could have been imposed. What I said, or what I meant to say, at any rate, was, that the judicial jurisdiction of justices of the peace could not be elevated by the legislature into the higher judicial duties, such as devolve, for example, upon the supreme judicial court. My proposition was this: that by this proposition, inasmuch as you say in your Constitution, by express words, that the jurisdiction may be changed, and do not confine it to subjects of like nature, you may give justices of the peace any jurisdiction that you choose, provided you keep within the provision of the United States Constitution, and the Bill of Rights in our own Constitution, if that be saved to us, that they shall not have any jurisdiction against trial by jury. But I have no time to discuss that point now.

I want to suggest, also, the propriety of striking out the words "the issuing of warrants in criminal cases." This is a matter which ought to be amended by law. Take all those cases in which there are police courts. The law provides now that justices of the peace may issue warrants, and those warrants shall be made returnable before the police courts. No mischief is done because

these justices of the peace, have no power to try. They merely issue warrants, and those warrants are returnable before the police courts. In those places where you have police courts, you have no trial justices; but it sometimes happens in Boston, Salem, Newburyport, Lowell, and New Bedford, and perhaps in other places where there are police courts, that, in the absence of the police justice, there is a necessity for immediate action, and a warrant must be issued by some magistrate, and made returnable before that police court. I think that if we say, by a constitutional provision, that no magistrate whatever, in the city of Boston, shall issue a warrant, no matter what the circumstances may be, returnable before the police court, that will be unwise; and it seems to me that the whole difficulty is remedied by the phrase that "the jurisdiction of all such justices shall not extend to the hearing or trial of any causes." The difficulty has not been the issuing of warrants made returnable before any tribunal; but the only difficulty has resulted from the attempt to try causes by incompetent magistrates. As it is not in order now, to move the amendments which I have suggested, I have merely made these remarks; and if they strike other persons favorably, they can move them. I tried very hard yesterday, but I could not get a vote of the Convention in favor of my propositions. Although the Convention rejected them, I still think there is good sense in them; and this is in accordance with the legislation of the last fifteen years, upon the subject of the police courts, and in accordance with public sentiment.

When you provided that trial justices should be deemed to have vacated their office when they removed from the town by which they were elected, it seemed to me that the purpose was to prevent justices elected in one town from having jurisdiction in another town; and the proposition that I made, was this: that where all the parties—of course I mean parties to a civil cause—have a residence within the Commonwealth, then the trial justice shall not have jurisdiction, unless some one of them has a residence within his town. If there are two parties, it should be either the plaintiff or the defendant; or if there are three parties, then it should be either the plaintiff, or defendant, or trustee. However many parties there may be, if there should be three or four defendants or trustees, if they all have a residence in the town in which the justice resides, then he shall have jurisdiction. That is just what we say in relation to police courts. Wherever we establish police courts, if both parties reside in the town, then the justice has jurisdiction.

If I understand the amendment that was read, and which is offered as a substitute, I am inclined to think that that is the best proposition—that the legislature should have power to classify and define the powers of the several kinds of justices of the peace—and it seems to me that that is a matter in regard to which we ought to have some constitutional provision.

Mr. DAWES. There are two or three objections to this proposition, in regard to which I wish to say a few words; and first, as to the jurisdiction. The apprehension of the gentleman from Salem, seems to me, to be unfounded. Our present Constitution leaves the jurisdiction of all the courts to the legislature. It establishes your supreme judicial court, and provides for

such other courts as the legislature may see fit to adopt. The Constitution, therefore, clothes the legislature with the power to create just such courts as they please. It does not even define the jurisdiction of the supreme judicial court, but leaves the matter entirely open to the legislature. The legislature may clothe it with few or with many powers. They may make it a higher court, for the hearing of capital cases, or for the hearing and deciding questions of law, only, or for the hearing of jury trials also.

It was thought, by members of the Committee to whom this matter was yesterday committed, as it was by those who framed the old Constitution, that it was best to leave this matter of jurisdiction entirely to the legislature; and as it was apprehended that no danger would arise in relation to the other courts, so it was not apprehended that any danger would arise if this matter was left to the legislature also.

Mr. LORD. I desire to ask the gentleman whether he believes it would be competent for the legislature to make justices' courts courts of record?

Mr. DAWES. Undoubtedly. But I will ask the gentleman from Salem a question which will answer his, and that is, whether he is perfectly certain that they are not courts of record now?

Mr. LORD. They are not.

Mr. DAWES. The supreme court, I believe, has given an opinion upon that point, and that must decide the matter between us.

But, to proceed. The gentleman wishes to amend by giving justices power to issue warrants in criminal cases. Why, Sir, the great evil complained of, and to be remedied, is the power which justices have all over the Commonwealth to issue criminal warrants. I do not believe, with the gentleman from Salem, that the only difficulty is in trying criminal cases; cases are instituted that ought never to be tried before any justice of the peace. I think it is a matter of quite as much moment to determine when a warrant shall be issued, as it is who shall try the cause. When once instituted, the case must be tried, however improperly begun. I do not think that every man who holds the office of justice of the peace should have the power to issue a warrant against anybody that he pleases. I think the community has felt the evil of this long enough, and a remedy will not be effected unless we cut off this power to issue warrants. If one trial justice is appointed in every town, and as many more as the increased ratio of population may require, I think that the police of the towns will be in safe hands. As has been suggested by another gentleman, I think that in the issuing of warrants, these justices lend themselves more to the gratification of malice and ill will, and spite of neighbor against neighbor, than to the promotion of the ends of justice in the trial of causes; and I am glad that the Convention has come back so nearly as it has to the legislation of 1850, when the act was passed in relation to trial justices. I believe that that was a good law, and had it lived until this time it would have brought about the good fruits which we are now seeking. As to the mode of electing justices of the peace, I have no particular choice.

But there is another objection of the gentleman from Salem in reference to their jurisdiction, which, I think, should be left to the legislature; and that is: that none of the justices should have

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jurisdiction unless one of the parties resides in the town for which the justice is elected. Sir, the gentleman forgets that justices are now county officers, having jurisdiction all over the county; and I am not aware of any evil ever having arisen from the fact that a justice of the peace can summon a man before him from another town in the county. How will the gentleman's suggestion operate in practice? In many of the towns there are not to be found men of the legal profession; and, unless justices have this power, and a man wishes a lawyer to conduct his case, or collect such debts as he has against his own townsmen, he must go to considerable additional expense in bringing a professional man from a distance. If the provision is limited to the county, so that no justice in one county shall summon a man from another county, I think the limit will be perfectly safe.

I hope, therefore, that the resolves will pass. I am not in favor of the amendment of the gentleman from Williamstown, for it seems to me that it would only be perpetuating and establishing what is felt to be a growing evil in the Commonwealth. I should have thought that nobody could have been so blind to the evil. In many towns of the Commonwealth we have nothing more than a perfect mockery of justice. The law, in consequence, has been brought into disrespect, and has been made the instrument of private malice and revenge, so that in many of our towns the very name of "justice's court" has become a stench in the nostrils of all respectable men; and I hope, if this evil cannot be remedied in any other way than by a constitutional provision, that we may have such a provision.

Mr. WALKER, of North Brookfield, moved that all farther debate on this subject cease at fifteen minutes past eleven o'clock.

The motion was agreed to.

The question was then taken on the amendment of Mr. Butler, and it was agreed to.

The question next recurred on the amendment offered by the gentleman from Williamstown, (Mr. Duncan).

Mr. MORTON, of Taunton. I think the subject embraced in these resolves is one of very great practical importance. We spent a good deal of time yesterday in the examination of this subject, and took a great many votes; but it was very apparent, then, that the subject was not sufficiently matured. Neither the Committee to which it was referred, nor the Convention, had digested the matter so as to arrange it satisfactorily; and, notwithstanding the anxiety of the Convention to close their business, they thought it expedient to recommit the subject to a Special Committee, and I am happy to bear my testimony in favor of the labors of that Committee. I fear that the subject has not commanded quite so much attention on the part of the Convention as it deserves. I think that the multiplication of justices is felt to be a great and growing evil, and that the resolves reported by the Committee are well calculated to remedy many of the evils complained of. I approve of it from the beginning to the end; and yet I think there is one proposition in it which it seems to me did not command quite sufficient attention on the part of the Committee. In the first resolution it is provided, that "no trial justice shall act as such upon his ceasing to reside in the town in which he was elected." That provision is a very proper one; but it might so hap-

pen that a justice might leave the town in which he was elected, without any ability to substitute any one in his place; and the substance of the amendment I was about to propose is, that his removing from the town shall vacate the office, and leave somebody else to be elected. I move to strike out all after the word "Provided," in the first resolution, and insert:—

That every trial justice who shall remove from the town in which he was elected, shall thereby vacate his office.

Mr. BUTLER, of Lowell. I rise merely to say that that matter has been called to the attention of some members of the Committee since they reported, and they quite agree to it. The words used in the Report were not well adapted to the object in view, and, for one, I am much obliged to the gentleman from Taunton for the amendment he has suggested.

The amendment was agreed to.

Mr. HATHAWAY. I rise for the purpose of moving an amendment to these resolves, with the view of perfecting them, as far as they can be perfected, before the question is taken on the motion to strike out. I move to strike out the words "or the issuing of warrants in criminal cases," from the second resolution, in the last line. My reasons for making this motion are these: If the Convention will notice the first resolution, they will perceive that no town is to have more than one trial justice, unless it have more than two thousand inhabitants. There are a great many towns in the Commonwealth which border upon other States, many of which would only be entitled to one trial justice; and it seems to me, that in such cases there are many circumstances which might arise whereby the ends of public justice would be promoted by giving to justices of the peace the power to issue a warrant for the apprehension of the party, but would not give any justice of the peace the power to try the matter. Your trial justice may be absent from home, or sick, or in other ways be prevented from issuing a warrant in a case of urgency, and yet it may be a matter of necessity that a person should be arrested immediately. I happen to live but a few miles from the border of the State of Rhode Island, and with the present facilities for expeditious travelling, there would be nothing easier than for an offender to step beyond the boundary of the State. I think that no possible inconvenience could result to the community from granting to a justice of the peace the right and power to issue warrants. The great difficulty has been that, heretofore, trials before justices of the peace have been anything but what trials ought to be, and their courts anything but a court of justice. Trials in justices' courts frequently have been such, that you would dignify them if you called them by no worse name than mock trials; and I have no question that, in many instances, and frequently, too, warrants have been by them issued because of the miserable small sum in the shape of fees they received therefor, thus gratifying their avaricious passions, if they have not been sometimes issued for the gratification of a still viler passion—that of malice.

It seems to me that the public, as well as many of the municipal communities, may find themselves surrounded with great difficulty, unless some officers besides the trial justices, have the right to issue warrants in criminal cases. When the question of the basis of the House of Rep-

resentatives was under discussion, it was said that there were sixty-four towns containing less than one thousand inhabitants, and I have no doubt that there is at least sixty-four towns more, which do not contain two thousand inhabitants. If that is so, then you have at least one hundred and twenty-eight towns, more than one-third of the whole, which would have but one trial justice, and only one person, in each of those towns, having the right to issue warrants; and if, in the providence of Heaven, the trial justice in such towns should be sick, or if he should be absent, no matter how high the offence that may have been perpetrated, or with which a man may be charged, the individual charged with the commission of it may escape for the want of a magistrate who is authorized to issue a warrant for his arrest. Hence, I think it is proper to strike out these words.

Mr. HALLETT, for Wilbraham. I am sure my friend from Freetown, (Mr. Hathaway,) will not insist upon his amendment, if he will but look at it for a moment. This provision is the most important amendment suggested in regard to the judicial department which is in the hands of justices of the peace. You have now the great principle, the interposition of the grand jury, by which no man can be charged for crime in your courts, unless his case has been heard beforehand—without his knowledge, to be sure—before the grand jury; yet you have now, and will have, if this amendment prevails, some eight or nine thousand persons who have it in their power, maliciously, or for other motives, privately, and unknown to any man, to issue a warrant by which a man may be taken out of his bed, and away from his family, and carried to prison, and there be confined until the trial justice can be found. And, unless you can prove that the justice issued the warrant maliciously or corruptly, the man has no remedy whatever. In that case, then, we shall be in the hands of every man who chooses to make a causeless charge against an individual, and your great principle, a presentation by a grand jury, the great bulwark of the liberties of the people, becomes entirely worthless; because, by this process of complaint, you can always charge any man you please with an offence—and to charge with crime an innocent man, is as bad for him, as is the conviction of a guilty man for him. If this provision remains, that great evil is taken away, and what is the inconvenience? It is almost impossible for cases to arise where you cannot get a warrant, and if you cannot get a warrant in season, the officer can detain a person until a warrant can be found. I hope the Convention will not change this most important provision.

Mr. HATHAWAY. One word only, in reply to the remarks of the gentleman for Wilbraham. I do not propose to permit these magistrates to try any causes, nor do I propose to so arrange it, so that a man upon being arrested by a warrant issued by a justice who is not a trial justice, shall be thrown into prison, to wait until the return or recovery from sickness, of the trial justice of the town where he happens to be arrested. I do not propose any such thing; for if the trial justice of one town is absent, another can be found in an adjoining town, not ten miles distant probably. I would not put a power into the hands of a justice which could be so abused; by no means. I merely would give the magis-

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trate the power of issuing warrants, so that, where there is really an offence, he can arrest the criminal.

Mr. BARTLETT, of Boston. The clause under debate attracted the attention of some members of the Committee, and it is really a balance question.

[Here the President's hammer fell, the hour of eleven o'clock and fifteen minutes having arrived, at which the Convention had ordered that the question should be taken.]

The question first recurring upon the amendment offered by the gentleman from Freetown, (Mr. Hathaway,) it was put and decided in the negative, upon a division—ayes, 43; nays, 144.

So the amendment was rejected.

The question next recurring upon the amendment offered by the gentleman from Williamstown, (Mr. Duncan,) it was put, and decided in the negative.

So the amendment was rejected.

The question was then taken upon ordering the resolves, as amended, to a second reading, and it was decided in the affirmative.

The PRESIDENT. The resolves will take their second reading to-morrow.

Mr. BUTLER, of Lowell. As this question has been fully discussed and considered, I therefore move, that the rule requiring the resolves to take their second reading to-morrow be suspended, and that they take their final reading at this time, so that they can pass into the hands of the Revising Committee, who are now waiting for them.

Mr. LORD, of Salem. Have these resolves been read? I had supposed that we had done nothing, except to substitute this Report for the Report of the first Committee.

The PRESIDENT. The whole subject was referred to a Special Committee, and the Committee made their Report, and the Convention have acted upon it, and ordered it to a third reading. Now the gentleman from Lowell, (Mr. Butler,) moves to suspend the rule which requires their second reading to-morrow, and put them upon their final passage at this time.

Mr. LORD. I desire to know if the Standing Committee of this body, which had this matter under consideration, and of which the gentleman from Lenox, (Mr. Bishop,) was the chairman, did not report a series of resolves, and whether these resolves were not reported as an amendment to those? The amendment offered by the gentleman from Bernardston, (Mr. Cushman,) was under discussion, and after the first resolves were amended, they were referred, and afterwards the resolves which have been now considered, were reported as an amendment to the original Report of the Committee.

The PRESIDENT. If the gentleman from Salem will look at the Report, he will see that the whole matter was referred to the Special Committee, and the whole subject was reported back in a new draft. The question is now upon the motion made by the gentleman from Lowell, (Mr. Butler,) to suspend the rules, and put the resolves upon their final passage.

The question was taken, and decided in the affirmative.

So the rules were suspended.

The question then recurring upon the final passage,

Mr. LORD, of Salem. I would inquire of the

Committee who reported this, whether, if a vacancy in the delegation in congress should happen in the early part of December, we shall be obliged to wait until the next November, until a writ can issue for a new election, whether the vacancy is caused by resignation or otherwise? Now we have representative districts for members of congress, and we have provided that they shall be chosen by a plurality vote, and it was said, when that matter was under discussion, that the districts included representatives to congress. In my judgment it does include them. They are to be chosen by a plurality of votes, as we have provided in the Constitution; and, therefore, the manner of election is provided for, although the election itself is not strictly according to the terms provided for. But, whether it does or does not, I desire to understand it. The language of the resolution is, "whose election is provided for." If it were "whose office is created by the Constitution," then I should have no difficulty. But the Constitution does, to some extent, provide for their election, and when the plurality question was under consideration, every-body agreed that the word "district" covered representatives to congress. Whether it does or does not, I do not know. If it does not, it is all well enough, but if it does, then the resolve is objectionable.

I desire to ask the gentleman from Taunton, (Mr. Morton,) whether the effect of his amendment, which provides that the removal of a trial justice from the town in which he resides shall vacate his office, will prevent the completion, by him, of the trial of causes, or the finishing up of cases already commenced before him before his removal, and pending at the time of his removal? I should like to know what his construction of it is?

Mr. WHITNEY, of Conway. I rise to renew the amendment suggested by the gentleman from Freetown, (Mr. Hathaway,) on a previous reading of these resolves. I have not had the benefit of the previous discussion, but it seems to me that the amendment is an important one. I think you will find that there are one hundred and seventy towns in this Commonwealth, which will have but one man, according to this resolve, who will possess the power of issuing warrants. Now, Sir, suppose that it should happen—as in many cases it will—that a man whom the people elect as a justice shall not be disposed to issue a warrant; take, for instance, the violation of the license law, when a tavern keeper is the justice. Now, I think, upon every principle, there should be more than one man in a town of two thousand inhabitants, who has the right to issue a warrant. I would not increase the number of justices empowered to try cases, but I would have more than is here proposed, authorized in criminal cases, and empowered to issue warrants.

Then, again, look to the condition of the border towns of the Commonwealth. There, a man who has committed a crime, may run across the line before he can be arrested, if it should happen that the one trial justice is sick or absent for a time. There would be a necessity that he should be at home at all times, if he is the only man who can institute proceedings. There is no man who does not leave the town at some time or another; and in that case, a criminal, happening then to commit crime, could get out of the Commonwealth before he could be arrested.

There is a good deal in this amendment, though

it did not meet with much favor before. It strikes me as an amendment of great importance, and one which should be considered before we pass these resolves. If you give to one man, and only one man, the right to issue warrants, it will introduce a new element into our elections. It will trouble us all over the Commonwealth. The question will be asked of a candidate, whether he will issue a warrant in this matter or that matter, before he can be elected a trial justice. This matter will return to trouble its inventors; and it becomes you, and it becomes me, and others, to consider this matter well before we act upon it. I undertake to say, that if you make this provision a constitutional one—and therefore out of the reach of the legislature for the next twenty years—you will greatly inconvenience the people of Massachusetts, and subject them to trouble in the execution of their criminal laws. It has been decided that in this Commonwealth a man has a right to defend himself against arrest, unless the officer making the attempt has a warrant to justify him. If a man pursues me for a crime, without a warrant or advertisement, I have a right to defend myself against arrest. In one case, I believe, life was taken, and the courts discharged the criminal on the ground that no warrant had issued. I would not, therefore, make it so difficult to procure a warrant. Now, it will be very difficult to obtain warrants in many cases, if this provision is adopted.

I therefore propose, that in this second resolution, all and after, and including the word "or," be stricken out. And I hope this amendment will prevail. The gentleman for Wilbraham, (Mr. Hallett,) says we have the grand jury. It is true, and we have the district-attorney. But that does not meet the wants of the case. There are many cases occurring which require an immediate arrest. Yet none of these officers are bound to arrest a man unless a warrant is issued. They can take the responsibility of arresting a man if they choose; but you cannot compel them to take the responsibility. I see no reason, therefore, why this power should not be committed to your justices of the peace. There has been no abuse of the power, heretofore, that I can learn; and I can see no good reason for taking the power from them. It is certainly important that more than one should be provided for a town of two thousand inhabitants. There are many cases where much inconvenience would be occasioned by this provision. Most of the towns in the Commonwealth, with a population of 2,000 inhabitants, cover a large extent of territory, and the appointment of more than one officer with the power of issuing warrants, is a matter of almost absolute necessity. I move, therefore, to strike out at the close of the second resolution the words "or for issuing warrants in criminal cases."

Mr. BARTLETT, of Boston. I was about to state upon a former occasion, that these questions were not lost sight of in the Committee to which this matter was referred; but the consideration which probably had much influence in controlling this action, was, that the proposition of the gentleman from Conway, when weighed and examined, must result in balancing convenience against personal liberty. The theory upon which this provision for distributing the powers of justices of the peace rests, is that you are to provide a class of magistrates who are, from their experience and more elevated character, better fitted

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for the trial of causes, and exercising judicial functions, than a large portion of the persons usually created justices of the peace.

Now, Sir, the case put by the gentleman from Freetown, (Mr. Hathaway,) is undoubtedly a very strong one in support of the argument founded on inconvenience. It is no doubt true that in cases where the party to be arrested is on the borders of the Commonwealth, or of different towns, he might escape before a warrant could be obtained for his arrest; but when you take into view the fact that your police force—your constables—are to a certain extent, authorized to arrest without a warrant, and bring the accused before a magistrate; and as, practically, in all cases of well ascertained guilt the officer incurs slight risk, which rarely deters him from action, I think the suggested defect is not of grave importance. At all events, cases of the character supposed, will be, I should suppose, unfrequent; and I ask gentlemen here, whether it is worth while, in order to meet such contingencies, to place this power of issuing warrants of arrest in the hands of all justices of the peace?—a numerous class of officers, many of them appointed by the governor by way of compliment, or for various reasons having but little connection with their qualifications by experience and judgment for the exercise of so delicate a power as that of arresting a man upon a complaint which they are not to try, and turning the case and responsibility over to another class of magistrates. I would rather this power should be delegated to a trained and less numerous class of persons than the great body of the justices of the peace; and so long as it shall be found, as I think it practically will, that escapes from process, or ultimate legal investigation, are unusual, I am averse to extending the power of issuing warrants beyond the class of persons selected and authorized by the proposition of the Committee.

Mr. WHITNEY, of Boylston. I want to say one word in reference to the amendment proposed by my friend from Conway, (Mr. Whitney). I think the reason given by him for striking out the words which he proposes to strike out, is the very reason why they should not be stricken out. The gentleman objects that in many cases it would require too long to get a warrant. Now, I think if they would only allow time for the parties to cool down a little, in many cases warrants would not be taken out at all. A case came under my observation where one man swore at another, and the other shook his fist in the first man's face. Well, Sir, without giving time for their tempers to cool, the matter was brought before a justice of the peace, and one man got his case; then it was brought before another justice, and the other got his case. Finally the matter was carried up to Worcester, and the judge threw it out of court at once, and neither got his case. The difficulty was that a justice of the peace was too convenient. They did not allow time for their tempers to cool off. If the parties were obliged to wait two or three days before a warrant could be issued, I think much difficulty would be avoided. I think the suggestion that of two evils we shall choose the least, by limiting the exercise of this power to the trial justices, is a good one; and I shall therefore vote against the amendment.

Mr. GOOCH, of Melrose. I think there is an objection to the resolution as it now stands, and at the same time I do not like the amendment of

the gentleman from Conway. I prefer giving the power of issuing warrants only to the trial justices, but I think there should be more than one trial justice in a town of two thousand inhabitants. In the first place, your trial justice may be absent; in the second place, he may be sick; and in the third place, he may be dead. So that there will be likely to be a great many towns where there will be no trial justice at all for a great portion of the year. I think, therefore, that it would be advisable to elect two trial justices in every town. There are a great many towns containing less than two thousand inhabitants, in which two villages are located four or five miles apart. In such cases it becomes almost a matter of necessity that a trial justice should be elected for each village. I propose, when the opportunity shall present itself, to offer an amendment that there shall be two trial justices for every town of less than two thousand inhabitants, instead of one. If this amendment be adopted, it will obviate the necessity of the amendment of the gentleman from Conway, (Mr. Whitney).

Mr. ADAMS, of Lowell. I move the previous question.

The previous question was seconded, and the main question ordered to be put.

The question being first upon the amendment of Mr. Whitney, of Conway, it was put, and the amendment was disagreed to.

The question then recurred upon the final passage of the resolves.

Mr. GOOCH. Must the question not be taken upon my amendment?

The PRESIDENT. The Chair did not understand the gentleman as offering an amendment.

Mr. GOOCH. I intended to offer one.

The PRESIDENT. The Chair cannot answer for the gentleman's intention.

Mr. GOOCH. Is it in order to offer an amendment at this time?

The PRESIDENT. It is not in order, the main question having been ordered.

Mr. GOOCH. I move to reconsider the vote by which the main question was ordered.

The PRESIDENT. The Convention ordered the main question to be put now, which main question extended first to the amendment pending, and then to the final passage of the resolves. The amendment has already been voted upon, and the Chair thinks it is not in order to move to reconsider the vote by which the main question was ordered. By general consent, however, the Chair will entertain the motion.

Mr. BUTLER, of Lowell. I object.

The resolves were then ordered to their final passage.

Mr. HALLETT. I now move to reconsider the vote by which the resolves were finally passed. I make the motion for the purpose of giving an opportunity for the alteration suggested by the gentleman from Melrose, (Mr. Gooch,) to be made. I think it is a very proper amendment, and should be made.

The PRESIDENT. The motion will go over until to-morrow, under the rule.

Mr. BUTLER, of Lowell. I move to suspend the rule, and that the motion to reconsider be taken up now for consideration.

The motion was agreed to.

Mr. BUTLER. Now, Mr. President, I am opposed to the motion to reconsider, for the purpose indicated. I am not able to see the great

inconvenience of which the gentleman from Conway, (Mr. Whitney,) and his friends are afraid. In every county, except Dukes and Nantucket, there will be as many as from ten or twelve up to fifty or eighty, and I do not know how many more, of these officers. With that state of things, I do not see that anybody would have to go whaling. [Laughter.] You provide that there shall be at least one in every town in the State, and this will make at least three hundred and twenty-eight of these officers who are authorized to issue warrants. Then, besides that, every man in the Commonwealth, whether constable, or otherwise, is authorized to pursue, overtake, and seize, without a warrant, any man who may be guilty of a State Prison offence, and to hold him until he can find a trial justice.

But it has been said that if a trial justice refuses to issue a warrant in certain cases, that will be made a test question in his election. Well, Sir, suppose it is, if he exercises his power improperly, there is a power to punish him. I do not doubt, however, that cases may arise in which some inconvenience may occur; but there is another consideration. If the plan proposed by my friend from Conway, (Mr. Whitney,) were adopted, and the power of issuing warrants were conferred upon all the justices of the peace, it would lead to the multiplication of these officers, until they would come to be a nuisance. It would be in their election, as it has been in their appointment, every man wants another in his town, and the governor has gone on appointing them until there are as many as four thousand, and I do not know how many more, in the Commonwealth. That will be the difficulty. Now, I say if we have one in each town with the power of trying causes and issuing warrants, there is no occasion for any more, for those purposes. Sir, we want men to try causes of a more elevated character than the general run of justices of the peace. We want men of capacity, and it has been ascertained by experience, as a general principle, that the fewer there are, the more elevated in character they are likely to be.

But, again, if you have two in a town, one will run in opposition to the other, like two stage lines. One will tell you that he is the cheaper justice, and that you can get your business done cheaper at his shop than the other one; and in my opinion, you will find in the end more inconvenience arising from multiplying these trial justices, than by limiting them in number. I hope, therefore, the motion to reconsider will not prevail for this purpose.

Mr. BRIGGS, of Pittsfield. If I were to vote for the motion to reconsider, I should do it for a different reason from that stated by the mover. I think the difficulty is, that we have provided for quite too many trial justices. I think if we had provided not more than a quarter as many, and had properly distributed them throughout the Commonwealth, that they would, as the gentleman from Lowell says, be much more likely to be selected on account of their qualifications and fitness for the office, and that such a system would be a much better one than that you have adopted. I cannot see the necessity for the great number of trial justices which is seen by some gentlemen. I do not suppose in one-half or three-quarters of the towns in the Commonwealth, there is a warrant issued from the beginning of the year to the end. But, if a man wants a war-

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rant issued, what does he do? He goes to a lawyer and applies to him, and he institutes proceedings in the case.

Now, I think it is not only worth while to deprive the justices of the peace of the power of issuing warrants, but if I had my way I would limit the power still farther than it is done in the proposition.

The gentleman from Freetown, (Mr. Hathaway,) stated a very strong case in which inconvenience would arise from the number of trial justices not being greater. But, at the same time, he stated a fact in connection with it, which seemed to me obviated the whole difficulty. In the case mentioned by him where the trial justice was absent, he said that in all probability the trial justice in the next town would not be more than ten or fifteen minutes off, and that they would send and get him. So that after all a delay of only ten or fifteen minutes would be caused.

I think, however, the case stands very well as it is, and I shall therefore vote against the motion to reconsider.

Mr. KEYES, for Abington. I rise for very much the same purpose that I did the other day, because I could not sit and listen any longer without taking some part in the debate.

Since this discussion has been going on, my mind has been turned a little to the town where I reside—not the town I represent. We have there nearly 5,000 inhabitants, and out of those there are but very few persons who would take the office of trial justice. When the trial justice law went into operation, several years ago, a man was appointed of more than eighty years of age; but since that act was repealed, as well as before it went into operation, most of the trial business has been performed by the register of probate. Now, one of these two persons would most likely be elected to the office under this provision which we have just adopted.

Now, Sir, I believe they are both of them honest men; they would endeavor to transact the business which their duty required of them under this law according to their conscience; but they are no more alike than snow and soot; they are entirely opposite by nature, by education, and by ideas. There might be some difference of opinion on the part of these two persons on particular questions. I suppose a majority of the people would decide that the judge of probate, being the younger man, should be the trial officer. He has to go about the country with his green bag, and is often away from his home. What would be the state of affairs in case he should be wanted while absent? It appears to me that if there is any use in having any sort of officer at all—I do not, myself, know of any great use for any—but if there is any use for one, is there not use for two?

Mr. CHAPIN, of Worcester. I propose to vote against the amendment, and certainly if I were disposed to vote in its favor, it would not be for the reason given by the gentleman from Pittsfield. After the act was passed authorizing trial justices, ordinary justices of the peace were deprived of the power to try causes. But the act worked well, and if the chief magistrate of the Commonwealth had appointed one trial justice in every town in the Commonwealth, it would have remained upon the statute book to this hour. The excitement against the act arose from the circumstance, that parties were carried from the town

where they resided to have causes tried at a distance from their homes, and the question naturally arose, whether they could not have a person nearer home qualified to try their cases. The answer was, that they could not. This proposition provides for what we want; it provides substantially, for a police court in every town. Take, for example, the city of Worcester, with twenty thousand inhabitants, and there is not a man there authorized to issue a warrant, in a criminal case, except a police justice. This is a strong case. Take the city of Boston, and other places where they have police courts, and there they have no trial justices, nor any other magistrates authorized to issue warrants in criminal cases, and who complains? There is another reason why I would be opposed to the amendment, and in favor of the original proposition. If we have various justices in the towns, not qualified to try causes, they will not be prepared to do any business relating to criminal cases, which will bear the test of criticism or examination. If there was such a justice of the peace in the town where an offence had been committed, I would not go to him, but to a trial justice in the next town, who would of course be prepared for such business, and would prepare the papers in such a manner that they would stand the test before a higher tribunal. Therefore, I am satisfied that this resolution should be adopted.

Mr. FREEMAN, of Franklin, called for the previous question, and it was ordered.

The first question was on the reconsideration of the vote by which the resolutions were passed.

The motion to reconsider was decided in the negative.

Conventions to Revise the Constitution.

Mr. HALLETT, for Wilbraham, from the Special Committee on the subject of Conventions to Revise the Constitution, reported the following resolutions, with a recommendation that they do pass:—

1. *Resolved*, That it is expedient to provide in the Constitution, that

"A Convention to revise or amend this Constitution, may be called and held in the following manner: At the general election in the year one thousand eight hundred and seventy-three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question: "Shall there be a Convention to revise the Constitution?" which votes shall be received, counted, recorded, and declared, in the same manner as in the election of Governor; and a copy of the record thereof, shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same, and shall publish, in the newspapers in which the laws are then published, the number of yeas and nays given upon said question, in each town and city, and if a majority of said votes shall be in the affirmative, it shall be deemed and taken to be the will of the people that a Convention should meet accordingly; and thereafter, on the first Monday of March ensuing, meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts, in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives, which the towns and cities shall then be entitled to elect. And such delegates shall meet in Convention at the State House, on the first Monday of May next ensuing, and when organized, shall have all the powers necessary to execute the purpose for which such Convention was called; and may establish the compensation of its officers and members, and the expense of

its session, for which the Governor, with the advice and consent of the Council, shall draw his warrant on the treasury. And if such alterations and amendments as shall be proposed by the Convention, shall be adopted by the people voting thereon, in such manner as the Convention shall direct, the Constitution shall be deemed and taken to be altered or amended accordingly. And it shall be the duty of the proper officers, and persons in authority, to perform all acts necessary to carry into effect the foregoing provisions.

2. *Resolved*, That whenever towns or cities containing not less than one-third of the qualified voters of the Commonwealth shall, at any meeting for the election of State officers, request that a Convention be called to revise the Constitution, it shall be the duty of the legislature, at its next session, to pass an act for the calling of the same, and submit the question to the qualified voters of the Commonwealth, whether a Convention shall be called accordingly: *provided*, that nothing herein contained shall impair the power of the legislature to take action for calling a Convention, without such request, as heretofore practised in this Commonwealth.

3. *Resolved*, The foregoing provisions shall in no wise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

Mr. HALLETT moved that the rule be suspended, and that the Convention now proceed to the consideration of the resolutions just reported.

Mr. GRISWOLD, for Erving. I would inquire whether it would not be better to have the resolutions printed, and take up other matters now? I fear that by a suspension of the rules we may delay the business.

Mr. HALLETT. If we suspend the rule, the resolutions can be read the first time now, and then be printed.

The motion to suspend the rule was agreed to.

The resolutions were read the first time, laid on the table, and ordered to be printed.

Bill of Rights.

On motion by Mr. LIVERMORE, of Cambridge, the Convention proceeded to the consideration of the unfinished business of yesterday, being the resolves in relation to the Bill of Rights.

The question being on ordering the resolves, as amended, to a second reading.

The second resolve having been amended, on motion of Mr. Dana, for Manchester, so as to read as follows:—

2. *Resolved*, That the Bill of Rights be amended by inserting, between the eleventh and twelfth articles, the following additional article, being identical with one now in another chapter of the Constitution, and which more appropriately belongs to the Bill of Rights, viz.:—

"VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months." And said writ shall be granted as of right in all cases where the legislature shall not especially confer a discretion therein upon the court; but the legislature may prescribe preliminary proceedings to the obtaining of said writ.

Imprisonment for Debt.

Mr. STRONG, of Easthampton. If it is in order, I wish to offer the following as an additional resolution:—

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IMPRISONMENT FOR DEBT.—STRONG.

[July 26th.]

Resolved, That the Bill of Rights be so amended, that no person in this Commonwealth shall be subjected to imprisonment for debt founded upon any contract, expressed or implied, unless in case of fraud.

Mr. STRONG, of Easthampton. Mr. President: The humanity of the age is against imprisonment for debt; but that it is the law of the Commonwealth, and is considered just, by many, admits of no doubt. If there was but one way to produce poverty, and that through a criminal channel, more, or even everything, might be said in favor of confinement; but almost endless are the ways by which men become poor. Does it not often arise from causes which no human sagacity can indicate, or care prevent? such as protracted sickness, loss of sight, limbs, failure of crops, death of stock, loss of property in the hands of agents, and often through the operations of swindlers and scoundrels; immense fortunes lost at sea, buried in a rolling ocean, which no human exertion could control; loss by sudden political changes, which put a stop to national as well as individual progress and prosperity. Yet in all these several misfortunes, the sufferer has incurred no guilt. Why, then, should a punishment from the law await him? Why should the vengeance of the law break in upon innocence? Whoever is willing to acknowledge that rational liberty is the choicest gift that Heaven has bestowed upon man, must also acknowledge that to be deprived of it, is the greatest evil. There is a spirit in man that induces him to break through difficulty, and live to triumph over all misfortune; and when the calamities I have mentioned have overtaken him, we behold him making head against them, with courage, and even cheerfulness; but the moment you insult his calamities, by adding contempt and imprisonment, it can never fail to break the force of a generous mind. He feels that these evils that have already fallen to his lot are enough—the voice of reason cries enough. Why, then, should the law interfere to render those calamities irreparable?

As a nation, we are unwilling to acknowledge the dominion of a foreign power over us, in the smallest degree. What, then, must be the feelings of an individual, when he finds himself a candidate for persecution and confinement, in the bosom of his own State, and by its own laws, without being guilty of any crime but that of being an unfortunate man? A short time after the close of the war of 1812, with England, there were more men confined in the jails of this Commonwealth for debt, than were made prisoners by the enemy during the entire war, from any one State in this Union. Thus, in the midst of peace, society was suffering an outrage worse than war. Again, if the debtor is poor, and can pay nothing, the creditor gets nothing, except it may be a malicious joy he may derive from the reflection that he is punishing a man as a criminal who is guilty of no crime. No, Sir; it seldom proves beneficial to the creditor, and has been the ruin of thousands of good and honorable men. It is no matter, Sir, whether he be confined one day or twenty; no matter whether his liberty is limited to a room ten feet square, or whether he have an acre of ground to walk upon; it is confinement, in both cases, and it is the principle I contend against. And, Sir, with this numerous class of unfortunate men, hunted by the officers

of the law, and thrust into jail for misfortune alone, the sinews of exertion relax, the objects of time lose their allurements, creation turns to a vault, wherein joy is entombed.

It is a pause—a calm on the ocean of life when the mind sickens and expires. It would be slander on the aborigines of this country to call it a savage custom; for, as I read their history, there never was such a custom among them. But whenever those sons of nature are unfortunate in hunting, or otherwise, they do not send out one of their runners to catch and confine them; they have no civilized hell-hounds to prowl in the kennel of justice. No, Sir; far different is the practice of the red man of the forest; each one throws in his mite for the unfortunate among them, to bring him up on a level with the rest, and to spare him the pain of feeling little among them; but, although not a savage practice, it may well be called a barbarous one, though nowhere to be found but where man pretends to love his neighbor as himself, and prays for the welfare of those who despitely use him. The unmerciful practice of confining men in jail for debt, had its origin in the dark and unlettered ages of the world, and the cupidity of mankind has retained the practice to the present hour; but if this monstrous practice has been perpetuated for ages, is that a reason why it should never end? That men should be compelled by law to pay their debts—as far as lies in their power—is beyond dispute; their property ought all to be surrendered to their creditors, and disposed of in an equitable manner, except those articles which are necessary to the support of life, and a small freehold estate for the protection and shelter of the family.

Sir, he that takes up goods with the intention of never making a just remuneration, degrades himself to the character of a thief; and to send such a man to prison, at the expense of the creditor, until restored to his liberty by being allowed to swear that he is poor, is a punishment too light; but he that has been overtaken by the misfortunes alluded to—which, with due deference, may fall to the lot of any member of this Convention—instead of persecution and imprisonment, deserves patronage and protection, and to confine such a man at all, is an outrage upon justice and civilization. The question is not, whether men should be compelled, by law, to pay their debts; but whether, under our laws, poverty shall be treated as a crime? for the law upon our statutes operates indiscriminately upon the fraudulent and unfortunate. Would it not, Sir, be more equitable to punish no man with the loss of his liberty for debt, than to couple the honest man and the knave together, and punish both alike? Sir, if only the idle and vicious were poor, and only the industrious and honorable were rich, the subject would appear in a far different light; but is wealth always acquired by honorable and legal means? Is it not often possessed in superabundance by the worst of men? Does not vast wealth often owe its origin to fraud or violence? May not a man be poor, and possess all the noble faculties of mind?

Successful actions are called wise ones, and, for the most part, they may be so; but to this rule there are many exceptions. Well matured plans often fail, while those constructed upon apparently less economy, succeed in human affairs. Can the human mind explore a future period?

Is it in man that walketh to direct his steps? Is the race to the swift, or the battle to the strong, or riches to the man of understanding? These questions, Sir, are answered from a law that teaches a different doctrine from the law of imprisonment upon our statutes. The farmer that sows, knows not that he shall reap; the enterprising commercial man of Boston, when he embarks the mass of his fortune on board of his ships, knows not that they will reach their destined port in safety; the sea rages, and in a moment his fortune is gone. Is he a man of fortitude and integrity, does he possess a cool and sensible courage? Even if all this can be said of him, it gives him no power over the elements, and to this providential event he is bound to submit in silence. He has no right, as a Christian, a philosopher, or a man, to repine; for all a man has is under the dominion of fortune, and it is but for man to suffer the lot of humanity. There is nothing in this case imagined that does not apply to all unforeseen events that await us on the journey of life, whether of minor consideration or not; and fortunate might this luckless victim of frowning fate consider himself, were his misfortunes to end with the loss of his property; but, Sir, they will not, for, under the law of imprisonment, a scene of persecution and captivity will open before him; at the beck of his creditors the prison doors will grate upon their hinges, and open their ponderous jaws to receive him into confinement; and what renders it intolerable is, that it is cast upon him without just grounds of legal complaint.

Again, various are the ways by which property is drawn from its rightful possessor by unjust means. The intriguing speculator often subtracts from the property of his credulous neighbor, by slow degrees. The unsuspecting man perceives his property wasting away, and though done before his eyes, knows not the cause, until ruin overwhelms him; and when poor and imprisoned, all must agree that the wrong man has gone to jail. But it may be observed that men are sometimes actuated by fear to do the things that are just; and when that fear, which the terrors of the jail excite, is removed, men would not make that exertion to pay their debts they otherwise would. Sir, neither the jail nor its terrors ever made a man rich, nor did they ever add one farthing to his ability to discharge his obligations; but when once he becomes poor and imprisoned, the imprisonment has a direct tendency to keep him poor,—it dampens his courage, and takes away all that dignity that belongs to self-respect. The law accepts of the body of the debtor—the oath is administered, and the execution is discharged until property can be found. A strange kind of payment, Sir; for the debtor pays that which is dearer than life, and the creditor gets nothing!

It is true that the body cannot be sold but once for the same debt, but why sell it at all if it bring nothing? If it be a crime to obtain credit or contract debt, the creditor is a partaker of the guilt—if there is any guilt about it—for in all transactions where two are equally concerned, that are attended with evil consequences, which ought to suffer? Why does a man grant my request when I am ignorantly demanding my ruin? If he grant it knowingly, and suffers by the transaction, it will be but the natural and just consequence that should follow an inconsiderate bounty.

Should the debtor, from obstinacy, prefer to go

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IMPRISONMENT FOR DEBT.—STRONG—WARD—FRENCH—KEYES.

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to jail and there spend his property rather than to pay his just debts, by the adoption of my amendment he could not get there, and the poor man who has nothing to pay, would not be obliged to suffer the outrage. To punish a man for being blown out of his path by a hurricane, goes to overthrow every principle of humanity and justice. Confinement is not rendered just by the debtor's being admitted to his oath, nor legal by a statute which contravenes the fundamental and moral maxims of our government. All a man has, in this world, will he give for his life, and often as much for his liberty. A creature must be more or less than human, who can endure confinement and not feel it. Highly as men prize wealth and glory, they fade to nothing, when compared with freedom.

As summer produces no sunshine to the clouded mind, so in vain shall man look for joy amid the prison's gloom. It has been well said that the law of imprisonment is harmless to the rich, but terrible to the poor. In the hands of unprincipled men, it has ever been used as a successful engine to oppress and torture the poor. The deep depravity and fiendish wickedness of the law, will not allow the poor man the miserable privilege of swearing he is poor, without he buys it; and if he cannot command the pittance, he must lie in jail without limit, at the behest of the creditor. Between one and two thousand of the citizens of this State are annually obliged to suffer the outrage of being thrust into cells with felons, there to be educated in habits of demoralization, as a preparatory step to crime and State Prison.

The amount actually paid to creditors by the exercise of the privilege of imprisonment, is wholly insignificant, as official statistics show that not more than four per cent. upon the sums for which the commitments were made, were realized to the creditors. Sir, four-fifths of the States have abolished imprisonment for debt. Ten States have set us the glorious example of constitutional prohibition.

Sir, I envy no man the glory or happiness he can derive from raising his voice, here or elsewhere, to vindicate or perpetuate this remnant of barbarism, which requires nothing but justice from us to blot it from the statute book forever, and redeem the old Commonwealth from standing in the position of isolated barbarism—the "Shylock of States."

Sir, I believe that there is a principle of justice embraced in this amendment, which, if adopted, will brighten the hope and prospects of the unfortunate and despairing, and wring a formidable weapon from the heartless extortioner.

Mr. STRONG moved that when the question be taken, it be taken by yeas and nays; which was agreed to, on a division—ayes, 57; noes, 119—more than one-fifth voting therefor.

Mr. WARD, of Newton moved that the words "upon execution" be inserted after the word "imprisonment," so that as amended, the resolution would read as follows:—

Resolved, That the Bill of Rights be so amended that no person in this Commonwealth shall be subject to imprisonment upon execution for debt, founded upon any contract, expressed or implied, unless in case of fraud.

Mr. WARD said: Until there is a trial for fraud it is not ascertained whether there is a fraud or not, and, therefore, I want to provide that he

may be committed upon a writ. I do not understand that the gentleman means to exclude him from being committed at all.

The question being then taken on the amendment offered by Mr. Ward, it was not agreed to.

Mr. FRENCH, of New Bedford. I am in favor of the amendment of my friend upon my right, to abolish imprisonment for debt; but I regret that he has called for the yeas and nays. I think it will be carried by a large majority, without taking the yeas and nays, and the calling of the roll will be an unnecessary consumption of time; and I therefore move a reconsideration of the vote by which the yeas and nays were ordered.

The question being taken on the motion to reconsider, it was agreed to.

The question then recurred on the motion of Mr. STRONG, that the yeas and nays be ordered on the amendment proposed by him; and upon a division there were—ayes, 47; noes, 165—so the yeas and nays were again ordered.

Mr. KEYES, for Abington. Mr. President: I hope, Sir, that this amendment will prevail. It will at least show a good disposition upon the part of the Convention if they adopt it, whether it shall practically avail much or not. I know that there is an impression existing among nearly all the inhabitants of this State, that there is no such thing as imprisonment for debt, unless some dishonesty has been proved; but still, upon looking over the annual return of the number of persons imprisoned, we find that a vast number have been imprisoned for debt. I was sorry that the speech of the gentleman from Easthampton, (Mr. Strong,) was not more distinctly heard by the members of this Convention; for I believe if they could have heard it, it would have produced a powerful effect. The gentleman read some statistics, and as I have the advantage of him in one respect, that of having a voice which can be better heard, perhaps it may be of some consequence that I should repeat the number of persons who have been committed for debt. I hold in my hands, through the kindness of that gentleman, a long and carefully prepared table, exhibiting the number of persons who have been committed to the Boston Jail for debt during the last seventeen years. I will not go into the details of each particular year, but the whole number is 9,404. The whole number who were confined for debt in all the prisons in the Commonwealth in the year 1852, was 1,362. But, Sir, without reading these dry statistics any farther than to give a general view, allow me to refer to one statement made by that gentleman, which ought to have a great influence, as it has a direct bearing upon the whole of this matter.

Out of something like five thousand whom he said were imprisoned for debt in Suffolk County in eight years, only about six per cent. of the demands were collected by that process. I have no doubt, Sir, that more than double that sum was expended in the prosecutions. Now I am not only in favor of the amendment the gentleman has proposed upon the ground of humanity, but because I believe it to be a good thing if it were to be considered simply as a matter of policy. I am also in favor of it on another ground. I hope the time will come when all laws for the collection of debts will be abolished. This idea is, I confess, somewhat startling, but it is beginning to be regarded with more favor than it was a few years

ago, when first announced. I believe that it would be a matter of economy and wisdom, not only in this State, but throughout the world, if the people should be compelled to trust to the honor of men, instead of the law, for the collection and security of debts. The first good effect that would be produced by the adoption of such a measure, would be to restrain the enormous and ruinous credits which are now a curse to the people, greater than any one thing else, except it be the use of intoxicating drinks. The disposition to run in debt, and the consumption of the purse which grows out of it, is the great evil of the present state of society. Any provisions that will tend to restrain it must be salutary; and, therefore, I believe that this amendment will do much good and no damage to anybody. It may sometimes restrain a man in the exercise of his passions, when, perhaps, they are reasonably excited; but all such will thank you for it, at any time after his passions become cool.

If a man knows that he has no power to put any person in prison because he refuses to pay a debt, it will be a caution for him not to trust men whom he does not know to be trustworthy. The effect of this will be to secure him against loss. Under the present law, if he thinks a man can pay who refuses to pay, he may sometimes feel justified in pursuing him with vengeance, while at the same time, if he should be restrained, he would, twenty-four hours afterwards, think better of it, and would be thankful for the law which restrained him. In nine cases out of ten, the creditor is the greatest sufferer, pecuniarily, of the two, under the operations of the present system.

Sir, we have the credit, all over the country, of having abolished imprisonment for debt, and, at the same time, we imprison nearly fifteen hundred persons annually, in our jails for debt. It seems to me to be a kind of hypocrisy, for us to have the credit of doing what we don't do. I do not know much of the detail of the laws now in force, in relation to this subject; I never had much experience in being sued for debt, and I never much helped anybody else to experience on the subject. I would not do it. I would much rather take fifty cents on a dollar, of a debt, if I could get it, than to sue any man for debt; and I think it would be for the pecuniary interest of every-body in the Commonwealth, if that principle could be universally adopted. I believe that the effect of the adoption of the amendment would be to benefit both debtor and creditor, and the only trouble or mischief that would grow out of it would be, that it might prevent what would, in many cases, be only a justifiable exhibition of vengeance on the part of the creditor. This might go against his grain at the time, but he would be glad of it afterwards, for it would save him a good deal of expense, trouble, and difficulty. I think, among all the acts of this Convention, we have not done a great many things that are to be classed among real humanitarian reforms; and it seems to me that it is the duty of Conventions that are held only once in twenty or thirty years, to do something to show that the people have advanced in civilization, and that they are doing something to sweep away that barbarism which is part of the nature of mankind in the early stages of society—that we are doing something by degrees, to raise ourselves to the standard of a higher and purer civilization.

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IMPRISONMENT FOR DEBT. — HILLARD — STRONG — HALLETT — HALE — LORD — BUTLER.

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The adoption of this amendment will give an indication that this Convention is animated by such a spirit; and it will be of some influence in conciliating the good wishes of the people in regard to the result of our labors here.

Mr. HILLARD. I know that the Convention are not in the mood for long discussions, and I shall only speak a moment or two; but it seems to be no more than fair that some one member of the Committee on the Bill of Rights, should defend their own work. This proposition was under discussion in that Committee, and was considered by them, and it was deemed unadvisable to propose it for the action of the Convention. The law stands now, that no person can be arrested on *mesne process*, or any action founded upon contract, unless the person who has the claim, or some one upon his behalf, makes oath that the debtor is about to leave the Commonwealth. A person can be arrested on an execution; but, besides that, all persons arrested may discharge themselves by giving bail; it is made the duty of the officer when he arrests a debtor, whether on *mesne process* or execution, to communicate to him the provisions of law by which he may discharge himself, on taking what is called the poor debtor's oath, within twenty-four hours.

If he takes the poor debtor's oath, he is only confined for twenty-four hours, and that is as short a time as it is possible to give notice to the creditor, and make arrangements with the magistrates. The only possible hardship, therefore, is, that sometimes a man may lie in prison twenty-four hours, and that such hardship may sometimes result from vindictive motives on the part of the creditor; but, after all, as one gentleman said this morning, it is a balancing of conveniences. I have been about twenty years in the practice of the law; and for many years, as master in chancery, I administered the insolvent law. I have, therefore, had some opportunity of comparing together the two great classes into which society is divided—the debtor and the creditor. The whole current of sympathy has been in favor of the debtor, and nobody has said anything in favor of the creditor. In my opinion, the creditors, as a class, deserve the sympathy of the community quite as much as the debtors. There is a large class of men, and not unfrequently of women, too, struggling for subsistence, keeping boarding-houses, or small shops, who are obliged to give credit. It is of no use to say that they should not; they must do so. It is our usage and custom; and there is a great number of debtors—reckless persons who have property, or who, by a little economy or sacrifice, could pay their debts; and, if called upon, either to pay their debts or to take the poor debtor's oath, they are put into the position of either making the payment or committing perjury. I do think, therefore, that if you take away this power of coercing a debtor in behalf of the claim of a poor but honest creditor, you introduce a very great evil—one which, I think, will be found to operate to the injury of many well-deserving members of the community. Regarding the balance of conveniences and inconveniences, I think you had better let the matter stand as it is.

Mr. STRONG. I wish to modify the amendment by substituting the word "inhabitant" for the word "person." I think that will better answer the object I have in view,

Mr. HALLETT. I merely wish to say that with that amendment I think it is perfectly safe to ingraft this provision upon the Constitution. It is an amendment which appears to me to be in accordance with the spirit of the times, and it shall have my vote.

Mr. HALE, of Bridgewater. It seems to me that we are likely to act with more haste in this matter than is judicious. Let me suppose a case. Suppose that I owe any man a thousand dollars, and not being either able or willing to pay, and I pack up what I have and direct my steps to one of our wharfs, and take passage for California; is the creditor in such case not to have the right to arrest me?

Mr. STRONG. Upon reflection I think I will withdraw the modification I suggested a few moments ago.

Mr. LORD. I move to amend the amendment by striking out the words "on any contract, express or implied," and insert the words "upon any civil process."

Mr. STRONG. In the amendment I have proposed, I beg to say that the language I have used is that which is found in the Constitutions of ten of the States of this Union; and I supposed that under such a state of facts, it would not be inappropriate to insert it in the Constitution of Massachusetts.

Mr. LORD. My reason for offering this amendment, is, in order that if we adopt this principle at all, we should adopt it entirely; so that the civil proceedings of one party against another, in the way of contract, should not constitute a foundation on which either party should put the other into jail.

Now, there are very few contracts that may be entered into in the Commonwealth of Massachusetts, which may not be converted, by a certain process, into a tort, and being converted into a tort, the imprisonment for debt will remain. Let me put an illustration. There is nothing more generally understood in this Commonwealth, than that females are not liable to imprisonment for debt; yet the very same provision which says this, also says that they shall not be imprisoned for debt, except when they are charged as trustees on a process of foreign attachment. If you want, therefore, to put a woman in jail, all that you have to do is, to sue somebody whom she owes, trustee her for a debt which she cannot pay, and then the execution runs against her body. Let me illustrate a little farther. Say that a female is indebted to me and cannot pay. I cannot put her in jail for that debt; but I am indebted to the gentleman for Marshfield. He sues me, and the woman who owes me is trusted by him for the amount of her debt to me. But, she cannot pay that debt to him, any more than she could to me. She can no more pay it as trustee for the benefit of another, than she could to the original creditor; and under such circumstances, by the laws of Massachusetts, to-day, she is liable to imprisonment; and I have known people try to use that process for purposes of imprisonment. Indeed, I can safely say, that I never knew any one who was aware of the process, who was not willing to use it for that purpose.

Now, perhaps nine-tenths of all the cases of tort between parties, are substantially such cases as arise on the obligations of contracts; and when one party recovers a judgment against

another for a tort, unless he shall have done something which shall render him amenable to the criminal law of the Commonwealth, I see no more reason why a debt created in that mode should give authority for one man to imprison another, than if it was created upon contract. And, in reality, there is not now any substantial difference in the law between tort and contract; and some of the cases of contract are so little distinguishable from cases of tort, that the new practice in court provides, that if a plaintiff cannot tell whether it is a tort or a contract that he is going to sue upon, he may declare twice, once on tort, and once on contract, and put at the bottom of his declaration that he does not know which it is, but may sue for the same thing in both ways. Now, if we declare the principle at all, it seems to me to be proper that we should declare it to the fullest extent; and when one party has obtained a judgment against another, to be satisfied by money, that he should not have the power to imprison him. That is the only limit we can put to it. It seems to me that if we do not go to this extent, we only half do our work, if we adopt a principle to apply in cases of contract, and not of tort.

Mr. BUTLER, of Lowell. Perhaps I do not understand this matter, but if I do, I should be sorry to suppose that there would be any danger of its passing through this Convention. I am content, for one, that where men make contracts, and where a thing is a matter of bargain between two men, they should understand that if they make such a contract, they shall not enforce it by arresting and imprisoning the person of either the one or the other. That is one thing to be considered; because with this provision before them in the Constitution, they can make a contract or not, as they please. But when we come to the amendment of the gentleman from Salem, that imprisonment shall not lie for debt in any civil action, I am not willing to go for it.

The gentleman has stated a rather fanciful case—that of trusting a woman for a debt. I have been in the practice of law for at least ten or twelve years, and have never known a woman imprisoned under such circumstances, and should like to see or hear from the gentleman who ever did. If there be any one here, I will sit down for him to speak and tell the case. [Mr. B. here paused for some seconds; but there was no response.] Sir, we represent this Commonwealth here pretty well; and if a woman had been put into jail under such circumstances, the fact would not have been hidden under a bushel. The case put by the gentleman from Salem, therefore, I cannot but regard as merely fanciful.

But that is not all the trouble. That gentleman proposes that whatever a man may do under which he can escape punishment in the State Prison, the party whom he may swindle shall be entirely beyond all legal remedy.

Mr. LORD. Not quite, Sir. I say that if you put anything in the Constitution in reference to this subject, it should be a provision to this effect—that a man shall not be put in jail unless he has violated the criminal law of the Commonwealth.

Mr. BUTLER. So I understand the gentleman at least. Let us take two or three cases. Suppose that a man comes and steals my horse, and he is put into prison for the felony. He goes to prison and has, it may be, any quantity of

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money in his pocket, and I want to get redress. He can take his bank bills and shake them in my face and I have no redress.

Again, take another case. Suppose that a man seduces a father's daughter, and all the remedy he can get is against his person; for when sued he may put his property into the hands of a third party, or secretes it, or turns it into money; and thus he may stand in a court-house and shake his money in that father's face, and say, "True, you have got your judgment, but what are you going to do?"

Mr. STRONG. If the gentleman from Lowell will allow me to say a word here, I would remind him that the law always presumes a man to be innocent until he is proved guilty, and a man should not be charged with having fraudulently put away his property until it is satisfactorily proved. When that is proved, he would then be subject to the operation of the statute law, and might be sent to jail on the ground of fraud.

Mr. BUTLER. Let us see about that. It is not quite so certain.

Mr. STRONG. Not for debt, but for fraud.

Mr. BUTLER. But let me go on. Say that I do not owe anybody a dollar to-day, I can then go on and dispose of my property as I please. Then I am sued for seduction; and I stand up in court with the bills in my hand; and if the amendment proposed by the gentleman from Salem passes, I should like to know what you are going to do about it? Put me in jail? That you cannot do. Get the money? No, you cannot do that either, for it is in my pocket. What fraud is there about that? It is simply a disposal of my property when I had a perfect right to do so. Or say that a man comes and takes the coat off my back, and says it is his coat. I sue him for it, and get an execution against him. But he replies, "I have the coat upon my back, and what are you going to do about it?"

But the difficulty I find, is this: that this is a matter of simple legislation. I am against imprisonment for debt as a matter for the enforcement of a contract; every man can understand that; but when a man does me a wrong—when he chooses to do me a wrong, knowing that so long as he has no property he is safe in doing it, if there is no way of getting hold of his person, that is another thing. A man knocks me down, beats me, tramples upon me, and when he gets through, I may punish him through the criminal law or not, as I please. But if there was no way of getting hold of his person in that way, why, what remedy have I in prosecuting? He would say to me, pay your lawyer and go home. I do not know but it would be all right; but I should not like it.

The gentleman's proposition is too radical for me. When he goes much farther than I do, I do not know how to follow him. When I get lost, that is one thing; but when some one of the stand-bys gets lost, the hold-backs are all gone. There is the difference between the gentleman and myself. My friend from Salem, (Mr. Lord,) is so conservative, usually, that when he goes for a radical doctrine, I begin to think there is something in it. He proposes to take away imprisonment in cases of all torts. If you do, that amendment would leave men without remedies. But if the Convention are ready for it, I am content. I wanted to say sufficient to put myself right, because I shall vote against it; that is, to impris-

onment for debt on matters of contract, I am opposed. As to imprisonment in matters of tort, I am in favor of it; because it is the only mode which, in many cases, you can avail yourself of to collect a debt. Now I agree, that in nine cases out of ten, in matters of contract or debt, by having the power of putting a man into jail you get no pay. I was going to say that in ninety-nine cases out of one hundred; but I will only say in six cases out of ten, for fear of being put into jail for a matter of tort, a man will pay.

Mr. ALLEN, of Worcester. I think it likely that the proposition of the gentleman from Southampton may need amendment; and as there will be an opportunity to consider it before it passes another stage in its progress, gentlemen will have an opportunity in the mean time to give it consideration, and perhaps be able to suggest such amendments as will prevent it from doing any mischief. For my own part, I will take the proposition for the present as it has been presented by the gentleman from Easthampton. As the opportunity has been afforded to express opinions upon the general principle, whether imprisonment should be allowed, I am willing and ready to vote for the great principle that poverty shall not hereafter be classed with crime. I therefore prefer the proposition now without the amendment, and take opportunity, before the case comes up again, to consider it, and propose any amendments which may be needed; so that the principle, benevolent in its character, shall not be productive of mischief.

Mr. HALLETT, for Wilbraham. Let me say one thing which gentlemen understand as well as I do. The distinction between actions of tort and actions of contract, is this: that in action of contract there is an agreement, or understanding, of some sort, between the two parts. They trade, they confer together, and one of them gets the other's property by his consent. In actions of tort, one man takes another man's property without his consent, or injures his property, or destroys his reputation, all without his consent. That is the distinction. Wherever two men get together in any relation in which they trust each other, and where the party owning the property has the right to refuse it, there should be no right of imprisonment for debt. But where a man takes another's property without his consent, or cuts down his trees, destroys his property, or commits a malicious mischief, that is another case.

Mr. LORD, of Salem. I desire again to be exactly right about this matter. The position which I propose to stand upon, is this: that punishment for offences committed, is the prerogative of the government; that it is not policy to put the power of punishment of one man in the hands of his neighbor. That is the general principle upon which I stand, and I would no more give that power to one man—the power to punish another, because he was mistaken in a controversy of tort, about a piece of property—than I would give it to him to use, because the other did not pay a debt.

Now, Sir, there has not been a single case mentioned, not one, but what, if this was made a constitutional provision, would be provided against as a matter of fraud. Not one. When the gentleman says that a man will hold bank bills in his hands, and shake them in his face, and say you shan't have them, why, if there is an obligation to pay a debt, and the man has the bills to

pay it, he cannot do it. Because that act is a fraud, one which the legislature will define to be a fraud, and every case which has been put by way of illustration, if it is not a fraud now, will be made a fraud. The gentleman says that when a man is guilty of the commission of malicious mischief, I could have him punished, and the law punishes him—would have him punished twice. The Commonwealth already punishes him by complaint and trial for malicious mischief, and in that very case which he has put, the party is liable to imprisonment in the State Prison. Now, will you say, that besides the public remedy by confinement in State Prison, the party shall have a remedy, and keep the man in State Prison until he rots? Will you let the public punish, and let the individual punish also? Because, if you allow the party to be sworn out by proving that he has no property, then you admit it to be a mere simple civil obligation.

Now, Sir, I am charged with breaking loose, and going farther than every-body else. Well, Sir, when I come to a principle which I think is right, I am very apt to follow that principle where it leads, without stopping to consider whether it would be safer for my party to go so far, and then chop around and say it is not safe to go any farther. Wherever I find a principle which I believe to be a just and true principle, I adopt it, wherever it is practicable to do so. Well, Sir, I really think there is humanity in this provision, and I only wonder that the reformers have not gone farther and proposed anti-capital punishment. I say, Sir, I am very happy, indeed, to express my gratification at the prospect of the majority doing a humane thing; but to show that I have no disposition to interfere with it, I withdraw the amendment which I proposed; and I withdraw it for the reason suggested by the gentleman from Worcester, (Mr. Allen,) that in the next stage there would be an attempt to mature it.

Mr. HALLETT. I move to strike out the word "persons," and substitute in lieu thereof the word "inhabitants."

Mr. HILLARD, of Boston. I would ask whether we have the right to make a provision which shall be applicable to inhabitants, and not to transient persons who may be here, and whether that does not come in conflict with that clause of the Constitution of the United States which gives to the citizens of all the States the same rights, &c., in every State?

Mr. HALLETT. As it reads now, it is that no "person" of this Commonwealth, &c. Now, I do not know what that means.

Mr. STRONG, of Easthampton. I will modify my amendment, and substitute the word "in" for the word "of," and that will remove the difficulty.

Mr. HOPKINSON, of Boston. I think, Mr. President, that the Convention will act inconsiderately, if they pass this without farther discussion. I understand that it is the intention of some gentlemen to consider this matter more maturely in the next stage; yet it seems to me not amiss to throw out some considerations, affecting the main question, at this stage. I think the gentleman from Abington, (Mr. Keyes,) put the question upon the right ground. If the provision is defensible in any way, it is defensible upon the ground that it is not expedient to take any steps to enforce a debt against a person in

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any form whatever. I will go farther—and I think his proposition went farther—to take any steps to enforce a debt against property, because to say that you will not enforce it against the property except when it is visible and open, is about the same thing. The proposition, therefore, is to say, that in all cases, founded upon contract, there shall be no provision by which a debt can be enforced. The distinction between cases of contract and cases of tort, has been pointed out in its broader shades; but the equity of the case is about the same, in a large number of cases. They shadow into each other until you can hardly tell which is contract, and which is tort, and it frequently depends upon the lawyer drawing the pleadings, whether it sounds in tort, or in contract. For instance, if a man goes to a poor woman and boards with her, and gets his living from her, and then refuses to pay the bill, he does a great wrong, but it is not a fraud; and, let me say, in reference to a remark made by another gentleman, the legislature cannot make it a fraud; because, when we are framing a Constitution, we use language as it is, and the legislature cannot, by giving a new definition to the words we use, say that the meaning is different from what we intended.

Another man, by accident, takes your umbrella, thinking it is his own, but, by mistake, gets your property, and that becomes the foundation of an action of trespass or trover, and the remedy can be enforced by imprisonment of the person. Yet I submit, there is no great difference in favor of the last case over the former. The former is, in fact, much more deserving of imprisonment. The distinction between the case founded on contract, and the case founded on a claim of property, where the defendant honestly supposed it to be his own, is one without essential difference in morals or equity, and yet you give a remedy in the one case against the person, and in the other only against the property.

But I pass by all these distinctions, and ask whether it is expedient and right to say that you will take no means whatever to force a man to deliver up his property to pay his debts, unless you can seize upon the property specifically? And I think all that the gentleman from Lowell, (Mr. Butler,) has said in relation to claims founded on tort, may be said here. A man who owes a debt, with his pockets full of money, and every means in the world to pay it with, can shake that money in your face, and say, I will not pay you. A debtor is going out of the State, having with him ten thousand dollars, visible to your eyes, and yet you cannot take it, you cannot arrest him. You will say that perhaps the law will provide that, in case a debtor is going to depart from the State, you shall have some means to arrest him. But suppose it were so, unless the man was fool enough to tell that he means to avoid the payment of the debt by running out of the State, you cannot, ordinarily, get hold of him. You cannot swear that you have reason to believe that he is going away, for you know nothing about it, and you cannot enforce the payment of the debt. The answer to this is, that the creditor, by consenting to the credit, does the wrong to himself; because he need not to have trusted him. There was no necessity of creating a debt, and he need not have subjected himself to a loss. He might have required payment in advance. That is easily said, but every man knows that such a provision

will not change the course of business. Every man knows, for instance, that when a person goes to board with a poor woman—who gets her living by feeding others, and makes but little at that, and perhaps nothing—he does not deposit a pledge in advance, and will not do it. So in most cases where a day laborer engages to work. It is a mockery to say such persons, or small traders, need not give credit. The every-day course of business compels them to give it.

My friend from Lowell knows that there are hundreds and thousands of persons among his constituents, who live in that way, and who would have no means to collect a debt in the world, without some provision by which a person could be detained until he disclosed his means of payment. It is not, therefore, a premium upon honesty. It is no boon to honest poverty that you propose. It is not a provision which can benefit honest men, or poor men; but it is a premium upon rascality. It is a boon to that class of persons who mean to get their living from the sweat of other brows, without laboring themselves. That is the amount of it.

But, it is said, that unless this provision is made, you declare that poverty is a crime. I deny it. The mere fact that a person is detained and held until he discloses his means of payment, is not to charge him with any crime. He need not be restrained in any case as the law now stands, according to my understanding of it, unless it is in the case where he is about to run away without paying his debts, or unless the creditor, by his oath, declares his belief that he is. All the debtor needs, is to go into court, which he can do at any time, without costing him anything, or with costing him next to nothing, and take the poor debtor's oath. When he has done that, he cannot be restrained for any such cause. No process can then issue against his body, before judgment, that is on *mesne process*, if he can only be restrained upon the oath of the creditor that he is about to escape. So that the only case where a man can be imprisoned for debt, is simply until he makes his oath that he has no property, or that he has given it all up; and he can make that oath immediately. It is simply a cheap and effectual bill of discovery. Without such a provision, any dishonest debtor can cover up or conceal his means of payment, and defraud honest creditors.

I submit, therefore, that it is not worth while to take away this only remedy which small dealers have of collecting their small bills from persons who are disposed to escape without paying them. I do not believe that such a provision would receive the sanction of this community.

But, Sir, I do not expect by any argument of mine, to change the action of this Convention. I only desire to protest against the adoption of a measure like this, for I believe it is one of which we shall repent, and one against which a majority of the people will protest.

I am for having every person escape with his liberty who will disclose his property and deliver it up to his creditors. I can see no stain put upon his character by detaining him until he has an opportunity of doing so, or of taking the poor debtor's oath. I repeat, that such a provision will act as no restraint upon those who are disposed to be honest. It is only a restraint upon those whose intention it is to commit a shameless fraud, by concealing their property, and refusing to pay their debts. It makes no charge upon anybody else.

It is entirely a misstatement of the case to say that it charges poverty as a crime. It makes no imputation upon poverty.

I see no difference in principle, between this provision as it now stands, and that proposed by the gentleman from Salem, (Mr. Lord). There are cases for seduction, for slander, or for outrageous frauds against property, which are in the nature of crimes, and widely different from debts of contract; for such cases, imprisonment is an appropriate punishment. But the majority of actions of tort are founded on claims of property, and should be collected in the same manner as claims for debt. They shadow into each other until there is really no distinction between them. Take, for instance, the case of a man who hires a horse to go twenty miles. That would be a contract. But, suppose he had occasion, when he arrived there, to go a mile or two farther; he knows that the owner of the horse would not have made the slightest objection, if he had asked to hire the horse to go those two miles, and he will not hesitate to drive or ride the horse there; but when you come to the matter of law, he is liable for the horse, for the distance for which he hired him only, as a matter of contract; but if he drives him two miles farther, he is liable to an action of trover or trespass, yet there is no moral distinction between the two cases. It is a mere technical distinction. In many, if not most cases, it is a distinction without a difference; while in other cases, the distinction is wide and marked. Leave the legislature, then, to make the appropriate distinction. It seems to me not worth while to perpetuate forever, in your Constitution, a distinction so unfounded and absurd in its general application.

Mr. BREED, of Lynn. I move the previous question.

The previous question was seconded, and the main question ordered to be put.

The question was first upon the amendment, on which the yeas and nays were ordered, and being taken, the result was—yeas, 120; nays, 45—as follows:—

YEAS.

Allen, Charles	Eaton, Lilley
Allis, Josiah	Edwards, Elisha
Alvord, D. W.	Ely, Joseph M.
Atwood, David C.	Fay, Sullivan
Baker, Hillel	Fiske, Lyman
Beal, John	Fiske, Emery
Blagden, George W.	Freeman, James M.
Boutwell, Sewell	French, Charles A.
Bradford, William J. A.	French, Rodney
Breed, Hiram N.	Frothingham, Rich'd, Jr.
Briggs, George N.	Gilbert, Wanton C.
Bronson, Asa	Giles, Charles G.
Brownell, Joseph	Giles, Joel
Buck, Asahel	Gooding, Leonard
Bullock, Rufus	Goulding, Dalton
Burlingame, Anson	Green, Jabez
Butler, Benjamin F.	Hadley, Samuel P.
Cady, Henry	Hallett, B. F.
Carter, Timothy W.	Harmon, Phineas
Chandler, Amariah	Hawkes, Stephen E.
Chapin, Daniel E.	Hayden, Isaac
Churchill, J. McKean	Hazewell, Charles C.
Cogswell, Nathaniel	Hersey, Henry
Copeland, Benjamin F.	Hewes, William H.
Crane, George B.	Hindsdale, William
Crittenden, Simeon	Hobbs, Edwin
Cross, Joseph W.	Howard, Martin
Dana, Richard H., Jr.	Hunt, Henry K.
Dean, Silas	Hyatt, Charles E.
Denton, Augustus	Huntington, George H.
Earle, John M.	Jacobs, John

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Kellogg, Giles C.
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Jefferson
Knight, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Ladd, Gardner P.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Loomis, E. Justin
Merritt, Simeon
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Morton, William S.
Newman, Charles
Nute, Andrew T.
Ober, Joseph E.
Oliver, Henry K.
Packer, E. Wing
Partridge, John
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Jesse
Pelps, Charles
Pierce, Henry

NAYS.

Abbott, Alfred A.
Adams, Benjamin P.
Allen, Parsons
Bartlett, Russel
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Booth, William S.
Boutwell, Geo. S.
Brown, Artemas
Coolidge, Henry F.
Davis, Solomon
Foster, Abram
Fowle, Samuel
Fowler, Samuel P.
Gooch, Daniel W.
Goulding, Jason
Hillard, George S.
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Jackson, Samuel
Kendall, Isaac

ABSENT.

Abbott, Josiah G.
Adams, Shubael P.
Aldrich, P. Emory
Allen, James B.
Allen, Joel C.
Alley, John B.
Andrews, Robert
Appleton, William
Aspinwall, William
Austin, George
Ayres, Samuel
Ballard, Alvah
Ball, George S.
Bancroft, Alpheus
Banks, Nathaniel P., Jr.
Barrows, Joseph
Bartlett, Sidney
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beach, Erasmus D.
Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Jacob
Bishop, Henry W.
Bliss, Gad O.
Bliss, William C.
Bradbury, Ebenezer

Pomroy, Jeremiah
Pool, James M.
Richards, Luther
Rogers, John
Schouler, William
Sheldon, Luther
Stacy, Eben H.
Stevens, Joseph L., Jr.
Stiles, Gideon
Strong, Alfred L.
Sumner, Charles
Sumner, Increase
Taber, Isaac C.
Taft, Arnold
Thomas, John W.
Tilton, Abraham
Turner, David
Tyler, William
Wales, Bradford L.
Wallace, Frederick T.
Walker, Samuel
Ward, Andrew H.
Wheeler, William F.
White, Benjamin
White, George
Whitney, James S.
Wilbur, Daniel
Wilson, Henry
Wilson, Willard

Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, John
Davis, Robert T.
Dawes, Henry L.
Day, Gilman
Dehon, William
Deming, Elijah S.
Denison, Hiram S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Easland, Peter
Easton, James, 2d
Eaton, Calvin D.
Edwards, Samuel
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fellows, James K.
Fitch, Ezekiel W.
Foster, Aaron
French, Charles H.
French, Samuel
Gale, Luther
Gardner, Henry J.
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Gould, Robert
Graves, John W.
Gray, John C.
Greene, William B.
Greenleaf, Simon
Griswold, Josiah W.
Griswold, Whiting-
Hale, Artemas
Hale, Nathan
Hall, Charles B.
Hammond, A. B.
Hapgood, Lyman W.
Hapgood, Seth
Haskell, George
Haskins, William
Hathaway, Elnathan P.
Hayward, George
Heard, Charles
Heath, Ezra 2d.
Henry, Samuel
Hewes, James
Heywood, Levi
Hobart, Aaron
Hobart, Henry
Holder, Nathaniel
Hood, George
Hooper, Foster
Howland, Abraham H.
Hunt, William
Huntington, Asahel
Huntington, Charles P.
Hurlbut, Samuel A.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
James, William
Jenkins, John
Jenks, Samuel H.
Johnson, John
Kellogg, Martin R.
Kinsman, Henry W.
Knowlton, Charles L.
Ladd, John S.
Langdon, Wilber C.

Lincoln, Frederic W., Jr.
Little, Otis
Littlefield, Tristram
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Marvin, Theophilus R.
Mason, Charles
Meador, Reuben
Mixer, Samuel
Monroe, James L.
Moore, James M.
Morss, Joseph B.
Nash, Hiram
Nayson, Jonathan
Nichols, William
Norton, Alfred
Noyes, Daniel
Orcutt, Nathan
Orne, Benjamin S.
Osgood, Charles
Paige, James W.
Paine, Benjamin
Paine, Henry
Parker, Adolphus G.
Parker, Joel
Parsons, Samuel C.
Parsons, Thomas A.
Paysoff, Thomas E.
Peabody, George
Perkins, Daniel A.
Perkins, Jonathan C.
Phinney, Silvanus B.
Plunkett, William C.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Putnam, John A.
Rawson, Silas
Reed, Sampson
Read, James
Rice, David
Richardson, Nathan
Ring, Elkanah, Jr.
Rockwell, Julius
Rockwood, Joseph M.
Royce, James C.
Sampson, George R.
Sanderson, Amasa
Sanderson, Chester
Sargent, John
Sherman, Charles
Sherril, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Sleeper, John S.
Smith, Matthew
Souther, John
Sprague, Melzar
Spooner, Samuel W.
Stetson, Caleb
Stevens, Charles G.
Stevens, Granville
Stevens, William
Stevenson, J. Thomas
Storror, Charles S.
Stutson, William
Swain, Alanson
Tabbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thompson, Charles
Tilston, Edmund P.
Tower, Ephraim
Train, Charles R.
Turner, David P.
Tyler, John S.
Underwood, Orison
Upham, Charles W.
Upton, George B.

Viles, Joel
Vinton, George A.
Walcott, Samuel B.
Walker, Amasa
Warner, Marshal
Warner, Samuel, Jr.
Waters, Asa H.
Weeks, Cyrus
Weston, Gershom B.
Wetmore, Thomas
Whitney, Daniel S.

Wilbur, Joseph
Wilder, Joel
Wilkins, John H.
Wilkinson, Ezra
Williams, Henry
Williams, J. B.
Winn, Jonathan B.
Wood, Charles C.
Wood, Otis
Wood, William H.
Woods, Josiah B.

Absent and not voting, 254.

So the amendment was adopted.

The question then recurred upon ordering the resolves to a second reading.

Mr. WHEELER, of Lincoln, moved that the Convention adjourn.

Mr. MORTON, of Taunton, remarked that the Convention had this morning imposed upon the Committee on the Judiciary a very important duty, which it would be impossible for them to perform in time unless they were allowed to sit during the session of the Convention. He therefore asked that the motion to adjourn be withdrawn, until he could make a motion that the Committee on the Judiciary have leave to sit during the session of the Convention.

Mr. WHEELER withdrew the motion. The Orders of the Day were, on motion, laid upon the table.

On motion of Mr. MORTON, of Taunton, it was then

Ordered, That the Committee on the Judiciary have leave to sit during the session of the Convention.

On motion of Mr. BUTLER, of Lowell, the Orders of the Day were again taken up, the question being upon ordering to a second reading the resolves in relation to the Bill of Rights.

Mr. SCHOULER, of Boston, gave notice that when the resolves come up again upon their final passage, he should move to amend them.

The resolves were then ordered to a second reading, when

On motion of Mr. WHEELER, of Lincoln, the Convention adjourned until this afternoon at three o'clock.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

On motion of Mr. MORTON, of Andover, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Schouler, of Boston, in the chair, and resumed the consideration of the resolutions reported by the Committee on the

Bill of Rights.

The Committee first proceeded to consider the following Minority Report:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 18, 1853.

The undersigned, a Minority of the Committee on so much of the Constitution as is contained in the Preamble and Bill of Rights, report that the second Article of the Bill of Rights ought to be so altered as to change the words—"for his religious profession or sentiments" to the words "for his profession or sentiments concerning religion."

So that it will read, if so amended—"And no

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subject shall be hurt, molested or restrained, in his person, liberty or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his profession or sentiments concerning religion."

B. F. HALLETT.
ANSON BURLINGAME.
CHARLES SUMNER.
HENRY WILLIAMS.
GEO. S. HILLARD.

Mr. CHANDLER, of Greenfield. I move to amend by striking out the word "subject" in the first line of the article, and inserting the word "person," so that it would read, "and no person shall be hurt," &c.

I also move to add at the end of the article the following proviso:—

Provided he does not interfere with the rights or privileges of other worshippers.

I fully approve of the alterations proposed in the Report, but it seems to me that proviso is necessary, because we know that there have been, and are, fanatics who will interfere with the privileges of other worshippers.

Mr. ALLEN, of Worcester. I should like to have some gentleman who is in favor of the alterations proposed in this Report, state to the Convention what evils we labor under at the present time, and what occasion there is for making any change? If it is true that there is entire religious freedom in the Commonwealth at this time, then I think no better language can be employed than is contained in the Constitution as it now stands. But perhaps reasons can be given why this change should be made. At any rate, before adopting this amendment, I should be glad to hear the reasons given for proposing it.

Mr. LORD, of Salem. I desire to know of some member of the minority of the Committee which reported this amendment, whether, in changing the language of the present Constitution, which is, that no person shall be hurt, molested, &c., for "his religious profession and sentiments," to the words "for his profession or sentiments concerning religion," they mean to say that men may avow in just such terms as they choose, as blasphemously as they please, sentiments in relation to religion, by this provision which they recommend, or whether it is to give farther security to persons in their religious professions?

Mr. SUMNER, for Marshfield. Does the gentleman appeal to me?

Mr. LORD. I do.

Mr. SUMNER. I regret that the member for Wilbraham, (Mr. Hallett,) is not in his seat, for this Report, though signed by others, was brought in by him. Still, I am very willing to respond to the gentleman, so far as I comprehend the import of his inquiry.

The existing Bill of Rights declares that no subject shall be molested "for his religious profession or sentiments." It is now proposed to say "for his profession or sentiments concerning religion." Now, it seems to me, that these two propositions, literally and properly interpreted, are substantially alike. I do not think that under the original words any person can be justly molested for any profession or sentiments concerning religion; always provided that he keeps himself within the accompanying limitation of

the Constitution, that is: "provided, he doth not disturb the public peace or obstruct others in their religious worship."

Mr. CHANDLER, of Greenfield. I desire to ask the gentleman for Marshfield if the proviso he has just read is in the Constitution?

Mr. SUMNER. Certainly it is.

Mr. CHANDLER. Then I will withdraw the proviso I offered.

Mr. SUMNER. But the gentleman from Salem asks, why introduce the proposed amendment? For this simple reason. A question has arisen as to the meaning of the language now employed, and it well becomes the Convention, in revising its Bill of Rights, to place a right of such importance beyond doubt. Surely, while the religious worship of others is unobstructed, and the public peace is undisturbed, every man should be at liberty to speak his mind freely on matters of religion, as on all other matters; nor can I accept any restraint of this liberty, beyond the requirements of the public peace and the religious worship of others. Religious toleration is one of the boasts of our country, as it is one of the aspirations of all generous lovers of liberty everywhere; but if any person may be molested for his profession or sentiments concerning religion, expressed within the existing limitations of the Constitution; permit me to say, Sir, that religious toleration does not prevail in reality; it is a name, and nothing more. Let us now help to make it a reality.

Mr. LORD, of Salem. I understand that what has merely a tendency to disturb the public peace, will not make a man liable to be punished for a disturbance of the public peace. Now what I ask the gentleman for Marshfield, (Mr. Sumner,) is this: whether an infidel has not the right, under this provision, to introduce into every shop window in Washington Street, and into every public place in the Commonwealth, the grossest caricatures, burlesques, and denunciations of the Christian religion? I ask whether he may not, in this way, promulgate his sentiments concerning religion? I ask the gentleman to tell me if every caricature, and every burlesque of every person professing the Christian religion, and of every principle of the Christian religion, hung up upon every sign-board and in every shop-window in the Commonwealth, may not, under this provision, be a legitimate means for persons to promulgate their sentiments concerning religion?

Mr. CHAPIN, of Webster, moved to strike out the word "restrained," so that instead of "and no subject shall be hurt, molested or restrained," it would read "and no subject shall be hurt or molested."

Mr. SUMNER, for Marshfield. I venture to suggest to the gentleman from Greenfield, who proposes to strike out the word "subject," that the word "man" would be more appropriate in that particular place than "person." The latter word occurs in the next line of the same clause, and in a sense different from that it would have in the first line. I presume the gentleman would not desire to see such a repetition in the text of the Constitution, even if it were not slightly incongruous also.

Mr. CHANDLER. I accept the suggestion, and will move that the word "man" be inserted in the place of the word "subject."

Mr. SUMNER. I am glad the gentleman has called attention to this point, though its discussion

at this moment seems to interfere with the main question. Unquestionably there are differences of opinion as to the expediency of change in the existing language of the Bill of Rights. All will agree that such a document, from such a pen, drawn from such sources, with such an origin in all respects, and which for more than three-score years and ten has been a household word to the people of Massachusetts, should be touched by the Convention only with extreme care. Its principles are justly dear; and its very words, vigorous and expressive, though not always those we should select, have become associated in our thoughts with the liberties which they guard. Still, had my desires prevailed in the Committee, there are expressions which I would have removed or changed, in order to bring the text into better harmony with our times; but I was overruled by the Committee, who preferred to leave the words as they came from the first Convention, and as they are now stamped upon the minds and hearts of the people of the Commonwealth. Some additional provisions I would have incorporated, also; and here again I was overruled, except so far as appears in the Report of the Committee; but I say nothing of these now. I am speaking simply of the language.

I am not strenuous in condemnation of the word "subject." It does not hurt me to be called a subject of the Constitution and laws. But I am bound to confess that there are other equivalent expressions which would do full as well, and would be more in accordance with the language of our day. It will be observed that this word occurs in several different clauses of the Bill of Rights. In the second clause I would supply its place by "man," according to the motion of the gentleman from Greenfield. In the eleventh clause, where it occurs once; and in the twelfth clause, where it occurs three times, I would supply its place by "person;" but in the fourteenth and twenty-fifth clauses, in each of which it occurs once, I would substitute "man." In making this change in the last two clauses, we should get back to the original draft of John Adams, which was altered in the Convention from "man" to "subject."

Mr. DANA, for Manchester. I would suggest the word "citizen."

Mr. SUMNER. This is a word of art, and is not so comprehensive and universally applicable as the word "man." It may be restricted to persons who enjoy the rights of citizens in Massachusetts.

Mr. BRIGGS, of Pittsfield. I came in when the gentleman for Marshfield was speaking, and I would be glad to understand more fully the object of the amendment. If there is any good reason for our interfering to change the form of a sentence in this part of the Bill of Rights, I have no disposition to oppose it. But what reason there is, any farther, when the gentleman says, as I understand him, that a liberal construction gives precisely the same import to both expressions, but there is some danger of a misconstruction of the language of the Bill of Rights as it is now, I do not perceive. Now, what that misconstruction is, or may be, I am not informed. I wish for some light on this subject. If there is any import to this new phrase different from that which strikes the ear or the mind, I should like to know what it is. If there is any meaning in the present term which is liable to misconstruction,

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and in any way to interfere with the unrestrained freedom of religious opinion, I should like to know what it is. I would like to know what that danger of misconstruction is, or how it may happen that any man in Massachusetts may be restrained, or curtailed, or deprived of any freedom of religious opinion and action consistent with the rights and interests of others, under the present Bill of Rights. When I know what it is, I will go as quick, and as far as any one, to redress it, and to provide against the evil. Therefore, I wish to have my friend say what this danger of misconstruction is, that will give a different interpretation to the old form of expression, which, he says, by a liberal construction, means the same as the other. If, by this alteration any such liberty is intended to be given as the gentleman from Salem (Mr. Lord) argues may be given; if by the language of the present Bill of Rights, which gives to every man freedom of religious opinion, he would not be permitted in language, in words, in actions, or by pictures, to ridicule and bring into disrespect, and treat with ignominy, the Christian religion, and this new mode of expression gives that right, or gives that liberty, I will not go for the change. If there is anything which will give a man who has no religion, who mocks at religion and its Author, who scoffs at the Creator, and tramples under foot all forms of Christianity,—if this amendment will give any man that privilege unrestrained, then I cannot vote for it. But, I say sincerely, I am in doubt. I do not know what different idea is intended to be introduced, and therefore I ask my friend to say what danger there is under the present Bill of Rights, of doing violence to any man's religious opinions, and what new security is given by the new form of expression? I ask with a sincere desire to be informed. If necessary, I go for it freely; but if not necessary, I should not think it wise to change the present form.

Mr. KEYES, for Abington. The gentleman for Marshfield having once answered that question, and that not being the first question before us, I wish to make a remark on the amendment offered by the gentleman from Greenfield, which is to substitute the word "man" for the word "subject." I suppose that the word "man," is intended to be used in its most comprehensive sense, and to include the whole race. But, it is not always held to mean so much, and the fact that it has been used with other meanings than that, has led the world into some difficulty heretofore. If it is necessary for the harmony of the sentence, I would prefer that the word "individual" should be introduced instead of the word "man," although it does not sound quite as well. I think the Convention ought to decide to change the word "subject," for one or the other of the words named. We have no subjects of government here, we are all partners. We have subjects of other things, of parties and powers, but not of the government. I had the impression that the word subject was stricken out, in most cases, by the Convention of 1820, but it seems it was not. I trust that we live at a period when we shall use no such unmeaning term as the word "subject." I would prefer the word "individual," rather than the word "man," which properly construed, I suppose would mean all mankind. But that word has been so construed heretofore as to deprive a portion of the people of a portion of their just rights.

Mr. DANA. I was not in when the question was propounded; but, if I understand it, it is on striking out the word "subject," and inserting the word "man." The gentleman for Abington proposes to insert the word "individual." I do beg that we shall not call it "individual." Every scholar has an aversion to that word, where it can be avoided. I would rather see all the rust remain, than put the word "individual" into our organic law.

Mr. KEYES. I do not object to the word "person."

Mr. DANA. There is a difficulty about that, because it will occur twice in the same sentence. I am decidedly in favor of the word "subject." We discussed the matter in Committee, and there was, at first, a little natural pride exhibited, like that which the gentleman for Abington has manifested with regard to using the word "subject." We came to the conclusion, finally, that our ancestors—who had as much pride as we—understood the matter perfectly well when they called themselves subjects. I do not believe that John Adams, or Samuel Adams, or James Bowdoin, made any mistake when they called themselves subjects. They understood perfectly, quite as well as we do, that they were not subjects of any king; but they took a proper pride in acknowledging that that they were subject to the law. They took a proper pride in saying that every Massachusetts man, while he was a sovereign as a law-maker, was—the proudest of us—a subject to the laws when made.

Now, I am happy to be able to say, that whenever the people of Massachusetts pass a law, I am subject to that law. I take pride in saying that, while I am one of the sovereigns, as a law-maker, yet, as a law-obeyer, I am one of the subjects. For one, I desire to have this term remain, that the idea of duty may remain somewhere in our laws and Constitution. We are too much in a state of feeling which can recognize nothing but power in ourselves. The duty of obedience seems to be almost lost sight of. Now, my pride is not at all affected or hurt by calling myself a subject of the laws, or of the State. I should not wish to be the subject of any one man; but I am quite willing to be the subject of the State, and to recognize the fact that in one aspect we are all kings, but in another aspect we are all subjects. I submit whether this is not running the matter a little too fine to refuse to acknowledge this relation. Our ancestors acknowledged it in 1780, John Adams, and all the rest; and, in 1820, there was a discussion on striking out the word "subject," and inserting the word "citizen," or "person." It was opposed, and was rejected by a vote of two hundred and eight to two hundred and twenty-seven in committee; and afterwards, when it came up in Convention, it was rejected without a count, and the term "subject" remained. Let it be declared that every man—the proudest and wealthiest—is still a subject of the State. I hope, therefore, the word may still remain in the Constitution.

Mr. KEYES. I wish to say, that if we maintain these two characters of sovereign and subject, that perhaps we may as well introduce the word "sovereign" instead of the word "subject," because, according to the gentleman's own statement, we are just as much sovereign as subject. When that discussion, in 1820, took place, they were not so far advanced as we are by thirty-three

years, and the men who then voted in favor of the change expressed the almost universal sentiment of this day, while the men who voted against it expressed sentiments that are outlawed.

Mr. WILSON, of Natick. I find the word "individual," the word "man," and the word "citizen," used in the Constitution in the same sense in which this word "subject" is used. In most of the Constitutions of other States, I find the word "person" is generally used. In the new States, the word "person" is used instead of the word "subject." This is the only State that retains the word "subject," unless it be one or two of the older Southern States. I do not feel degraded by it; I agree with the gentleman for Manchester, that there is nothing derogatory in it. We are all sovereigns, and all subjects to our own government. But at the same time, I do not like the word very well, and I should prefer to see the word "person" used throughout, as it is used in the Constitutions of most of the new States of the Union.

Mr. CHAPIN, of Webster. I hope this whole resolution will be voted down; but, if it must pass, I prefer to have the amendment prevail. I think it is evident that this change which has been proposed, is not presented for the mere purpose of improving the phraseology of the Constitution. There is, evidently, a design behind that, and, for one, that design is very evident to my mind; and I hope that before the Convention vote upon this matter, gentlemen will study a little upon the phraseology of this resolution, and they must be able to see the real object of the change proposed. I wish the chairman of the Committee was present to make an explanation. I think we are not sufficiently acquainted with the matter. I hope we shall not impose upon courts of justice the necessity of receiving evidence of persons who disbelieve in a Divine Being. I think this amendment paves the way for such a result. I hope the Convention will be prepared to vote upon the subject understandingly.

Mr. BIRD, of Walpole. This amendment, which is proposed by the gentleman from Greenfield, (Mr. Chandler,) is a very grave matter, and I think there is reason for regret that it should have been introduced at this late stage of the session, when the fifteen minute's rule is in operation. It should have been brought in when the hour rule was in force, so that we could have had some speeches that would have opened up the whole question. I only want to say, that if gentlemen are disposed to make any more speeches upon the matter, as to whether we shall use the word "man," "person," or "individual," I shall feel constrained to move that the whole matter be referred to a Special Committee.

Mr. HILLARD. I am sorry, Sir, that the gentleman who represents Wilbraham, (Mr. Hallett,) is not here; this whole matter is a child of his begetting, and I regret that he is not here to look after it. It will be observed that my name is at the bottom of those who propose it; and I will tell the Committee how that happened to be so. The gentleman for Wilbraham introduced a large number of propositions for the consideration of the Committee. We had a great many meetings and a great many discussions, and I was obliged to oppose almost all of these propositions. Upon one occasion, when the matter before us was under discussion, it so happened that the fact whether it should be re-

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jected or adopted, would depend upon my vote. I had very little choice about the matter, one way or the other; and so I said to my friend who represents Wilbraham, that, having been so often obliged to go against him from conscientious motives, now, when I could, with a little straining, go for him, I would willingly do so, and I did so; and, accordingly, the proposition was adopted. My hand being there to it, I am bound to stand up and explain what I suppose was the real motive that induced the minority of the Committee to submit the proposition. This whole matter grew out of a single memorable trial in this Commonwealth—the trial of the Commonwealth against Kneeland—and, were I addressing my friend from Taunton, (Mr. Morton,) I should say

"Quorum pars magna fuisti."

My friend who represents Wilbraham, was much exercised in his mind with regard to that trial, and I must say that, to some extent, I went along with him. I was one of a certain number of persons, who, under the lead of my revered and beloved friend, the late Dr. Channing, petitioned the executive to pardon that unhappy man. I understand that the doctrine upon which that conviction was obtained, was this: that although the Constitution said—[Mr. Hallett at this moment entered the hall]—I can now say, as Othello said, "Here comes the lady; let her witness it!" [Laughter.] I understand that the conviction was obtained upon the ground that, although a person could not be called in question for his religious sentiments—he might utter any sentiments whatever respecting religion, or respecting Christianity, so long as they were religious sentiments, but the moment he uttered irreligious sentiments he made himself amenable to punishment. From the principle involved in this construction, I must respectfully dissent. It seems to me, that upon this whole subject of religion, or more properly, of Christianity, for that is what is meant here, there are two rules. One of these is the rule of the Romish Church, which denies entirely the right of private judgment. They say that the Church, being a body of wise and learned men, running through all periods of time, have construed the Bible, and have agreed upon certain doctrines and tenets which are not only to be received as true, but all others are false. No person shall preach or maintain any doctrine opposed to them; and, not only that, but no person shall think or hold, within the sanctuary of his own conscience, except on sufferance, any other doctrines than those which the Church approves and teaches. That is the Romish rule or principle, and is consistent and intelligible; the Protestant doctrine, on the other hand, gives the right of private judgment, without limitation, and without restriction. Between these two, I cannot see any principle on middle ground; and I do not think it is ever wise to punish a man for his sentiments or opinions concerning religion. I humbly think that the trial of Kneeland was unwise as a matter of policy, and that the friends of Christianity can never wisely and judiciously ask that the arm of law shall be stretched forth to silence discussion. So long as a person utters his sentiments, supposing them to be irreligious and opposed to Christianity, so long as he utters them with decency and decorum, I would not have him punished. Among

the petitions presented to the Committee, was one from an individual bearing the name of Le Barnes; I do not know who he is, but his argument was, indirectly and by inference, rather against Christianity; and, so far as it went, the language was perfectly decorous. His arguments were addressed to the reason; but the difficulty is, that in almost all cases, those who oppose Christianity are left, by the very infirmity of mind and heart which leads them to do so, to use language which is indecorous, and which should not be tolerated. The difficulty in Kneeland's case was, that there were some expressions which he used, that were outrageous and indecent; and it was for that reason that the sympathies of the community were not excited in his behalf. Here is the difficulty about this subject. While I would not, on the one hand, restrain or punish any person who should utter irreligious or un-Christian sentiments in decent language, which did not lead to a breach of the peace, I do think that society has a right to punish the man who assails our religious convictions, and wounds our religious sensibilities by indecent, contemptuous, and sarcastic language, such as, from the infirmities of humanity, leads inevitably to a breach of the peace. Here is a practical difficulty in legislation which I hardly know how to meet. On that account, for one, I never would have stirred in this matter; I never would have presented it to the Convention; and, frankly, I must confess that I have very great doubts about the wisdom or propriety of submitting it to the action of the people.

Mr. CHANDLER, of Greenfield, When I first read this resolution, I supposed that it was intended to throw open the whole area to free and perfect competition, and not that any consequences would be likely to follow, such as have been suggested by the gentleman from Salem, and by the gentleman from Pittsfield—gentlemen who are versed in the law, and who are more capable of judging than I am. I suppose it was not designed to give countenance to any such thing; and if such an abuse was to be made of it, I presume it would be actionable at law. It would come under the proviso that the legislature have a right to pass all wholesome and reasonable laws; but I trust that no man, for undertaking to propagate his sentiments concerning religion, will be subjected to any pains or penalties whatever. I do not know but that my friends will think that I am taking a very strange course for a man in my position; but what I am about to state I have held for years—I have declared my views in the private circle, I have declared them publicly in my own pulpit, and I am ready to declare them in this assembly. I have no sympathy with the Atheist, who denies the God who made him; I have no sympathy with the Deist, who denies the Savior who bought him with his blood; and least of all have I any sympathy with the professed Christian minister, who acknowledges Jesus as his highest ideal of human greatness and virtue, and in the same connection proves him guilty of falsehood. No, Sir! but I hold to free competition. I never feel that the citadel of truth is safe, while it is surrounded by bulwarks of human erection; but, in maintaining the cause of the Bible, I will retreat into the citadel, and open every door, and there I defy the world. It appears strange to me that men should often seem to be so afraid of the consequences of certain

things. It was but a year or two since, that I was conversing with a gentleman high in civil society, of education, and in an honorable profession, who expressed great fears that geology was going to disprove the Bible; and with another one who was mightily afraid that the science of phrenology would overthrow the Bible. It appears to me that they really did not believe the Bible. I have such a conviction in the truth of the Holy Scriptures, that I say, only leave the Bible free, and leave its friends free to defend and advocate its truth, and you may leave all the opposition in the world free to attack it; I have no fears as to the result. Let them come into free competition; let every kind of error and delusion speak, only let truth be free to speak in turn, and I fear not. For this reason I approve of this resolution, and hope that it will pass.

Mr. FRENCH, of New Bedford. I will merely say, Mr. President, that my mind preponderates in favor of the word "person," and I should like to have that word inserted in preference to any other word that I have heard mentioned. There is a national odor about it which I like.

Mr. SUMNER, for Marshfield. I should like to ask the gentleman if he observed that the word "person" occurs in the second line. I presume he would not desire to have the word occur twice in the same sentence, used in different senses.

Mr. FRENCH. There might be some difference of opinion with regard to that; it would not be a very strong objection to my mind. As I was saying, there is a kind of national odor about this word "person"; I find that it is frequently used in the Constitution of the United States. I am in favor of that instrument, let me here remark, although so many persons suppose that I am opposed to it. I find, on a single page of the book before me, that the word "person" occurs three times: "No person shall be convicted of treason," &c. Then again: "A person charged in any State with treason, felony, or other crime," &c.; and again: "No person held to service or labor," &c. It is a term that is plain and simple, and at the same time most comprehensive. If we turn over, we find in the United States Constitution, in another place, the following: "No person shall be held to answer for a capital or otherwise infamous crime," &c. As the word "person" covers the whole ground, I am decidedly in favor of it.

Mr. HALLETT. I was unavoidably detained from the Convention until after the hour of meeting, and am indebted to my colleague on the Committee, the gentleman from Boston, for giving an explanation of this proposition; nevertheless, I desire to offer a word or two in order that the Convention may fully understand the views with which this amendment was suggested. I understand that the proposition is now to amend by substituting the word "person" instead of "subject." I will only say in regard to that, that the Convention of 1820, containing men of all sorts of views and feelings, applied their criticisms to it, and after all, concluded to let it stand. The truth is, there is no word in the English language, applicable to a proposition of this kind, which you can substitute for it. It embraces every human being, who can by any possibility be within the Commonwealth; and whoever is within the Commonwealth must be subject to general laws of some kind or other. As that is the original word, I propose to leave it as it

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stands; if the Convention think proper to change it, they can do so, but I will remark that this change will render it necessary to make a great many alterations throughout the Constitution.

The gentleman says he regards the words proposed to be changed as comparatively slight and unimportant; because no man shall be called in question for his religious sentiments or opinions. It is in vain to deny that the practical construction of that is, that a man must have some religious sentiments or other. He shall not be called in question for his religious opinions or sentiments, but he may be for his irreligious opinions. Who is to determine whether his opinions are religious or irreligious? Your court, and therefore it is an ecclesiastical tribunal. That is the rule of law as it now stands. Let me refer, simply to show the operation of your Bill of Rights in this respect, to the case of the Commonwealth *vs.* Kneeland, as laid down in 20 Pickering's Reports, 206: "The Universalists believe in a God which I do not, but believe that their God, with all his moral attributes (aside from nature itself) is nothing more than a chimera of their own imagination." This language, which Mr. Kneeland published, was blasphemy, as the judges said, because he did not put a comma after God, although the author of it declared that he intended to have put a comma there. If we put in a comma it will read: "The Universalists believe in a God, which I do not"—that is, they believe in a kind of God which I do not, and it is no blasphemy at all. But the judges read it right on, "The Universalists believe in a God which I do not"—that is, I do not believe in any God at all—"but believe that their God, with all his moral attributes (aside from nature itself) is nothing more than a chimera of their own imagination;" and then it was blasphemy. The court also held that the law was not designed to prevent the simple and sincere disavowal of belief in the existence or attributes of a Supreme Being, upon suitable and proper occasions, but to punish a denial of God, made wilfully, and with a bad intent; and the question was very well put, how on earth is a man to deny God at all unless he does it wilfully? If he does not believe in a God, he must do it wilfully; and yet the judges say that he may deny God, provided he does not do it wilfully; and they did not punish him for denying God, but merely because he denied him wilfully! This brings us back to the question, have we arrived at this point in the Commonwealth of Massachusetts,—I arrived at it a good many years ago, but perhaps I am as much in advance on this point as I am in some others; I do not know how that may be,—have we arrived at this point in religious freedom, to say in our Constitution that no man shall be molested or called in question for his opinions or sentiments concerning religion? As to the manner in which a man shall conduct, that is a very different question. I do not say that he should be allowed to go about the streets and proclaim his doctrines, for you do not allow Father Lamson to go into the streets and proclaim orthodox doctrines, or Mrs. Folsom to go about proclaiming abolition doctrines. Whatever doctrines are proclaimed in the street, if they are likely to create a mob or a riot, so as to disturb the public peace, that is quite another matter; it makes no difference what doctrines they are. The question for us to decide is, shall we go forward, or shall we go back to the old times in 1637,

when Governor Winthrop with his Council— that very Council that sits in that secret room— called up that poor woman, Ann Hutchinson, for blasphemy, because she said that the ministers of Boston preached the doctrine of works, and not the doctrine of grace? When she said it was matter of conscience, the reply of the inquisitor, Governor Winthrop, was, you must keep your conscience right, or we shall keep it for you. And, accordingly, they did undertake to keep her conscience. They banished her; and, as history tells us, she went from here into the wilds of Connecticut; and the court of Massachusetts pursued her even there, and demanded that Connecticut should drive her out from their borders; and she was driven out and went into Rhode Island among the Indians, and herself and whole family were afterwards massacred. Now, Sir, that is a black stain upon the history of the Commonwealth of Massachusetts—a stain which has remained upon it to this day—and I hope that by our action upon this amendment, we will to-day wipe out that stain. Why, Sir, even as late as 1811, a man could not worship God according to the dictates of his own conscience. He was obliged to contribute to the support of the parish minister. Among the earliest things that I can remember was the tythe man coming to the house of my father, who then contributed some \$200 a year for the support of a Baptist minister. The tythe man came and seized his cow, and sold it for the payment of his parish taxes, because his conscience would not let him pay them. That circumstance made an impression upon my mind which I have felt ever since; and from that hour to this, I have thought it wrong to put any restraint upon any man's religious sentiments. With the belief, therefore, that God himself will take care of his own religion, which is worth preserving and sustaining, I think we should leave all men to the free exercise of their opinions on matters of religion, with the full liberty to worship God or not to worship him, as they may see fit.

Mr. WHITNEY, of Boylston. I should like to say one word upon this subject, and also to offer an amendment. I want to give my adhesion to the remarks of the gentleman on the left of the Chair, (Mr. Chandler,) and simply to say that I hold to that Protestantism which says that every man has a right to read and judge, and decide for himself, in all matters of religion; for, if we have not this right, then we might as well go back to Catholicism at once. Sir, if I were asked to give a reason to-day why it is that Catholicism, in this and other countries, is gaining ground, I should say that it was because Protestants had departed from their own Protestantism, and that we need another revolution in this matter; that every man has become, himself, a sort of pope, on a small scale, and actually verifies what one of the popes once said—that the Protestants denied the divine authority of the pope, in order that they might set up themselves as popes.

It seems to me, Sir, to be the worst of infidelity to bring the Word of God to sanction crime. He who brings forward the Bible to sustain the fugitive slave law, is, in my opinion, among the greatest blasphemers in the world; yet some of the clergy seem to think that they have a right to blaspheme in this way. Sir, I repeat it, that if they do so, they are among the greatest blasphemers that have ever been seen on the face of the

earth. I am, therefore, in favor of this amendment; but I want to offer an amendment to it, because there is an exception that I want to show. I want to say that no man shall be molested for his religious opinions, except those whose opinions forbid the taking of human life. That exception is already made, in fact, and I want to have it acknowledged. The first best thing that a man can have is his rights, and the next best thing to that is to have his wrongs acknowledged. I do not mean to complain here or anywhere else of the action of the Convention. Why should you require that an oath or affirmation should be taken, by which every person by himself or his agent shall accede to the principle of taking away human life? Myself and five or six hundred others cannot take that oath. We have remained outside of the government for more than fifteen years, and men in all ages of the world have stood upon this objection, and I think our sentiments will not die out for some generations to come. We have had an existence since the days of Jesus Christ, and even before his days; and all we have asked for is a peaceable acknowledgment that our religious opinions in this respect shall not deprive us of our civil rights.

Gentlemen may say, with flippancy, "All you have to do is to take the oath," that "it does not mean anything." But, Sir, to us it does mean something; it means as much to us as did that oath which was required of Daniel O'Connell, that he would support the Protestant succession, which oath he, as a Catholic, could not take; and he was refused a seat in parliament in consequence, until the people of Ireland and the Catholics of England knocked so loudly at the door of that house, that they were obliged to repeal the law, and pass the Catholic Emancipation Act. We stand out upon precisely the same principle.

Mr. President: I have an amendment to offer, and I will give you the reason why I offer it.

The PRESIDENT. An amendment is not in order at this time. There are already two amendments pending.

Mr. HILLARD. I wish to state, in reply to one or two questions that have been asked here, that I do not understand, nor was it the understanding of the minority of the Committee, that this proposed amendment had anything to do with the exclusion of witnesses on account of their religious belief. That issue was not before us. I do not understand how giving testimony in a court of justice can be said to be a privilege, or how any person can be said to be restrained in the exercise of his religious freedom, in consequence of being debarred from giving testimony. If there be anybody who is deprived of a privilege, it is the party who calls the excluded witness; not the witness himself. The former loses a privilege; not the latter.

Mr. HALLETT. This is a question of the most important character; and I should hardly conceive that, in this enlightened age, any court would so construe that provision as to impose any restriction in this respect at all.

Mr. HILLARD. It is no "molestation" to deny to a man the right to testify. We do not allow parties to testify for themselves. We seal their lips, though they know more about the matter than anybody else. If we exclude them, we may exclude any one else.

The question was then taken on the amendment

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to the amendment, which was to strike out the word "subject" and insert in place of it the word "man."

The amendment to the amendment was rejected.

Mr. BUTLER. In order that there may be perfect unanimity in regard to this matter, I now move that the word "subject" be stricken out, and the word "one" substituted in its place. It will be better English, and will cover the whole ground. It will then read:—"It is the right of all men to worship the Supreme Being," &c., and "no one shall be molested," &c.

Mr. DANA. I move to amend the amendment of the gentleman from Lowell, by substituting "two" for the word "one" [laughter]; and the question will, of course, be taken on the highest number first. [Laughter.]

Mr. BUTLER. The gentleman for Manchester is wrong on two grounds: first, in interrupting a gentleman who has the floor, [a laugh]; and secondly, that it is hardly worth while to attempt to meet argument by ridicule. I think, that on examining the matter, the gentleman for Manchester will see, that my proposition makes better English.

Mr. DANA. What! "one" better than "subject."

Mr. BUTLER. Yes, "one" better than "subject."

Mr. DANA. I do not agree to that.

Mr. BUTLER. Well, let us see how it is. You first say, that all men shall worship God, as they please, and then you say, that no "subject" shall be "molested or restrained," &c. You thus make a distinction between men and subject. Now, it seems to me, that it is better to say, that all "men" shall worship God as they please, and that no "one" shall be molested or restrained in the exercise of that right. I understand it to be better English, and I think it will meet the wishes of every-body, besides. It suits the feelings of my friend for Abington, and also of my friend for Manchester, who wants to be understood as being in favor of this law, although he wants to ridicule my proposition by substituting "two." [A laugh.]

Mr. CHAPIN, of Webster. I am gratified that the gentleman for Wilbraham, has conceded the points which I made, and I think the Convention now fully understand the state of the case. I am glad that the attention of the Convention has been called to that particular concession.

Mr. BRIGGS, of Pittsfield. I am gratified, that my friend for Wilbraham has thrown some light upon the subject—

Mr. SUMNER, for Marshfield. Will the gentleman from Pittsfield allow me to say, that I would like to answer the question of the gentleman for Wilbraham, by stating, that I thought I had properly answered his question, before he took the floor. That suggestion was not made in Committee, nor did I hear it made by any gentleman before.

Mr. BRIGGS. One thing is true. The gentleman for Wilbraham avows his opinion manfully and nobly; and now, it appears, that though the other gentlemen of the Committee did not apprehend anything of this kind, his opinion is, that the law should be changed on the subject of the admission of witnesses to testify. By the present law, as I understand it, no man who denies the existence of God, is permitted to take an oath in the name of that God whose existence he denies. Now, my friend for Wilbra-

ham understands the effect of this to be, that the courts would so construe this, as that when a man presents himself as a witness, even if he were an Atheist—

Mr. HALLETT. I did not say what the courts would do; but I spoke of the manner in which they ought to construe this provision.

Mr. BRIGGS. The gentleman avows plainly what he means, and what he thinks ought to be done. Now, if the Convention is prepared to say that there shall be no limitation in regard to the admission of witnesses, then we vote understandingly. I wanted to know more explicitly what are the evils complained of in the present Constitution, and what the remedy is to be. We now have something tangible. It is expected, that if this amendment is adopted, it will do away with all restraints upon witnesses produced in court, and that an Atheist is to be sworn in the same manner as the man who believes in the existence of that Supreme Being, upon whom he calls when he testifies.

Mr. HOLDER, of Lynn. Gentlemen are alarmed unnecessarily about this question. I cannot conceive a reason why a person who professes that he does not believe in the existence of a God, should, by that profession, be rendered unfit to give testimony in a court of justice. Suppose a man does believe in God; suppose that that man has no regard for humanity, no principle, perhaps, as good as we entertain; suppose he have a God in his imagination equal to Nero in cruelty, invested with everything odious to humanity, and nothing we could love, but everything to hate; I ask if that belief makes his testimony any better, whether it makes him more humane, more of a man that will tell the truth? Does not the very fact that a man, who disbelieves in the existence of a God, acknowledges that disbelief against the contrary prevailing sentiment, go to show that he is an honest and a truthful man? The idea which I hope we shall entertain of God, if we believe in one at all, is that of the being who has implanted himself in humanity at large.

When it was suggested to turn the word "subject" into the word "man," I thought that was the proper word. *Man*, understood in his rightful sense, gives power and efficiency to the word. I wish we all understood man as he was comprehended by that distinguished individual referred to by the gentleman from Boston, (Mr. Hillard). I would that we all understood him in the greatness and power which belongs to him.

I hope the amendment will be adopted; for I believe one of the greatest manifestations of true religion is that which gives man his freedom, in every sense of the word.

Mr. JENKS, of Boston. I should like to inquire of the Chair, what the question is before the Committee? Is it not the motion to substitute the word "one" for the word "subject?"

The CHAIRMAN. It is.

Mr. JENKS. The word "one," was proposed by the gentleman from Lowell, (Mr. Butler). Now, it seems to be very difficult, in this wise body, to find any sort of satisfactory synonyme for the word "subject." Some gentlemen suggest "individual," others "man," others "one," others the word "citizen," and so on with others. Now, Sir, if they want to define the thing more nicely, they might as well take a definition which I have seen somewhere in print,

and adopt that part of it which defines "man" to be "any intelligent, two-legged, featherless animal." [Laughter.]

Mr. GARDNER, of Seekonk. It seems to me, after all, that the word "subject" is the correct word, and one which is the most explicit. I hope, Sir, we shall not continue to debate this subject any farther. I hope the question will be put now, and the sense of the Convention taken upon the amendment offered by the gentleman from Lowell.

Mr. PARKER, of Cambridge. The Committee on the Bill of Rights, after listening to a discussion among themselves very much like that to which the Convention have listened this afternoon, came to the conclusion that it was best to retain so much of the rust of the Bill of Rights as was embraced in the word "subject."

The question recurring first upon the amendment offered by the gentleman from Lowell, (Mr. Butler,) it was put, and decided in the affirmative, upon a division, there being—ayes, 150; noes, 107.

So the amendment was adopted.

The question next recurred upon the amendment proposed by the gentleman from Webster, (Mr. Chapin,) to strike out the words "or restrain," and insert the word "or," before the word "molested," and being put, it was decided in the negative.

So the amendment was rejected.

Mr. SPOONER, of Warwick. I propose an amendment at the end of the clause, by adding the words "or any other subject," so as to provide that he shall not be molested for his sentiments, not only on the subject of religion, but on any other subject.

It may mean something, or it may not. I do not know whether it will. I think the gentleman for Wilbraham, (Mr. Hallett,) will recollect a subject to which it might have applied, some two or three years ago. If I recollect aright—for I was not deep in the subject of politics at that time—a governor of this Commonwealth—the governor who preceded the gentleman from Taunton, (Mr. Morton,)—proposed that a certain law be enacted, or rather that a certain law be applied to a certain class of persons who were very closely connected with a peculiar institution which exists in this country. On account of the sentiments of that governor upon that subject, the people of the Commonwealth restrained him from the exercise of his official duties; and I would restrain any governor from making any such proposition again.

The question was then taken upon the amendment offered by Mr. Spooner, and it was rejected.

The question then recurring upon the resolution, as amended,

Mr. LORD, of Salem, said: The gentleman who represents Wilbraham, (Mr. Hallett,) very frankly told us, in answer to an inquiry, or rather he volunteered to tell us, that this resolution was intended to take away all disqualification of witnesses, on account of their want of religious belief. It was calculated to do that. Now I desire to ask that gentleman if, in his judgment also, this resolution, or the principle of it, if incorporated into the Constitution, would prevent the punishment of any person for blasphemy?

Mr. HALLETT. If the gentleman will inform me what he means by the word "blasphemy," I will answer him.

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Mr. LORD. Just what the law of the Commonwealth defines blasphemy to be, the contumeliously denying the existence of the Deity, or reproaching the Deity. Does he mean to say that a man, in the promulgation of his sentiments concerning religion, may contumeliously deny the existence of a God, or reproachfully deny it? I ask that because the gentleman knows that the language at the end of the sentence, which is "provided he doth not disturb the public peace," does not affect it, because it is a well settled principle of law, that no words disturb the public peace.

Mr. HALLETT. I desire to ask the gentleman another question: what does he mean by contumeliously? What signification has it?

Mr. LORD. I will read the statute of the Commonwealth; and I ask the gentleman whether this resolve would abrogate that statute?

"If any person shall wilfully blaspheme the Holy name of God by denying, cursing, or contumeliously reproaching God, his creation, government, the final judging of the world, or by cursing or contumeliously reproaching Jesus Christ or the Holy Ghost, or by cursing, or contumeliously reproaching the holy word of God, contained in the Holy Scriptures, or exposing them to contempt and ridicule, he shall be punished by imprisonment in the State Prison not more than two years, or in the county jail not more than one year, or by fine not exceeding three hundred dollars, and may also be bound to good behavior."

Now I ask the gentleman, if in his judgment, this resolution is intended to abrogate that statute?

Mr. HALLETT. The gentleman is very much distinguished in law, and I presume he must be equally so in polemics, and if that be so, he can explain this matter. I cannot. I do not know what contumeliously means. It may be that it will be explained, as in this volume of Pickering's Reports, it is said "wilfully" means "intentionally."

Mr. LORD. I do not now ask what he understands to be the meaning of this, but does he intend to abrogate it?

Mr. HALLETT. I mean to abrogate every power of every tribunal, ecclesiastical, civil, religious, or irreligious, to call any man in question for the opinions which exist between him and his God. That is what I mean. And then outside of that, outside of religious opinion, there exist the duties which man owes to society. Neither a religious man, or an atheistical man can infringe the duties which he owes to society. This is one thing, and the duty he owes to God another. It is entirely immaterial, as far as we have any control over them, what opinions he holds as to his God; but his duties between himself and his fellow men, are imperative that he shall so use his own as not to injure the possessions of others. He shall, therefore, so hold his opinions, and exercise them, as not to injure and abuse the opinions of others. In short, in the language of this Constitution, he may do anything, "provided he doth not disturb the public peace, or obstruct others in their religious worship." A man, therefore, might contumeliously reproach God in his own closet, and injure nobody; but, if he goes into the streets and does it, it may be another thing.

Mr. LORD. Will the gentleman tell me whether he means to have this resolution abrogate that law? Does he mean that it shall be abrogated or not? That is the question.

Mr. HALLETT. I mean that the courts shall put their own construction upon it.

Mr. LORD. I do not want to know what the courts will do, but what the gentleman means? He can certainly have no objection to telling us whether he means to abrogate the statute I have read. Of course the gentleman has no concealment.

Mr. HALLETT. The gentleman is very pertinacious upon this subject. I mean, if I can, to give such a direction to the public sentiment, bearing upon the highest judicial tribunal in this Commonwealth, that it shall never again have its courts dishonored by another such trial as has been heretofore alluded to.

Mr. LORD. That does not precisely answer the question. The Constitution is the supreme law, and this is subordinate. Now does he mean that that shall abrogate this? That is the question. He certainly can have no objection to tell us what he means. Does he mean that the supreme law shall be in conflict with this subordinate law?

Mr. KEYES. I might as well say a word, as to listen any longer to this debate, for it seems to amount to nothing. Now, Sir, so far as regards my own vote upon this subject, I had made up my mind to give it for this resolve. But, as I understand gentlemen, it has been said the probability is, that it may do away with the requirement of a belief in God to render a man competent to give his testimony in a court of justice. Now, in voting for this proposition, in that view, it might appear to some men in this Commonwealth that those so voting, are rather loose in their morals or religion. I shall vote for it, I trust, without being understood on that account, to entertain opinions inconsistent with Christianity. I recollect being myself upon a jury where I had the opportunity of getting the opinion of one of the supreme justices of this State on this subject. I recollect that when a witness was brought upon the stand, the counsel proposed to question him upon the subject of his belief in God. The judge who presided in that case, not only indicated, but said in so many words, "Do not do it," so that it was heard by the jury, and I do not know but it was heard by every person in the court-house. It gave me to understand it was his opinion, at least, that it was an improper act. Now, when it comes to this, I for one, should like to have something in the Constitution to prevent calling upon God to attest the numerous lies that are told upon the stand. I think if there is any blasphemy anywhere, and any temptation to it, it is that men are compelled to call upon God to witness the streams of falsehoods which are poured out upon the witnesses' stand. It is not necessary under our Constitution. Men are supposed to be able to tell the truth without this. One sect of Christians are not required to do it; and that is a sect which all will admit, tell the truth more uniformly and conscientiously, than any other portion of the community, on the stand, and everywhere else. They affirm under the pains and penalties of perjury alone, and it is those pains and penalties alone which produce any effect. At our custom-houses they have what they call a custom-house oath, which every-body knows, practically means nothing. Were it not for the pains and penalties of perjury, men would be just as well with the oath as without it. It is not so much from my own observations that I

have come to this conclusion, as from the testimony of lawyers and others who are familiar with the proceedings in courts. Therefore, in voting for this, I do it because I believe it is useless to question a man as to his belief in God. Everybody believes in some sort of a superintending power, even if it be that of blind chance. Whatever belief he may have, he may swear if he pleases before the court that he believes in a God, although he may be what is called an infidel; and therefore in voting for this proposition, which may do away with the law forbidding infidels to testify, I trust none of us will be charged with any want of awe or reverence for the Supreme Being.

Mr. KINGMAN, of West Bridgewater. I shall vote for the amendment of the gentleman for Wilbraham, and I shall do so because I am in favor of the greatest liberty being allowed in this matter. Why, Sir, if the prediction of the distinguished member for Berlin is to be verified, we shall, in less than half a century, have half a million of Chinese in the State of Massachusetts, every one of whom is an idolater. And are these Chinamen to be deprived of the right of testifying in our courts of justice? It certainly appears to me to be a curious idea. I hope the amendment will be adopted, so that every man, be he Christian, Mahometan, or idolater, may have the privilege of testifying in our courts.

Mr. CHAPIN, of Webster. Mr. Chairman: I should like very much to know, what are the main objects which this Convention was called to consider. It has been said, that we have assembled here for certain purposes, and we have considered and acted upon many important subjects, but, Sir, I claim that we are not here to amend the Constitution in the manner now proposed. The people never contemplated any such amendment; they did not expect it; and are not prepared to vote upon it. I do not believe that the legal voters of our Commonwealth are ready to deny the existence of a Supreme Being in our courts of justice; but, on the contrary, they desire that every man connected with these proceedings, should feel and acknowledge His presence; that the judge upon the bench should feel it; that the juries in their boxes should feel it; and, above all, that the man upon whose testimony is depending the life and liberty of a fellow creature, should feel that the Great God is looking down upon him, and that the Recording Angel is writing every sentence he utters. And yet, from the remarks of the gentleman for Wilbraham, I am inclined to think that the design of this amendment is to effect that very object.

I wish to say, farther, that as a member of this Convention, and especially from the peculiar relations I sustain to the gentleman for Wilbraham, (Mr. Hallett,) I have the right to an answer from him, to the question proposed by the gentleman from Salem, (Mr. Lord). It so happens, that the town which he represents is my native place, and I am very happy it has been so ably and correctly represented in this Convention. I wish to say, for the encouragement of the gentleman for Wilbraham, that my eye has continually been upon him and his actions, during this session; and I have had occasion to feel proud that my native town has had so able, just, and learned a representative; but I do feel a mortification this afternoon, in seeing the town of my birth and education represented in this Minority Report of the Committee. I am sorry that that Report has

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come from the gentleman for Wilbraham; I should have much preferred that it had originated in some other quarter, and I trust that this Convention will not fix upon the town of Wilbraham the disgrace of having originated an amendment to the Constitution of this character, to be acted upon by the people of the Commonwealth.

Mr. HALLETT. The gentleman from Webster has done me great honor in his remarks, and I thank him for his compliments. I will show him, however, that I know his town as well or better than he does himself, and that it is, moreover, one of the most liberal towns in the Commonwealth. To convince him of this, I will call to his mind a single fact in its history.

In 1741, it was undertaken to form a church in Wilbraham, and the reverend ecclesiastics came from Springfield for the purpose of founding it according to the ecclesiastical rules of the Westminster platform, or whatever platform they had at that day, which required seven persons to make a church, and they had not but six on whom they could rely for this purpose. What to do they did not know, until at last the expedient was hit upon, to go out in the streets and seize the first man whom they met. They accordingly did so, and found one David Warner walking along, and, without stopping to inquire what was his creed or belief, or whether he had any at all, they carried him off and made him join the church, to make up the odd number which was required. [Laughter.]

Now I propose to do the very same thing in regard to the people of this Commonwealth. I desire that they may go into our great State church, without being particularly questioned in reference to these nice points of faith. I would treat every man as David Warner was treated; and, if I stand well here in other respects, I am confident that that generous constituency who said, when they sent me here, in a letter which I hold in my possession, "that they gave me no other instructions, than to do that which my conscience directed me," will sustain me in whatever course I may pursue. At any rate, whether or not I stand well before my constituents, in advocating religious freedom, I know I stand well before my God.

Mr. PLUNKETT, of Adams. I am not going to detain the Convention by any lengthy remarks, but I merely rose to express my disagreement and opposition to this amendment. I feel that it will not be safe, and my impressions are strengthened by reading the words of one whom every-body revered—the words of George Washington. He says:—

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national

morality can prevail in exclusion of religious principles."

Comment on this is unnecessary; it cannot fail to have its effect upon the minds of those who are in doubt upon the subject, and it may possibly lead those who have become fixed in their determination in favor of this amendment, to look at it in a different and more rational manner.

Mr. ABBOTT, of Lowell. Without intending to detain the Convention, I desire to say a single word upon the point raised, as to whether the adoption of this resolution would prevent the courts from deciding, or the legislature from enacting, a law that an Atheist might testify in courts of justice. I do not care what my friend for Wilbraham may say upon the subject, but I do not believe for a moment that he will risk his legal reputation by saying that the adoption of such a provision will have the slightest effect upon that question. I think that the criticism of the gentleman from Boston, so far as this matter is concerned, is perfect. It is by no means a privilege, that men are allowed to testify. No man can go into court and say, "Here I am, gentlemen of the jury, I want to testify," but he is obliged to go there—it is his duty, and not a privilege.

In regard to the matter under consideration, I believe there is nothing which would, in the slightest degree, interfere with the passage of this provision which has been reported by the Committee. Nor do I believe that it would affect the question, whether a man should be permitted to testify who did not believe in a Supreme Being; for how can it be said that because you do not allow a man to testify on account of his disbelief in a Supreme Being, you restrain him in his person, his liberty, or estate? Besides, the matter has been already passed upon by the supreme court of this State.

I have made these remarks because I desire that no man may be prevented from voting for this resolution from any supposition that it will affect his religious belief. I am free to say, and will not attempt to disguise it, that if I believed for a moment that this would be the effect of it, whether it is progressive or not, whether it is a work of reform or not, I would cut my right hand off before I would vote for such a proposition.

The question was then taken upon the adoption of the Report of the minority of the Committee, and upon a division—ayes, 121; noes, 168—it was decided in the negative.

So the Report was rejected.

Mr. HALLETT moved a reconsideration of the vote which had just been taken.

Mr. LORD, of Salem. Before the question is taken on that motion, I wish that the gentleman for Wilbraham would answer my inquiry. [Laughter.]

The question being taken on the motion to reconsider, it was decided in the negative.

The Committee of the Whole then proceeded to consider the Minority Report of the same Committee, on the subject of

Law Martial.

The report was read, as follows:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 18, 1853.

The undersigned, a minority of the same Committee, also report.

To strike out from the 28th article of the Bill of Rights the words "but by the authority of the legislature."

So it will read, if amended,

No person can in any case be subjected to *law martial*, or to any penalties or pains by virtue of that law, except those employed in the army or navy, and except the militia in actual service.

B. F. HALLETT.

L. MARCY.

H. WILLIAMS.

Mr. HALLETT. As this is a matter which is strictly legal in its character, I desire very briefly to explain the purpose of the Committee in making that Report. The Constitution of 1780 was adopted during the revolutionary war; our peace took place in 1783. At that time it was as a law of the camp, deemed necessary to have what is called the power of "martial law," or the "law martial," and it was accordingly inserted in the Bill of Rights rather as a limitation then, than as a power granted, that "no person can in any case be subjected to law martial, or to any penalties or pains by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature."

It will be recollected that at one period during the revolutionary war, Gen. Gage proclaimed martial law in the city of Boston, and the inhabitants were smarting under the recollection of the violence and wrong committed under this law, because, as Blackstone says, martial law is the absence of all law. It was, therefore, provided in the Constitution which was framed in 1780, for the purpose of securing a greater degree of protection to the people, that that law should not be put in force except by the consent of the legislature. Now, when the State of Massachusetts came into the Union, and the Constitution of the United States recognized the military power as belonging to the United States, Massachusetts conceded that the power of martial law in the Commonwealth became entirely incident to the camp. So that as the present Constitution stands, this clause is wholly unmeaning, and is with but little or no force, except that in certain cases it is giving to the legislature a great, an alarming, and a despotic military power, which, if they choose to exercise, might result in a reign of terror, and in the most disastrous and pernicious consequences. I do not apprehend that they ever will exercise it; it is quite certain they never have exercised it; and even during that stormy and remarkable period known as Shay's Rebellion, when judges were turned out of their courts, there was no resort to "martial law." But yet I am opposed; and it seems to me all who mean to restrain despotic power, should be opposed, upon principle, to allowing that power to remain; and I hope we shall now take the necessary steps to remove it. If gentlemen have made up their minds in regard to this subject, I have nothing farther to say; but if they have not, and as they ought to vote upon this question understandingly, I wish they would give me their attention for a few moments, and see whether or not this change which is proposed, is proper to be made.

Now, the first question which arises is, "what is martial law?" And here let me say that it is entirely different from "military law," and this is a fact which I wish military gentlemen to

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understand. It has no identity whatever with the courts martial held in the militia, or the navy and army." And the amendment which has been proposed by the minority of the Committee, leaves the matter so that no person can in any case be subjected to "martial law," except those employed in the army or navy, and except the militia in actual service. That is the only time when a martial law is required, and then it is the martial law of the camp—that law which General Jackson, in a great and overwhelming emergency, proclaimed at New Orleans; and yet, as the martial law of the camp, it left offenders in civil matters subject to all the penalties of civil law for any violation of civil rights. Now under the Massachusetts Constitution, as it stands at present, the legislature may pass what is called a territorial martial law, and may thus declare the whole territory of Massachusetts under such law; and this extends all over the State, and stops all civil remedies. To show what martial law is, I read from the seventh of Howard's United States Reports, (*Luther vs. Borden*), where this subject is very deliberately considered by Judge Woodbury; and I am sure that no gentleman who will attentively read this opinion of that very learned judge, as it is here reported, will hesitate, for one moment, about striking out this authority given to the legislature to pass such a monstrous law, or rather a power to abolish all laws except those of a military despotism. He says:—

"How different in its essence and forms, as well as subjects, from the articles of war was the 'martial law' established here over the whole people of Rhode Island, may be seen by advert- ing to its character for a moment, as described in judicial as well as political history. It exposed the whole population not only to be seized without warrant or oath, and their houses broken open and rifled, and this where the municipal law and its officers and courts remained undisturbed and able to punish all offences, but to send prisoners, thus summarily arrested, in a civil strife, to all the harsh pains and penalties of courts martial, or extraordinary commissions, and for all kinds of supposed offences. By it, every citizen, instead of reposing under the shield of known and fixed law, as to his liberty, property, and life, exists with a rope round his neck subject to be hung up by a military despot at the next lamp-post, under the sentence of some drum-head court martial. (See *Simmons's Practice of Courts Martial*, 40.) See such a trial in Hough on Courts Martial, 383, where the victim on the spot was 'blown away by a gun,' 'neither time, place, nor persons considered.' As an illustration how the passage of such a law may be abused, Queen Mary put it in force in 1558, by proclamation merely, and declared 'that whosoever had in his possession any heretical, treasonable, or seditious books, and did not presently burn them, without reading them or showing them to any other person, should be esteemed a rebel, and without any farther delay be executed by the martial law.' (Tyler on Military Law, p. 60, chap. 1, sec. 1.)

"For convincing reasons like these, in every country which makes any claim to political or civil liberty, 'martial law as here attempted, and as once proclaimed in England, against her own people, has been expressly forbidden there, for near two centuries, as well as by the principles of every other free constitutional government.' (1 Hallam's Court Hist. 420.) And it would not be a little extraordinary, if the spirit of our institutions, both State and National, was not much stronger than in England against the unlimited exercise of martial law over a whole people, whether attempted by any chief magistrate, or even by a legislature."

This is the definition of martial law, by Judge Woodbury, and it shows the dangerous power which the Constitution places in the hands of the legislature. I hope that the amendment of the Committee will be adopted, and that we shall strike out that power to declare martial law over the whole people and territory of this Commonwealth.

The question was then taken on agreeing to the Report of the Committee, and it was decided in the affirmative.

The next question to be considered in Committee of the Whole, was the following Report of the minority of the same Committee:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 18, 1853.

The undersigned, a minority of the same Committee, also Report.

That there should be added to the fifteenth article of the Bill of Rights the following clause:

In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right in their verdict of guilty or not guilty, to determine the law and the facts of the case.

B. F. HALLETT.

ANSON BURLINGAME.

CHARLES SUMNER.

L. MARGY.

CHARLES ALLEN.

H. WILLIAMS.

The question being on the adoption of the above Report,

Mr. HILLARD, of Boston, said that as this was a very important question, and one which would require to be discussed at length, he desired that it should be taken up at a time when the members were in a more refreshed condition than at present. The question of enlarging the powers and increasing the rights of juries was one of the greatest importance, and he would submit whether it would not be better for the Committee to rise and report progress, and take up something which would not require so much consideration.

Mr. WILSON, of Natick. I move that the Committee rise, report progress, and ask leave to sit again.

The question being taken on agreeing to the motion, it was, upon a division—ayes, 118; noes, 39—decided in the affirmative.

The Committee accordingly rose, and by their chairman, Mr. Schouler, reported to

THE CONVENTION,

That they had had under consideration the several Minority Reports of the Committee on so much of the Constitution as relates to the Bill of Rights, and had rejected the first Report, adopted the second Report, and upon the third and last Report no action had been taken; and the Committee accordingly ask leave to sit again.

Leave was granted.

The question then being on concurring in the Report of the Committee of the Whole, it was decided in the affirmative.

Mr. BUTLER, of Lowell. I move that the Committee of the Whole be discharged from the farther consideration of the third Report.

Mr. SCHOULER. I hope that motion will prevail, as the matter can be considered in Convention just as well as in Committee.

The motion was agreed to.

Mr. HALLETT, for Wilbraham. I move a reconsideration of the vote by which the Convention concurred in the Report of the Committee of the Whole, that the first Report of the minority be rejected, and upon that question I ask the yeas and nays.

Mr. LORD, of Salem. I would suggest to the gentleman representing Wilbraham, that it will be better to ask a division of the question now, and call for the yeas and nays upon the final passage.

Mr. HALLETT. I merely desire to have some stage where the yeas and nays can be taken upon this question of religious freedom. I was not quite rapid enough to keep track of the movements of the Convention.

The PRESIDENT. By permission of the Convention the Chair will state that the question is on concurring with the Report of the Committee of the Whole that the first resolution ought not to pass.

Mr. HOLDER, of Lynn, asked for the yeas and nays.

The yeas and nays were ordered. The question then being taken on concurring in the Report of the Committee, it was decided in the affirmative by the following vote—yeas, 133; nays, 107.

YEAS.

Adams, Benjamin P.	Freeman, James M.
Aldrich, P. Emory	Gale, Luther
Alvord, D. W.	Gilbert, Wanton C.
Andrews, Robert	Giles, Joel
Aspinwall, William	Goulding, Dalton
Atwood, David C.	Goulding, Jason
Ayres, Samuel	Gray, John C.
Barrows, Joseph	Griswold, Josiah W.
Bartlett, Russel	Hale, Artemas
Bartlett, Sidney	Hale, Nathan
Bennett, William, Jr.	Hammond, A. B.
Boutwell, George S.	Hapgood, Lyman W.
Bradbury, Ebenezer	Harmon, Phineas
Brinley, Francis	Haskins, William
Briggs, George N.	Hayward, George
Buck, Asahel	Hersey, Henry
Bullock, Rufus	Hewes, James
Cady, Henry	Hinsdale, William
Carter, Timothy W.	Hobart, Henry
Caruthers, William	Hobbs, Edwin
Chapin, Daniel E.	Houghton, Samuel
Chapin, Henry	Howland, Abraham H.
Childs, Josiah	Hunt, William
Churchill, J. McKean	Huntington, Charles P.
Clark, Salah	Hurlbut, Samuel A.
Cleverly, William	Hurlbut, Moses C.
Cogswell, Nathaniel	James, William
Cole, Lansing J.	Jenkins, John
Conkey, Ithamar	Johnson, John
Crittenden, Simeon	Kellogg, Giles C.
Crosby, Leander	Knight, Joseph
Cross, Joseph W.	Kuhn, George H.
Crowell, Seth	Langdon, Wilber C.
Crowninshield, F. B.	Lincoln, F. W., Jr.
Cushman, Thomas	Littlefield, Tristram
Dana, Richard H., Jr.	Livernore, Isaac
Davis, Solomon	Loomis, E. Justin
Dawes, Henry L.	Miller, Seth, Jr.
Dean, Silas	Mixer, Samuel
Denison, Hiram S.	Morey, George
DeWitt, Alexander	Morton, Marcus, Jr.
Doane, James C.	Morton, William S.
Durgin, John M.	Noyes, Daniel
Eames, Philip	Oliver, Henry K.
Edwards, Elisha	Orcutt, Nathan
Edwards, Samuel	Packer, E. Wing
Ely, Homer	Paine, Benjamin
Eustis, William T.	Paine, Henry
Foster, Aaron	Parker, Adolphus G.
Foster, Abram	Parker, Joel
Fowle, Samuel	Plunkett, William C.

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Pomroy, Jeremiah
Preston, Jonathan
Rawson, Silas
Read, James
Reed, Sampson
Richards, Luther
Richardson, Daniel
Richardson, Samuel H.
Royce, James C.
Sanderson, Amasa
Sargent, John
Sikes, Chester
Smith, Matthew
Souther, John
Stetson, Caleb
Stevens, Charles G.

Stevens, Granville
Sumner, Increase
Talbot, Thomas
Turner, David
Tyler, William
Wales, Bradford L.
Waters, Asa H.
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
White, George
Wilder, Joel
Wilson, Milo
Winn, Jonathan B.

Brown, Alpheus R.
Brown, Artemas
Bullen, Amos H.
Bunpus Cephas C.
Chapin, Chester W.
Choate, Rufus
Clark, Henry
Clarke, Stillman
Coggin, Jacob
Cook, Charles E.
Coolidge, Henry F.
Copeland, Benjamin F.
Crane, George B.
Cressy, Oliver S.
Crockett, George W.
Cummings, Joseph
Curtis, Wilber
Cushman, Henry W.
Cutler, Simeon N.

Loud, Samuel P.
Lowell, John A.
Marcy, Laban
Marvin, Abijah P.
Marvin, Theophilus R.
Meador, Reuben
Moore, James M.
Morse, Joseph B.
Morton, Elbridge G.
Morton, Marcus
Nash, Hiram
Nayson, Jonathan
Norton, Alfred
Ober, Joseph E.
Orne, Benjamin S.
Paige, James W.
Park, John G.

Mr. DANA, for Manchester. The Convention will perceive that only three members of the thirteen who formed the Committee have signed this Minority Report, and the conclusion of course will be that the other ten had some reason for withholding their names. If gentlemen will turn to the twenty-eighth article of the Bill of Rights, they will find that it reads as follows:—

“No person can in any case be subjected to law martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.”

It is proposed by the minority of this Committee to strike out the words “but by authority of the legislature.” The question, of course, arises, what is the object of this amendment? The Committee which had the matter under consideration, did not think this a proper amendment to the Constitution, because we believed that it ought to be in the power of the Commonwealth to proclaim martial law whenever circumstances should render it necessary. We all hope and pray that it may never be needed, but the question is, whether there shall be vested in the legislature this power, to be used in case of any great emergency? For my own part, I can see no reason why we should strike out this clause from the Constitution. It has never been abused, and there is no danger that it ever will be; and I believe that we should therefore allow it to remain. The question is not whether martial law is necessary or unnecessary, but whether the power to proclaim it shall exist as it has heretofore existed in our Commonwealth. The fears of gentlemen will be allayed, by considering the process which must precede the declaration of martial law. The bill must pass the House of Representatives, then the Senate, and afterwards go to the hands of the governor and be signed or rejected by him. I cannot but think that if the Convention consider this subject more maturely, they will concur with the Committee.

Mr. HALLETT. The gentleman has not explained to the Convention, if I understood him, what martial law is; but he asks, is it possible that you will take from the legislature, who have so long held it, the power of proclaiming martial law? Now the question which we should ask ourselves is this: “Shall we, or shall we not, take from the legislature the power of abrogating all law, and proclaiming itself a dictator?” for, as Blackstone says, martial law is the abrogation of all law; it is putting territory under military authority.

The gentleman says there may be a necessity for this. When it is so, it will be equally necessary for us to do as they did in the Roman Republic—proclaim a Dictator.

Mr. BUTLER, of Lowell. I am unwilling that this question shall be taken, without the fullest understanding of the subject; and in order that I may at least, present my views for the correction of other gentlemen, I will state a few words in regard to what I understand to be the principles of the subject under discussion. The question in dispute seems to be, whether or not the Convention are ready to say, that to the legislature shall be given the power at any time when it may best suit them, to take any citizen of this Commonwealth, however peaceably disposed, and without judge or jury, to try him, and hang him on the first tree! If you are ready for that, I am

NAYS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, James B.
Allen, Joel C.
Allen, Parsons
Alley, John B.
Austin, George
Baker, Hillel
Bancroft, Alpheus
Barrett, Marcus
Bates, Moses, Jr.
Beal, John
Bird, Francis W.
Booth, William S.
Boutwell, Sewell
Bradford, William J. A.
Breed, Hiram N.
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Burlingame, Anson
Butler, Benjamin F.
Case, Isaac
Chandler, Amariah
Clark, Ransom
Clarke, Alpheus B.
Cole, Sumner
Davis, Ebenezer
Day, Gilman
Deming, Elijah S.
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Earle, John M.
Easton, James, 2d.
Ely, Joseph M.
French, Charles A.
French, Samuel
Frothingham, R., Jr.
Gilbert, Washington
Giles, Charles G.
Gooch, Daniel W.
Green, Jabez
Hallett, B. F.
Hawkes, Stephen E.
Hazewell, Charles C.
Hillard, George S.
Holder, Nathaniel
Hopkinson, Thomas
Howard, Martin
Hoyt, Henry K.
Hunt, Charles E.

Hyde, Benjamin D.
Jackson, Samuel
Kendall, Isaac
Knight, Hiram
Knight, Jefferson
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Little, Otis
Marble, William P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Newman, Charles
Nichols, William
Nute, Andrew T.
Osgood, Charles
Partridge, John
Perkins, Daniel A.
PHELPS, Charles
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Ring, Elkanah, Jr.
Ross, David S.
Schouler, William
Simonds, John W.
Sprague, Melzar
Spoonser, Samuel W.
Stevens, William
Stiles, Gideon
Strong, Alfred L.
Sumner, Charles
Swain, Alanson
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d.
Thompson, Charles
Tilton, Horatio W.
Turner, David P.
Underwood, Orison
Viles, Joel
Wallace, Frederick T.
Wallis, Freeland
Walker, Amasa
Warner, Samuel, Jr.
Weston, Gershom, B.
Williams, J. B.
Wilson, Henry
Wilson, Willard
Wood, Charles C.
Wood, Otis

ABSENT.

Abbott, Alfred A.
Allen, Charles
Allis, Josiah
Appleton, William
Ballard, Alvah
Ball, George S.
Banks, Nath'l P., Jr.
Bates, Eliakim A.
Beach, Erasmus D.
Beebe, James M.
Bell, Luther V.

Bennett, Zephaniah
Bigelow, Edward B.
Bigelow, Jacob
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Braman, Milton P.
Brewster, Osmy
Bronson, Asa
Brown, Adolphus F.

Davis, Charles G.
Davis, Isaac
Davis, John
Davis, Robert T.
Dehon, William
Dorman, Moses
Easland, Peter
Eaton, Calvin D.
Eaton, Lilley
Farwell, A. G.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fiske, Emery
Fitch, Ezekiel W.
Fowler, Samuel P.
French, Charles H.
French, Rodney
Gardner, Henry J.
Gardner, Johnson
Gates, Elbridge
Gooding, Leonard
Gould, Robert
Graves, John W.
Greene, William B.
Greenleaf, Simon
Griswold, Whiting
Hadley, Samuel P.
Hall, Charles B.
Hapgood, Seth
Haskell, George
Hathaway, Elnathan P.
Hayden, Isaac
Heard, Charles
Heath, Ezra, 2d.
Henry, Samuel
Hewes, William H.
Heywood, Levi
Hobart, Aaron
Hood, George
Hooper, Foster
Hubbard, William J.
Huntington, Asahel
Huntington, George H.
Ide, Abijah M., Jr.
Jacobs, John
Jenks, Samuel H.
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kinsman, Joseph
Kinsman, Henry W.
Knowlton, Charles L.
Ladd, John S.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Lord, Otis P.
Lothrop, Samuel K.

Absent and not voting, 179.

So the Report was concurred in.

The next question being on ordering the amendment reported by the minority of the Committee, on the subject of martial law, to a second reading,

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willing to take my chance with the rest. [Laughter.] That is just the question which we are to decide upon. Martial law, as I understand it, is this: that whenever either the legislature, or in some countries the general, chooses to proclaim martial law, from that moment the military chief is the only judge, the drum-head the only trial, and the provost-martial the only executioner. The gentleman for Manchester says, if a man is going to be hung, he may as well be hung by martial law, as by any other.

Mr. DANA. I beg pardon of the gentleman for interrupting him, but what I said was, that it was as well to be hung by martial law, as by no law.

Mr. BUTLER. I accept the amendment of the gentleman. Martial law then, is no law; it is the abrogation, as the gentleman for Wilbraham has said, of all law. Now, the moment a city gets to be a camp, we shall have martial law, and not before; and as such, the law martial may be proclaimed by the declaration of the commanding officer. But when so declared, it can only apply to the officers and soldiers under his command, and those who are in actual service and have consented to be governed by such a law, in any great emergency that may arise. Now, let me ask, what shall be done with five thousand insurrectionists, who may be disturbing the public peace, and laying waste the public property? Why, we will assail them, cut them off, destroy them, get them hanged, take them prisoners, and then, we will try them fairly and openly in our courts in as independent a manner as the lot of humanity will permit, before the judges whom my friend wanted to be elected for life.

Sir, I trust there is no lawyer in this body who is not sound in regard to the explanation of martial law; and as for myself, I am unwilling to have the power of proclaiming such a law placed in the hands of the legislature, except so far as it may affect those persons in actual service. Soldiers and sailors may be subject to martial law if they please; but I am unwilling that the little child, the infant in the cradle, the wife and the mother, shall come within its reach, to be hung up and whipped, to suit the capricious and brutal fancy of a second Haynau.

Mr. BRIGGS, of Pittsfield. I do not believe that in these days of progress and civilization, we stand in much danger of being hung up and whipped under a martial law, by a second Haynau, or anybody else. The experience of the past has shown that this power has never been brought into requisition, although at one period of our history, at the time of Shay's Rebellion, there was as much need for it perhaps, as there has ever been since, not excepting a recent crisis which arose, when the army and navy of the United States were directed to turn their attention towards this rebellious city. It is not impossible, however, that circumstances may arise in future, which will require martial law to be proclaimed in Massachusetts; but does any one doubt for a moment, that here, in this goodly Commonwealth, a proclamation will be made that all citizens from Boston Corner down to Hull shall cease to be under the civil law, and that every man, woman and child, shall be subject to a court martial for any charge brought against them? I do not believe that there is the remotest probability of such a state of things taking place; and therefore, I confess, though I have a great rever-

ence for ancient things, I have no desire to see the martial law among the people. The history of our country presents but little encouragement to the continuation of such a law in our Constitution. It has seldom been proclaimed; I remember but a single instance, and that was in the city of New Orleans in the war of 1812; and I am sorry to say that there were transactions during that period which I wish, for the glory and renown of the individual who proclaimed it, could be expunged from the history of the country. That same individual said, that if Massachusetts had been within his military district, he would have hung every delegate. That is martial law; its process is summary; the trial is before a court martial, and not before a court of law; there is no great time spent in examining or cross-examining the witnesses, but the case, however important it may be, is brought to the most speedy termination. For these reasons, I think it would be entirely safe for this clause to be stricken out of the Constitution. As Burke once said, in speaking of the veto power in England, its preservation and repose may at some time result in great good. He said that that power for more than one hundred and thirty years had been unused, and its very repose had probably preserved the country. And so would I say in regard to this martial law, if there was the slightest probability that it would be the means of preserving the Constitution and the Commonwealth; but I do not believe there will ever be a need for it within the boundaries of our State; and I am, therefore, inclined to vote for the amendment of the Committee, and have the clause which provides for the proclaiming of the martial law by the legislature, stricken from the Constitution.

Mr. OLIVER, of Lawrence. I do not propose to occupy but a few moments in discussing this subject. I merely desire to say that I shall vote for the amendment which has been proposed by my friend for Wilbraham, on the part of the minority of the Committee, and I shall do so from the principle which has ever guided me, of endeavoring to keep everything of a military character distinctly subordinate to the civil power. As it has already been observed, the law martial travels with the military array, and wherever the military are, there, too, is this law. But the question is asked, if your law martial has reference only to the military, what shall be done with traitors who may be found inside the lines? I reply, they would be subject to arrest, but to arrest only; for they would not be tried by the law martial, but be turned over to the civil authorities, to be dealt with by them.

Mr. SCHOULER. I would inquire, if the civil authorities were on the side of the enemy, what would you do then; and who are to try such cases then?

Mr. OLIVER. I think that a case like the one supposed by my friend, could never occur. I do not believe that the circumstances could possibly happen, when the whole community who do not belong to the military organization, would be found to be traitors.

Mr. SCHOULER. My question was, what are you going to do in case the civil authorities are traitors?

Mr. OLIVER. I cannot inform the gentleman, for such a state of things is entirely beyond my comprehension. At any rate, I think the community will be perfectly safe if we

omit this provision in the Constitution, as has been proposed by the Committee. Although I have been connected, for many years, with the militia of our State, I have a disrelish for anything which tends to place it in a prominent position; and, as I said before, I shall seek every opportunity of keeping it strictly subordinate to the civil law. For these reasons I shall vote for the amendment which has been proposed by the gentleman for Wilbraham.

Mr. SCHOULER. I do not suppose it is very probable that the circumstances will ever arise that will make it necessary for the martial law to be proclaimed; but still, I can conceive the possibility of such an exigency, and so long as this exigency exists, I am unwilling to have this clause stricken out. I do not believe that the legislature would ever exercise that power unless there was an urgent necessity for it, and then it would not by any means be so stringent in its operation as some gentlemen would make us suppose. We do not know what may happen in time, but at any rate, it is best we should be provided for any emergency that could arise. So long as there is no necessity for it, of course it will be a dead letter in the Constitution; but if the necessity should arise, we shall be provided for it. I am, therefore, opposed to the amendment which has been submitted by the Committee, and hope that it will not be adopted.

Mr. HALLETT, for Wilbraham. I do not feel that I can sit still after the allusion which has been made by the gentleman from Pittsfield, to the memory of one of the greatest men and patriots who ever lived in our country, without making some reply. Sir, I believe that that gentleman entirely mistook the character and conduct of General Andrew Jackson. That distinguished man, in his proclamation of martial law in the city of New Orleans, though he did it upon his own responsibility, saved his country and his country's honor at a moment when the legislature of Louisiana, assembled in New Orleans, were deliberating upon the propriety of surrendering that city to the enemy without striking a blow. He took this step, proclaimed martial law, and arrested that inglorious act. Yet, the gentleman says it was a stain upon his memory, and upon the history of the country! What, Sir, would have been the stain, if instead of the glorious victory which now graces our annals, we should have had a disgraceful defeat, and a surrender of our forces to Packenham? He took upon himself the responsibility, as a great man will ever do on a great occasion, and defended and saved his country's honor. And when that was accomplished, what did he do? He went into court, threw down his sword, and was tried for an infringement of the existing law. He paid his fine and passed out of the court, suppressing any attempts on the part of his friends who were there assembled, to interfere with that decision; because he well knew that it was the principle of his country to hold the military in subservience to the civil power. Time went on; party feeling passed away, and there now stands upon the records of the national legislature that act which refunded the fine which Andrew Jackson paid. That was the martial law then, and I ask, shall we allow to remain in our Constitution a provision which vests in the legislature alone the power of proclaiming the martial law. If necessary at all, give that power to the commanding officer; for

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as Livingston, one of the ablest of political writers has said, whenever a General attempts to declare martial law upon his own responsibility, if he is successful, and protects his country, his country will protect him; and if he does violence and wrong, the laws will punish him. That is the only martial law I want to see in this free country.

Mr. GRAY, of Boston. I do not feel qualified to speak upon this question at length, because I do not know that I am aware of the precise distinction between the law martial and the military law; but I desire to refer to another part of the Constitution, which has not yet been adverted to. I find in chapter 6, article 7, the following clause:—

“The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months.”

Now, my question is this: If we say that the law martial ought not to be permanently established, ought we not likewise to say that this power of suspending the *habeas corpus* shall not be given to the legislature? If the legislature are allowed the power to suspend one of the greatest rights and privileges of a citizen, ought not the same reasons to operate for the retention of the clause in question?

These are my views in regard to the subject, though I must confess my ignorance, as I said before, in regard to the merits of the question.

Mr. BATES, of Plymouth, demanded the previous question.

The demand for the previous question was sustained, and the main question ordered to be now put.

The question being on ordering the resolution reported by the Committee to a second reading, it was taken, and upon a division—ayes, 73; noes, 41—decided in the affirmative.

On motion by Mr. PLUNKETT, of Adams, the Convention then, at twenty-five minutes to seven o'clock, adjourned.

WEDNESDAY, July 27, 1853.

The Convention assembled, pursuant to adjournment, and was called to order by the President at nine o'clock.

Prayer by the Chaplain.

The journal of yesterday was read.

Distribution of Books.

The order introduced yesterday, by the gentleman from New Braintree, (Mr. Mixter,) directing the distribution to the towns not represented of a copy to each of the new Constitution, and of the Journal of the Convention, and of that of 1820, was taken up for consideration.

Mr. MIXTER moved to modify the order by substituting the following:—

Ordered, That each of the towns in this Commonwealth that have not sent a delegate to this Convention shall be entitled to receive one copy of Barnes's Constitutions of the United States, one copy of the Journal of the Massachusetts

Convention of 1820, and one copy of the Journal and Debates of this Convention.

Mr. MIXTER remarked that it had been suggested to him that the towns which are not represented here would not be furnished with these books, unless some special action were taken in regard to it. The members of this Convention would doubtless take care that their own towns were supplied, but those unrepresented, although equally entitled to receive them, inasmuch as they would be called upon to pay their proportion of the expenses, would, without some such order as this, be unsupplied.

Mr. EARLE, of Worcester. I have but one objection to the adoption of the order that is proposed, and that objection is, that I believe we have no power to do it. It appears to me we have just as much right to make an appropriation for any other object as we have for this; as much right to vote an appropriation for any purpose under the sun, as to do what is proposed by this order.

Mr. WALKER, of North Brookfield, remarked that it certainly appeared to him that the towns having no representatives here were as much entitled to have these books for their information, as those which are represented.

Mr. BUTLER, of Lowell, moved that the order be laid upon the table.

He withdrew the motion, at the request of

Mr. BRIGGS, of Pittsfield, who moved to amend the order, so that it would read, that “the Secretary of the Convention be directed to send to each of the towns,” &c.

Mr. ALDRICH, of Barre. I would inquire whether it will be possible to execute this order? It proposes to supply these towns with a copy of the Debates of this Convention. I ordered three copies at the commencement, and this morning I went to buy three more copies, and bought them at a premium upon the ordinary cost. I understand that it will be difficult to procure them.

Mr. SARGENT, of Cambridge. I would ask if the Convention did not order a sufficient number, so that they would have enough on hand to enable the Secretary to comply with this order?

The PRESIDENT. The Chair is informed that there is another edition to be published, from which this order could be filled, if the Convention so determine.

The amendment of the gentleman from Pittsfield was agreed to.

The question being on the adoption of the order, as amended,

Mr. BATES, of Plymouth. I should like still farther to amend this order. I suppose the Convention of 1820 voted to each town in the Commonwealth a copy of its Debates, and that that copy is in the hands of the clerk of such town. This proposition is to supply those towns which are not represented here. Now, I would propose that, so far as relates to the Debates and Proceedings of this Convention, they be distributed to all the towns, one copy to each. It may as well be done under this order as at any other time. If we so order now, it will prevent the necessity for another order in reference to that matter.

Mr. MIXTER. I do not know but that the Convention of 1820 did order the distribution of their Proceedings to all the towns in the Commonwealth, but I do happen to know that there is no copy of those Proceedings in the town in which I live. I have had occasion to examine the books

belonging to that town, and I have never seen a copy of those Proceedings.

Mr. SARGENT, of Cambridge. In reply to the remarks of the gentleman from Plymouth, I will say, that my impression is that we ordered a certain number of copies, one portion thereof to be distributed among the members, another portion to be placed in the hands of the Secretary of State, to be distributed as the Convention may direct.

Mr. BRIGGS. I hope the gentleman will allow this order to pass, so as to provide for the towns that are not represented; and in reference to those that are, their representatives will undoubtedly take care of them.

The amendment was agreed to, and the order, as amended, was adopted.

Rights of the Jury.

On motion of Mr. WILSON, of Natick, the Convention proceeded to consider the unfinished business on the Orders of the Day, being the resolve on the subject of the rights of the jury.

The pending question being on the final passage of the resolve.

Mr. BURLINGAME, for Northborough. Mr. President: There is so little time to discuss this question, that I scarcely know where to commence. I do not complain, however, for I am most anxious to bring the labors of the Convention to a close. But inasmuch as the time for discussion is so limited, I ask the ear of the Convention while I shall occupy its attention—not for my sake, but for my cause's sake—in behalf of a most important right. I shall speak as rapidly as I can, so that I may crowd as much as possible into the brief space allowed me.

The minority of the Committee, in asking you to adopt their Report, do not urge you to declare any new doctrine, but to recognize the old common law rights of juries. We do not wish to assail judges, nor to reflect upon them, but rather to relieve them from the imputations to which they might otherwise be subjected. Inasmuch as they do not now agree among themselves, as to the extent of their powers; it is our duty, as it is our right—for their good, and for the general safety—to define them, to bound their sphere of action, to state the law which is to guide them so clearly that they can never misunderstand it; so that juries will know their duty, and counsel how far to go, and the whole people their rights.

Because in civil cases the judges give the law to juries, and because in criminal cases they instruct them in the law—which duty we do not desire to relieve them from—juries have become to believe, and the whole community along with them, that they can do no otherwise than follow the instructions of the court, whether those instructions be right or wrong. It is because this is so, because judges have, in some instances, in these latter days, usurped the rights of juries, denying to them, in the pride of position and the pride of learning, the right, in criminal cases, to pass upon the law and the fact, it becomes necessary, if we would save the great right of trial by jury in its integrity, either by legislative enactment or by more solemn expression in the fundamental law, to declare the right of juries, especially in criminal cases. This has been found necessary many times heretofore. Burke states that, up to his time, in England, over forty acts had been passed guarding the rights of juries;

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and in our own country, our State and National statutes are full of provisions tending to the same end.

I did intend, and it would have been my pleasure, had this subject arisen earlier, to trace rapidly the most interesting history of trial by jury, from the first glimmer of anything like it in the classic land, and in the warrior land, to its greater development among the blue-eyed sons of the north, along the Baltic, and at last to its practical and complete realization by the mingled and mingling races of the British Isles and this continent. In this history its great value would be revealed to us, and we should see why we ought to resist, with all our strength, the first attempt to impair its vigor. As it is, I must content myself with a few statements and views, which I hope will be found sustained by precedents, and vindicated by reason and common sense.

In the first place, then, I contend that the doctrine of the Report is sound law; that it has stood against all assaults, for hundreds of years. Judges have so decided, commentators have so expounded, historians have so recorded, and statesmen have vindicated and eulogized this doctrine. There are ten precedents in its favor where there is one against it. Nearly all of the great lights of the English and American law shine out in its favor. The great writers, from Bracton to Blackstone, Littleton to Coke, and later, and the brilliant advocates and the great judges are for it—Holt, and Hale, and Vaughn, and a host of others. We have in this country nearly all of the judges, from the beginning to the present time, in its favor—Marshall, Jay, and Kent; and in this State, until recently, the unstained ermine, the united voice of the court—Parsons, Putnam, and Morton, and the present chief justice himself, until the extraordinary reasoning, not decision, in *Commonwealth vs. Porter*, a case where the authorities on this subject, *pro* and *con.*, may be found. In short, there is one great stream of authorities in its favor, flowing down through centuries. Indeed, it was never denied, except in libel cases, and in these not long. It was undoubted at the Revolution, and in colonial times, juries frequently called upon by standers to testify as to the law.

There are but two great authorities on the other side—Mansfield, in England, and Story, in this country. Mansfield, as an authority, was killed, by act of parliament, by Fox's bill; Story's decision, in this country, still stands, but like a leaning tower, toppling to its fall. I say there are but these two of commanding importance. There are a few others in England and this country, but they are lost in the shadow of these. I ought to say there is a respectable authority against this doctrine, in New Hampshire, which I should not forget to mention, inasmuch as the judge who delivered it is an honored member of this Convention, (Mr. Parker, of Cambridge). There is Duffee, in Rhode Island, and a few inferior judges in other States have decided, sometimes one way, and sometimes another; and a judge of the supreme court of the United States, has decided both ways; but the authorities largely preponderate in favor of the doctrine we maintain.

I said Mansfield's authority was destroyed by Fox's bill. In this country we have followed the doctrines of that act; and if you will look over the Constitutions, and through the statutes of the several States, you will find that in nearly all it

is declared that in cases of libel the juries shall have this right "the same as in other cases"; these words "the same as in other cases," clearly recognizing the right to pass upon the law and the fact in all other criminal cases. I will not insult you by citing, as an authority for the opposite doctrine, my Lord Jeffreys, that bloody villain, who, in the trial of Algernon Sydney, told the jury they must take the law from him, and, forcing them by threats to do so, judicially murdered that noble man. There have been ship-money judges and dispensing judges, and such scoundrels as Scroggs; but I need not wound those who may oppose us here, by stating on which side of this question they were found. Again, I say, the Report we have made is sustained by the precedents; and that you may not rely upon my declarations alone, I beg to refer to Mittermaier, professor at Heidelberg, the greatest living jurist, who has just published a book, not yet translated into English, upon the English, Scotch, and American criminal law. He, after a searching examination of all the authorities, states—and I have the extracts here, translated for me by a German friend of mine interested in this subject (B. Roelker)—Mittermaier states, I say, that in the United States, England, and Scotland, juries have the right to pass upon the law as well as the facts, in criminal cases. He goes into a history of the law in relation to this subject, and cites hundreds of authorities to maintain this proposition. Even those judges who deny to juries this right, admit their power to exercise it. Mansfield first, and Story following him, and taking his very language, adopting his dead decision to bind it upon the living back of America; and Shaw, arguing in favor of the same doctrine, all admit the power of juries to pass upon the law and the facts, but intimate that they have no right to exercise it.

Now, with all due deference to these learned judges, I submit that it borders on the absurd to say juries have the power but not the right. Does the law stultify itself by conferring a power without a right to use it? If they have the power it is, a legal power, and the legal presumption is that it is a rightful power. If it is wrong for them to exercise it, then where is your remedy? It is said there is no wrong without a remedy. Where is it in this case? Suppose the jury does not choose to follow the court; what can the judge do—can he punish? No; he cannot touch a single jurymen; the verdict of not guilty concludes the whole matter; the prisoner goes free and forever. If juries have not the right we claim for them; then why are counsel allowed to address them upon questions of law—a right never but in two or three cases (since overruled) denied them—why should they be permitted to persuade the jury to do wrong? A man cannot plead ignorance of the law as an excuse for its violation; he is presumed to know the law; and yet the jury which is to try him—which is to determine his guilt or innocence—is to be presumed ignorant of the law he is to be punished for violating—ignorant, after hearing the counsel and the judge. Surely this position against us cannot be maintained. Then it may be said—indeed, it has been said—that because judges are clothed with power to pass upon questions of law, preliminary and subsequent to the trial, that therefore they have exclusive power. Now, I maintain that they have scarcely any power which

they can exercise against the prisoner. All the powers lodged with them are for his benefit, *in favorem vite*. Is it not for his benefit that the judge shall determine what evidence shall go to the jury? This is a power not likely to be abused. Is it not for his benefit that the indictment be quashed—that a demurrer be argued—that exceptions be taken—that a new trial, in case of conviction, be granted? What one of these humane powers, which can be only exercised in favor of life and liberty, does our proposition take away? It leaves the judge all power for good, but none for evil, none for caprice, none for oppression. We wish to throw around the citizen every guard. The judge shall be his friend, and the grand jury and the traverse jury; and a new trial shall be granted if the verdict is against evidence. But be it ever remembered that this can only be granted in criminal cases, where the verdict is against the prisoner. Such is the humanity of the law, and who would have it otherwise? Thus our doctrine is sustained by precedent, sanctioned by reason, and commended by humanity. If it had no higher claim for our support than its age, nothing but precedent to recommend it, I would not advocate it here.

The opposite doctrine, in the first place, assumes that all judges are pure, that all juries are corrupt—that judges are always wise, and that juries are always ignorant. Now, I assume that both are honest, and I say one honest judge is as likely to be corrupted as twelve honest jurymen. Let history decide the question. Let us admit that the judge and the jury are equally able to meet the requirements made of them, and equally desirous of performing their duty according to law; which, in the long run, taking human nature as we find it, ought we to trust with the great interests of humanity? Let history answer. I appeal to it confidently; does it not show, that whenever there has been a conflict between judges and juries, the juries have always been right and the judges always wrong? When kings were cruel and courts were corrupt, the jury remained kind and pure; in its generous bosom the victim of oppression found safety and protection. Again and again it has stood like a rock against tyranny. The things of which we most boast were saved by it. Freedom of speech and freedom of the press, and the long list of our rights and privileges. So it was and so it is now. Recently, in England, when the Earl of Derby, then Prime Minister, menaced the refugees from continental oppression, the press of England, with the *Times*, its great thunderer, at its head, informed the haughty earl that it was not for him to admonish and threaten—it was not for him to say who should visit England, or how long he should remain, or when he should take his departure. These were questions to be determined by a jury, and the declaration rang from side to side that no man, no matter what his clime or what his color, could be touched in his property or in his liberty, save through the warm heart of an English jury.

I need not remind you how many times, even in our free land, the fierceness and fanaticism, the madness of party, and the tyranny of wealth, have lost their victim in the jury-box. How often unjust laws have been stayed from cruel execution, or been made to sleep by juries until they were swept from the statute book by the roused spirit of the people. Let no man think that I would ask a jury to shield the citizen from a just law. You

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say who is to determine its justice? I reply, an honest jury, instructed by an honest judge. If a law, or what is called law, outrages all rights and the public conscience, clergymen may preach, and judges may instruct until they are hoarse, juries will never convict under it. This is a fact, and he is unwise who fails to recognize it. But let this be said of juries, and to their honor, when judges have many times struggled with great zeal to convict under cruel laws, if juries have failed in these cases to respond with their verdict, it has never been wanting against the violator of a just and wholesome enactment.

It may be said, if in civil cases the jury take the law from the court, why not in criminal cases? Because the rules that govern them are not the same. The law relating to property is artificial and technical, and there is little motive for tyranny. The criminal law, on the other hand, is easily understood. The indictment must set out the charge clearly and singly, and then, after the counsel have addressed the jury, and the court instructed them on one single question, if they cannot understand the law they must be ignorant indeed. After this is done, it is their right and duty to complicate law and fact, and to bring in a general verdict of guilty or not guilty. They may, if they choose, return a special verdict; but this the court cannot require, and this is still another proof that they have a right to pass upon the law as well as the fact. If the court is to determine the law, then I submit that the trial by jury is little better than a farce; then a man is no longer tried by his peers, as is his right, but by the judge, who may give the law the hue of his own mind. The judge may be his bitter enemy, but still he must take his chance; he cannot challenge him, as he can a jurymen, and exclude him.

Some men seem to think that the moment a man is placed upon the bench, all human passions depart from him, and all wisdom rushes in to take their place. Now I have considerable reverence, but I never could understand this blind adoration of those who chance for the time being to be judges. I never supposed, nor do I now suppose, all wisdom will die with them, that their removal would suspend the laws of nature, and cause the moon to fall, or the stars to rain down from heaven. I take it judges sometimes get disturbed—that they have their likes and their dislikes; and it is said, some of them frequently get angry; and that they hate reformers so much that it would, at times, be difficult for them to detect enough of the gentle quality "mercy" in any law they could apply, to save one from prison or the gallows.

Of this I feel quite sure—I should prefer to take my chance for life or liberty, with twelve of my friends and neighbors—to let them determine the fact and the law, the violation and the intent—rather than to be in the power of any one man, no matter how kind his heart.

If any man in this Convention should say the people are not competent to make the laws by which they are to be governed, we should all denounce the imputation; and yet, there are many here who seem to doubt their capacity to interpret the laws made by themselves when transferred from this or any other place to the jury-box. We do not trust the making of our fundamental laws to judges. Why not, if they alone can understand them? Here we rely somewhat upon the wisdom of those who are or who have been

judges, but we do not follow them blindly. So jurymen, when judges state the law correctly, will be happy to be guided by them; but when from ignorance, or bigotry, or dishonesty, they misdirect and falsely state the law, then the jury must be its defence, as well as the shield of the citizen.

It may be said juries differ in their verdicts. Do judges always agree? Let the volumes of overruled cases answer. The doctrine for which we contend is not in quiet times appreciated. When human affairs are unsettled, when party rages, when majorities rule at the centre, and madness takes possession of accidental presidents, and governors, and judges, then it is the jury shines out as a beacon of safety. The friends and neighbors of a man, made up of every party, form a wall of hearts about him, through which no tyranny can reach him.

In closing, let me pray you not to decide against us hastily; and I appeal for a hearing and for support, to my own party friends. I claim them for this great right, because of their devotion to that liberty it is intended to guard. I claim the reformers of every party. I hold them to their professions. I claim the conservatives, because they would cling to the ancient ways. Here is the pure gold. Here is a doctrine that has stood the blasts of centuries. I call upon my professional brethren to stand by it. They know it is the law. Let them no longer, in this Convention, subject themselves to the charge of opposing everything the people desire. I know our profession has always been sensitive to anything touching the laws and their administration.

I believe it was Chatham who, because of this sensitiveness of lawyers, launched at them, in substance, this sarcasm. I do not remember the precise words, but it was something like this, he said: "The whole empire might shake from its centre to its circumference, and every lawyer would remain quiet in his cell; but touch one thread of the law, and every spider in Westminster Hall would crawl forth in its defence." I think the sarcasm is unjust, for wherever liberty and humanity have needed defenders they have found them in our ranks. We may point with pride to Tronchet, Deszeze, and Malesherbes, defending an old king deserted by all the world, at the risk of their lives; to Erskine, standing up bravely for the doctrine we advocate, between an angry judge and a quailing jury; to Curran, in the midst of arms, breathing forth those last words of defiance ever heard in his native land; to Otis and Adams, arguing writs of assistance one day for the people, and then stemming their wrath by defending the soldiers who caused their blood to flow in King Street. I say the sarcasm is unjust. But I see my time is about up. Again I urge the Convention to adopt the Report of the Committee; it will then have done something to guard the rights of the people.

[Here the President's hammer fell, the time to which the speaker was entitled, under the order of the Convention, having expired.]

Mr. RANTOUL, of Beverly. There is one case to which the gentleman for Northborough, (Mr. Burlingame,) did not refer, in which the court instructed the jury that if they had doubts of the law, they were bound to receive the law from the court; that they had the power, but not the right to do otherwise. This was in the case of an indictment against Abner Kneeland, in

Suffolk County, about twenty years ago, at which trial Judge Wilde presided. It may be that I have not seen a correct version of the facts; but as I have seen the case reported, the judge so instructed the jury. This case occurred to my mind, while the gentleman last up was speaking, and I thought I would suggest it to the Convention.

As long ago as 1771, President John Adams discussed this subject, and decided that the jury had the right to determine the law, as well as the facts.

In 1802, when Judge Chase, of the Supreme Court of the United States, was impeached, one of the charges against him was, that he denied to the jury the right to determine the law, as well as the fact. Upon this charge, however, he was acquitted. He proved, by evidence, that he had never interfered with the jury in that respect; but that on the contrary, he had argued that the jury had that right; that it was an ancient and a sacred right, and one which should not be interfered with.

I believe there is another case which occurred in Boston, within two years, which might be referred to, in which a United States judge required, in impanelling a jury, that they should declare that they would take the law from the court. But it appears to me, that this is a very great encroachment upon the rights of jurors. It is a matter of the highest importance, that their rights should be well guarded, and, I think it would be very proper at this time to interpose some obstacle against the encroachment of the courts upon their rights.

Mr. HILLARD. Mr. President: This is an important question, as has been said by my friend for Northborough, (Mr. Burlingame,) and I have only fifteen minutes to discuss it in. I wish our friends, the reporters, would invent a system of short-hand talking as well as short-hand writing. I wish we could apply to our debates some condensing process like that by which chemistry presents an acre of poppies in the shape of an ounce or two of opium. It is hardly possible to do more than cross the threshold of this subject in the limited time we have.

The question under discussion assumes two aspects. In the first place, what is the law,—in the second place, what ought it to be? As to the first point, every lawyer in the Convention will tell you that in criminal issues juries are judges of the law as well as of the facts. This is one of the common-places of our science. But what do these words mean? Here is the rub. One-half of the questions which have convulsed the world have been questions of definition. I am reminded, in this connection, of a well-known Jacobite epigram:—

"God bless the King! God bless the faith's defender!
God bless, no harm in blessing, the Pretender!
Who that Pretender is, and who that King,
God bless us all! is quite another thing!"

In the interpretation of these words, two views or theories will be found to be sanctioned by the opinions of courts and judicial dicta. One is, that the jury has and ought to have the right to determine or settle the law, and in doing so to disregard the instructions of the court if they see fit; in other words, to assume what are strictly judicial functions. The other is, that while the jury, inasmuch as they give a general verdict of guilty or not guilty, have the power, or rather

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(to use a pedantic word) the potentiality—for power has a double meaning—to disregard the instructions of the court, and settle the law for themselves, they have no moral right to do so; that such a course is a departure from their proper line of duty, and that they are bound to receive the expositions of law laid down by the court, as authoritative and binding, and apply them to the facts as proved. This latter doctrine I take to be the received law in this Commonwealth, as laid down by the supreme court of Massachusetts in *Commonwealth vs. Porter*, (10 Metcalf, 263) and also in the circuit court of the United States by Mr. Justice Story and Mr. Justice Curtis.

In every criminal trial, the issue of guilty or not guilty, involves matter of law as well as questions of fact. In the first place, were certain acts committed; in the next place, do those acts come within the legal definition of the crime alleged in the indictment. This is true in all criminal issues; but there are also many civil issues which involve matter of law and matter of fact also. Two men, for instance, quarrel in the street. One gives the other the lie; and he is knocked down for it. He brings a civil suit for damages; the issue is not guilty; and the only defence is a legal defence founded on the provoking language. The judge charges the jury that words of provocation are no justification of an assault, but may go in mitigation of damages. If the jury disregard these directions and bring in a verdict of not guilty, the verdict may be set aside and a new trial granted. On the other hand, if the party assaulted goes before the grand jury, and they find a bill, his opponent is indicted for the same offence, the issue is the same, the defence is the same, the charge of the judge is the same, and yet it is contended that the jury have the right to disregard the instructions of the court, and acquit the defendant, as fully as they have the actual physical power, and there is no remedy anywhere. I put it to any lawyer, to any man of candid, common sense, if between these two cases there is any distinction in law, reason, or natural justice. Can any man tell me why the jury, in the one case, should have a power which they ought not to have in the other?

The sensitiveness felt by many politicians, upon what are called the rights of juries in criminal trials, is, I think, the result of a false analogy—always a fruitful source of error. The doctrines on this subject, grew up in England, in times of tyranny, when the government was an oppressor; when men were hunted to death under the forms of law, by venal advocates and unprincipled judges. They grew up, also, not in ordinary trials, but in state prosecutions. The jury-box was then the Thermopylae of liberty; and I honor, in the core of my heart, that noble army of martyrs and patriots, who, in that narrow strait, fought the good fight of constitutional freedom. But, applied to us, the analogy fails. In a criminal trial here, it is not an arbitrary government crushing one of its subjects, but it is organized society protecting itself against crime; it is the majority enforcing legally its legal will. And yet we claim for the felon, who makes war upon society, some portion of that sympathy which belongs to the patriot who resists tyranny.

Out of a multitude of considerations which crowd into the mind, I can only present one or two. Under all popular governments like ours, a written Constitution is a matter of necessity.

The object of a Constitution is to protect the minority against the majority, as it is the object of a court of justice—in criminal matters—to protect the individual against the majority. This gives rise to an important branch of law called constitutional law. In England, they know nothing of this. Parliament is supreme, and when a statute is passed, there is an end of the matter. But here there are many enactments which come under the head of constitutional or not constitutional. In regard to these, as a man thinks, so is it. So close and subtle is the connection between the will and the mind, that where there is any room for question, every man conscientiously believes a law to be unconstitutional which he dislikes. I presume there is no man in this Convention, opposed to the fugitive slave law, who does not believe it to be unconstitutional. I presume there is no man opposed to the Maine liquor law, so called, who does not believe it to be unconstitutional. What will be the practical effect of giving the jury the right of acquitting every person tried under a law which they may deem unconstitutional? A law is passed by a large majority; it is sustained by public sentiment; the court charges that it is constitutional, and yet, if one jurymen thinks otherwise, no conviction can ever be had under it. I ask the democratic gentlemen in this Convention, if this be not an anti-democratic principle? if it does not give, to one man in twelve, that is, to one-twelfth of the community, the power of nullifying the decision of the majority lawfully expressed. And, by the proposition before us, we invest an unlawful, unwarrantable usurpation of power with the character and privileges of a lawful right. And, especially, do I put it to the friends of temperance on this floor, that if they give their hands to this measure, they must, forever, resign all thoughts of combatting this mountainous mischief of intemperance by legislative weapons. They may rear law upon law, they may cover the statute book with their enactments, but it will all be in vain. They will all be but waste paper. Their penalties and sanctions will be but wooden guns that will not go off, and painted dragons that will terrify none but babes.

I am farther opposed to this resolution, because its tendency is to strengthen what does not need to be strengthened, and to weaken what ought to be confirmed. It elevates the jury and depresses the court. My friend for Northborough, (Mr. Burlingame,) says, that in England the judges have been encroaching upon the province of the juries. Is that true of this country? Are we likely to suffer from the encroaching and aggressive spirit of the bench? I submit that the danger with us is rather the other way. The danger rather, is, that the currents of popular feeling, when strongly moved, will sweep away the bench, like bubbles on a swollen flood. In medical books, we read of cases of hypochondria. I have read of a man who thought his legs were made of butter, and would not come near the fire lest they should melt. There is also such a disease as political hypochondria. The minds of politicians are often haunted with unreal and fantastic fears. And I know of no more marked case of this disease than an apprehension of the usurpations and encroachments of the judiciary—that the rights of the people are likely to be immolated upon that altar. What has been, what is the course of public sentiment on this point?

Are not judges less respected than they once were? Are not magistrates less honored? Is not the spirit of reverence growing more and more faint in the general heart? All the old men in the Convention will confirm these statements. It is the power of popular sentiment, manifesting itself through juries and legislatures, which is gathering everything into its irresistible current. The very debates of this Convention show the weakness of the judiciary. Let me here state a political truism. The very fact that so many of our vigilant patriots are so sensitive as to the encroachments of the judiciary, is a security against those encroachments. Dangers that are foreseen are not dangers. Forewarned is forearmed. The real perils in States are those which are not apprehended. Should anything like a conflict ever occur between the judiciary and the legislature, or between the court and the jury, we should learn where was the strength and where was the weakness. The active sympathies, the fervid passions, the strong instincts, would rally round the popular institutions, while the bench would have the languid support of reason and judgment. The old, the timid, the conservative, the fossil remains of an antediluvian age of politics, would gather round the judiciary, while on the other side would be found the young, the ardent, the ambitious, and the aspiring; and in the shock of conflict the judiciary and its friends would not stand a moment. And I object to this proposition, because it is travelling farther in a direction in which we have already moved quite far enough. So far as it has any practical effect, it will be to lower the judiciary. It will make the presiding judge in a criminal trial, little more than a respectable ceremony. We require him to instruct the jury, and yet we authorize the jury to disregard those instructions. We permit them to receive the directions of the court simply as a piece of testimony on the law, which they may believe or not, as they please. You will thus lessen the desirableness of a seat on the bench, in the eyes of all high-minded men, and that is a result which the community must deprecate.

Lastly—I object to the proposition because of the cruel and mischievous uncertainty it will introduce into the administration of criminal law. If juries may determine the law as well as the facts, there will be as many courts of final jurisdiction, as there are juries. There will be one law to-day, and another to-morrow; one law in Boston, another in Worcester, and another in Springfield. A man may be acquitted in Suffolk, and another convicted in Middlesex, on precisely the same facts. Where the law is thus uncertain and inconsistent, there can be no true liberty. The government becomes, what our Bill of Rights says it should not be—a government of men and not of laws.

Mr. President: The views I have advanced are not popular. They are not entertained by the majority of the whole country, and I do not suppose that they will commend themselves to the favor of the majority in this Convention. I expect to be voted down. But I have learned to submit to the will of the majority when lawfully and constitutionally expressed. I shall waste no time in repining or croaking, but make the best of what is left. Inasmuch as the jury may always return a general verdict, and as they cannot be interrogated upon the grounds on which they made up their verdict, the proposed measure

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will have very little practical effect. I oppose it on principle. It is going farther where we have gone far enough; it is throwing additional weight into a scale already too heavy. In all things, my trust is the moral sense, the enlightened public sentiment of the community. Where that is sound, it corrects defective institutions; where that is corrupt, good laws are of little value.

Mr. KEYES, for Abington. I have waited for others who are more competent than I am, to discuss this question. I do not propose to say anything as a lawyer, or as a judge, upon it; but I look at it as an individual sitting upon a jury, might look upon a question of law. I recollect what Judge Wilde once told me when I was sitting upon a jury. Speaking of common law, he said that a man of good common sense could tell what the common law was upon almost, if not quite, every subject; and I inferred from that that the only advantage which a judge had over a juror, if he was a man of ordinary capacity, was that the judge had more experience, and his information was more comprehensive, and included a greater number of facts and cases. That is all the difference; so that a man who is not educated in the law can tell very well what the law is, because he can tell what it ought to be. The common law is the science of reason and justice; and a man who can tell what justice is can tell what the common law is, in almost all cases, and therefore he is just as competent to decide the case as the judge. I was glad to hear the gentleman from Boston say that the probable state of things would be very much as it is now, even if this resolution should pass. I believe so too. It seems to me, treating this as we do other subjects, that there is reason enough for the adoption of this proposition, growing out of the present state of uncertainty which exists in regard to it. Every-body knows that juries do judge of the law as well as of the facts. They cannot help it; they will do it. In the city of Boston,—I was going to say that you could carry the fugitive slave law into execution, but I doubt it; I will not accuse the city of Boston of that; I believe that, bad as they may be in some respects, they are not bad enough for that. But, Sir, I will say this, that in the city of Boston you can hardly carry the Maine law into execution. There are reasons for both of these facts. I should like to see the Maine law executed; but no man refuses to carry that law into execution who does not have some very plausible reasons for it. There are provisions in that act which we would not submit to in other cases; and the only justification of it is, that as liquor-selling is an extraordinary evil, it requires an unusual and extraordinary remedy. But when you find one jurymen out of twelve, as the case has been within two or three days in Boston, standing out against it, it is not entirely without reason that he does so. A few years ago there was a gentleman who was editor of a paper in Boston, and it happened that he was on a jury, and it happened, also, that he was found in a minority of one, and he thought the other eleven were extremely unreasonable because they did not agree with him. Sir, according to the judgment of the public at the present day he was right, and the eleven opposed to him were wrong. The laugh and joke has passed around about the one who thought all the rest on the jury were unreasonable; but it is now generally believed they

were unreasonable; there is no doubt about it; the minority was right. Now, Sir, the difficulty is not that the jury are liable to be influenced by the judges. They will take the judge's testimony just the same as they take the witness's testimony. They are to receive it as testimony, and they do receive it as testimony. Do men suppose they will not place any reliance upon it? Let Judge Shaw give instructions to the worst set of men in the Commonwealth who ever constituted a jury, and we know they would regard his testimony. If a law should happen to be passed which insults the common sense and the humanity of the people, they may so construe it that the people will not suffer. Now, Sir, the testimony has been well stated here. This subject was once before the Senate, and I took occasion to look at some books to find out the opinions of the bench upon it, and I found them to be, in a majority of cases, in accordance with the doctrines of the resolution before the Convention, viz. that the jury had a right to decide the question of law, as well as the question of fact.

Now, Sir, there need be no apprehension one way or the other, unless great political questions are to be decided. When such questions are to be decided, then, of all times, it is the business for the jury to be felt. Take the great case in Pennsylvania, the Prigg case, for example; that was an agitated political question, but the judges did not decide it according to law; they did not pretend to decide it according to law. Then was a proper time for the jury to give their opinion of the law, as well as the judges. There is no danger from these political questions, because they do not often come in contact with the judiciary, and neither the judges nor the jury are often affected by political agitation. Therefore we find no difficulty. But the very existence of a doubt on this question is, in my opinion, enough to make it necessary that it should be settled one way or the other; because, if the judge in one place is to tell a jury they are bound to decide according to the law which the court lays down, and a judge in another place allows the jury free power to judge both of the law and the fact, there arises the difficulty to which the gentleman from Boston (Mr. Hillard) so justly deprecates. The only way to avoid that difficulty, is to have the matter decided here, one way or the other.

Now, the judges in Massachusetts have, for a few years past, taken the law into their own hands in a totally unjustifiable manner. They have questioned jurors before they took their seats. But jurors, when drawn, should be allowed to take their seats, unless they are challenged by the accused. If a judge is to tell a man who is drawn, that he is unfit to sit because he entertains certain opinions; or if a judge shall ask a juror who is drawn, if he believes in the constitutionality of this or that law, the juror ought to tell him it is none of his business. The moment you permit the judge to put this question and that question, and compel the juror to answer, the power and independence of the jury are destroyed. Why, Sir, under such arbitrary ruling, if the juror says he does believe the law to be constitutional, then he can sit; but if he says he does not believe it to be constitutional, then he is rejected.

Mr. HILLARD, of Boston. I wish to correct a statement of the gentleman for Abington; for I am sure he would not wish to leave a wrong

impression. The question put in the case to which he alludes, was just this: Are your opinions upon the constitutionality of the fugitive slave law, such as to prevent your finding a verdict of guilty in any possible state of facts?

Mr. KEYES. No matter; it comes to the same thing. It is this. The facts in the case, most of them, may be perfectly notorious; the question is to be decided upon the juror's ideas of the law itself. If, therefore, his mind is made up against the accused, then he is allowed to sit; if it is made up the other way, then he is not allowed to sit. But, I say the judges have no business to know anything about it. The law provides a way in which jurors are to be drawn, and they are to sit, unless they are challenged by the person accused, or have expressed such opinions as would show that they were unable to decide impartially, after all the forms of trial had been gone through with.

Mr. SUMNER, for Otis. I cannot subscribe, Mr. President, to the principle involved in the proposition under consideration, notwithstanding the very respectable authority which has brought it forward. Jurors are now unquestionably, judges of the law as well as of the fact. But it is a well settled principle, and I apprehend, one which is regarded throughout this Commonwealth, that they should be governed by the advice of the court, or the instructions of the court, in relation to the law, unless they know that those instructions are wrong. And in assuming to act contrary to the instructions of the court, they assume a very high responsibility.

This proposition before us seems to be founded—for it is not a novel one—upon a feeling of philanthropy toward the accused; and the question is, whether, after all, it is not a mistaken and a misdirected philanthropy, and whether the proposed rule may not be prejudicial rather than otherwise to him. Let us illustrate it. Suppose a person is put upon trial who is accused of crime. His reputation is perfectly well known in the vicinage, and is known to the jurors as being bad. Now the facts which happen to be adduced against him are weak; and the law, rightly applied to his case, would exonerate him from the charge against him. The law is correctly given to the jury by the court; but the jury, by reason of prejudices, of which, perhaps, they are not conscious, but growing out of the fact of their acquaintance with the reputation of the accused, make the law, in their hands to become elastic. They venture, notwithstanding the plain instructions of the court, to go contrary thereto, and the consequence is, that the accused is condemned, and condemned wrongfully. All this may be the effect which this supposed philanthropic rule which you are attempting to fix in the Constitution will produce. Other illustrative cases might easily be adduced, but they will so readily occur to the minds of gentlemen present, that I need not take time to state them. And what is the remedy against the verdict thus found by the jury? If the jury decide wrongfully, who can interpose to restore to the injured party his rights?

No, Sir; I think that upon principles of philanthropy in relation to the accused, as well as in regard to every other principle that can be brought into view, the rule stands better as it now exists, than it will by the incorporation into the Constitution of any such principle as the one proposed. As the law and the practice now is, if the court

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err in relation to the law which is given to the jury, then there is a complete remedy. Then an exception may be taken to the ruling of the court, and a farther hearing may be had upon the subject, and if an error has been committed, it can be corrected.

Again, Sir, what is the duty of the court in conducting criminal trials? The theory of the common law, in relation to the duty of the judge is not an unmeaning theory; namely, that he is to be of counsel for the accused. It is incumbent upon a judge to see to it, that a proper watchfulness is exercised in the conduct of every criminal case, that no improper evidence be introduced; that no erroneous rule is laid down for the government of the jury; in a word, he is, I repeat it, to be of counsel for the accused.

If the principle is to be adopted, that jurors are to be judges of the law, irrespective of instructions from the court, the same principle will, of course, find its way into the grand jury room. The regulation now is, that before every grand jury, they are to have the aid of a prosecuting officer, conversant with the law, who is to inform them of the rules of the law as applicable to the cases before them. But if jurors are to rule over the court, in the trial of causes, then why not suffer the same authority to be adopted in the grand jury room; why not specially authorize grand jurors to take upon themselves the responsibility of indicting persons according to their own notions of law, crude and imperfect as they may be? The result might easily be seen. Indictments without law, and against law, would be found.

Sir, in looking at the probable working of the change proposed, who cannot readily perceive the confusion and difficulties that will be apt to follow? May not, and will not, occurrences and examples like the following often be witnessed? For instance, here are two cases precisely alike, depending, it may be, upon the same facts and the same principles; you bring one before the jury upon the right of the judge; they hear the case, they hear the evidence, and they render a verdict of acquittal, upon their law. Another case comes before a jury on the left of the judge; the same evidence is given, and the same law is applicable, and that jury, with the same power to judge of the law, find a verdict precisely contrary to that which was rendered in the other case. What a system of things for the administration of justice that would be!

No, Sir, I think we had better let the principles which now obtain in Massachusetts, remain as they are, without seeking such an improvement—if so it may be called—as is here proposed.

Mr. LADD, of Cambridge. I desire to say a few words upon this question, before it shall be finally passed upon by the Convention. Although I find upon the Committee who reported the resolution, the names of gentlemen of such character and judicial reputation, as will almost induce us to adopt, upon their authority, and without careful investigation, a proposition of this kind, emanating from such a source, yet I do protest against the enunciation, in our organic law, of such a principle as is contained in this resolution. There are considerations, entirely conclusive to my own mind, and which, it seems to me, should control the action of the Convention in this matter.

The great principle of the American system of

government consists in the division and distribution of power among several coordinate departments—the legislative, executive, and judicial—not as government existed with our ancestors in a former age, and another country,—when the people were not governed by written laws and constitutions, and the powers of the legislature were defined and limited by no constitutional provisions. Now, by the Constitution, the power and duty of administering, interpreting, and judging of the law, devolved upon the judiciary. That is the department of your government which should decide upon law. Now, the resolution proposes that in all criminal trials, the jury shall have the right to decide, not only the fact, but the law.

We have in the Bill of Rights, art. 10, the following provision: "Each individual of the society has a right to be protected by it, in the enjoyment of his life, liberty, and property, according to standing laws." And by the 29th article of the Bill of Rights, it is provided as follows: "It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice."

Now, I think it very important, either as a practical or a theoretical question, whether you shall put this amendment into the Constitution. As the law now exists, as I understand from the decisions of our supreme court, the jury in criminal cases may, if they think it expedient, return a special verdict; that is, the jury may judge and determine as to the fact, and submit the same to the court to apply the law. And that is a special verdict. The jury have also the right of applying the law as propounded by the court, and of returning a general verdict; and thus they have the power—if they choose to assume a power which they cannot rightfully exercise—they have the power to revise and control the decision of the court. But the supreme court has held that jurors are bound by their duties to society, by their social and moral obligations, and the sanction of their oaths, to receive the law from the court, and to adopt its interpretation and construction for their guidance.

Now, I would inquire, whether in our American system, or in our own Constitution, there is any meaning or intention that any such condition of things should exist, as that, in the ultimate decision of questions of law—the highest exercise of the judicial authority—the jury should have the right to judge, in order that, in the words of the Bill of Rights, "each individual may be protected in the enjoyment of his life, liberty, and property, according to standing laws," and "that there be an impartial interpretation of the laws, and administration of justice"?

I inquire, then, what will be the result, if you introduce this principle into the Constitution, and if juries should exercise, as they then rightfully may, the power thus conferred? You would have juries who would not hesitate to carry out the principle, and to claim the right to decide upon the law. With a rightful authority to construe, interpret, and judge of the law, by how short a step may juries advance to the inquiry, whether the law, which they are called upon to decide, is a proper law, or not? If they are made the judges of the law, how great a stretch of authority would it be for them to assume to decide upon the

constitutionality of the law? Now, Mr. President, it seems to me that it is one of the great duties of the government, to protect persons who may be accused of crime, as well as to protect the community against crime. It is the right of every citizen to be governed by "standing laws," the interpretation of which shall be uniform, and not subject to change. Ingraft this principle upon the fundamental law; give to juries this right of ultimate judgment in criminal causes; and you establish in every county of the Commonwealth a distinct tribunal, which is to pass upon the most sacred rights of the citizen, but whose decisions are governed by no uniform rule—by no standing law—and from which there can be no exception or appeal.

What security for a fair and impartial trial, according to standing laws, would remain to the accused, in some circumstances in which he might be placed in relation to society, or in periods of public excitement? Establish this principle, and if juries act upon it, the great safeguards of the accused are removed. He is no longer protected by standing laws.

It seems to me, therefore, that in every point of view in which I can survey the question, the proposed innovation involves a dangerous principle; that it is contrary to the general spirit of our institutions; that it contravenes the provisions of our Bill of Rights, and will practically introduce uncertainty and confusion into the administration of the law.

Mr. HALLETT, for Wilbraham. This question, involving the great right of juries in criminal trials, was much considered and discussed in the Committee on the Bill of Rights, and the proposition now under debate, was reported to the Convention, not by a majority, but by an equal division of the Committee.

It is a very vital question, as I regard it, and one in which I have, professionally and personally, taken a deep interest for a great many years. I trust, therefore, that having been instructed by one half of the Committee to submit this proposition, I shall not be considered as intruding upon the Convention, in offering some reasons for its adoption, as a necessary reaffirmation of a lost right in the Constitution. It is obvious, that under the rule limiting a speaker, I have no time to argue; I can but make suggestions, though I may enlarge in revising these remarks, by adding what I am now obliged to pass over.

Sir, I claim no new right for juries, but the restoration of a very ancient right, which the courts recently, and against common law, have denied to them. A new sophistry has sprung up by which acute lawyers and judges, while admitting the power of the jury to pass upon the law and the fact, proceed to argue away the right, and by thus alarming or confounding jurors, take from them the power as well as the right to do otherwise than to find a verdict as the judge may direct; so that in all criminal trials, where the law is in doubt, it is the verdict of the judge and not the verdict of the jury alone, which convicts.

Now I hold that this is not the ancient "trial by jury"; the "judgment of his peers," which is secured to every subject by the Bill of Rights; and therefore if we would not yield up this old common law right to a new judicial construction by which the courts evade it, it must now or never be reaffirmed by the people, as a part of their organic law.

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Hence the proposition I have had the honor to submit, is simply the reaffirmation of a denied right; the enunciation of a great principle, endangered by judicial construction—the reorganization, in fact, of the ancient charter of jury rights. That is what it is; and with it is involved the right of every person when charged with crime, to have the *whole verdict* of a jury, guilty or not guilty, law and fact all included. And therefore in considering a proposition, which lies at the foundation of all personal rights in government, I look at it only as a broad fundamental principle. I can see no personal or particular application, that I desire to make of it; no law that is to be enforced by the judges, depriving juries of their rights, or to be abrogated by the juries exercising that right. Give me the principle, and sure I am that it will secure the rightful administration of justice, by a rule of trial as old as the common law, and under which all criminal causes have been conducted, consistent with good government, for two hundred years in this Commonwealth.

It was necessary in the olden time, repeatedly to reaffirm *Magna Charta*, which was first forced from King John, was subsequently violated by his successors, and again reënacted by the people, until it was made treason in the king to attempt its infringement. So in modern times, the judicial power, under the irresponsible life tenure of office, has gradually usurped the ancient right of juries in criminal trials, by construing it to mean a naked and lawless power, without any right to exercise it. And now the time has come when the people of Massachusetts will have the opportunity to demand, in the reënactment of their Constitution, that this power and this right, which always meant one and the same thing in the organization and practice of trial by jury, shall be restored with its original interpretation and intent.

That is the question here to-day. It is no innovation, but it is a restoration. We ask for no new law, for no new principle. We ask only, that this judge-made law, which is no part of the Constitution, no part of the old common law, no part of statute law, and no part of the precedents or practice of our courts until very recently, shall be set aside in Massachusetts, and the original construction and practice in trials by jury, be proclaimed anew as the supreme law of the land.

I have said that the recent denial of this right by the courts, was an usurpation. I use that term in no offensive sense, but as indicating the gradual encroachments of the bench, which is always inclined to amplify its jurisdiction. It has gone on here precisely as it has gone on in England, whenever it became the wish or the policy of the courts to treat the jury as an obstacle in the way of enforcing convictions.

The denial of the jury right began in England with the usurpations of the judges over the liberty of the press in trials for libel. It was never applied to other criminal trials as a rule of law. With a thorough examination of English precedents, I undertake to affirm, that until after American Independence, which freed us from all British criminal practice, unless previously adopted by our courts, no authority of any court of common law in England can be found, against the right of the jury to find the law and the fact of the case by a general verdict in all criminal trials, except in the judicial murder of Algernon

Sydney in 1683, by Chief Justice Jeffreys, who said to the jury "the point in law, you are to take from the court, gentlemen."—(3d State Trials, 805.) And this never was law, even in England, for Parliament set aside the verdict and attainder against Sydney, solely on the ground of the misdirection of the court to the jury.

The denial of this right, in fact, had its origin in the infamous Star Chamber, and a modern English law writer of high authority, Mr. Starkie, says: "After the abolition of the Star Chamber, which in cases of libel exercised an unbounded control over both law and fact, the cognizance of such offences reverted to the court of King's Bench, to be exercised in the constitutional mode by the intervention of a jury; and till sometime after this period, no doubt seems to have been entertained of the *right* of a jury, (he uses the term *right* and not power,) to give a general verdict in the case of libel, as well as in any other criminal proceeding." And he then proceeds to give a history of Lord Mansfield's usurpation over juries in denying to them the right to determine the law and the fact in trials for libels.—(Starkie on Slander, 617.)

The whole course of the common law was thus perverted by this comparatively modern devise, of power without right, which was invented in order to destroy the free press of England, by that learned, but most arbitrary of all the judges who ever sat on the king's bench.

I am surprised that American lawyers or judges should ever cite that authority against juries, because the first formal decision by Lord Mansfield that the jury were bound to take the law from the court (in the Dean of St. Asaph, disclaimed too, at the time, by his associate on the bench, Mr. Justice Willis, who said that "the jury had the *right* as well as the power to judge of the question whether libel or no libel") was given in 1784, long after our independence, and therefore never was common law or any other law in this country. And in England that judge-law was repudiated by an act of Parliament in 1792, as a judicial usurpation over the rights of juries to determine the law and the fact by a general verdict in indictments for libel as in all other criminal causes.

Recently, some British judges have attempted to revive this exploded doctrine of Lord Mansfield, and the ancient right of juries is now in danger in England, as it is in this country, by the mere force of judicial construction.—(Baron Parke in 6 M. and W., and Best, chief justice, in 4 Bing, 195.)

The progress of judicial usurpation over juries has been similar in this country, first in the circuit court of the United States for Massachusetts, and very recently in two or three State courts. The lawyers and judges of the old school of common law always affirmed, and never questioned the right. In 1804, the supreme court of the United States, through Chief Justice Jay, declared the opinion that "the jury have the *right* to take upon themselves to judge of both law and fact, and to determine the law as well as the fact in controversy."—(3 Dallas, 4.) And yet a very learned judge of the circuit court—Mr. Justice Story—assumed to set aside that law and all American common law on that point, by resorting to this subtle definition of power without right, which has since been adopted by other judges in that court, and by judges of our State courts

in Massachusetts, until the power and the right will both be taken from the people by judicial construction, unless they now affirm it emphatically, as a part of their fundamental law.

In Massachusetts, the very recent change in judicial construction against jury rights, is remarkable. From the earliest period of the judicial history of this Commonwealth, down to the recent decision in the tenth of Metcalf's Reports, (*Commonwealth vs. Porter*), no question was ever made by the supreme court, or any of its judges, of the right of the jury to determine the whole law and the whole fact involved in their verdict of guilty or not guilty. Chief Justices Parsons, Parker, and Shaw, and Justices Putnam, Wilde and Morton, and others, have announced this as a settled principle of common law, over and over again. I have at hand references to numerous cases in our reports directly to this point. It was the common judicial acceptance in charges and in arguments to juries in all criminal trials, and if there be any common law settled by precedents, that was settled, until it was disturbed, though not even then expressly denied, by the decision in the case in Metcalf. I will cite two authorities that cover the whole ground. In the tenth volume of Pickering, 496, *Commonwealth vs. Knapp*, the supreme court deliberately say: "As the jury have the *right*, and if required by the prisoner, are bound to return a general verdict of guilty or not guilty, they must necessarily decide such questions of law as well as of fact, as are involved in this general question, and there is no mode in which their opinions upon questions of law can be revised by this court or by any other tribunal."

That was the solemn decision of the whole court in 1830. And again in 1838, in the 20th of Pickering, 222, the case of *Commonwealth vs. Kneeland*, the learned Chief Justice Shaw, in giving the opinion of the court, said: "In all criminal cases the jury are to pass upon the whole matter of law and fact, and to render a verdict of guilty or not guilty upon the whole matter, including all questions of law and of fact."

And that is just what the proposition now under consideration is intended to affirm as the meaning of "trial by jury" in Massachusetts. It says, in very plain terms, that the jury, having the power, as is admitted on all hands, "shall have the *right*, in their verdict of guilty or not guilty, in all trials for criminal offences, to determine the law and the facts of the case." Not to violate law, not to make law or to establish precedents of law for other cases, but to say guilty or not guilty upon the law of the case which makes the act a crime, as well as upon the act itself, which is alleged to be a crime. So that there is no pretence for the objection raised by those who disparage juries, that this makes the jury judges to decide points of law or settle the law in one case for other cases, or that they will make the law uncertain by different verdicts—because each case stands by itself, and the jury decide nothing but the particular case committed to them, including therein the whole issue of law and fact.

Hence, this proposition, if put into the Constitution, will only restore the right which the courts of Massachusetts always admitted to its full extent, until the case in the tenth of Metcalf, which has left the power and taken away the right. And how did that happen? In 1845 a case was tried before the court of common pleas, in which the judge denied to the counsel the

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right to argue the law of the case to the jury at all. It was the first time, in the existence of common law courts, that such a right had been denied to counsel, and yet it was but the final step in this judicial assumption of taking the law of the case out of the hands of the jury. It in effect, set aside the trial by jury, and when that judge required of me, as counsel in that case, to argue the points of law to him, that he might order the jury how to find on the law, and then to argue the facts only, to the jury, I said: "I will not argue the law to the court, and the facts to the jury separately; I will argue the whole defence of mixed law and fact to the jury, or not at all. The Constitution secures to every subject, 'when held to answer for any offence, the right to be fully heard in his defence, by his counsel.' If the court sees fit to stop the defendant in his full defence, I will sit down, but I will not yield the right to argue the full defence of law and fact to the jury." The judge persisted. Exceptions were taken to his ruling, and when the question was argued before the supreme court, the learned judges, after holding the case over for more than a year, turned their backs upon themselves, and, in effect, set aside all the precedents and practice of the Commonwealth. I must be excused for saying that it was the worst reasoned judicial opinion that can be found in the Massachusetts Reports. It did not take the only consistent ground against law which the common pleas judge took; viz.: that the counsel should not argue the law to the jury, because they had nothing to do with it. They overruled that as utterly against all law and all practice; but after affirming that the counsel had a right to argue the law to the jury, they then went on to say that the jury had no right to listen to, or be convinced by the argument, but must implicitly take the opinion of the judge. And this was the first time that the doctrine was ever broached by the supreme court of Massachusetts, that the jury had the power but had no right to determine the law and the fact of a criminal case.

Now, where could there be a more extreme judicial paradox than this, no matter from what quarter it should come? Admitting that the counsel had a right to argue the law to the jury, and then denying that the jury had any right to say whether the argument was true or false! Why then argue it at all? The right of counsel to argue, but upon the express condition that you are not allowed to convince! A great right, truly! That, Sir, is conclusive that the decision of the judges in the case in the tenth of Metcalf, was wrong, wholly wrong upon that point; and no learning or logic can sustain its consistency. True, the supreme court overruled the case as it came up to them, and sent it back for a new trial, so that the defendant prevailed. But, it was decided upon a new and self-contradictory principle, that juries have the power to embrace in their verdict, and determine the whole issue of law and fact, but that they have no right to use that power, and they would be guilty of presumptuous wickedness if they dared to exercise it! Just as if you cannot trust juries as well as judges, with the exercise of every power which the Constitution and the law gives them; for neither judge nor jury can have a lawful power to do anything which they would not have a lawful right to do.

On the contrary, instead of the judge being

the safest depository of criminal law, all judicial history shows that, whenever the life or liberty of the people is concerned, it is the judges, and not the juries, that are most to be feared in disregarding law, and enforcing injustice. The books are full of cases involving great questions of liberty and law, in which the judges have been wrong, and the juries right; and there is not a case on record, where a jury has convicted the innocent by disregarding the law laid down by the court, and never will be. I have no time to cite cases, but just go back to the trials for witchcraft, in Massachusetts, in 1696. Hutchinson tells us that the juries changed long before the judges did. And so it was; by disregarding the directions of the judges as to the law, and taking the law as well as the fact into their own "judgment," they averted that terrible judge-law persecution. And where did that monstrous judicial error spring from? Why, Sir, aside from all the province laws, it came from the English common law of crime, made by the otherwise learned and upright judge, Sir Matthew Hale, who caused the hanging of poor Rose Cullender, by inducing a jury to take his law which he laid down to them, that witchcraft was a crime punishable with death. That same judge-law was introduced into the then supreme court of Massachusetts, as the common law of England, and Chief Justice Stoughton, and his associates on the bench, undertook to enforce it, until they hung nineteen women, and had some seventy accused arraigned for trial, when a jury of Middlesex resolved to give a whole verdict upon the law as well as the fact, and acquitted the victims, against the instructions of the court, and determined to convict no more. And thereupon old Judge Stoughton rose on the bench, and exclaimed: "We were in a fair way to have rid the land of these emissaries of the devil, but now, the Lord have mercy upon us!" And he left the bench, and would sit no more in that court.

Now, Sir, I defy any lawyer to cite a case in which the jury, where the judges sought a conviction, have undertaken to determine the law and the fact of the case, and have not decided rightly, in favor of life and liberty.

A word, only, touching some technical objections raised here. One gentleman says, there can be no exceptions taken as to the law, if the jury are to determine the law as well as the facts. Cannot except? What do you except to? To the verdict of the jury, when they acquit? Never. That is final, and no judge or court can call it in question. And how do you know, or what right has the court to know, whether the jury render their verdict on law or fact, or both? That belongs to them, and never to the court. If the jury convict, the law, in that case, has always allowed the prisoner to except either to the instruction of the court, or to the verdict of guilty, if against law or against evidence. That is the security given to the subject in favor of life and liberty, and who will dare to take it away? And that is left by this proposition as it now stands. It declares that "the jury, after having received the instruction of the court, shall have the right, in their verdict of guilty or not guilty, to determine the law and the facts of the case." That is, they are to take the whole matter in issue, law and fact together, and have the right to determine the criminal guilt, which is the law, and the actual guilt, which is the fact. But the supreme court

now undertake to say, as Judge Jeffreys said, in the trial of Sydney, "The point in law you are to take from us. We will find a verdict upon the law, and you may find a verdict upon the facts." And thus the judge makes himself the jury, and finds one-half of the verdict, and the jury the other half, and so between them they convict; and that, I maintain, is against common law, because it is not the "trial by jury," "the judgment of his peers," to which every man charged with crime is entitled of right.

It is the province of the judge to instruct the jury, not to control them, against their "judgment," which means their honest opinion, under their oaths, and not the opinion of the judge forced upon them. It will happen, only in extreme cases, where a jury will not be able, conscientiously, to conform their "judgment" to the instructions of the court, and therefore it may be safely left to their discretion. In fact, it is the only safeguard against arbitrary and unjust judges. If the instructions of the judge are wrong, or if the verdict of guilty is wrong, you go to the court for a new trial, and therefore this proposition—affirming the jury right—in no wise can be construed to interfere with the right of exception, or of a new trial. If professional gentlemen have any belief—which I have not—that the court would evasively deny exceptions, let it be made their duty to allow exceptions, and grant new trials, as heretofore.

Especially is it unfair for professional gentlemen to confound the broad distinction that exists between civil and criminal trials, in this respect. In civil causes, either party, at the discretion of the court, may have a new trial, for law or fact; but in criminal trials, this right appertains to the defendant only when convicted. Why is this? The reason covers the whole ground of the argument. It is because the trial by jury, in criminal charges, has always been regarded as the palladium of liberty, and there is no safety in trusting the life and liberties of the people in the hands of judges; and therefore, neither parliament in England, nor any legislature in America, ever enacted a law to allow a judge to grant a new trial against a party who has been acquitted of crime, by a verdict of jury.

On the other hand, in civil causes between parties, there has always been, by common law, and with us by express statute, a discretion given to the court to set aside a verdict and grant a new trial to either party, either for law or for fact. And this makes a manifest distinction. It takes from the jury both the power and the right to determine the law in civil causes, and gives it to the court, who may control the jury by setting aside their verdict, whenever the judge does not agree to it, and granting a new trial. Consequently, by refusing to give any such power to the court, in all cases of a verdict of not guilty, in criminal trials, the law decides and declares that it is the jury, and not the court, who are to pass upon and determine, by their verdict, the whole matter of law and fact in the case, and the court has no power or right to interfere with the power and the right of the jury to acquit.

Now, Sir, we have got involved in subtle definitions and technical contradictions by this new judicial theory of power without right, and I desire, as it seems to me all should desire, to have this matter authoritatively settled by the people, in their new Constitution, so that we may no

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longer have these contentions between judges, lawyers, and juries, but may return to the old safe practice of leaving the whole case, law and fact, to the "judgment" of the "peers," the jurors.

Manifestly a necessity has arisen for this declaration. Junius well said of Lord Mansfield, who began this work of destroying the trial by jury: "Let the case be what it may, your understanding is always on the rack to contract the power of the jury, or to mislead their judgment." And as Lord Mansfield did in his day, so some modern judges have done and are now doing in their day; and this is a reason why the judiciary has fallen somewhat in its old repute; not because it has not enforced law, but because it has too much attempted to enforce juries and contract their rights. And this has caused criticisms and comments of the profession and the press, in which the judiciary has had the arbitrary side of the argument. While I concede all that may be asked to the learning and ability of Massachusetts judges, I feel bound to say, nevertheless, that this tendency of the bench to contract the power of juries and control their verdicts, has been carried farther in this Commonwealth than in any other State in the Union. In Maine, in Vermont, and other States, this great right of juries has been again and again judicially affirmed, and it is made a part of the Constitutions of several of the States, and the criminal law is as wisely administered there as here, for the public security. So in all that time, in which the right was never denied in Massachusetts, until Judge Story began it, sixteen years ago, who will deny that law was as safely enforced in this Commonwealth as it has been since?

Now, let us put this question directly to the people, for them to settle. If it is their will that the judges shall control the verdicts of juries in criminal trials, precisely as the law authorizes them to do in civil cases, so that the jury are to find the fact, separate from the crime, and the court apply the law to it, as in a special verdict, then let it be so proclaimed; and that will strike out of the Bill of Rights the "trial by jury" and the "judgment of the peers." But if they mean to preserve the ancient right of juries as the palladium of personal liberty, they will put this provision into the Constitution, and it will there remain, an undisputed and perpetual right.

Mr. DANA, for Manchester. I will take a moment out of my very short time, to ask the gentleman for Wilbraham whether he means that juries shall be exclusive judges of the law of evidence, and of the reception or rejection of the testimony of a witness?

Mr. HALLETT. No such theory is embraced in or can be construed out of that provision. It is only in regard to receiving instructions.

Mr. DANA. Suppose that certain evidence is given in, and the court tells the jury that that evidence is not admissible; are the jury then to receive it or to throw it out, each man as he chooses?

Mr. HALLETT. The answer to that is simply this: The jury is sworn to determine between the prisoner at the bar and the Commonwealth, according to the evidence. That evidence is what goes to them under the supervision of the court. That evidence that is not given to them, or that is withdrawn, they have nothing to do with.

Mr. DANA. Then the gentleman admits that the jury are bound by the decision of the court

upon the law of evidence. But this is not clear from the resolve. The resolve says: "In all trials for criminal offences, the jury, after having received the instructions of the court, shall have the right, in their verdict of guilty or not guilty, to determine the law and the facts of the case." So that it is no matter what the instructions of the court may be, the jury are not bound to follow them. If the court say to the jury that a certain piece of evidence is not to be received, still the jury have, by this provision, a right to receive it or not, as they may see fit, and each juror as he sees fit. But I understand the gentleman for Wilbraham to say that this is not so. He should provide, in his resolution, that it should not apply to the case of evidence.

Then, Sir, there is another consideration, and that is, whether the rights of parties in criminal cases do not depend nearly as much upon the law of evidence as upon any other law; and if he provides that they shall not be judges of the law of evidence, but shall take the law, in that case, from the court, then he has surrendered one-half of his case, and all the principle of his case. The law fixes the rules of evidence that shall acquit or convict a man. I offer a piece of evidence tending to acquit a man charged with crime. The judge says that such evidence is not admissible. If the jury think that, if received, it would clear the prisoner, and that it ought to be received, and yet reject it, does not the jury convict the man against its view of the true legal case?

Mr. HALLETT. We merely propose to restore the original rights of the jury. If the gentleman for Manchester desires to embrace the question of evidence he can do so.

Mr. DANA. Then I understand the gentleman to say that he does not include the law in regard to evidence. Let me carry out the illustration I had commenced. Here is a piece of evidence tending to acquit a prisoner. The court says that it cannot be received. The jury say that it can; yet the jury is not to judge, but are tied, hand and foot, by the court. Now, am I not right in saying that the gentleman has surrendered his principle on a very material point? And the fact that he has surrendered it there, shows me—and I hope it will show every gentleman in the Convention, who will consider this matter candidly and without passion—that this principle cannot be carried out.

It is now the rule that juries pass upon the law in rendering general verdicts, as well as upon the facts. It always has been so; and when judges take from juries this right, they have usurped a power which does not belong to them. It has not been done in this Commonwealth. Lord Mansfield attempted to encroach upon the right of the juries, by telling them whether a certain publication was a libel or not. But an act of parliament—drawn in the first place by Burke, and afterwards altered and carried through by Fox—provided that the question, whether the particular publication was a libel or not, including the intent, should be decided by the jury and not by the court. This is now the law here, and it is the law everywhere. But this does not make the jury judges of the law. It only transfers one subject from the department of law to the department of fact—from the court to the jury, still leaving each its department.

This proposition introduced by the gentleman for Wilbraham, (Mr. Hallett,) is one of two

things. It either has no significance at all, and leaves the law as it now is; or else it introduces a new and dangerous principle. It is one or the other. It does seem to me that the gentleman for Wilbraham is a little disposed—unintentionally, of course—to make this Convention a court of errors, to rectify the decisions of courts given in cases which he has lost. [Laughter.] First is the case of Abner Kneeland. That must be set right by amending the third article of the Bill of Rights. Then the Porter case. That requires an amendment of another article. To soothe his mind on the Rhode Island cases, we must have a new declaration of the right of self-government, and an abrogation of the right of the legislature to proclaim martial law. He takes these cases too much to heart. He would make this Convention hinge on the Dorr controversy, and Abner Kneeland and Zachary Porter.

Mr. HALLETT, (interrupting). The gentleman has probably in his mind his *habeas corpus* in the Sims' case.

Mr. DANA. I think these cases have made a lodgement in the mind of that gentleman, and he cannot be easy until he makes the action of this Convention turn upon them. On the subject of amendments to the Constitution, it must turn on the Rhode Island case. On the subject of law martial, it must turn on the Rhode Island case. On the subject of the jury's judging of the law, it must turn on the Kneeland and Porter cases.

Consider, for one moment, if this proposition is adopted, and the jury are to judge of the law, what the consequences will be. I must throw myself upon the candor of the Convention, at this time, as I know they are not disposed to hear speeches at this late day, and the popular feeling is in favor of juries.

There is one great fact taught by all history: that is, that liberty is best secured by a division of power. We have divided our government into three great departments: the executive, the legislative, and the judicial. Why? Because liberty is best secured by a division of power. Why do we have judges and juries? Because liberty is best secured by a division of power. Whatever gentlemen may think of a particular case or law, of the fugitive slave law, of the liquor law, or of the libel law, when you take all together, the whole history of the past, liberty is best preserved by a division of power. Give your judges the responsibility for the law, and give to your juries the responsibility for the facts, with the right of applying them and declaring the result. But, if you make your judges judges of law and fact both, however good your judges may be, your liberties cannot long be safe. You may give me a court of seven of the best men in Christendom, and I would not allow them to judge of the law and fact in criminal cases. Give me twelve of the best men in Christendom for a jury, and, in the long run, I would not allow them to be judges of both law and fact, in the sense of the gentleman for Wilbraham, that is, that they should be the final and conclusive judges.

Let gentlemen look at the result. We wish to have laws uniform and well settled, if we have laws at all. The interpretation of laws must be as much settled, as the writing of the law. We pass a statute, and the interpretation of it is a great point. How can we ever have a settled interpretation, if the jury are to be the judges?

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The juries never give a reason for their verdicts. They go out and consider their verdict, and come in and say "not guilty;" but whether they come to their conclusion for want of evidence, or because they thought the law applicable to the case unconstitutional, or because they understood the law in a peculiar way, or rejected or accepted certain evidence, never can be known. Two men may be engaged in the commission of the same offence. They may separate in their trials, and one goes to the first jury, and he is acquitted, and the other goes before the second jury, and he is convicted. They are tried on the same evidence, and by the same judge. You can never know why one was taken and the other left. It may be that the jury thought certain evidence admissible in the one case, which was not received in the other. One jury may have thought the law constitutional, and the other not. There is no record to show their reasons, and it can never be known, until the sea gives up its dead, why the one was acquitted and the other hanged. Now, if the jury is to judge of the law, I insist that the jury shall give their reasons, and that those reasons shall be reported. I should like to see the gentleman for Wilbraham, (Mr. Hallett,) made the reporter of all the decisions of the juries in the whole Commonwealth of Massachusetts. Then, perhaps, we should know what the laws are, under which we are to live.

But if this resolve passes, and a person comes to me and wants to know what the law in a civil case is, I can tell him. Here is a statute that has been interpreted by the supreme court, upon full deliberation, and they have decided that it is so and so, and every jury impanelled must follow that decision. If the law is not popular, the people, through their legislature, can alter it. But if he comes to me with a criminal case—which is vastly more important to him than a civil case, as it involves his life, his property, his liberty—I would have to say to him that the Convention of 1853 passed a resolve, at the suggestion of the gentleman for Wilbraham—

Mr. HALLETT, (interrupting). Not upon my suggestion.

Mr. DANA. Well, I pass that by, since he disowns it, as it will consume my time.

Mr. HALLETT. The gentleman says the Convention passed it at my suggestion. It is not so. Six gentlemen have reported it to the Convention.

Mr. DANA. Well, the Convention passed a resolve at somebody's suggestion, that the jury is to settle these matters. Now, my dear Sir, I cannot tell you the law for the life of me. It depends entirely upon the twelve men you may happen to get to try you. One jury of twelve men may think the law applicable to your case constitutional, and another may think it unconstitutional, and you may be acquitted or convicted accordingly, and, what is more, you never can find out the reason why you were acquitted or convicted.

The consequence of this would be, that in Boston the fugitive slave law will be constitutional, and in Worcester it will be unconstitutional, and the Maine law *vice versa*. The result is, we shall have no settled or certain law. A law will be constitutional for you and not for me, and constitutional for me in one place, and on one day, and not constitutional for me in another place, or at another time.

Now, what is the result under the present system? The judges instruct the jury, and the jury take the law from the court, and the facts from the witnesses. They go out, and find a general verdict upon both law and fact. If we think the rulings of the court were wrong upon the law, we take exceptions, and go to the supreme court, and they determine the law and reverse the judgment, if the charge of the judge below was wrong. If the supreme court does not decide it satisfactorily to the people, the people, through the legislature, can repeal the law and overrule the decision. The decision of the court is not final, for the legislature control the court. I beg gentlemen to understand that they are not under the control of the court. If a man is convicted under a wrongful decision, he may be pardoned by the executive, and reinstated or reimbursed by the legislature. But if he is wrongfully convicted by the jury, the cause can never be legally known, and he cannot, therefore, be so certainly or properly redressed.

[Here the President's hammer fell, fifteen minutes, allowed by the rule for debate to each individual, having expired.]

Mr. ALLEN, of Worcester. It may be somewhat rash in me to think of supporting the resolve. I find myself unable to act in conformity with the experience of my conservative friend who has just spoken, (Mr. Dana,) and also with the conservative gentleman from Cambridge, (Mr. Ladd,) and I find myself upon the side of that rash and progressive innovator, the delegate from Cambridge, the former chief justice of New Hampshire, (Mr. Parker,) for upon this very question, as already intimated, that distinguished gentleman and his associates have determined that the law in this country, and in the country from which most of our ancestors came, was always in conformity with the principle presented through the resolve now before us.

Sir, it seems to me, that the pangs and fears which haunt my friends, at the very idea that a jury should be allowed to pass upon the law in criminal cases, after all the opportunity they have had, derived from the instruction of a learned court, results from an unreasonable distrust of that institution. And that is the radical difference which separates, I apprehend, some of us from the others. The fear is, that that which our fathers regarded as the palladium of our liberties, should prove to be their destruction, and that there is no safety for freedom to be found but upon the bench. Now, Sir, I have no such fear. Neither the experience of the past, nor my own reflection, have filled me with any such apprehensions. In the course of a somewhat long professional career, from year to year, I have learned to respect more and more the decisions of juries. I have learned to rest there as the last resort and defence of my liberties, my rights, and my privileges. The legislature may pass unreasonable and unconstitutional laws, and conservative courts may sustain them, but I will trust to the jury, with the Constitution and the Bill of Rights in their hands, to protect me against any unconstitutional or unreasonable dangers. Sir, in ordinary cases, the juries will always take the law from the court, which relieves them from great responsibility—a responsibility from which they seek to be relieved. Inasmuch as they take an oath to act upon the law and the evidence, and to decide rightly, they may consistently with the

obligations of that oath, leave the law to the opinion of the court.

But there are great cases which sometimes arise in the history of a nation, in which fundamental principles are assailed, when you cannot rely entirely upon the legislature or upon the courts; when your defence must come from the people themselves, from the juries who are of the people. Sir, the Bill of Rights declares certain great principles, and secures certain privileges, among which are that all men are born free and equal, and that they have the right to defend their lives and liberties. Now if a law is passed which contravenes these rights, I do not believe it should be left entirely to the court to determine what the law is. I believe the people themselves have the right to this security, not only against the legislature but against the court too. I believe the jury have the right to say whether, in their opinion, a law violates a fundamental principle laid down in this Bill of Rights. They will spurn the opinion of the legislature, and of the courts, and all human authority that can be combined, and standing upon the charter of all men of Massachusetts, will declare the law to be unconstitutional.

Such cases have arisen, and I wish I had time to speak of them more at length. But I will confine myself to one, and that is the law passed by the congress of the United States. I would not at this time introduce the subject myself, but it has been introduced, and now I say that, in my opinion, a law more unconstitutional, more deadly and vital in its action upon human liberty, could never have been framed. And how was it done? It stands upon the records of congress, and let it stand upon the records of Massachusetts. Why, Sir, men more desirous of protecting the power of the slave-holder over the slave than of securing the rights of the millions of the free, demanded farther legislative enactments. A piece of white paper—for I will not use French when I can get good economical English—was given to a nullifier, a member of the Senate, from one of the southern States, and upon that he wrote what he pleased, and upon it he inscribed one of the most arbitrary enactments, and in one instance holding forth a bribe to the commissioner to send a man, may be a citizen of Massachusetts, into slavery. I trust, however, there are some men in Massachusetts, and in this Convention, above the influence of bribes. Yet the law does hold forth that bribe to induce the commissioner to send back into chains, it may be a citizen of Massachusetts, who may be claimed by a southern slave-holder. By another provision a citizen of Massachusetts is to be deprived of the right of trial by jury, here at home, where his witnesses and counsel can be obtained; and not only here, but everywhere, for it is in vain to say that he could obtain the benefits of that trial in South Carolina, where his counsel could not go, and where his witnesses, those of his own color, could be enslaved.

But I will not go into this matter, but will only say farther, that it would have rejoiced my heart, when that question came before the supreme court of Massachusetts, in advance of any decision made upon it by the supreme court of the United States, and unrestrained as the court was, by any decision given by the court of the United States, if they had declared it against the fundamental rights of the people, and unconstitutional and void. That day would have done honor to the judiciary of Massachusetts, and the

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page which contained the record of such a decision would have been the brightest in the history of Massachusetts.

Sir, I declare these views, and I wish to put them upon the record; and if I am not sustained by the opinion of men around me, I ask the decision of posterity upon the words I now utter, if ever they—in looking over the proceedings of this Convention—shall take notice of the opinion of one so humble as myself.

But the court did not do that. I do not intend to reproach that court. I have a high respect for it, and in regard for the venerable chief justice who has presided over it for nearly a quarter of a century, I yield to no man. Yet certain influences did bind and control the court, and, in that instance, their decision, instead of reflecting honor, will reflect disgrace upon the history of Massachusetts. It will be in the history of that court, a blot upon its fair pages. Not in that case alone, but whenever the principles which we declare to be at the foundation of our frame of government are infringed upon—whenever the rights which we reserve to the people are invaded by any law, I ask, that in that case, a jury coming from the people may be allowed to come in and give their judgment, and rescue the people, in the name of their declared rights, from an unconstitutional law, or from an unconstitutional interpretation of that law.

The fears which have been suggested of difficulty, from the fact that jurors may differ as to the construction of a law, I apprehend, is but a technical difficulty, and would not be found to exist in fact.

But it is said that juries would not decide alike upon the same law. Well, Sir, have judges always decided alike? Does not my friend for Manchester, (Mr. Dana,) know that there are volumes of decisions given by the judges reversing former decisions? Why should not juries decide unlike? Because one decision is wrong, should both be wrong?

Mr. DANA. I can answer the gentleman.

Mr. ALLEN. I have not time to yield to the gentleman. I have no doubt of his ingenuity to answer any difficulty that could be raised. We have seen enough of that gentleman's ingenuity. I suppose he would answer that it is impossible for a jury to decide every little quibbling doubt that may be raised by an attorney—that they could not retire to decide such questions. I suppose the gentleman would answer by such arguments as that, but I hope he would not puzzle this great jury. I hope he would not lead them to abandon this great and important principle, because of the ingenious difficulties which he might raise in every possible ease against carrying that principle out. That gentleman knows very well, that when we have a great and sound principle before us, it is our duty to carry it out as far as we can; and when it becomes impracticable, or inconsistent to adhere to it, we are not to be censured for failing to do what we cannot do.

Fears and difficulties have been introduced here to affect the minds of temperance men—and I am happy to know that a large majority of the members of the Convention are of that class—that the jury will not be true to them. Now I ask the friends of temperance from what quarter they have met with the greatest hindrances? Has it been the jury in Rhode Island, who have found flaws with every complaint which has been

brought up? Is it the jury who throw obstacles in the way, when such cases are brought up? When facts, evidence, and experience, prove that a law is a wise, wholesome, and equitable law, has it been the jury who were found to set aside that law? Has it not rather been the courts who have met at the threshold every attempt to carry out the law? Have not these difficulties arisen with the bench, and not with the jury? But, Sir, I see my time has expired, and I will not proceed farther.

The PRESIDENT. The gentleman has two minutes remaining.

Mr. ALLEN. Two minutes—well, Sir, that is enough to answer the argument of the gentleman from Boston, (Mr. Hillard,) that it is not democratic to allow one man to stand out against eleven in deciding a question of law. Yet it is very democratic for one man to stand out against eleven bringing in a verdict of guilty, when he believes, from the bottom of his heart, that the man is not guilty. Is it democratic for the majority to govern in the jury-box? The gentleman says, he has never been in a town meeting. Surely he has been in a court-house. Yet it is a wholesome, humane law, that a majority of a jury shall not convict a man, and incarcerate a man in prison. It is a just and proper rule, that a man shall not be deprived of his property, his reputation, or of his life, until twelve men have agreed that he is guilty of a violation of that law.

[Here the hammer fell.]

Mr. PARKER, of Cambridge. The honorable gentleman from Worcester, (Mr. Allen,) is under a misapprehension respecting the decision in New Hampshire; and however much I may desire to stand by the side of that gentleman, I cannot have that pleasure upon the present occasion. The decision to which he refers—which the gentleman representing Northborough characterizes as "respectable," and which, according to the remarks of the gentleman representing Wilbraham, (Mr. Hallett,) was an outrage upon the rights of the jury—was the other way.

Sir, I have perhaps as little interest in the decision of the question now before the Convention, as any member of the community. I have no particular anticipation that I shall be placed at the bar of a court in such a position that I shall have occasion to appeal from the law of the bench which leaves my case hopeless, to the law of the jury, with the hope that they will overrule it. I have no supposition that I shall find myself again at the other bar, defending a party accused of crime under such circumstances, that I shall desire to shake my finger at the judge upon the bench and say: "Sir, you may believe after all your studies, that such is the law, but here is a tribunal that will overrule your decision, and they have the right under the Constitution to do it." Still less have I any expectation that I shall ever again be placed in a situation where the counsel may beard me in that manner.

But, Sir, as my attention has been called to this subject in former years, and I am a member of the Committee on the Bill of Rights, from which this Minority Report comes, it may be expected that I should take a part in this debate, more especially as the chairman, by signing this Report, appears to have gone over to the enemy. The case in New Hampshire occurred in 1842. It was a prosecution under the law of

that State passed in 1838, prohibiting the sale of liquors in any quantity, without a license from the proper authority. It was my fortune to preside at the trial in the common pleas. Two individuals composing a mercantile firm, were indicted for selling a barrel of gin without a license. They were defended by the gentleman who represents Wilbraham, (Mr. Hallett,) and another distinguished gentleman who has since been a candidate for the highest office in the gift of the people, (John P. Hale,) and of course we know that they were defended with all the zeal and all the ability which could be brought into requisition in such a case.

Several questions were raised in that case, and among them a preliminary question in relation to the organization of the jury. Questions were put to the jurors, and as that course has been censured here I will state them, that gentlemen may see how far courts go upon that subject. The questions were:—

"1. Have you formed an opinion that the law regulating licensed houses is unconstitutional, so that you cannot convict a person indicted under it, if the facts alleged in the indictment are proved, and the court hold the statute to be constitutional?"

"2. Do you hold any opinion upon the subject of the license laws, so called, which will induce you to refuse to convict a person indicted under them, if the facts set forth in the indictment, and constituting the offence, are proved against him, and the court direct you that the law is constitutional?"

"3. Do you hold any opinions upon the subject of the license laws which will induce you to convict a person if the court shall direct you that the statute under which he is indicted is unconstitutional?"

The object was to obtain a jury which could come to the performance of the duty, with such opinions as would permit them to try the case according to the evidence before them.

Other questions were raised on the trial. One was, whether the jury were judges of the law as well as of the fact. Another, whether the law itself was constitutional. It appeared that the barrel of gin was purchased in Massachusetts, brought to New Hampshire, and sold in the same condition in which it was purchased; and it was contended that the law was unconstitutional in its application to that case, by reason of the provision of the Constitution of the United States, giving to congress the power to regulate commerce.

Mr. HALLETT. I ask the gentleman to allow me to correct him. I did not raise the question that the jury were the judges of the law and fact.

Mr. PARKER. Then I have been laboring under a misapprehension for more than ten years. It was so put upon that occasion.

Mr. HALLETT. Not by me. I did not say the jury were the judges. That position was not taken by me, but that they passed upon and determined all questions of law and fact in the case.

Mr. PARKER. If such was not the exact phraseology, it was substantially the position taken. It was said that the jury had the power to judge of the law, and that this proved conclusively that they had the right to judge of the law—that the power carried with it the right, as a matter of course. And I do not know what that means unless it is that the jury are the judges of the law. That position was distinctly stated by the gentleman again and again. These ques-

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tions were argued before the jury with all the learning and power of that gentleman, and without any objection upon the part of the court. But the court in charging the jury, instructed them that juries were not judges of the law, and that the statute of New Hampshire was a constitutional act.

The jury were of opinion against the defence upon one or the other of these points, and returned a verdict of guilty. The case was carried before the superior court of New Hampshire, and both these rulings sustained. It was then carried to the supreme court of the United States, upon the last point—that of the constitutionality of the law—and the decision was affirmed there.

Now, here is another case which the gentleman for Wilbraham will never forget. He lost it; and I attained the bad eminence of being chronicled in some of the newspapers as an arbitrary judge; as second only to Chief Justice Jeffreys. The gentleman may perhaps recollect something of that. Chief Justice Durfee, of Rhode Island, was afterwards added, I think, to make up a trio.

Sir, I have no time to go into an argument upon this question whether the jury are judges of the law, as well as fact. I had occasion to express my opinion in that case, and it is upon the record. I have no doubt that in England, at the earliest stage of their legal proceedings, of which we have knowledge of juries, they were judges of the law as well as of the fact, not only in criminal cases, but in civil cases. For a long period, they were punishable if they gave a false verdict. They were anciently the principal witnesses, also. They were summoned from the vicinage—from among those who were supposed to have the best knowledge of the facts of the case, and were expected to decide from their own knowledge, more than from the evidence which was presented. Cases were sometimes decided by battle, and by ordeal, also, in those days. But, Sir, the law is in the ranks of the progressives. It has made progress since that time, in divers particulars, and among others, in the mode of trial by jury. The jury are no longer to judge from their personal knowledge of the facts of the case, and courts set aside verdicts, and arrest judgment after verdicts. It is fully established and understood that juries are not judges of the law in civil cases; but they pass upon the law and the fact in a general verdict; and the question has arisen, whether the same change and adaptation of rules does not apply in criminal cases as in civil cases. That is a question upon which there has been a great difference of opinion upon the bench and elsewhere.

The case referred to by the gentleman for Wilbraham, where the jury, as he said, took the matter into their own hands, I do not understand to be a case in which they undertook to settle the law. It seems they settled the fact that there was no witchcraft.

The case which he refers to, before Chief Justice Jay, of the supreme court of the United States, was not, as he supposes, a decision that the jury were the judges of the law in criminal cases. As reported, the chief justice declared that they were the judges of the law generally, and the case was a civil case. Now, I maintain that the right of the court to set aside the verdict and to arrest the judgment, is altogether inconsistent with a right on the part of the jury to decide questions

of law either in civil or criminal cases. When juries exercise a right of that kind, while at the same time the court overrules their decisions, the judicial system is incongruous. The right may be conferred even by statute. But, if you incorporate this provision into the Constitution, and a jury convict a man upon charges, which in the opinion of the court are not sufficient, or not sustained according to law, I doubt whether the court, upon principle, can have the power to set aside the verdict or arrest the judgment. It is not quite clear to my mind, that if this provision is adopted, your courts can consistently exercise such powers in any criminal case.

I have but a moment left to speak of the practical operation of this provision, if adopted, and, instead of enlarging upon this topic, as I should otherwise desire to do, I ask leave of the Convention to read a paragraph from the charge given to the jury in the case in New Hampshire, as published in a pamphlet at the time:—

"It is contended that the defendants are not liable, because the act of 1838 was unconstitutional. Whether it is unconstitutional or not, is a question that should be settled in some way. How is it to be settled? If the doctrine so earnestly contended for, be correct, it never can be settled, so far at least as criminal cases are concerned."

[Here the hammer fell.]

Mr. BUTLER, of Lowell. Sir, I can promise the Convention that I will not occupy much time upon this matter.

Mr. PARKER. I dislike to trespass upon the courtesy of the Convention, but I wish to read the remainder of the paragraph which I had commenced.

Mr. BUTLER. I will give way.

Mr. PARKER read as follows:—

"If the constitutionality of this statute may be drawn in question in a civil case, it may be settled so far as civil cases are concerned. But if the defendant's counsel are right, that would not settle it as to criminal cases. And no verdict would settle it in such cases; for, if one jury is to judge of the matter, every jury is to judge; and what each will judge cannot be known, until the matter is tried. Well, gentlemen, one man assumes that the statute is unconstitutional—he purchases in Massachusetts, sells the article here, and is indicted. The jury so find, and as to him the statute is unconstitutional. Another person seeing this, and thinking the laws operate equally on all, does the same. He purchases the same kind of article, from the same dealer in Massachusetts, brings it here, and sells it in the same condition, to the same individual to whom the first sold. He is indicted, and another jury find the other way. As to him, then, the law is constitutional. Take the case of the same jury, sitting in a civil, and then in a criminal case. A civil case arises which involves the constitutionality of the law. The court rule that it is constitutional. The juror is bound to regard that as the true construction, and his conscience returns a verdict accordingly. The law is constitutional. A criminal case follows, which involves the same question: The juror is sworn to the same effect—that is, to give a true verdict. But he disliked the instruction in the civil case; his conscience turns round, and he holds the law to be unconstitutional. And so his conscience must keep turning, as it encounters a civil or a criminal case. If it is a civil case, he has a civil conscience. If a criminal case, his conscience is of a different character."

Mr. BUTLER. Well, Mr. President, I wish

to say, before I go on with my remarks, that that is the longest paragraph that I ever listened to. [Laughter.] I cannot forbear entering my protest against what I deem to be an innovation upon the old rule of common law. So far as I have learned anything with regard to this question, from my earlier teachings, from the early books that I read, and from the old lights upon English common law, it was laid down, not as a principle, not as an axiom, not as a rule, but as a boast—for it was a boast of the common law—that juries were judges of the law as well as of the fact, in criminal cases. And my heart kindled, Sir, as I read of the struggle between the people and crown, the court and the jury, for this right, as I gradually saw that great right rising on the dark horizon of law, like the morning sun, until it illuminated the whole system; and, Sir, I thought that nothing was better settled in this Commonwealth; aye, Sir, as nothing had been better settled in England, nothing was better settled in this country, than this doctrine. And, Sir, the first shock that my mind received, the first time anything came across me to unsettle it, was when I read the charge, the last paragraph of which we have just listened to, made to a jury by the gentleman from Cambridge. And again the blood stirred within me on reading that charge, but with a different feeling; and notwithstanding my great respect for the gentleman who delivered that charge, every drop of my blood boiled in my veins under the idea that a judge should tell a jury that they had not the right to determine the law and the fact in criminal cases. Sir, the Knapps were hung on that instruction of the law. The court sitting on that case said to the jury, "You have a right to judge the law and the fact, and no man can step between it and you." But when it becomes popular in a community to carry a favorite measure through the courts, or to convict an unfortunate criminal, then it is very convenient for a judge—to do what? First, when a man is to be tried by his peers, and when they get into the jury-box, to weed them out, so as to try him by a set of men who are not his peers, who have no fellow feeling, but men who, by their position, feelings, and sentiments, are dissimilar. The judge, taking care to weed the jury-box of every man who has the same set of feelings, then proceeds to try him, not by his peers, but by some picked and packed set of men. Sir, I detest, I hate and despise, this abominable business of weeding the jury-box and attempting to try men not by their peers. In some short practice which I have had, I have seen something of a number of jury trials; and I take it upon me to bear my testimony, most solemnly here, as I would before my God, that I have seen quite as many errors on the bench as in the jury-box; and I speak it with great respect to the learned courts which have administered the law.

The jurors have no occasion to be afraid of the people, for they are the people, in their primary capacity. Who is the judge? A learned man, an honest man, a high-minded man; but still a man. What is to be tried? The intention, the thoughts, and as they bear upon the actions of another man. Which is the best tribunal to try that case? This man who sits upon the bench, and who has no sympathy, no fellow feeling, nothing in common with the people; who has hardly seen a common man in twenty years; and lest he should see one, always has had a sheriff, with a long pole, to

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attend him and keep them off. [Laughter.] Is he the better man to try the case than they who have the same stake in community, with their wives, and children, and their fortunes, depending on the integrity of the verdicts they shall render? Who, I ask, is the best fitted to constitute a tribunal to try him? And why can they not judge of the law? What is the law in criminal cases? There is a distinction which does not seem to have been adverted to here. What is the law in criminal cases? It is not complicated. In a civil suit, the law which applies to it, may be complicated; but in criminal cases, it is always a plain proposition upon which the jury have to pass, with or without the instruction of the judge, a very plain proposition. Let us see how it is. In the first place, every man is bound to know the law; and ignorance of the law will not excuse him if he commits a crime against the law. He is by the law bound to know the law, and to be punished if he commits a crime, even if he does not know it. Very good. Yet you say, this criminal being bound to know the law, and act upon his peril, twelve men who are supposed to be as learned, or more learned than he, do not know enough to try him for breaking that very law which he was bound to know. Will that do for a moment? That is all there is about it. The crime consists in what? In doing some act against conscience and against law with an intent to break it, or else the man is not guilty. Yet you say, that twelve other men, who are also bound to know the law, are not the proper persons to try him. You say this criminal must be punished, and even hanged, because he ought to know the law, and yet these other men are not fit to try him because they do not know the law. Will gentlemen tell me that the judges, reported in tenth Metcalf, did not know that this was so? It is true they stultified themselves when they undertook to say this, to wit: that jurors had the power to judge of the law, but had not the right; or speaking as lawyers, they had the power to do wrong. I deny it. There is no power to do wrong. The gentleman from Cambridge put it exactly when he said, that the power always drew after it the right. I thank him for that. The gentleman from Cambridge said that.

MR. PARKER, of Cambridge. If the gentleman will allow me, I wish to state, that I said that was the argument, that the power showed the right. It was the gentleman for Wilbraham who used that argument.

MR. BUTLER. Well, I will put it to the gentleman from Cambridge himself, if a man—speaking as a lawyer to a lawyer—has the power to do a thing, has he not the right to do it?

MR. PARKER. If the gentleman from Lowell will look at the thirteenth New Hampshire Reports, he will see that I have denied such a conclusion distinctly, and the reason for the position.

MR. BUTLER. I have had an opportunity to look at it. I say, that a man has no power to do wrong. It is a misconstruction of language to say he has. He has no legal power to do wrong: he has the power to murder; but that is not a legal power; it is a usurpation, it is an interference. The judges of the courts have said that jurors have the power to render a verdict upon the law, but not the right. They have said, the jury shall hear the arguments of counsel on both sides, upon the law, but not deliberate upon or

judge of that argument. And that was to get out of a dilemma.

It seems to me, that the law is well settled. I remember that when a very old doctrine was preached, a doctrine found in the New Testament, that a certain man went into a great city where there was a temple, and when he preached that doctrine, he drew after him a number of others, who cried out pretty loudly: "Great is Diana of the Ephesians." Well, why did they do that? Because a man who was a coppersmith, and made shrines for Diana, feared for his craft, that was in danger. Sir, I think we have a kind of craft here, and I think I have heard the cry of Alexander the coppersmith here. [Laughter.]

No, Sir, I would have no such fear of danger; I think we are not to make a Constitution here, because somebody has given a decision in one State or another. I wish to commend—as I shall not ask anybody else to stop while I read an argument—to the gentleman from Cambridge, the last volume of the Reports of the court of Vermont, where he will find the thirteenth New Hampshire, and tenth Metcalf handled without gloves. That learned court decide, that jurors have the right to determine both the law and the fact.

One thing farther. The gentleman from Cambridge says, that courts have the power to set aside a verdict. That is the "usurpation." I ask if that doctrine has not come down from Jeffreys? It has grown up to be a practice in tenderness to human life and liberty, that while a verdict may be set aside, which is against a criminal, it never can be set aside, when in his favor. If the jury once find a verdict of not guilty, there is no power that can interfere between him and his crime, if he has committed a crime. No court can set it aside. The next usurpation was for the court to lay its hand upon the law—for they are a body sitting in permanence, reaching and grasping a little more—God made them so to do, for he made them men—

[Here the time expired.]

MR. LORD, of Salem. Mr. President—

MR. PARKER. If the gentleman from Salem will permit me, I wish to say one word only. I wish to say that if the gentleman from Lowell has read the dissembling opinion in the Vermont case, he has doubtless seen an opinion surpassing in ability altogether, that given by the majority of the court.

MR. BUTLER. That depends upon the spectacles one reads through. [Laughter.]

MR. LORD. I hoped that when the gentleman from Cambridge alluded to a particular branch of this subject, he was about to develop his views upon it more fully, than even if he had devoted all the rest of his time, he would have had an opportunity to do. It was upon this point, whether, if this resolution is passed, there is the power in any tribunal, to revise the decisions of a jury upon a matter of law, however unjust that decision may be. Take the case put the other day, by the gentleman who represents Wilbraham. He says the judges of the court gave an extraordinary construction to that law, which required two witnesses in case of treason; and I ask if jurors should come to such a conclusion as that, is there any power to revise such a decision on the part of any one? I asked the gentleman for Wilbraham, also, to consider his own position in reference to another proposition, that the jurors shall have nothing to do with

the matter of evidence. Suppose a party is indicted for libel, and the party indicted undertakes to offer evidence of the truth of that libel, and the court rejects that evidence, will he have the party convicted, or must not his principle lead him farther, to say that a jury in a case of libel shall have the right to demand evidence of the truth, if the party proposes to offer evidence of the truth?

The gentleman from Worcester made an appeal to the friends of temperance, to know who it was that was interfering with the due execution of the law, the jurors or the judges; who was it that was picking flaws in complaints and indictments. Would he have jurors pick flaws in complaints and indictments? The Constitution of this Commonwealth used to say, and I believe it says now, that no man shall be held to answer to a charge of offence, unless the same shall be fully and fairly, plainly and substantially, set out. Who shall decide on that great constitutional question? Shall the court decide it, or shall the jury decide it? Gentlemen on the jury know just as well whether a party is properly charged with an offence, as whether that party is guilty of the offence.

My mind has been somewhat exercised upon this subject, and what I desire is that some gentleman will explain to me the exact point where the jury shall have control over the rights of men—where it shall begin and where it shall end; but no man can do it in fifteen minutes. Everybody knows that the whole of a criminal charge depends upon the evidence; the evidence may be excluded by the court, and yet, if the evidence exists, it may have an effect upon the minds of the jury. Perhaps the evidence might have been more satisfactory; but whose minds are to be convinced as to whether the matter proved is in violation of law? The jury's. Under this proposition, whose minds are to be convinced as to what the law is? The jury's. Now, Sir, here is an enactment of the legislature. Men may possibly differ as to the exact meaning of the statute—not whether it is constitutional or not—but as to the meaning of the statute; and who is to interpret that statute, the jurors or the court? These are questions which no gentleman has undertaken to answer. There are difficulties in this very plausible and beautiful theory; and, Sir, I am not prepared to embrace it, for I cannot do so without risking the liberty of the subject to a degree to which I am not willing to risk it.

I was somewhat struck by the extraordinary statement of the gentleman from Worcester, (Mr. Allen,) in regard to a particular law which has been passed by congress; and that gentleman desired to leave his statement upon record, that it was as gross as violation of the Constitution, and of the rights of man, as could be conceived of. I should be most happy to have him tell the reason for his opinion, for I am not aware that there is any principle in that law which is not upon our own statute book—not one. The party, of which that gentleman is a member, has been in power for two successive years here, and yet I have never heard of their endeavoring to repeal any of the provisions of these laws. Take, for example, what he calls bribery. If a magistrate under that law adjudges a party to be guilty, he gets more fees than he does if he discharges him. Very well; and so does any justice of the peace, if he convicts a man of an offence in this Common-

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wealth; but I never heard that called bribery. There is not a justice of the peace in this Commonwealth who does not get more money if he convicts a man, than if he acquits him. Is that bribery? Why should men use such language as that, to excite prejudice against a law, and render it unpopular?

There is another provision, and it seems to me the most objectionable provision of the fugitive slave law which is this: Any man may go before a commissioner of the court, and get the custody of another man, and carry him off—there is no jury trial. But is there not just such a law upon our own statute book? If an apprentice runs away from his master, the master can go before a justice of the peace and make his complaint, and that justice of the peace may order the apprentice into the custody of his master; he may even authorize the master to carry that apprentice beyond the county where the justice of the peace has jurisdiction. Why did not the gentleman's friends repeal those laws which interfere with individual liberty? And we have another law, providing that paupers may be sent out of the country—there is no jury trial about it; but yet I never heard anybody get up and say that these were most monstrous infractions of personal liberty! No, Sir; there was nothing to be made out of it in these cases; when you send a poor pauper back to Ireland, there is no chance to make political capital out of that infraction of personal liberty. Sir, I do not rise to defend the provisions of that law at all; but my difficulty is to know how men can sit here quietly and say that that law is not only a violation of humanity and human rights, but of the Constitution of this Commonwealth, and the Constitution of the United States, when we have just such provisions on our own statute book, and nobody is ready to raise a finger to wipe them off.

The gentleman from Lowell suggested that this matter would be likely to excite a prejudice against the legal profession. I never make that objection, because in such a case we make more out of it than anybody else. The more prejudice there is—the more noise is made about it, the more grist it brings to that mill. Now, every lawyer may make a constitutional argument to every jury upon any liquor case that comes along,—and some of them have a legion of them—in the hope that he might convince some one jury that the law was unconstitutional, and thus, perhaps, get his case. I think that is a question which we are not to consider at all in the discussion of a constitutional provision; but when it is put to our side of the House that the arguments which are made by gentlemen here, whose characters are altogether above suspicion, are influenced by any such considerations as that, I say it is only proper to turn round and say that it opens the door to a new field, in which the gentleman for Wilbraham has already appeared so conspicuously, and where the gentleman from Lowell is no very distant follower. The very question that it is proposed to introduce here—the argument of the law to the jury—is a field in which I believe, nobody has reaped except the gentleman for Wilbraham and the gentleman from Lowell; and having found it a little difficult, heretofore, to cultivate that field, they now propose to make it easier. Now, Sir, if we can adopt the principle in some such mode as to relieve me from the difficulties which I find in the way, and which I have sug-

gested, and which nobody has answered, I am ready to go for it; but until these difficulties can be answered or obviated, I am not ready for it.

Mr. GRAY, of Boston. Having been on the Committee, I hope the Convention will indulge me in a few remarks, and I shall do my best to fall much within the time allowed. I admit, with the gentleman from Salem, that the boundary between the respective rights of courts and of juries, is a somewhat undefined and shadowy one. It is so, both in criminal and in civil cases. I will put an instance. Suppose the question arises, whether a man devises a lot of land to me or not—that is a question of fact for the jury to decide. I understand the statute to read, that every will should have three witnesses, and every judge would tell the jury so; but now the question arises, is the jury to decide on that point in rendering their verdict? How can you define their province in such a case? Or, take the criminal law; how can you define their province there? The gentleman for Wilbraham has read several extracts, to show that the court has agreed in his position; but I think there is a slight mistake there, and it grows out of this fact. Whenever the jury give a general verdict of guilty or not guilty, there is no power or right to revise that verdict. No man disputes that—the verdict cannot be revised. Where, then, is the power to be derived? Who is to draw the line between the province of the judge and the province of the jury, in general cases? The jury; because they have power to give a general verdict. What is to decide where the line ought to be drawn? The jury again, on their conscience. They are bound, on their conscience, as I understand it, to take the law from the instruction of the court, and to take its exposition of law as law. Suppose they refuse to do so. Suppose they consider that a case has arisen, one of those extraordinary cases laid down by all writers on law, in which a subject may judge for himself, not from law, but from the principles of moral right and wrong; who shall say whether they judge right or not? There is no power to revise their decision, for their tribunal is a sacred one—their judge sits at their own heart. Now, Sir, I admit what my friend from Salem seems to intimate, that this is not a desirable state of things. It might be better that we should lay down some tangible and visible boundaries, which will render it plain what the province of the judge is, and what the province of the jury is? But, Sir, can we do it? Admitting this to be an evil, and no one, I presume, will deny that, does this proposition remedy it? There is one objection that weighs on my mind, to which I believe no gentleman has adverted; and that is, that I do not wish to diminish the responsibility of the judges. Now, Sir, the judges in important criminal cases, are bound to lay down the criminal law. If a man loses his life or his liberty, if even a stigma falls upon him, the judge must bear the responsibility to the community. He cannot say: "I told the jury what I thought the law was, and it assumed the responsibility; if an outrage has been committed on the community, lay the blame on the jury, but do not charge me with it." It is, as the gentleman from Lowell very truly said: the judges are but men; and the moment you lessen their responsibility, you take away from them a motive to exercise their power thoroughly and faithfully,

which is, in many cases, a delicate and difficult thing, and sometimes renders him obnoxious even. Let gentlemen read the trial and conviction which resulted in what may be the last execution to take place in Massachusetts. Let them look at the position which the court held, and let them say whether there are many judges who would have laid down the law so fully and clearly as that chief justice did. I believe he would do the same again; but can you rely upon every judge to take such a painful and obnoxious position, and one which, in the eyes of a public sentiment and of the public press, as well as of a great many people, was a most odious position? The position taken by the court then, was most odious; for the time being, I mean. I cannot vote to diminish that responsibility; and, farther, I cannot vote to enjoin on the jury to decide as to the law, and to take the responsibility for so doing. I cannot agree to put it in the power of juries to say: "Here are our learned judges—they have told us what the law is—we would be thankful to rest, in some measure, upon their suggestions, but we are not allowed to do so, and the people hold us responsible." All this might be very well, and might operate in a proper manner, if we were sure that juries would always want to acquit, and that they would never be tempted and biassed to convict wrongfully.

Gentlemen talk about trusting the people. Now, Sir, the people of California are a brave and a free people; but, Sir, have we not reason to think that juries in that community would be tempted to bring a man in guilty in certain cases, where the strict interpretation of law would acquit him? Is there no such thing as popular violence? The juries and judges in the witch cases, were referred to by my friend for Wilbraham; but it was not the court that was to blame, it was a vitiated public sentiment; it was the power of the clergy, then too great; but I think that has been remedied and more than remedied since. It was this current of public feeling that murdered those poor creatures. Why, Sir, when the first jury brought in the first verdict of not guilty, a cry went through the court-house; the whole community, with one voice, were most earnest for blood, and blood they had. The very first impulse of popular feeling that then existed, for the acquittal of these persons, was followed by the verdict of this jury in their favor. But these Constitutions and laws are to protect a person from popular fury; these guards are thrown around him, so that, when he is accused, he may be tried before twelve men good and true; and, if they unlock his prison door, the voice of thousands of people can do nothing to gainsay it. Is there nothing for the court to do, in criminal cases? Gentlemen speak of the common law as though it was perfectly easy for any man of common sense to understand all about it, without any study; but, does not every gentleman who has studied the common law as much as I have—and I have studied it considerable—know that the common law is not always common sense? There is a great deal that a man would not know, unless he studies the statute. In the case of criminal law, who knows exactly what murder is? I do not—nobody knows. It seems a very simple question. If a person lies in wait for a man and assassinates him, you and I know, and every man knows, that is murder; but who can tell, unless he has examined the statute, whether the firing

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BILL OF RIGHTS.—GRAY—WALKER—HUNTINGTON—GARDNER—WILSON.

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of a gun carelessly, by a drunken man, in a crowd, is murder, or something else?

Sir, there are nice distinctions in the criminal law—not so much as in the civil law—and the jury may decide them. Now where is the evil? Where are the men unjustly convicted? I do not say that there are no evils, but I ask how has the administration of criminal justice been? Why, Sir, it is most merciful. If the jury judge of the law, and judge of it in a way that makes against the prisoner, the court has now a power which I fear this resolve would take away. If a jury are in favor of a prisoner, their verdict cannot be revised; and why? Not on any general principle involved here, or that the jurors are sole judges of the law. No, Sir; I think you give the scales a cast on a general principle in favor of life and liberty—that every chance short of endangering the welfare of the community, shall operate in favor of the prisoner. Therefore, while I admit that the boundary is not so well defined as it might be; while I admit that it seems, and perhaps is rather a perplexing doctrine to say that a jury may bring in a verdict of guilty or not guilty, and nobody impeach them, on the whole matter, and yet that they are bound to take the law from the court; in other words, to say that they must take the law from the court and then decide against that law, seems to create a confusion of boundaries between the province of the courts and the province of juries, not only, I think, in criminal, but also in civil cases. But I fear that if we debate this resolve much longer, we shall make the remedy worse than the disease.

Mr. WALKER, of North Brookfield. I rise to move the previous question.

Mr. HUNTINGTON, of Northampton. I wish the gentleman from North Brookfield would withdraw his motion. I have an amendment to offer, which the friends of this proposition do not object to. I think my amendment will obviate many objections that have been made to this proposition.

Mr. WALKER. Will the gentleman renew the motion for the previous question when he offers his amendment?

Mr. HUNTINGTON. It is a thing that I never did, and I am not disposed to do it now.

Mr. WALKER. Then I am sorry to say that I cannot withdraw the motion.

The question was then taken on the motion for the previous question, and a division being demanded, there were—ayes, 159; noes, 75.

So the main question was ordered.

Mr. GARDNER, of Seekonk, moved that when the main question be taken, it be taken by yeas and nays.

The yeas and nays were ordered, the question being on the second reading of the resolve.

Mr. WILSON, of Natick, moved a reconsideration of the vote by which the yeas and nays were ordered.

The motion to reconsider was agreed to, and the question then recurring on the order for the yeas and nays on the main question, the yeas and nays were ordered.

The question on ordering the resolve to a second reading, was then taken, with the following result—yeas, 192; nays, 146:—

YEAS.

Abbott, Josiah G. Allen, Charles
Adams, Shubael P. Allen, James B.

Alley, John B. Allis, Josiah
Alvord, D. W. Austin, George
Baker, Hillel Bancroft, Alpheus
Barrett, Marcus Bates, Eliakim A.
Bates, Moses, Jr. Beal, John
Bennett, Zephaniah Bigelow, Edward B.
Bird, Francis W. Boutwell, Geo. S.
Boutwell, Sewell Breed, Hiram N.
Bronson, Asa Brown, Adolphus F.
Brown, Alpheus R. Brown, Hammond
Brown, Hiram C. Brownell, Joseph
Bryant, Patrick Burlingame, Anson
Caruthers, William Case, Isaac
Chapin, Chester W. Chapin, Daniel E.
Chapin, Henry Churchill, J. McKean
Clark, Henry Clark, Ransom
Clark, Salah Cleverly, William
Cole, Sumner Crane, George B.
Cross, Joseph W. Cushman, Thomas
Cutler, Simeon N. Davis, Charles G.
Davis, Isaac Day, Gilman
Dean, Silas Denton, Augustus
Duncan, Samuel Dunham, Bradish
Durgin, John M. Earle, John M.
Easland, Peter Edwards, Elisha
Ely, Joseph M. Fellows, James K.
Fisk, Lyman Fiske, Emery
Foster, Abram Freeman, James M.
French, Charles A. French, Rodney
French, Samuel Frothingham, Rich'd, Jr.
Gardner, Johnson Gates, Elbridge
Gilbert, Washington Giles, Charles G.
Gooch, Daniel W. Gooding, Leonard
Graves, John W. Griswold, Josiah W.
Griswold, Whiting Hadley, Samuel P.
Hallett, B. F. Hapgood, Lyman W.
Hapgood, Seth Haskins, William
Hawkes, Stephen E. Hayden, Isaac
Hazelwell, Charles C. Heath, Ezra, 2d.
Hewes, James Hewes, William H.
Hobart, Henry Holder, Nathaniel
Hood, George Hooper, Foster
Howard, Martin Hoyt, Henry K.
Hunt, Charles E. Hurlbut, Moses C.
Hyde, Benjamin D. Ide, Abijah M., Jr.
Jacobs, John Keyes, Edward L.
Kimball, Joseph Kingman, Joseph
Knight, Hiram Knight, Jefferson
Knowlton, J. S. C. Knowlton, William H.
Knox, Albert Ladd, Gardner P.
Langdon, Wilber C. Lawrence, Luther
Leland, Alden Loomis, E. Justin
Marble, William P. Marcy, Laban
Marvin, Abijah P. Mason, Charles
Merritt, Simeon Monroe, James L.
Moore, James M. Morse, Elbridge G.
Morton, Marcus, Jr. Morton, William S.
Nash, Hiram Newman, Charles
Nichols, William Nute, Andrew T.
Ober, Joseph E. Orne, Benjamin S.
Osgood, Charles Packer, E. Wing
Paine, Benjamin Paine, Henry
Parris, Jonathan Partridge, John
Peabody, Nathaniel Pease, Jeremiah, Jr.
Penniman, John Perkins, Daniel A.
Perkins, Jesse Perkins, Noah C.
PHELPS, Charles Phinney, Silvanus B.
Pierce, Henry Pool, James M.
Rantoul, Robert Rawson, Silas
Richards, Luther Richardson, Daniel
Richardson, Nathan Richardson, Samuel H.
Ring, Elkanah, Jr. Rogers, John
Ross, David S. Sanderson, Chester
Sherril, John Simmons, Perez
Simonds, John W. Sprague, Melzar
Spoonser, Samuel W. Stacy, Eben H.
Stevens, Joseph L., Jr. Stevens, William
Stiles, Gideon Strong, Alfred L.
Sumner, Charles Swain, Alanson
Taber, Isaac C. Taft, Arnold
Thayer, Joseph Thayer, Willard, 2d
Thomas, John W. Thompson, Charles
Tilton, Abraham Tilton, Horatio W.
Underwood, Orison Viles, Joel
Vinton, George A. Wales, Bradford L.
Wallis, Freeland Walker, Amasa
Ward, Andrew H.

Warner, Samuel, Jr. Waters, Asa H.
Weston, Gershom B. Whitney, Daniel S.
Whitney, James S. Wilbur, Daniel
Williams, Henry Wilson, Henry
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wood, William H.
Wright, Ezekiel

NAYS.

Abbott, Alfred A. Adams, Benjamin P.
Aldrich, P. Emory Allen, Joel C.
Andrews, Robert Aspinwall, William
Atwood, David C. Ayres, Samuel
Barrows, Joseph Bartlett, Russel
Bartlett, Sidney Bennett, William, Jr.
Bigelow, Jacob Bell, Luther V.
Bliss, Gad O. Booth, William S.
Bradbury, Ebenezer Bradford, William J. A.
Braman, Milton P. Brewster, Osmyn
Brinley, Francis Briggs, George N.
Brown, Artemas Buck, Asahel
Bullock, Rufus Carter, Timothy W.
Chandler, Amariah Childs, Josiah
Clarke, Stillman Coggin, Jacob
Cogswell, Nathaniel Cole, Lansing J.
Conkey, Ithamar Cook, Charles E.
Coolidge, Henry F. Copeland, Benjamin F.
Crittenden, Simeon Crockett, George W.
Crosby, Leander Crowell, Seth
Crowninshield, F. B. Curtis, Wilber
Dana, Richard H., Jr. Davis, Solomon
Dawes, Henry L. Deming, Elijah S.
Denison, Hiram S. Donne, James C.
Dorman, Moses Earnes, Philip
Eaton, Lilley Edwards, Samuel
Ely, Homer Farwell, A. G.
Fay, Sullivan Foster, Aaron
Fowle, Samuel Fowler, Samuel P.
French, Charles H. Gale, Luther
Gardner, Henry J. Giles, Joel
Gould, Robert Goulding, Dalton
Goulding, Jason Gray, John C.
Green, Jabez Hale, Artemas
Hale, Nathan Hammond, A. B.
Harmon, Phineas Haskell, George
Heard, Charles Henry, Samuel
Hersey, Henry Hillard, George S.
Hinsdale, William Hobart, Aaron
Houghton, Samuel Howland, Abraham H.
Hubbard, William J. Hunt, William
Huntington, Asahel Huntington, Charles P.
Huntington, George H. Hurlbut, Samuel A.
Jackson, Samuel James, William
Jenkins, John Jenks, Samuel H.
Johnson, John Kellogg, Giles C.
Kendall, Isaac Kinsman, Henry W.
Knight, Joseph Kuhn, George, H.
Ladd, John S. Lawton, Job G., Jr.
Lincoln, Abishai Lincoln, Frederic W., Jr.
Livermore, Isaac Lord, Otis P.
Lothrop, Samuel K. Loud, Samuel P.
Miller, Seth, Jr. Mixer, Samuel
Morey, George Nayson, Jonathan
Noyes, Daniel Oliver, Henry K.
Orcutt, Nathan Park, John G.
Parker, Adolphus G. Parker, Joel
Perkins, Jonathan C. Plunkett, William C.
Pomroy, Jeremiah Read, James
Reed, Sampson Sampson, George R.
Sargent, John Schouler, William
Sikes, Chester Sleeper, John S.
Smith, Matthew Souther, John
Stetson, Caleb Stevens, Charles G.
Stevens, Granville Sumner, Increase
Tileston, Edmund P. Train, Charles R.
Turner, David Upton, George B.
Walcott, Samuel B. Walker, Samuel
Weeks, Cyrus Wheeler, William F.
White, Benjamin Wilder, Joel
Wilkins, John H. Williams, J. B.
Wilson, Milo Winn, Jonathan B.
Woods, Josiah B.

ABSENT.

Allen, Parsons Appleton, William Ballard, Alvah
Ball, George S.

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RAILROAD ACCIDENTS, &c.—MORTON—PARKER—HILLARD—HALLETT—CADY.

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Banks, Nathaniel P., Jr. Marvin, Theophilus R.
 Beach, Erasmus D. Meader, Reuben
 Beebe, James M. Morton, Marcus
 Bishop, Henry W. Norton, Alfred
 Blagden, George W. Paige, James W.
 Bliss, William C. Parker, Samuel D.
 Brownell, Frederick. Parsons, Samuel C.
 Bullen, Amos H. Parsons, Thomas A.
 Bumpus, Cephas C. Payson, Thomas E.
 Butler, Benjamin F. Peabody, George
 Cady, Henry Powers, Peter
 Choate, Rufus Preston, Jonathan
 Clarke, Alpheus B. Prince, F. O.
 Cressy, Oliver S. Putnam, George
 Cummings, Joseph Putnam, John A.
 Cushman, Henry W. Rice, David
 Davis, Ebenezer Rockwell, Julius
 Davis, John Rockwood, Joseph M.
 Dehon, Robert T. Royce, James C.
 DeWitt, Alexander Sanderson, Amasa
 Easton, James, 2d Sheldon, Luther
 Eaton, Calvin D. Sherman, Charles
 Eustis, William T. Stevenson, J. Thomas
 Fitch, Ezekiel W. Storrow, Charles S.
 Gilbert, Wanton C. Stutson, William
 Greene, William B. Talbot, Thomas
 Greenleaf, Simon Taylor, Ralph
 Hall, Charles B. Tower, Ephraim
 Hathaway, Elnathan P. Turner, David P.
 Hayward, George Tyler, John S.
 Heywood, Levi Tyler, William
 Hobbs, Edwin Upham, Charles W.
 Hopkinson, Thomas Wallace, Frederick T.
 Kellogg, Martin R. Warner, Marshal
 Knowlton, Charles L. Wetmore, Thomas
 Little, Otis White, George
 Littlefield, Tristram Wilbur, Joseph
 Lowell, John A. Wilkinson, Ezra
 Wood, Nathaniel

Absent and not voting, 82.

Mr. EARLE, of Worcester, moved that the name of Marcus Morton be erased from the roll, that gentleman not being present when his name was called. He was in one of the committee rooms.

Mr. ASPINWALL, of Brookline. When the name of Mr. Morton was called, I heard a certain response. It was not exactly a negative, but seemed exceedingly like it.

Mr. FREEMAN, of Franklin. I believe I was the first who called attention to the fact of the gentleman's absence from the Convention when his name was called. He was in the room of the Judiciary Committee when his name was called.

Mr. MORTON. If there is any question as to my vote, I desire to say that I was not present when my name was called. I was in the Judiciary Committee room. If it is not too late, I will vote.

Mr. EARLE, of Worcester. I move that the response be erased.

The PRESIDENT. The response will be erased, so as to correspond to the fact. The resolve is ordered to its second reading, and will take its second reading to-morrow.

Sectarian Schools.

Mr. PARKER, of Cambridge. There is lying on the table a resolve on the subject of schools. This is a very important subject—one in which I have taken some interest, and I desire that it may be taken up at this time, so that it may be disposed of.

The PRESIDENT. The motion of the gentleman from Cambridge is not in order, the Orders of the Day being under consideration.

Mr. PARKER. Then I move that the Orders

of the Day be laid upon the table for the purpose of taking up this subject.

The motion was not agreed to.

Railroad Accidents.

The Convention next proceeded to the consideration of the resolve on the subject of legal remedies to the representatives of persons killed by the negligence or misconduct of railroad corporations, as follows:—

Resolved, That where death is caused through negligence or misconduct, by means of railroads, steam-boats, or public conveyances for hire, the same remedies shall be open in a suit at law, as for like injuries to the person resulting in disability and not in death.

The question being on its second reading,

Mr. HILLARD, of Boston. I rise to ask the gentleman who is chairman of the Committee which reported this resolve, to state some of the reasons why a provision of this kind should be placed in the Constitution at all, any more than a provision as to drawbridges, or the guages of roads? I should like to know on what principle this is to be taken from the statute law and placed in the Constitution?

Mr. HALLETT. In reply to the question of the gentleman from Boston, I will state, that this subject was referred by the Convention to a Special Committee, who instructed me to report this provision. The gentleman desires me to give some reasons why it should be put into the Constitution. Sir, I shall not go into any elaborate reasons; but when that gentleman compares a subject of this magnitude with the guages of railroads and drawbridges, and matters of that sort, he could not have had his mind upon the appalling fact, that since this Convention met, in the month of May, the deaths caused by railroad and steam-boat accidents, as reported to us in the newspapers, amount to two hundred and twenty-two! Now, if there is any principle that should have prominence in a fundamental law, it is that the government should protect the lives as well as the property of citizens; and they should protect those lives by throwing around them all possible security. Your Bill of Rights says, that every person shall have a remedy in your courts of law for all injuries sustained by the hands of others. Now, while this wholesale slaughter is going on, and every man's life is in danger every time he passes to and fro upon these lines of travel, is it worth while to put a declaration into the Constitution that shall seem to say, "This work of death must stop"? Every evening, when I see my friends go out of this hall, to pass along the various railroads to their homes, I look upon them as if I were beholding them for the last time, unless I should see them as mangled corpses; and when I see them next morning, safe and sound, I feel as if I could congratulate them as much as if they had escaped unharmed from a field of battle.

Sir, in the insurance of men's lives, it has now become an important question, as to whether their business requires them to travel much on railroads or steam-boats.

And why should this be put into the Constitution? I suppose, Sir, for this reason: that the courts of law in Massachusetts have decided that, by the common law, if a man is injured on a railroad by having an arm or leg broken, he is entitled to a remedy; but, that if he is killed, no damage is done whatever. That is the rule of

law. The supreme court are called upon to construe all your laws. I am aware that there is a law providing a penalty of four or five thousand dollars for each passenger killed, and which is recoverable by indictment. That is a penalty in the nature of a punishment for an offence; but when you come to your civil suits, and produce your Bill of Rights, which says that every person is entitled to a remedy for injuries received, what is the principle? If a man is maimed, and he goes before a jury, that jury determines what the injury is, and award him damages accordingly. But if a man, on whose labor a wife and children depend for support, is killed at a blow, and his heir or administrator apply for damages, he is told by your courts that there was no injury, because he was killed outright, and all the damages that can be recovered would be for the suffering he endured, if you can prove it, for the few minutes which intervened between the time he received the blow and the time he ceased to breathe.

Gentlemen tell us that we may go to the legislature for the proper remedies. So you might, if your legislature was not, in great part, composed of men who are either directors or stockholders in most of these companies; but, if I judge rightly, this is a matter which is worthy of being put into your Constitution, that this great moloch may be properly restrained. Sir, it is shown by statistical returns, that more persons have been killed in the State of New York on railroads, in one year, than were killed on all the railroads in England in the same time; and, after having created these corporations, and invested them with this power, is it not worth while to put into the Constitution a principle that will protect the community against them? Your penalty for an offence is one thing, but your remedy for an injury received is another. That is what I wish to provide for. I have no feeling in regard to the matter, except a feeling of humanity and right.

I am in favor of this proposition, considering that when your Bill of Rights declares that there shall be a remedy for all injuries, that remedy should provide for the injuries sustained by women and children who may lose their husbands and fathers, and, in that loss, their means of livelihood. In recent cases tried by the supreme court, the question was, whether a party who was killed lived long enough to maintain a suit. If he did not, no remedy could be had, and especially where death was instantaneous. The court would not allow such cases to go to the jury. They took it away from the jury, on the ground that there was no surviving injury on which an administrator could take action.

Sir, I think that great danger may arise from this new element we have introduced into the business of life, unless it is guarded by proper restrictions. I think that when you incorporate a provision like this into your Constitution, you hold up, as it were, a beacon light to guard and protect human life; the attention of all parties will be called to it; and the result will be in renewed vigilance, and care, and caution, and the saving of human lives, and the preventing of that desolation of hearths and hearts which, in our recent experience, has been so fearfully extended. By this you will do as much real good, as by any other provision in your Constitution.

Mr. CADY, of Monson. It is quite immaterial with me, in what way, and by what means, this protection shall be afforded—whether by the or-

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ganic law, the statute law, or by the common law. But that no protection in cases now before the Convention, is afforded, is true; but that is not all in relation to it. I hold that the eleventh article of the Bill of Rights, in the present Constitution, which contains this same principle, has not afforded any protection, either in this or other cases. I see no reason why, except that this article has never been heeded by the legislature, and they have never given that attention to it which is necessary to make it valid and effectual. And I see no reason why this resolution should be put in here, if no more attention is to be paid to it hereafter by the legislature, than has been paid to it heretofore; and if they should not, I would as lief see this provision struck out of the Constitution entirely. I can see no value in retaining an article in the Constitution, which has no effect, and is practically invalid. The present article says: "Every subject of the Commonwealth ought to find a certain remedy, by having a recourse to the laws for all injuries or wrongs which he may receive in his person, property, or character." I claim that no person has ever had a remedy for an injury which has caused death, as he had for wrongs to character or property. The article farther says: "He ought to obtain right and justice freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; conformably to the laws."

Well, Sir, there are no laws except this very one, and this, so far as it may be construed as a law, might be considered as applying to all cases. But I suppose it is not to be considered as a law, but only as a principle upon which a law can be founded. Now, Sir, I contend that no person has ever had the benefit of the provision here made, or intended to be made, by this article of the Bill of Rights. A man can injure and wrong his fellow-citizen, and there is no remedy against him which can be applied. I can bring an action against any man, or a rich man may bring an action against a poor man unable to defend his case, and there is nothing in the statute which prevents it. He makes him just as much expense, and as great a loss of time as he chooses and may cause delays—for these actions are not without delay—and just as much delay as the individual who is the oppressor, sees fit to make. In these cases of unjust prosecutions, where an innocent man has been seized by the arm of the law, and has been obliged to spend his time and money for his counsel and other things, although he may at length become released and establish his innocence, where is he? Being a poor man, he has expended all the means he has in his power to obtain, to pay his attorney and lawyer for his defence, and has spent his time, and what is the result? He has beggared his family, his children are naked, and his wife is in distressed circumstances.

Now, Sir, as I said before, I care not where the law comes from which affords this protection. If a provision of our Constitution cannot be made valid to afford this protection, I say I am in favor of striking it out. This provision is here in the Constitution for something, and the legislature heretofore have neglected to pay that attention to it which it really deserves. Now, I think that it is of vital importance to have such an article in the Constitution, but I think it is of much more importance that the article should be heeded. This neglect was not because it was an oversight. The legislature looked upon this article, and knew that

it was there. They knew practically what had been done by previous legislatures. Still, from year to year, and year after year, a perfect neglect has been indulged in by legislative bodies, and they have neglected to afford that protection which this article in the Bill of Rights was intended to afford. There may be such a thing as an oversight, but this has not been one. When the mother of Achilles plunged her son into the river Styx, to render him invulnerable, there was an oversight on her part, because she forgot that the heel failed to be laved by the prophylactic waters. But not so in this case. The legislature have had their attention directed to this matter, but they have gone on, year after year, neglecting it, and we have no more protection than when it was first put into the Constitution in 1789.

Now, Sir, I am in favor of a resolution like the one offered by the gentleman for Wilbraham, (Mr. Hallett,) if it can be made effectual in any way. I am in favor of incorporating something like this into the Constitution.

Mr. DAVIS, of Plymouth. Owing to the lamentable circumstances to which the gentleman has alluded, I have hesitated to propose the motion which I shall offer before I sit down, until I could hear the gentleman for Wilbraham, (Mr. Hallett,) explain the reasons for his amendment. It seems to me that no good reason can be assigned why a provision providing only a simple remedy for an evil, for injuries, for trespasses, &c., should be put into the Constitution; and, especially, no good reason can be given why it should be put into the Bill of Rights. If it were proposed to put into the Constitution a provision, that for all injuries by tort, an action at law should lie, and that when such tortious injury resulted in death the action should survive, I could see some reason for the principle, but certainly none for such a provision as this. I understand that the liability, to some extent, is now perfect by the act of the legislature. And I also understand him to admit that the legislature have now full power to enact sufficient laws with regard to all remedies affecting the person, whether they result in death or not. If that be so, I see no reason why the provision should be placed in the Constitution or in the Bill of Rights. If gentlemen will look at this resolve as reported, it seems to me they will find that it is too vague and indefinite. In point of fact, nothing can be made of it whatever, and I ask gentlemen of the Convention, before they make up their minds upon this question, to read the provision. It is this: "Where death is caused through negligence or misconduct by means of railroads, steam-boats, or public conveyances for hire, the same remedies shall be open in a suit at law as for like injuries to the person resulting in disability and not in death." That is, "where death is caused," "the same remedies shall be open as for a like injury," namely, death "resulting in disability and not in death." Will gentlemen also ask themselves what that same remedy is which shall be open at suits at law for injuries resulting in disability and not in death. Does the Committee mean that the like rule of damages shall apply to injuries resulting in death, that apply now to injuries which do not result in death? Or does the Committee mean to say a jury shall be called upon, without any limit, to estimate, in broad terms, the value of life? What is the limit? It seems to me, that, if called upon as a juror, as perhaps I may be, to consider that question, I

might say that the value of a man's life was a million of dollars, and this constitutional provision might require that of me; or else—for so I read this resolve—or else I should be called upon merely to decide that the party entitled to some remedy is entitled to the same remedy which he would be entitled to for an injury resulting in disability and not in death, no matter how small the damage may be. It seems to me there is this inconsistency and this vagueness. I therefore move that this resolution be laid upon the table.

The question was taken, and the motion was agreed to.

So the resolve was laid upon the table.

Law Martial.

THE PRESIDENT. The next matter in the Orders of the Day is the resolve upon the subject of the law martial. The question is to strike out of the twenty-eighth article of the Bill of Rights the words, "by authority of the legislature," so that it shall read:—

No person can in any case be subjected to law martial, or to any penalties or pains by virtue of that law, except those employed in the army or navy, and except the militia in actual service.

The question is upon the final passage.

Mr. DANA, for Manchester. I wish to know whether I can throw myself upon the indulgence of this Convention, for a few minutes, upon this subject. I will occupy but a few minutes, and will state but two propositions. Last night, when there was but just a quorum present, the resolve introduced by the gentleman for Wilbraham, (Mr. Hallett,) to deprive the legislature of the power of enacting the law martial, was passed. I think it was passed under a misapprehension. I have conversed with a number of gentlemen since last evening, and I have seen but one person to whom the subject has been presented, who has not changed his mind. If the Convention will give me attention for a moment, I will endeavor to satisfy them that the Constitution, since 1780, has been right in this respect, and that we had better let it alone.

The first question is, What is the law martial? and the second is, Who shall control it? First, what is the law martial? It is supposed by many that the law martial is just what a military man chooses to do. That is not so. It is a code of laws enacted by the legislature, and not what a military man chooses to do. First, we have the civil law, and, second, the law martial. They are both enacted by the legislature, and they are both controlled by the legislature.

Mr. HALLETT. Does the gentleman say there is a martial law in Massachusetts?

Mr. DANA. Certainly there is.

Mr. HALLETT. No, Sir; there is a military law.

Mr. DANA. The martial law of Massachusetts is in the Revised Statutes, and under that the courts martial are held. The law martial of the United States is in the laws of the United States, and under that the courts martial of the United States are held; and I think the gentleman for Wilbraham, (Mr. Hallett,) himself, has been a judge advocate of an United States court martial. The legislature of the State can control the law martial of the State; can alter it, and make it just as humane as they please. It is a system of laws executed by a military tribunal

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instead of by a civil tribunal. Those tribunals act according to law, by records, by proceeding in writing, and can punish no man except according to law. They cannot do as they please.

We have the civil law to apply to ordinary cases, but to whom does the martial law apply? It applies to military men, under arms. We try a militia man now, under martial law. At what other time does the military law apply? It applies when the civil law cannot apply; when, in times of insurrection and disturbance, you cannot control your jails, when you cannot control your court-houses, when the sheriffs cannot summon their juries, and courts cannot meet. When the civil law cannot go on, then the martial law is proclaimed. When the enemy is in possession of your strong-holds, when the milder processes of the civil law cannot go forward, then it is martial law or nothing. Well, then, the martial law is a law of the legislature, and which the legislature controls. When that state of things arises where the civil law cannot be put in force, then the legislature puts in force the martial law.

Then there remains but one question—who shall put in force the martial law? Shall it be proclaimed by the legislature, or shall it be proclaimed by any military man who chooses to do it? Our ancestors, in 1780, abundantly cautious of liberty, provided that only the legislature should proclaim the martial law. The gentleman for Wilbraham means to leave it so that any military commander that comes here, may proclaim the military law. He eulogizes General Jackson for putting New Orleans under military law. I think General Jackson was right in doing that. But I wish to know why, if it was right for General Jackson to do that, it is not right in the legislature to do it; why it is not better and safer in the hands of the legislature.

If the legislature of Louisiana had put New Orleans under martial law, it would have been far better than to have General Jackson do it. General Jackson had to assume the power to do it, and I think he did right; but if the legislature had declared the city to be under martial law, it would have saved him an assumption of power, and General Jackson, as a good citizen, would have rejoiced at it.

Now let us take a case nearer home. Suppose you pass this provision, and Massachusetts is threatened to be invaded by an armed force. Your civil law cannot be enforced. A military commander comes and says, here are five thousand troops firing upon us. The people are in arms; there is no civil law that can be enforced; your wives and children cry to us for protection. Your sheriff is not strong enough to protect them; juries cannot be impelled; courts cannot sit; and we must have a law. Well, Sir, what do we do? We say Massachusetts has provided for this great emergency. We have a martial law. Let military courts proceed where civil courts cannot. We therefore go to the legislature, and ask them to proclaim martial law for that part of the Commonwealth where civil law will not apply. And what does the legislature say? They say: "We had the power to do what you ask us to do up to 1853, when a Convention was held to revise the Constitution. It was composed of very good, very wise and excellent men, but they were under the impression that there ought not to be martial law, and they have taken away the power of proclaiming it." And then the legisla-

ture of Massachusetts will go down upon its knees to this military commander, and beg him to enforce that martial law which they have not the power to proclaim. They will surrender up to this one man, despot though he may be, all the power they possess, and allow him to exercise it without the power of controlling him, because his Convention has said that in no case shall the legislature proclaim martial law.

Now the question is not whether we shall have martial law or not, for that we shall have, if the case should ever arise when it should be needed; but the question is, whether we shall allow a military chieftain, who may come here, to assume that power for himself, without the power of the legislature, or of any civil tribunal to control him, or whether it shall be left in the power of the legislature to proclaim it when it shall appear that the civil law cannot be exercised? Shall we leave it to them, or shall we place ourselves in the mortifying condition of forcing a military hero to assume the power, in an emergency, because we have unwisely tied our hands in a period of peace?

Mr. HALLETT, for Wilbraham. As the gentleman for Manchester had leave to state his view of this question, and as I think he has stated it not in accordance with the law or the facts of the case, I ask the indulgence of the Convention to say a few words in reply, and promise that I will detain them but a moment.

If I understand the point made by the gentleman, he assumes that "military law" is "martial law." Now, Sir, martial law is not military law, and I am sure that the gentleman cannot undertake to assert it, from any authority he can produce. I can only attribute his error to his not having looked into the matter. I presume that Blackstone was not before him, or the opinion of Judge Woodbury, when he made that assertion. Sir, I repeat, martial law is not military law. You cannot find any martial law upon the statute books. Martial law is the absence of all law. It can only be proclaimed when the laws which the legislature has established cannot be enforced. I read from Judge Woodbury's opinion, as given in the 7th volume of Howard's Reports, in the Rhode Island causes. The question there was, whether martial law could be proclaimed by a legislature. The learned judge says:—

"The present laws for the government of the military in England, do not exist in the vague and general form of martial law, but are explicitly restricted to the military, and are allowed as to them only to prevent desertion and mutiny, and to preserve good discipline. So in this country, legislation as to the military is usually confined to the general government, where the great powers of war and peace reside; and hence, under these powers, congress, by the Act of 1806, has created the Articles of War 'by which the armies of the United States shall be governed,' and the militia, when in actual service, and only they. To show that this is not the law by which other than those armies shall be governed, it has been found necessary, in order to include merely the drivers or artificers 'in the service,' and the militia, after mustered into it, to have special statutory sections. Till mustered together, even the militia are not subject to martial law. And whenever an attempt is made to embrace others in its operation, not belonging to the military or the militia, nor having ever agreed to the rules of the service, well may they say, we have not entered into such bonds—in *hac vincula non vens*. Well may they exclaim, as in *Magna Charta*, that 'no freeman

shall be taken or imprisoned but by the lawful judgment of his equals, or by the law of the land.'"

Again he says:—

"So it is a settled principle even in England, that 'under the British Constitution, the military law does in no respect either supersede or interfere with the civil law of the realm;' and that 'the former is in general subordinate to the latter.'"

Now there is the rule of law, and the clear distinction between military law and law martial. I do not suppose that the gentleman for Manchester intentionally misstated the point; but I must say that, as a lawyer, he stated it very disingenuously. Now I ask, will the gentleman contend that military law should supersede the civil law?

Mr. DANA. I said nothing of that sort.

Mr. HALLETT. The gentleman said that martial law existed in our statute books, and that when the civil law could not be carried out it should be superseded by martial law. If he is correct, it follows that military law may supersede civil law whenever the legislature choose to say so. Now, Sir, I repeat that military law and martial law are not the same thing, and that there is no martial law in the statute book. The gentleman alluded to a court-martial, and to a judge advocate. Why, Sir, there are no judge advocates under martial law. No, Sir; if the gentleman had ever looked into any book upon martial law or upon military law concerning a court-martial, he would have known the distinction. There is no trial under martial law. There is no judge advocate. It is the drum-head and the platoon.

Mr. DANA. Does the gentleman mean to say that the legislature has no right to control martial law or to enact it?

Mr. HALLETT. Yes, Sir. The legislature can only declare martial law, or enact that certain persons, or the whole people, shall be put under martial law. They cannot alter martial law, nor decree what it is. The case for declaring that martial martial law exists, can arise only when the legislature, as it did in Rhode Island, shall declare the whole State to be under martial law. In other words, an abrogation of all law. The legislature of Massachusetts could not declare one portion of the Commonwealth under martial law and the other under civil law, during a campaign. They could not declare one town under martial law and another under civil law.

Mr. DANA. The gentleman has not answered my question. I ask him whether he means to deny that the martial law is under the control of the legislature, and whether they have not the right to make laws regulating it?

Mr. HALLETT. That is the point I was explaining. No, Sir; the legislature cannot make martial law or control it, because they have no power to enact in detail a code of law which abrogates civil law. They have no authority whatever, except that contained in this provision in the Bill of Rights, which is just this, as it stands in the present Constitution:—

"No person can in any case be subjected to law martial, or to any penalties or pains by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by the authority of the legislature."

There is the authority which is to declare martial law, or to subject persons to martial law;

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not to make or modify martial law. Now the gentleman says the legislature ought to have authority to put any man, or the whole State, under martial law. Do you mean to give the legislature that power? Do you mean, when you come here to propose to the people a Constitution which prescribes and limits the legislature, to say that the legislature shall have power to abrogate even the Constitution itself, whenever they shall think proper? Do you mean to give them the authority to point to this man, or that man, and say he shall be put under martial law, without any protection of his rights by civil law? What is the use of your Bill of Rights? What is the use of anything in your Constitution with that provision which makes the legislature as lawless as a Roman Dictator?

Now instead of that, it is proposed to take this power away from the legislature and provide that no person shall be subjected to law martial except those engaged in the army and navy, and except the militia in actual service. That is the law martial of the camp, which follows the army wherever it goes, and that is all the law martial which any republican Constitution, made since the Revolution, ought to provide for, and it is all the martial law I hope this Convention will consent to.

To settle this matter of definition, I will read a short extract from 4 Blackstone's Commentaries, concerning martial law. He says:—

"Martial law, which is built upon no settled principles, but is entirely arbitrary in its decisions, is, as Sir Matthew Hale observes, *in truth and reality no law, but something indulged in rather than allowed as a law*. The necessity of order and discipline in an army, is the only thing which can give it countenance."

Mr. BIRD, of Walpole. I have but a single word to say, and that is this: I hold that those who are opposed to the passage of this resolve, must show that there is a necessity for conferring upon the State authorities this power to declare martial law.

Mr. DANA. We have always had it.

Mr. BIRD. There may have been a necessity for it when this Constitution was formed, for we had not then tried the experiment of self-government. It was then a very doubtful experiment, and it is easy to believe that it may have been wise then to put such a provision into the Constitution. But before gentlemen can with good reason call upon me to vote for continuing this power, they must show that the power is necessary in this year of grace, 1853. Sir, I do not believe it. It may have been considered necessary, or because it may have been really necessary in 1780, it does not follow that it should be continued now when that necessity has passed away.

Mr. SCHOUER. Suppose it should be necessary fifty years hence?

Mr. BIRD. It has not been necessary for fifty years past, and I believe the world is growing better instead of growing worse, and therefore it will be no more necessary fifty years hence than it is now.

Now, I must first be satisfied that any conceivable case can ever arise in Massachusetts where it will be necessary for the State authorities to proclaim martial law, before I will ever vote to confer such a monstrous power upon the legislature.

But there is another question which may very well be asked—whether the State of Massachusetts has, or has ever had since the adoption of the Federal Constitution, the power under any circumstances, to proclaim martial law? I think it would not be very difficult to show that Massachusetts has given to the federal government the entire control of this matter. By the Constitution of the United States, any individual State has no right to declare war, and martial law can only be declared in a state of war. We might find ourselves in a state of insurrection under circumstances when it would be justifiable to declare martial law; but even then it could be done by State authorities only, against law.

But, waiving this question, I do not believe any emergency will ever arise within the borders of the State of Massachusetts, where it would be advisable to confer upon the legislature the power to declare martial law. I do not believe such a state of circumstances is possible in the nature of things, in the next fifty years. I do not believe any person upon this floor will rise here and say he seriously believes that any emergency will ever arise in Massachusetts which may not be safely controlled by the civil authorities. Then where is the necessity or propriety of conferring such a power upon the legislature when we can hardly conceive of an instance in which it would be proper to use it? I hope the proposition before the Convention will be adopted.

Mr. CHURCHILL, of Milton. It seems to me that if we are to adjourn on Saturday, the debate upon this particular topic has been prolonged as far as is necessary. It seems to me that a power that has existed so in the Constitution without any harm coming from it, may very safely be trusted there in future. At the same time, I believe some great emergency may arise in the future, when such a power would be necessary. I therefore move to lay the whole subject on the table.

Mr. BIRD. Upon that motion, I ask for the yeas and nays.

The yeas and nays were not ordered, 25 voting in the affirmative, and 104 in the negative.

The question upon Mr. Churchill's motion was then taken, and agreed to—ayes, 70; noes, 67.

So the whole subject was laid upon the table.

Mr. FRENCH, of New Bedford. I move a reconsideration of the last vote, that the subject may go among the Orders of the Day for tomorrow.

The PRESIDENT. At the present time, the Orders of the Day are under consideration. The next order is the document on the Bill of Rights. The question is on its final passage.

Mr. MOREY, of Boston. I move that the Convention do now adjourn.

The question was taken, and on a division there were—ayes, 65; noes, 93.

So the Convention refused to adjourn.

Mr. BRIGGS, of Pittsfield. I wish to inquire whether the yeas and nays have been ordered on the amendments to the Bill of Rights? It seems to me, that if they have not, we ought not to take the question now, on such a subject.

Mr. SUMNER, for Marshfield. There has been no vote to take the yeas and nays on this proposition.

Mr. BRIGGS. Then I think we ought not to act upon it now, with a house consisting of scarcely a quorum.

The PRESIDENT. The question is on the final passage of the resolves.

Mr. SCHOUER, of Boston. As I wish to move an amendment to that Report, of which I gave notice last night, I hope the Orders of the Day may be laid on the table; and I make that motion, that they lie on the table.

The motion was agreed to.

Mr. SCHOUER. I move that the Convention adjourn.

The question being taken, on a division there were—ayes, 83; noes, 44.

So the Convention adjourned until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

Mr. BROWN, of Medway. I voted this forenoon, under a misapprehension, on the subject of the rights of the jury. That vote does not express my real views, and I wish to have it changed, so that it may be recorded yes, instead of no, on that question, if it is consistent with the rules to do so.

The PRESIDENT. The subject having passed in Convention, it is not competent for the gentleman to change his vote at this time.

Mr. WILSON, of Natick. I move to take from the table the resolutions in relation to future amendments of the Constitution. I wish to have the subject placed in the Orders of the Day.

The motion was agreed to.

Mr. WILSON. For the purpose of saving time, I move to suspend the rules for the purpose of having this subject placed in the Orders of the Day, for to-day.

The motion to suspend the rules was agreed to, and the resolutions were placed in the Orders of the Day.

Sectarian Schools.

Mr. PARKER, of Cambridge. I move now to take from the table the subjects contained in Documents Nos. 11 and 16 of the calendar, relating to schools and school moneys. I do not wish to consume the time of the Convention by any remarks; but I must regard a refusal to take them up, as a refusal to act upon them at all.

The motion to take them up, and proceed to their consideration, was agreed to.

The question was on the second reading of the following resolve:—

Resolved, That it is expedient so to amend the Constitution, as to provide that no public money in this Commonwealth, whether accruing from funds, or raised by taxation, shall ever be appropriated for the support of sectarian or denominational schools.

Mr. PARKER. I move to amend the resolution of the Committee, by striking out all after the word "Resolved," and inserting the resolve contained in Document No. 123, which is as follows:—

That all moneys raised by taxation in the towns and cities, for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to, and expended, in no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall

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never be appropriated to any religious sect for the maintenance, exclusively, of its own schools.

I do not wish to detain the Convention a moment with this subject. This amendment has been prepared on consultation with divers gentlemen; and it is one which, I suppose, will meet the approbation of the Convention, and may be adopted without debate; and unless some gentleman objects to it, I shall take no time in explaining it now.

The question was then taken on the adoption of the amendment, and it was decided in the affirmative.

The question recurred on the final passage of the resolution as amended, and it was passed.

Special Assignment.

Mr. MORTON, of Taunton. There is a subject before the Convention of some considerable interest, upon an amendment which I had the honor to offer to the resolution in relation to representatives. At the request of certain individuals who were not satisfied with my amendment, I withdrew it a fortnight ago, and submitted it as an independent proposition. For the accommodation of gentlemen who wished to press forward other business, I omitted to call it up until now. I find that gentlemen are anxious to close their labors here, and that there are other propositions which they wish to have acted upon at present; and I have agreed to move that the Committee be discharged from its consideration, so that there may be a special assignment for it to-morrow, at an early hour. It will be necessary, in order to accomplish it, that there should be a motion to suspend the rules for the purpose of discharging the Committee.

The motion to discharge the Committee from the consideration of the resolution, was agreed to.

Mr. MORTON. I move that the rules be suspended, so that the subject may be considered in Convention.

The motion was agreed to.

Mr. MORTON. I now move that it be specially assigned as the subject for consideration at ten o'clock, to-morrow.

Mr. HUNTINGTON, of Northampton. It seems to me this question is closely connected with another question which remains to be settled yet; and that is, as to the mode in which these amendments are to be submitted to the people. If these amendments are to go before the people as a whole, under the form of a revised Constitution, I do not see how this can be adopted; and I think that until that question is settled, it should not be discussed. I object to having it made a special assignment for to-morrow morning at ten o'clock, until the other question is settled. It seems to me we shall only get ourselves into embarrassment, and consume time to no purpose, by taking up this subject, until we have settled the other question.

Mr. MORTON. I make this motion under somewhat peculiar circumstances; and if it is debatable, I should like to give the reasons why I claim to have it assigned for consideration to-morrow at ten o'clock.

The PRESIDENT. It is debatable to that extent.

Mr. MORTON. It will be recollected that this proposition was submitted more than two weeks

ago, as an amendment to the resolves in relation to representation. At the request of certain individuals who were in favor of this proposition, and upon the assurance that it should have an early consideration, I withdrew it as an amendment. I did not wish to press it upon the Convention, nor to surprise them with it at any time, and concluded to offer it as an independent proposition. Various subjects have come up, and it has been postponed from time to time, at the request of gentlemen who had some object which they wished to have acted upon, until the present time. I think that, under the circumstances, I have a strong claim to have it considered by the Convention at an hour when they can have an opportunity to consider it. I therefore desire that an early hour may be fixed for its consideration to-morrow.

So far as the objection goes, I think it should not prevail, because the gentleman may have as much of an opportunity to discuss it under this, as under the independent proposition; and therefore, I hope that, under the peculiar circumstances, the Convention will do me the favor, I may say the justice, to make the special assignment. It is obvious, and we all rejoice at it, that this Convention is about to draw to a close; and unless this proposition, which is a pretty important one, is considered early to-morrow forenoon, there will no proper opportunity to consider it at the present session of the Convention.

Mr. WILSON, of Natick. I wish to say but a single word in relation to this matter. I hope it will be specially assigned for to-morrow, and if at that time it is not best to consider it then, if other things come up, it can be deferred for a short time. We have several subjects which it is necessary to dispose of this afternoon, and I hope the gentleman from Northampton will not object to it.

Mr. HUNTINGTON, of Northampton. I have no objection to that time, if we can save time by it; but the other question in relation to the mode of submitting the amendments to the people, has got to be discussed when it is brought before the Convention by the Committee who are to report upon that subject. If you assign this subject for to-morrow morning at ten o'clock, it will be discussed then, and you will inevitably have another discussion on it when the Committee report; and thus you will consume double the time that is necessary. It appears to me, that in discussing the main question, this will also be brought in and discussed incidentally. The gentleman from Natick seems to suppose, that unless this is specially assigned for some future time, it necessarily comes up now; but that is not so. If it is not assigned for to-morrow morning, it may go over, and if the gentleman from Taunton will assign it for the same time that the other question is to be discussed, I think we shall save time by so doing; as the two subjects are connected, let them be discussed together. I do not see why the gentleman cannot modify his motion, so as to have this assigned for the same time that the other subject is taken up. If he will make that motion, I will vote for it.

Mr. EARLE. I think if this subject is first discussed, it will do very much towards enabling us to come to a proper result in relation to the other question. I think that that question cannot be settled before, so well as it can be after this is determined. When this comes to be discussed, it will probably lead to other propositions, and I

think it should be disposed of before the other subject is taken up. For these reasons, I am in favor of the motion of the gentleman from Taunton, and hope this subject will be assigned for to-morrow morning.

Mr. SCHOULER, of Boston. I have been trying for the last fortnight to discover some insuperable objection to having this alternative proposition taken up. Gentlemen who have spoken to me about it, have told me that it was not possible to dispose of that subject now, and I understand the gentleman from Northampton, to consider it impossible. If we decide that the Constitution shall go out as a whole, with the exception of this representative question, I understand him to argue that it will be impossible to send out an alternative proposition with regard to the basis of representation. There must be some objection that I have not thought of nor heard of; for really, I cannot conceive of any. Supposing we do decide that the Constitution shall go out to the people as a whole, still I can conceive of no objection to having this part considered separately. We may, for instance, place in the Constitution, the system of town representation that has been adopted by the Committee and the Convention; and at the same time we can send out to the people the other proposition for them to vote on, and provide, that if the district system receives the largest number of votes, that shall be inserted into the Constitution in place of the other. I can think of no difficulty about arranging that matter. I think I can frame a proposition in five minutes, that will put the matter just right, unless there is some objection which has not yet been advanced. I am in favor of the gentleman's proposition, that we shall take up the subject to-morrow morning at ten o'clock, and decide whether we are to submit anything to the people besides the system of town representation which has been adopted. It has been intimated, that there is a compromise proposition to be offered, that will, perhaps, reconcile all differences. I think if this matter is taken up to-morrow morning, there will be an advantage in having an early decision of the question, in order that the Committee who are to prepare and write out the amendments to the Constitution, may be enabled to govern themselves accordingly. For these reasons, I am in favor of the special assignment proposed by the gentleman from Taunton.

Mr. EAMES, of Washington. I am in favor of the assignment for to-morrow morning, for I am willing to give the gentleman from Taunton time to have the matter discussed; but, for the purpose of putting an end to this preliminary debate, which accomplishes nothing, and in order to enable us to get home to our constituents some time or other, I now move the previous question.

The previous question was ordered.

The question being then taken on the motion of Mr. Morton, it was agreed to.

Leave of Absence.

The PRESIDENT. The Chair has received a communication from Mr. Huntington, member of the Convention for Becket, stating that in consequence of a death in his family, he is obliged to ask leave of absence until the close of the session of the Convention.

On motion by Mr. EAMES, leave of absence was granted.

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Sectarian Schools.

Mr. WHITE, of Quincy, moved to reconsider the vote by which the resolve on the subject of appropriations for sectarian schools was passed; and upon that motion he asked the yeas and nays.

The motion was placed in the Orders of the Day for to-morrow.

Bill of Rights.

Mr. WILSON, of Natick, moved that the Convention proceed to the consideration of the resolves from the Committee on the Bill of Rights.

The motion was agreed to; and the resolves having been read a second time, the question was stated on their final passage.

Mr. HALLETT, for Wilbraham, moved to strike out the following words, being the same that had been inserted on the motion of Mr. Dana:—

“Said writ shall be granted, as of right, in all cases where the legislature shall not specially confer discretion therein upon the court; but the legislature may prescribe preliminary proceedings to the obtaining of said writ.”

Mr. HALLETT. Mr. President: This is a wholly new question, and I wish gentlemen to be apprised of its importance. The insertion of this provision in our Constitution, may bring the United States and the State into direct conflict. This provision may authorize any person to take out of the custody of any United States officer, any one whom he has in trust upon a criminal or civil process. The result of it is, you compel your State courts to issue a writ of *habeas corpus*, and one of your constables or sheriffs goes to the marshal to execute it, who must either resist it, or be liable to a penalty if he allows it to be carried into effect. If the marshal resists, the United States forces will be called out, and he will be sustained by the United States law. He would call on his *posse comitatus*, and if the governor happens to be on his side, he would have the military ordered out to assist him, and you would have war immediately. If this Convention desire to have a war, they must find means to carry it on. Now, Sir, I object to throwing any such firebrand as this into the Constitution. I hope we shall leave this matter where we found it; for if we are going to have war, I want to know what your martial law is going to be.

Mr. DANA, for Manchester. Will the gentleman allow me to ask him wherein my provisions differ from a law in the Revised Statutes, which has been in force ever since 1822?

Mr. HALLETT. I will tell the gentleman that there is a difference in one important point. The gentleman wants to carry his particular cases. He accused me of bringing some matters into the Constitution, for which he said I desired to make constitutional provisions because I had lost cases; but the gentleman also lost a case, and he has got his hobby here that he proposes to ride through the Convention. I hope the Convention will not allow him to ride it in peace.

Mr. DANA. That is not my question.

Mr. HALLETT. I was going to answer the gentleman's question, if he will let me take my time for it. The gentleman asks in what respect this provision that he proposes to introduce into the Constitution, is different from a law now in

force. I will tell him. By the present existing law, the judge determines, upon the presentation of a petition and the evidence, whether he will issue the writ of *habeas corpus* or not. In the case where a person is held by a criminal process, if he determines that that legal process is a valid process, he does not issue a writ of *habeas corpus*. Now the gentleman insists that if you go before the judge and apply for the writ of *habeas corpus*, on the very civil process under which the marshal holds the individual, although the judge thinks that is valid, nevertheless he must issue the writ of *habeas corpus*. Then you have the whole State on the one hand to put down, and the whole United States on the other hand to be put down; and the question is, who can fend off the hardest?

Mr. KEYES, for Abington. I have been quite concerned the last three or four weeks, in consequence of not having heard anything said about saving the Union. I think it has not been saved for at least three weeks. [Laughter.] Since we have heard these patriotic speeches on the subject, however, I feel somewhat inspired with a hope that we shall not go to pieces before to-morrow morning, now that the subject has been taken up. Now, Sir, I take it that the meaning, if there is any meaning at all in this matter, is to extend and to render more secure the right of *habeas corpus* in Massachusetts, to individuals. If this is the tendency of it, I suppose it will be adopted. There is a small class of people here in Massachusetts, who have undertaken to save the Union by making us all negro-catchers—nothing else; and, I trust, whatever this Convention may do, that it will not degrade itself by following any such lead as that. Yes, Sir; there are a set of men here in Massachusetts, who, for the last two or three years have taken it upon themselves to save the Union by making the people negro-catchers—the miserable serfs of negro-drivers; and Henry Clay says that even throughout the South, they are a tabooed and contemptible set—tabooed from all civilized people, and from the society of gentlemen. If that class of men are satisfied to become negro-catchers; if they choose to become these abandoned wretches that are despised by all gentlemen, then I am content that they should do so, and will not undertake to interfere with them at all; but when they undertake to make me a negro-catcher, I am not content, for I regard it as a personal insult, which I shall take every occasion, and every justifiable means to resent. I say that this class of men are despised by the human race, as they ought to be. But if this matter is to be argued seriously—and I do not believe that there is any need for it—take the case that the gentleman for Wilbraham, (Mr. Hallett,) has said may occur in Massachusetts. A case of the kind has just occurred in Pennsylvania; and, Sir, the State of Pennsylvania does not rank itself anywhere beside Massachusetts on these questions of liberty. But a case of that sort has arisen in Pennsylvania, and the marshal of the United States, armed with those infamous powers which are conferred by the federal government, but which conflict with the laws of the State of Pennsylvania, has been arrested and imprisoned in that State. Sir, look round on these walls; look up into the sky; look at Washington, and everywhere else; and all that you ever knew about the Union is just as perfect as before that event happened. Yes, Sir, this fu-

gitive slave was taken out of the hands and the custody of the marshal of the United States, by the State of Pennsylvania, and when the marshal refused to give him up, he himself was imprisoned. How different, Sir, are our proceedings in our courts in Massachusetts! When an application was made on behalf of the State of Massachusetts, to the United States marshal of this district, in a similar case, he set your application and your laws alike at defiance. The officers of the United States spit in the face of Massachusetts; and instead of that opposition which should have come from brave men, there was a whining sycophancy, a cowardly cringing to the South, which has had no example since the days of the Revolution; and the men who indorse this foul cowardice, are the only men who are called national Democrats or national Whigs. [Laughter.] Sir, according to the definition the national Democrats have given themselves, they are unlineal and bastard Democrats. [Renewed laughter.] What idea have they of the doctrines of their great founder, whose name they take upon their lips, but whose doctrines they every hour trample in the dust? I take it, Sir, that Pennsylvania has set an example which Massachusetts may follow; that of this idea of danger to the Union, and this conflict with the government of the United States, with which men, for their own base purposes, have endeavored to frighten the people of Massachusetts, we have now had an example, and we now see to what it amounts. When Pennsylvania, or any other State demands, and insists upon its just rights, those rights will be granted; and that too, without danger to the Union; but if we lay down on our faces, dust-licking, they trample upon us, as they ought to do, and as we deserve to be trampled upon. We ask for nothing but our just rights and liberties; and if we ask for them like bold, brave, and just men, we shall get them without much trouble. It is because we have a pack of men in this Commonwealth, and scattered all over the country for political purposes, to show that they are national men, and who are forever with their mouths in the dust, that has brought all this evil upon us. Let us assert the dignity of Massachusetts, and submit to this thing no longer. Let us show, that while we regard the government of the United States, we are not to neglect the interests and rights of the State and the people of Massachusetts. Let the people of the New England and the Free States but say the word once, and all difficulties and collisions between the South and the North will end at once. Southern men are gentlemen; Southern men are brave, and therefore I am willing to trust them. It is not the slave-holder, born on the Savannah—

The PRESIDENT. The Chair must remind the gentleman for Abington, that he is passing beyond the subject before the Convention.

Mr. KEYES. I was not aware of it. I thought I was talking about the amendment. The amendment, if I understand it, is for securing the writ of *habeas corpus*, or rather for extending the power of that writ in the State; and, Sir, I maintain that it is good for nothing, unless it applies to this matter of the fugitive slave law. It is scarcely ever needed under any other circumstances, and those difficulties between the North and the South are what make this amendment necessary.

But, Sir, I do not seriously intend to argue this amendment; because, if the Convention regard the

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amendment on grounds like that, if the people of Massachusetts did not hiss at the whole of it at once, we are not worthy of having a Constitution at all. [Laughter.] They will do it; and I hold it to be a duty which I owe to my constituents, and to myself, as well as to the people of Massachusetts, to do everything in my power to prevent the execution of this abominable law; and any man who extends the powers of that law, I hold does me a personal injury, and offers me a personal affront, and I hold him responsible to me; and I shall never neglect an opportunity of resisting such an affront whenever it is offered.

Mr. DANA, for Manchester. The member for Wilbraham, in his very natural excitement, fearing the Union to be in danger, is not in so perfectly calm a state of mind as is desirable for the investigation of a question of law. This is a pure question of law; and were it not that he is impressed by this feeling of great alarm, he would see at once, that what I propose has no harm in it. The Revised Statutes have provided, since 1836, and the old law provided since 1822, that every person restrained of his liberty, by any other person or persons, may prosecute a writ of *habeas corpus*, according to the provisions of the statute. Now, if that does take a slave out of the custody of his master, we cannot help it; it is the law, and it must be enforced when necessity arises.

"Every person imprisoned in any common jail, or otherwise restrained of his liberty, by any officer or other person, except in the cases mentioned in the following section, may prosecute a writ of *habeas corpus*, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful."

He shall "prosecute the writ" and "obtain relief," if the restraint shall prove to be "unlawful." Now, that is perfectly plain. He is entitled to his writ, and then, upon that writ, is to be determined the question of the lawfulness or unlawfulness of the detention or restraint. If the detention proves to be lawful, he is not relieved; if unlawful, then he is relieved. I cannot see how any person can be afraid of such a law as that.

The second section describes persons who shall not, as a matter of right, be entitled to this writ; meaning, thereby, that all others, with these exceptions, shall be entitled to it as a matter of right. "Every person," with certain exceptions, "may prosecute a writ of *habeas corpus*." And what are the exceptions? Persons convicted for treason or felony; persons convicted or in execution upon legal process; and persons committed on *mesne process*. These shall not have the writ as a matter of right, but the issuing of it shall be left to the discretion of the court. In these three classes of cases it is not proper that persons should be taken out of the custody of an officer upon the petition of every-body who asks for it, because they are in a public jail, in the custody of a public officer, and ordinarily in no peril. The court will hear the question upon petition before they will decide as to granting the writ. But all other persons, except these, shall have the writ as a matter of right. Why? Because they may not be in legal custody; and in such case they ought to be brought into court, and not held at the mercy of persons who may choose to detain them. That has always been the statute law of Massachusetts—that these three classes who are here

enumerated, shall not have this writ as a matter of right, but that all others shall.

Then, the statute says that application shall be made to the court in writing, setting forth the name of the party for whose relief the writ is intended, the place where the party is imprisoned, the pretence for the imprisonment or restraint, and if there is any warrant or other process, a copy is to be annexed, or evidence given that it has been demanded and refused; and finally, the facts set forth in the complaint shall be verified by the oath of the person making the application.

Then, the fourth section provides that the court or magistrate, "shall, without delay, award this writ of *habeas corpus*." It does not say that they may or may not issue this writ, as they please, but that they "shall, without delay, award and issue a writ of *habeas corpus*." My amendment, therefore, does not differ from the Revised Statutes and the law, as it has been in operation since 1822. It simply proposes to put this matter into the Constitution, where it cannot be changed by the legislature, or evaded by the court. The writ is to be granted in all cases where there is not a discretion specifically vested. At present, the discretion is limited to three classes of cases. The legislature may, if it chooses, add to these classes all persons held under charge of being fugitive slaves, and relieve the mind of the gentleman for Wilbraham. There is nothing to prevent the legislature, if they please, from adding that class. I saw a report of a case this morning, in a Pennsylvania paper, in which application was made for this writ, in behalf of a fugitive slave. The United States marshal, in whose custody the fugitive slave was, refused to deliver him up to the sheriff, and the consequence was, that the marshal was arrested. A return was then duly made to the writ; and, upon a hearing of the case, the fugitive was remanded into the custody of the marshal. The only question was, whether the hearing should be upon the writ, or without the writ. The great security has always been, that it should be upon the writ; and the object, is that the court may see the parties before them, that they may see the original process, and not be obliged to depend upon copies, or upon any man's word; and above all, that there may be no danger of the party being spirited away before a decision. As Judge Kane, in the Pennsylvania case said, he could not trust to the word of the marshal, that he would not carry the fugitive off beyond the jurisdiction of Pennsylvania. Now, if the court is first to give a hearing on petition, before the writ is granted, the respondent might, in the mean time, carry the man away, which he could not do, the writ being granted, and the parties all in court. The great purpose of the writ of *habeas corpus* is not to have a decision of a court as to whether a man may be carried off, but to prevent his being carried off until it is first determined whether he is in lawful custody. For a mere decision, any other action may do as well. The party is to be brought into court, so that he cannot be carried away. You may issue an injunction, to say that a man shall not carry another away; but what is the use of your injunction? He may get beyond your jurisdiction. The writ of *habeas corpus* seizes all the parties, so that from that moment no damage can be done until the question on the writ is decided.

In these remarks, I have alluded to the case of a fugitive slave; for it is in respect to them only, I

believe, that any objection is offered to my amendment. If on the return of the writ, it is decided that the master has a right to the slave, he will get him; or if it is decided that the marshal should detain him, he will, of course, have the right to do so. This was the course pursued by Judge Woodbury, in the case of Sims. He issued the writ, and heard the case on the return, with all parties before him. I cannot conceive any objection that there can be to the issuing of the writ, unless it be that it prevents the chance the claimant has of getting his man out of the State before a legal decision can be had.

I believe, Sir, that I am one of the last persons who will be accused of bringing forward radical measures in matters of law. On the contrary, I have maintained conservative measures in this Convention to the extent my influence would reach, and perhaps beyond it. On this point, I merely wish to place in the Constitution what is now, and always has been, the statute law. I desire to do this, because there is now a disposition on the part of the courts to assume the right of discretion in all cases. In the case of Thomas Sims, the supreme court said that they had discretion in all cases on the petition. The hearing might occupy a day or two, or three, or even a week, without ever getting the parties before them; and hence, by the time that a decision was obtained, a man might be a week's journey out of the State. I do not believe that the courts have a right to exercise such a discretion, and I want the Constitution to say that they shall not exercise it, except in such cases as the legislature may specially authorize. The gentleman for Wilbraham, (Mr. Hallett,) in his zeal to prevent collision with the United States, ought to recollect that the same privilege he is so zealous to give to the master in favor of his slave, may do great wrong to many innocent persons, who ought to have the benefit of that writ. There are other persons besides slaves who want the benefit of the writ of *habeas corpus*. And I beg gentlemen in their zeal for the recovery of slaves, not to put into the hands of the master a power which others may exercise to the oppression of the weak.

Mr. HALLETT, for Wilbraham. The gentleman for Manchester sometimes reminds me of the one idea concentrated so touchingly in the sentimental writings of Sterne, which describes an enthusiast looking through the door of a prison grate, and seeing nothing but a slave with the iron entering his soul. That gentleman, upon some subjects which he discusses, does the same, and can see nothing but the slave and the slaveholder. I trust my mind is a little broader than that. I have not thought of that in connection with so great a personal right as the *habeas corpus*.

Mr. DANA. I ask the gentleman whether I ever brought up the subject of the fugitive slave law in debate, except in answer to him?

Mr. HALLETT. The gentleman has brought it up here in this proposition; he brought it before the Committee on the Bill of Rights, where it was voted down; then he comes here and renews the issue. Now, Sir, it is not solely on the ground that this amendment may be designed to obstruct the execution of the fugitive law that I oppose it, but because the gentleman in his zeal to cover that case, is endangering the benefit of the writ of *habeas corpus*. It relates to all our laws, and to the personal rights of all citizens. Just examine it. The present provision in the Con-

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stitution in regard to the writ of *habeas corpus*, is this:—

"The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner."

Can you add anything more to that? It "shall be enjoyed in the most free, most easy, most expeditious, and most ample manner!" The gentleman says that is not enough. He wants something more. But to get that more he puts this great right at the mercy of a legislature. If he wants anything more than the Constitution now gives, of the freest and cheapest claim to this writ in all cases, it seems to me that he can only want some provision by which, under color of its being an amendment to the common law right of *habeas corpus*, some law may be violated, or the State and the United States be brought in conflict.

Sir, instead of securing liberty, it may authorize any man, under color of this new *habeas corpus*, to take any man or woman out of their house or bed, and drag them before a magistrate; or kidnap them while on the way; or, by bribing the officer who executes this writ, to be granted to anybody who asks for it. That is the practical effect of requiring such a writ in all cases. What does the gentleman intend by it? He is perfectly frank upon that point. He intends by it to compel any judge to deliver a writ of *habeas corpus* to any person who asks for it. Suppose a case in which a person is held by the United States marshal under civil process. What would the gentleman do? He goes to a judge of the State court and applies for a writ of *habeas corpus*. Why, says the judge, the marshal has got the man for debt, under legal process, and what is the use of issuing a *habeas corpus*? Nevertheless, he replies, I want the man here, I want to do something for him, and must have a writ. The law, if this provision prevails, can give the judge no discretion, and he must issue the writ. Then comes the conflict of State and United States officers. The party must be brought before the judge, if the marshal will allow it; and if the prisoner can be rescued on the way, very well. That may be one object. Just so if the marshal has a pirate in custody, and his comrades, or any class of philanthropists, opposed to hanging, desire to have him rescued; they go to a judge, and the judge must issue a writ of *habeas corpus*; and, in the meantime, the crew, or the sympathizers, are ready to rush to his rescue as soon as the marshal undertakes to bring him before the judge. The legal process goes for nothing, which holds any person in custody, for this provision in the Constitution will supersede all existing statute law. I ask the gentleman one thing; the moment this is adopted into the Constitution, what becomes of your statute law? It is repealed. Which is the higher law? The Constitution. If anything in the Constitution is in conflict with the State law, the Constitution repeals that. This amendment, therefore, will repeal that provision in the existing law. To whom does that provision in the existing law deny the right of the writ of *habeas corpus*? To persons in prison for felony, and persons in execution on civil process. The present proposition is, that the writ shall no longer be denied to them. And worse than that, the legislature are to have control over this great writ of personal right to make it anything they choose to

have it. Why does the gentleman want to go farther than the Constitution and laws now go? The Constitution says this writ shall be enjoyed in the freest manner possible; and the legislature says, it shall be granted as a matter of right in all cases, except in case of persons in prison for felony, or held in execution upon civil process. The gentleman wants something else; but what else ought he to have? I have not opened this question here. I wanted to avoid raising it. I did not want a question upon a sectional matter like this, to mingle in the discussions upon the adoption of the new Constitution. I know those who want to defeat this Constitution, are very anxious to have some sectional or disunion matter incorporated into the Constitution, for they know that they can then rally every friend of the Union against it. For that reason, I want to throw everything aside of that character. I say, therefore, if you adopt this provision, you furnish the opponents of the Constitution with an argument which I do not wish to put into their hands. I trust that we shall not, by our action, bring about this conflict; or, at least, keep this matter by itself for a distinct, separate vote.

Although gentlemen who have stood with me upon a good many platforms, upon this subject, are silent now, and probably will be by their votes, yet I hold it to be quite as important now, as it was just before the presidential election, to preserve this Union. [Laughter.] Most of all is it important to prevent a conflict between the civil and criminal jurisdiction of the United States and of the State. That is a grave subject, upon which no citizen, who has taken an oath to support the Constitution of the United States, should suffer a smile to come over his countenance; and if gentlemen will laugh at that, they will laugh at their own condemnation in the day of judgment.

I say upon this point, that the bare possibility of any provision creating a conflict between the United States and a State, is a matter of the highest delicacy. I trust, Mr. President, without reflecting upon the actions or motives of any one, that we shall leave this subject where we find it; and not, under the mistaken idea of enlarging the right of the writ of *habeas corpus*, in fact, restrict it, by putting it in the hands of a party legislature, or allow it to be made an instrument of tyranny and gross abuse, in the hands of any man who may wish to seize the person of another against his will, for a malicious, corrupt, or wicked design.

Mr. WILSON, of Natick. Mr. President: I am amazed at the extraordinary assertion of the member for Wilbraham, (Mr. Hallett). That assertion is this: that if the declaration is made in the Constitution of Massachusetts that the writ of *habeas corpus* is a writ of right, it is a declaration of war upon the United States. Sir, this is certainly an extraordinary doctrine to avow in a Constitutional Convention in America. *Magna Charta* recognizes the *habeas corpus* as a writ of right. This is the American doctrine, incorporated into the Constitutions of the American States. The Constitution of this State declares that "the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious, and ample manner." Now, the member for Wilbraham sees, in the annunciation of the doctrine—that the writ of *habeas corpus* is a writ of right, to "be enjoyed in the

most free, easy, cheap, expeditious, and ample manner," not at the discretion of a judge of the supreme court, but as a right—a declaration of war upon the national government. He sees war, strife, bloodshed, and disunion, looming up on the horizon of the future. Sir, the judges of the supreme court may now exercise all the powers this proposed constitutional amendment imposes; they may, they can, do all that the amendment of my friend for Manchester (Mr. Dana) imposes upon them, and yet the member for Wilbraham is alarmed because the Constitution, if amended, will require the judges to do just what they all can lawfully do now.

I yield to no man, Mr. President, in love and devotion to that Union which binds together the sovereign States of this ever-extending, ever-advancing republic. I love that Union for the glories of the past, the renown and power of the present, and the brilliant hopes of the future. I hope that every foot of the North American continent will be incorporated into this Union—into this cluster of bright constellations. I wish to see freedom and free institutions for all, and chains and fetters for none, follow the advancing flag of the Union. But this morbid anxiety about the Union, which is sustained by the stout hearts and strong arms of more than twenty millions of American freemen, is supremely ridiculous and absurd. Sir, this Union does not depend for its perpetuity upon the self-appointed Union-savers, who, during the past three years have blurted into the ears of the country, their devotion to it. It lives in the hearts of twenty millions of men, ever ready to defend it and preserve it.

All of us here, Mr. President, appreciate the devotion to the Union, of the member for Wilbraham, (Mr. Hallett,) but none of us, I am sure, believe that even that gentleman has any fear for the safety of that Union. Should the amendment of my friend for Manchester, (Mr. Dana,) be adopted, I think the perilled Union will survive the shock, and that even the member for Wilbraham will sleep well of nights. His slumbers will be undisturbed by war, bloodshed, and strife, growing out of the exercise of the right of the writ of *habeas corpus*. If I saw in the amendment moved by the member for Manchester, any danger—if I could see in it any tendency to bring on a conflict with the general government, I would vote against it. I am not one who would advocate anything that should lead to bloodshed and conflict. But it seems to me that the right of the writ of *habeas corpus*, is one which should not be held at the discretion of the judges of the supreme court of Massachusetts, or any other class of men. It should be the constitutional right which we can appeal to at all times—which we may enjoy in the "most free, cheap, expeditious, and ample manner."

Reference has been made to the recent case in Pennsylvania. Last Saturday, Marshal Wynkoop was called upon on a writ of *habeas corpus*, issued by a judicial tribunal of that State, to produce the body of a person in his custody as a fugitive slave—placed in his custody by the decision of Commissioner Ingraham, whose "alacrity" in the business of consigning persons claimed as fugitive slaves to their claimants, has won for him an immortality of infamy. Marshal Wynkoop, whose conduct in this case meets the unqualified condemnation even of the conservative presses of Philadelphia, refused to obey the

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summons. He was arrested, and held in imprisonment until Monday, when he came into court and produced his prisoner; the individual produced was delivered up to the marshal, who held him on the certificate of the commissioner, under the fugitive slave act. There was no danger, difficulty, or conflict. No one felt any shock. The sensitive nerves of the members of the Union-Safety Committees were not affected. The Union moved on in harmony in its course.

This extra anxiety about the Union, is the merest political cant. The country is sick of it. The sad fate of the chiefs in this Union cry, of the past three years, must convince even the member for Wilbraham, that this sitting up with the Union does not pay expenses. It is to be hoped that this Union delusion will soon pass away; and that the especial guardians of the Union will soon discover that the American people can preserve and protect that Union which makes them one people, without the special aid of their officious interference.

Mr. BARTLETT, of Boston. I have no desire to treat this as a matter of political interest, arising out of any past occurrence in this Commonwealth, but purely as a question of law. As I listened to my friend for Manchester, (Mr. Dana,) I at first thought he was right, and he would have commanded my vote but for a little farther scrutiny. I think there is error in the first place, in the suggestion that the courts of the Commonwealth have assumed a discretion not warranted by the statute. If I could find a trace of that, either in the authorities or in the oral history of proceedings under this great writ of liberty, I would aid in amending the law. But the gentleman is wrong. No court of this Commonwealth, in regulating the granting of the writ of *habeas corpus*, has ever, so far as I can learn, departed from the statute. The solution of the supposed disregard of the law is, I think, to be found in this. The statute regulating the right to the writ of *habeas corpus* provides for classes of cases. It has enumerated three classes in which it is discretionary with the court to grant the writ or not. It has left, by just implication, all else without discretion. But, Sir, the law has wisely provided beyond that, that in cases where there is no discretion, some preliminary case is to be made, before the exercise of the judicial power can be called into action. The provision is set forth with clearness and distinctness in the third section of the chapter. By that section, before any writ can issue, the applicant must make out a case under oath, complying with certain requisitions, and among them, not simply that the party is restrained of his liberty, but he must set forth, according to his best knowledge and belief, the cause or pretence for that restraint, and if it be under legal process, must annex a copy if he can.

Now, as happened in the Sims case, and as will happen again, the alleged cause of the restraint was shown on the face of the application to be perfectly legal and justifiable. The party, in compliance with the prerequisites of the statute, exhibited a case which, if it were correctly stated, was beyond the power of the court to relieve; and those statute prerequisites were framed with the intent that the true condition of the facts, if known, should be early developed—to the end that the authority and process of the Commonwealth should not be idly and frivo-

lously invoked. It will be difficult otherwise to account for their insertion.

Such, I think, is the legal attitude of the case, and such the intent of the statute. As I said before, I have no desire to discuss the principles on which the Sims case was disposed of, but simply to vindicate what I think was a just construction of the statute regulating the writ of *habeas corpus*. If the Convention shall deem it proper that the writ should issue without scrutiny, at the will of the applicant, I should prefer a plain, distinct resolution to that effect; rather than the proposed amendments.

But so long as it is deemed wise that a party applying for the writ shall make some case, so that the court shall not be compelled to deal with frivolous applications, I think it would be better to let the law stand as it is.

Mr. FRENCH, of New Bedford, here obtained the floor.

Mr. DANA, for Manchester. If the gentleman from New Bedford will allow me a moment of his time, I should like to say a word in answer to the gentleman who has just taken his seat.

Mr. FRENCH. Certainly, I will yield a moment.

Mr. DANA. The legislature has said, that the application shall set forth four things. Now in the Sims case, those four things were set forth; first, the person by whom the party was imprisoned; second, the cause or pretence of the imprisonment; third, it was said to be by process, and we annexed what we supposed to be a copy of the process, a copy which was handed to us—whether it was a precise copy we could not know—and then we verified it by oath. Now, here arises the question. We said, and I say now, that having complied with those four requisitions, we were entitled to our writ. The gentleman says, that though we complied with them, we were not entitled to it, unless the court considered that upon them we had made out a *prima facie* case of illegal restraint.

That is not so. And there our courts differ from the law and decision of other courts. The process, a copy of which we annexed, showed that our case did not come within the three classes of cases set forth as exceptions in the second section of the statute. The object of requiring the copy of the process to be annexed to the petition is, that the court may see whether the case comes within either of these classes of exceptions. If it does, they have a discretion. If not, they have not a discretion, but must issue the writ, and determine the lawfulness of the restraint upon the return to the writ. In the case of Sims, the process was clearly not within either of the exceptions.

Mr. BATES, of Plymouth. I rise to a question of order. I believe the gentleman has occupied his fifteen minutes.

The PRESIDENT. The gentleman is talking upon the time of the gentleman from New Bedford, (Mr. French).

Mr. DANA. As the gentleman rises to a question of order, I will not pursue the subject farther.

Mr. FRENCH, of New Bedford. Mr. President: I am in favor of the amendment which has been proposed by the gentleman for Manchester, and for the reason that it asserts that this writ of *habeas corpus* shall be issued as of right; and had it been thus issued on former and proper occa-

sions, when there was a necessity for it—when it was applied for in a legal manner—this amendment would probably not have been offered on the present occasion. But, Sir, in one of the most important cases that was ever tried in Massachusetts, or that can ever arise here—a case where the personal liberty, during life, of a human being was concerned—that writ was denied. And notwithstanding the high eulogies the gentleman for Manchester, (Mr. Dana,) and others, have passed upon the judges of the supreme court of this Commonwealth, I should like to ask the gentleman for Manchester, for my own information as well as for the information of the Convention, how those judges treated him on an occasion when he applied for a writ of *habeas corpus* in a case of personal liberty, or slavery for life?

Mr. DANA, for Manchester. I would rather not answer that question—but I will say one thing. I have never said that the supreme court of this State, in the trial of the Sims case, was as impartial as the lot of humanity will allow. I was understood very generally, I am informed, as having used that expression; but what I said is this: that the law had done all it could do to make them as impartial as the lot of humanity will permit. As to the manner in which I was treated on that memorable occasion, I will not at present allude.

Mr. FRENCH. It is not at all strange to me that the gentleman declines to answer my inquiry. I will state another case, however. A very respectable attorney of this city (S. E. Sewall, Esq.) applied to one of the judges of the supreme court for a writ of *habeas corpus*, in the same case; but, Sir, without even deigning to reply to the applicant, that learned judge turned his back upon him and marched off—and that, too, in a case of personal liberty, or slavery during the poor man's natural life—the latter of which was assigned him in this land of the free. Under these circumstances, I ask, ought we not to have in our Constitution a provision like that proposed in this amendment—that this writ shall be issued as a right? These are some of the reasons why I am in favor of it.

Talk about danger of a dissolution of the Union! Why, we were told upon the floor of the Senate of the United States, a long time ago, that the women and children down South will take care of that; and I am surprised that large, robust, healthy looking gentlemen should attempt to make speeches here in favor of saving the Union, when it can be so well taken care of by others. There is no danger about this matter at all; and let me say that this amendment would never have been offered or required, had it not been for these miserable tinkers of the Union.

Sir, if the delegations from Massachusetts, which she sent to look after her interests at the capitol of our country from time to time, had stood up like men for the liberty our forefathers fought and bled for, we should not have had any talk about the danger of dissolution and secession. We were told here the other day, by the gentleman from Pittsfield, about the door of the capitol being slammed in the face of little Michigan, by the slave-holding power, when she applied for admission into the Union as a free State; and about the eloquent gentleman from Quincy, who stood up there and defended her rights; but where were the balance of the delegation from Massachusetts,

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who should have supported that old man eloquent? As we were told this morning in regard to another gentleman, upon another occasion, they had gone over to the enemy, and were assisting him in slamming the door, and holding it there, too.

Sir, what has caused all the difficulty and trouble which we have experienced, and which makes it necessary that we should adopt some provision of this character for our own protection? It has been caused by the dough-faces of the Free States, who have gone to Washington and crawled upon their bellies in the dust to conciliate the slave-holders, and who assisted in the passage of the fugitive slave law, that their darling (Webster) might be made president of the United States. And, Sir, if the representatives from the Free States had stood up in congress for their rights and the rights of humanity, like the old man eloquent, we should have had no fugitive slave law, and no talk about it. Massachusetts alone was its godfather, and Massachusetts should be responsible for it. And since it exists, let us fix our Bill of Rights and our Constitution in a way that will hereafter guard our rights and secure liberty for all our citizens.

There is another amendment which ought to be submitted and adopted, touching trial by jury, and which would probably assist us on future occasions, upon this subject; but I am willing, if the present proposition is adopted, to let that pass for the present—that seems to be so well provided for now. Let us take care of the future as well as the present; and, while here, let us put into the Bill of Rights and the Constitution that which will hereafter secure liberty to every man not guilty of crime who treads upon Massachusetts soil and breathes the free air of the Old Bay State.

Before I take my seat, I desire to allude to one other matter, intimately connected with this subject. I wish to bring to the notice of the Convention a humiliating fact. It has been the custom, from time immemorial, when a member of the Boston bar has been called to his long home, to notice the event, and appropriate resolutions have been passed—no matter what had been his standing—by the bench as well as the bar; but when that lamented son of Massachusetts (Robert Rantoul, Jr.)—the philanthropist, statesman and patriot, who did what he could, in the trial of Sims, for his personal liberty and his natural rights—departed to his long home, the Boston bench and bar—of the latter of which he was a member—were as silent as the grave in which he now rests. But, Sir, the time will come when justice will be done to him in that matter, as well as to those who procured the passage of the fugitive slave law; nor will those who applied it in Massachusetts, and those who have been the immediate cause of the trouble and excitement which has been experienced in this regard from one end of the Free States to the other, be forgotten—Union-savers and Southern dirt-eaters, in particular, not excepted.

Mr. LORD, of Salem. The only objection I have to the amendment which has been submitted to this resolve, is this: that in my judgment, it is a very serious restriction and limitation of the *habeas corpus*. The Constitution, as I understand it, provides that "The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner, and shall not be

suspended by the legislature except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months." Now, Sir, neither the legislature nor the courts have any authority to touch the *habeas corpus* in such a way as shall not make it the most free, easy, cheap, and to be enjoyed in the most ample manner. And when you say that the legislature shall have discretion in this matter, or when you say that that body may prescribe the preliminaries in regard to it, you throw away all that is provided in the Constitution, and place the power in the hands of the legislature, from whose decision there is no appeal. Suppose that the gentleman who represents Wilbraham, (Mr. Hallett,) and those who agree with him in opinion, should prevail in the councils of the State, and the legislature should pass an act that no writ of *habeas corpus* should issue until the preliminaries were settled, and that the party in whose favor it was sued out should not be a fugitive slave. Does the gentleman want the legislature to say that a mere transient person shall not have the right to a *habeas corpus*? And yet, this amendment proposes to let the legislature fix all the preliminaries. No, Sir; I prize that *habeas corpus* altogether too highly. I am no liberty trading politician; I deal in no such capital, but I prize the *habeas corpus* as a matter of personal right. I do not want the legislature to have the power of fixing any preliminaries in regard to the *habeas corpus*, but I want it just as the Constitution gives it to us, as free, easy, cheap and expeditious as it can possibly be. The people, I am sure, have the greatest confidence in it, as it at present stands, and are ready to rely upon the judgment and discretion of the courts for its proper use. The supreme court has never refused to issue a writ of *habeas corpus*, unless it was manifest from the circumstances of the case that they would be obliged, upon the appearance of the party before them, to return him instantly to the same party in whose custody he was. Under such circumstances, of course, they would not issue the writ. I desire, therefore, to retain the *habeas corpus* of the Constitution just as it has ever existed, unincumbered and unrestricted by the preliminaries which the legislature may see fit to make. I shall vote against the amendment.

Mr. ADAMS, of Lowell, demanded the previous question.

Mr. SCHOULER, of Boston. I hope that the demand for the previous question will not be sustained, at least, if it is intended to apply to the resolutions as a whole. I gave up my right to the floor yesterday, and am willing to sit all day now, if I can be allowed to reach the resolution to which I desire to submit an amendment. I have no objection to the previous question so far as it applies to each particular resolution, but I hope it will not operate against the whole.

Mr. ADAMS. If my motion can be so modified that the question can be taken on the adoption of the resolutions separately, I am willing that that course should be taken.

The PRESIDENT. The motion of the gentleman can be so modified.

Mr. WALES, of Randolph, moved that when the question is taken, it be taken by yeas and nays.

A division being called for—ayes, 45; noes, 214—one-fifth not voting in the affirmative, the motion was not agreed to.

So the yeas and nays were not ordered.

The question was then taken on the amendment submitted by the gentleman for Wilbraham, (Mr. Hallett,) to the second resolve, and upon a division—ayes, 37; noes, 176—it was decided in the negative.

The question recurred upon the final passage of the first, second, and third resolves, and being taken, they were, without a division, agreed to.

The question then being upon the final passage of the fourth resolve,

Mr. DAVIS, of Worcester, moved to strike out the words "and no powers shall ever be assumed by the legislature that are not granted in this Constitution." So that if amended, the resolve will read, "This enumeration of rights shall not impair others retained by the people."

Mr. DAVIS. I make this motion because I see no reason why we should prohibit the legislature, and not the executive and judicial departments of government. I hope that the amendment will be adopted.

Mr. HALLETT. If that clause is stricken out, it is evident that the legislature may assume powers not granted in the Constitution.

Mr. SCHOULER, of Boston. This is the long-sought for resolution to which I have desired to offer an amendment. And if it is in order, I now move to strike out the whole resolve. It seems to me that some gentlemen, and particularly the member for Wilbraham, (Mr. Hallett,) during a considerable part of this session, have been endeavoring to legislate for the next twenty years to come, and to restrict the people, in their legislative capacity, from making laws. This very forenoon we had an attempt, which I believe was unsuccessful, to pass a resolution that the legislature should never have the power to proclaim martial law. We have provided that the legislature, to a certain extent, can never loan the State credit; and numerous other attempts have been made to limit the power of the legislature, in its future action. Now, Sir, I am opposed to this whole system; I believe that the people of the year 1853 are wise, and intelligent, and that a great deal of wisdom is assembled within this hall; I am in favor of progression, but I do not think we have reached the height of improvement. We shall go on improving, day by day, and year by year; and I do not wish to have any clause put into the Bill of Rights that will be, in all future time, held up to our vision, by men opposed to progress and reform.

Now I cannot conceive what is the object or intention of this resolution, except it be to endeavor to obtain, in a roundabout manner, that provision which we voted down the other day—that the State credit shall not be loaned except for internal improvement. The gentleman for Wilbraham attempted to make a provision that the legislature should not have the power to act in anything not expressly provided for in the Constitution; but I desire to have a discretionary power left in the hands of that body, for I feel confident they will never violate it. I hope we shall not set ourselves up as the masters of all future legislatures, to say what they shall, and shall not do. "Sufficient unto the day is the evil thereof."

The legislatures which are to come after us will exercise the discretion granted to them in a proper manner; and I am therefore opposed, altogether, to having this resolution adopted. I think

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that, if adopted, it will result in evil, and be the cause of many unpleasant discussions and conflicting opinions as to the right of the legislature, which if possible, ought to be avoided. I will not farther occupy the time of the Convention, but simply make the motion to strike out the whole of the fourth resolve.

The PRESIDENT. The Chair would inform the gentleman that his amendment is not in order at this time.

Mr. STETSON, of Braintree. I do not intend to occupy the time of the Convention. I rose merely to say that if there is any one of these resolves to which this body ought to give their sanction, it is to the fourth resolve. I do not think it is the object of this Convention to confer power upon the legislature, but to reserve those powers which have been delegated by the Constitution, to be acted upon by the people. And, therefore, any restriction which will give them the right to control matters which may arise in the course of legislation, and which properly belong to them as sovereigns, ought to be adopted, and no more should be delegated to the legislature than is absolutely necessary to carry on the government.

Mr. MORTON, of Quincy, demanded the previous question.

The demand for the previous question was sustained, and the main question ordered to be now put.

The question being on the adoption of the amendment of the gentleman from Worcester, (Mr. Davis),

Mr. BRIGGS, of Pittsfield, asked for the yeas and nays.

The yeas and nays were not ordered.

The question was then taken on the adoption of the amendment, and it was, upon a division—ayes, 135; noes, 60—decided in the affirmative.

The question then recurred on the final passage of the fourth resolve, as amended, and a division being asked for, it was—by a vote of 116 ayes, and 118 noes—decided in the negative.

So the resolution was rejected.

Imprisonment for Debt.

The next resolve was read, as follows:—

Resolved, That the Bill of Rights be so amended that no person be imprisoned for debt, in this Commonwealth, except in those cases where fraud can be proved.

The question being upon its final passage,

Mr. MILLER, of Wareham, asked for the yeas and nays.

The yeas and nays were not ordered.

Mr. HUNTINGTON, of Northampton. I move farther to amend this resolution, by inserting after the word "debt," the words "hereafter contracted."

Mr. ALLEN, of Worcester. I would suggest to the gentleman from Northampton, that it would be better to change the phraseology, so that it will read that no debt contracted after the amendment shall go into operation, &c.

Mr. HUNTINGTON. That was my intention, and I am willing, therefore, to accept the modification.

Mr. DAVIS, of Plymouth, moved that the resolve be laid upon the table.

Mr. SCHOUER, of Boston, asked for the yeas and nays upon that motion.

The question being taken, upon a division—ayes, 54; noes, 196, one-fifth voting in the affirmative—the yeas and nays were ordered.

Mr. HALLETT. I understand the motion of the gentleman from Northampton to be pending.

The PRESIDENT. The yeas and nays are upon the motion to lay the resolve upon the table.

Mr. KEYES, for Abington. I move a reconsideration of the vote by which the yeas and nays were ordered.

The motion was agreed to.

The question then being taken on ordering the yeas and nays, it was decided in the negative.

The question recurred on the motion to lay the resolves upon the table, and being taken, the motion did not prevail.

Mr. HALLETT. I wish merely to say in regard to that amendment, that it seems to me to be only half doing what we propose to do. We have a perfect right to make provision concerning the process for collecting debts already contracted, as well as for those to be hereafter contracted, and there is no vested right with which an exemption from a process of arrest and imprisonment can interfere. The courts have decided this matter.

Now, the question which we have before us, is whether we shall, or shall not, put into the Constitution, a clause which abolishes all imprisonment for debt, except in cases of fraud—that is, of an honest, unfortunate debtor? If we are to do anything in regard to it, let us do it fairly and clearly; let there be no half-way work about it, and let the only distinction be between an honest and a fraudulent debtor.

There is another reason why the exemption from imprisonment should embrace debts already contracted. There are many persons now absent from the State because they have contracted debts which they have been unable to meet; and to avoid the disgrace of the dungeon, they have been compelled to go to other parts of the world, in order to preserve their personal freedom. There is no limitation which will allow a man to return, for though he may have been absent twenty years, yet, unless the debtor and creditor have been six years after the debt, in the same State, the moment the debtor sets his foot within the boundaries of the Commonwealth, he becomes liable at any moment to be seized and imprisoned for his former debt. Why will you retain such a provision as this, and thus hold the whip over the heads of the absent, who can never return to their old homes? Another view presents itself. The stranger cannot come to Boston to trade, without being subject to imprisonment, if he owes a debt here, or anywhere in the world, which he cannot pay. What effect does this have upon the trade of Boston, Lowell, Lynn, &c.? Why not make a clean thing of it, and say that hereafter there shall be no more imprisonment for honest debt, upon the soil of Massachusetts, and allow every man who is now absent from his family and friends, to return home, and live in peace, or to come and visit the old homestead, or come and trade among us, without feeling that he is in danger of being snapped up at any moment, and held upon an affidavit. I hope that the amendment will not be adopted.

Mr. GRISWOLD, for Erving. I regret, Sir, that the mover of the original resolution consented to that amendment. It seems to me, that if we intend to do anything in regard to this mat-

ter, we had better make provision for all past as well as all future contracts. I should much prefer to adopt the resolution originally proposed, for I believe this imprisonment for debt, where there has been no intention of fraud, to be a relic of a barbarous age, of which the sooner we rid ourselves the better. I am willing to go as far as any one in this matter, for I believe that it is not only an act of duty, but an act of justice and humanity which we owe to our fellow man. I shall, therefore, vote against the amendment.

Mr. JENKS, of Boston. I would inquire of the Chair if it is in order to offer an amendment?

The PRESIDENT. It is not in order at this time, but the gentleman may be allowed to state it, if he desires.

Mr. JENKS. I propose to substitute the following amendment, which, I think, will obviate the entire difficulty under which we labor:—

No person shall be imprisoned in any case, who is not declared by law to be a criminal, or dangerous to the public safety.

Mr. HUNTINGTON. I did not introduce this amendment, by any means, from any hostility to the proposition of the gentleman from Easthampton, (Mr. Strong,) for I have been in favor of the principle which he desires to establish, for twenty years; and, I believe the first petition ever presented to the legislature of Massachusetts, praying for the abolishment of imprisonment for debt, was drawn up by myself. Since that time, my opinion has never changed; but I have on all occasions, whenever an opportunity has presented itself, advocated the principle to the extent of my humble ability, though never with any material success. I desire to see that principle adopted in the State of Massachusetts, and it is because of that desire that I introduced the amendment I did. It is my opinion, that if you do not introduce some qualification like that which I have proposed, you will array against the proposition a great number of persons who hold debts in their hands—and expect at some time to be able to collect them—against men who have absconded. There are persons to be found in almost every village in the Commonwealth, who hold debts contracted under this law, who were aware that this remedy existed, and might be applied. I do not say that it is unconstitutional to pass the resolution without such an amendment to it, but I think that it would do great injustice to a certain class of citizens; and I foresee, that unless there is some qualification of this character, there will be but little probability that the proposition will be adopted by the people. These are the motives which induced me to submit the amendment.

Mr. LORD, of Salem. I supposed from the debate which took place yesterday afternoon, that those who had influence in this Convention would mature this proposition, and it was because of some intimations to that effect, that I withdrew the proposition I made at that time. Now, no gentleman in this Convention is more opposed to putting a man in jail for mere indebtedness, than I am; and yet, you do not begin to remedy the evil which exists, by adopting this resolution. The real evil is a great deal deeper. What we want to say is, that no man shall imprison another by reason, and on account of any liability due from one to the other. To use the mere term "debt contracted" is to take but a very small class

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of cases, a class of cases in which there is no more reason for exempting a man from imprisonment for debt, than ordinary cases which come under a different head. Suppose, Sir, a poor man commences an action against a rich man, and after having been worried out, not being able to get a trial, he abandons his case. There is a bill of costs made out, and, because of his inability to pay that, the rich man takes him, puts him in jail, and keeps him there until the debt is cancelled.

Yet that man could not be imprisoned, if it had been a debt contracted in a bargain. Take a hundred cases; one was suggested to me yesterday: an express man, through a mere accident, loses a bundle of money; an action of tort is brought, judgment is recovered against the express man for the amount, and unless he pays, he has got to go to jail. And why? Simply because you do not provide for that class of cases. In his case, the suit is not upon a contract. There are, likewise, numerous other cases to be cited, but these two are sufficient to show, that if it is wrong to put a man in jail in one instance, for failing to discharge an obligation, it is wrong in another instance. It is a question entirely, however, of judicial remedy; it is not the contract, strictly speaking, that a man is enforcing when he sues upon a debt; but it is in reality for damages for the non-performance of the contract; for the non-payment of money. I am, therefore, entirely opposed to placing in the Constitution a provision which only half covers the case.

If, after a matter has arrived at a judgment, and that judgment can be discharged by the payment of five hundred dollars, what difference is it, whether that five hundred dollars is judgment obtained by reason of a contract made by me, or for anything else which is to be paid for in money?

After a party has obtained a judgment, and has thus ascertained the amount of damages, it then becomes a debt, and is precisely of the nature of a debt between two individuals, which it becomes a civil obligation to discharge. It is just as if the party had promised so much money; there can be no distinction, and the party is morally bound by law to pay that debt, just as much in one case as in another. And if it is a principle that you can put a man in jail in one case, and cannot in another, that distinction is founded in wrong and injustice. I therefore move to amend the amendment, by inserting after the words "hereafter contracted," the phrase "upon judgment hereafter recovered in any civil suit."

Mr. SCHOULER, of Boston. I have no doubt that the amendment proposed by the gentleman from Salem, abstractly considered, is right, and if I were sure that the people of the Commonwealth would understand it, I would go for it with all my heart; but I think that we have secured one great object, when we can recognize in the Constitution of Massachusetts, that no man shall be imprisoned for a debt, and that we may leave the rest of the matter to be acted upon by subsequent legislatures. If we can get this principle recognized in that instrument, we shall gain a great end; but I believe we should run a great risk, if we should adopt the amendment of the gentleman from Salem, and it is for this reason that I shall vote against it.

Mr. HOOD, of Lynn. I do not find anything in the programme marked out for this Convention in relation to imprisonment for debt; not do

I believe that this is an amendment which the people expected would be made to the Constitution. And, I submit to the friends of reform, if we have not done quite as much as is expedient, in considering and adopting the amendments which have been before this body since the session commenced? This is one of the questions which will excite a great deal of opposition to the Constitution which we intend to submit to the people, and it may be the means of causing it to be rejected altogether. The subject has been discussed for many years in the legislature, and never yet have they been able to pass a law so strong and sweeping as the one proposed here. There is a strong feeling in the community against the passage of any such provision, and I believe that it would be unwise to adopt the proposed amendment. Under these circumstances, therefore, while I am in favor of the principle, and am opposed to imprisonment for debt, I believe it is better to leave the whole matter to the legislature, to be acted upon by that body; and I move that the whole subject be indefinitely postponed.

The PRESIDENT. The Chair would state that such a motion is not in order at this time.

Mr. BRIGGS, of Pittsfield. I am opposed, entirely, to the imprisonment of an honest man because he cannot pay his debts, and it is for this reason that I shall vote for the amendment which has been proposed by my friend from Easthampton, (Mr. Strong). I shall not do as the gentleman from Lynn has just told us he would do: he says that he is in favor of the principle, he believes it to be right; but, nevertheless, will vote against it. The gentleman says that it is not in the programme of this Convention. Sir, it is in the programme of the minds and hearts of the people of Massachusetts; and, in my opinion, the time has arrived when the honest poor man should not be incarcerated four-and-twenty hours in a prison, surrounded by crime and criminals, simply because he cannot pay a debt he may have contracted.

It has been suggested by my friend from Boston, on my right, that we are going too far, and that the last clause, that he should not be imprisoned for debt except in cases of fraud, might not secure the rights of creditors against fraudulent debtors. Now it is my opinion that the legislature will take this matter in hand; and if we adopt this amendment it will give them ample power to deal with fraudulent debtors, who, having the means of paying, will not comply with their contract. If I did not believe this to be the case, I should be the last man to vote for the proposition. If I am not mistaken, it declares that, hereafter, no honest debtor, who on account of misfortune cannot pay his debts, shall be imprisoned.

Let me put it to the good sense of this Convention: Would it be a light matter for one of us to have a deputy-sheriff come into our house, where, surrounded by a beloved family, we were enjoying the comfort of a peaceful home, take us by the collar, and thrust us into a cell, and say: "Oh! its only four-and-twenty hours you have got to stay there; it is n't much?"

Mr. President: I do not regard it so; I believe that it is a matter of a great deal of consequence, and I shall do all that lays in my power to prevent any honest man from staying even four-and-twenty hours within the walls of a prison-house. I thank the gentleman from Easthampton, (Mr.

Strong,) for introducing this proposition; I shall go with him cordially in sustaining it, and I trust that the Convention will do the same.

Mr. BATES, of Plymouth. I have only a word to say in regard to a matter to which the gentleman from Pittsfield has failed to allude, and that is, that a debtor is not only incarcerated in prison, but then, unless he pays the expense—which amounts to about seven dollars—of swearing out before a justice, he must remain in confinement. I submit to gentlemen whether that is a proper mode of treating the poor debtor.

Now, Sir, I am opposed to the amendment introduced by the gentleman from Salem, (Mr. Lord,) because I prefer to leave that matter to be settled by the legislature, believing them to be fully able to provide for any difficulty that may arise. I am, however, in favor of the amendment of the gentleman from Northampton, (Mr. Huntington,) and I hope that it will be adopted by this Convention.

Mr. DAVIS, of Plymouth. I was unfortunately absent yesterday, in consequence of illness, when this subject came up for consideration. It was brought before us without notice, and upon the amendment offered, in the form of an additional resolution. And from what I have learned from others, who are not ignorant of the true bearings of this subject, there seems to have been manifested in its discussion either a timidity allied to a spirit of demagoguism, or what I would much rather think was the case, ignorance on the part of many gentlemen as to the true position of the law upon this question.

Now, Sir, I deny, in the first place, that there is any imprisonment for debt in the Commonwealth of Massachusetts. She is not fairly to be charged with that disgrace. I am aware that gentlemen in this Convention, as well as out of it, have indulged themselves and others with the impression that a man may be imprisoned for any length of time, because he happens to owe a debt which he cannot pay. Gentlemen argue as if such were still the law. I deny that there is any imprisonment for debt, as such, in this Commonwealth. It was abolished years ago, through the honored and humane labors of the gentleman from Northampton, (Mr. Huntington,) and such as he.

Mr. BRIGGS. If the gentleman had been here yesterday, he would have learned from a public document which was read here, that during the last year there were thirteen hundred persons imprisoned for debt in this Commonwealth.

Mr. DAVIS. The gentleman will be kind enough to answer my argument when I have stated my position. I contend that there is essentially no imprisonment for debt, no imprisonment for poverty or inability, but imprisonment for not paying a debt when a man has the means to discharge it. The law is, that a man who owes his neighbor, and is not willing to pay, though he has the means, is imprisoned, not so much because he owes the debt which he cannot pay, as for endeavoring to avoid discharging the obligation of his contract, without showing his inability to perform it. I believe, Sir, that those who know me, will admit that I am in favor of the largest liberty; but I think it is necessary that some means should be allowed by the Constitution, and provided by law, which will give the power to the creditor to arrest a debtor, who may have contracted a debt with an honest intention, but who may have twenty thousand dollars in his

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pocket, which he has concluded not to pay. If this resolution is adopted and made part of your Constitution, a man may be going through your State from New York to Maine, his person loaded with money, and the Boston creditor, or the Berkshire trader, can neither detain him, or in any mode attach the money in his pocket. It is for these reasons that I can see nothing but a pure spirit of demagoguism which would justify me in advocating a resolution of this character, without some such limitation as I have alluded to.

I maintain, Sir, that no honest poor man was ever imprisoned during the last ten years, even for twenty-four hours, except by his own voluntary act. I can merely say that, in my experience, I have never known a case where he could not get bail, or swear out within that time, if he had no property. But I have known very many cases where, by arresting the debtor, the debt was recovered, which, it was certain, could never have been obtained in any other way. I see no reason why we should not look upon this subject practically, as upon other subjects, which I am sure the gentleman from Pittsfield is disposed to do.

Do you mean to let a man shake a bag of gold in your face, and say he does not intend to pay you, because you have no remedy against him? Men are arrested every day who are strangers here, who contract debts here, and are about to escape to other States, and including them, and all our population, thirteen hundred are said to have been imprisoned for debt. Not more than one to ten thousand of our own population! And then I am told that statistics show that only four per cent. of the amount for which they are committed is paid by imprisoned debtors. Sir, there are, and can be no statistics, which show the amount paid by persons arrested on *mesne process*, or the sums paid in private settlement by debtors on execution. Who can say what sums are paid for fear of an arrest.

Gentlemen are liable to be led into great misapprehension in this matter. What is the law upon this subject? No man can be arrested upon *mesne process* for debt, except upon affidavit that the creditor has absolute reasons for believing the debtor is about to depart *ex se*; and this power should be in some form retained. But if arrested, bail can be given to the officer without going to jail, and I thank God there are few honest poor men in this Commonwealth who cannot obtain it! The officers of the Commonwealth, when they arrest a man, give him the amplest opportunity to confer with his friends, and secure whatever bail may be demanded. And having been arrested, whether he gives bail or not, he can take the oath before the court when the writ is returned, or before the magistrates at any time, upon twenty-four hours notice.

But if not arrested on the original writ, the law is such that any man who has had process served upon him, can submit himself for examination before the court, and satisfy the court that he has no property. By so doing he exempts himself from arrest upon any execution which may thereafter issue. That is all that is necessary.

I therefore submit to the Convention that there is no good reason, and surely no popular demand, for the adoption of so sweeping an amendment; and I hope it will be fairly and fully considered before we take so important, and I think, unnecessary a step. We were not sent here for this

purpose. If the people demand it, let the legislature take the matter in hand, and make such a provision as they may desire, and circumstances may warrant. The legislature abolished the old imprisonment for debt, and can be trusted to make such modifications as are required from time to time. Adopt this resolution, and the courts will hold that you must prove your fraud before you can make a constitutional arrest; or else, if a creditor be permitted to arrest a repudiating debtor on a charge of fraud, no man would dare to do it. Why? Because he would subject himself to an action for false, illegal, unconstitutional imprisonment, if he should happen to fail in proving his case. "Except in cases of fraud," are the words.

For these reasons, it seems to me it would be the height of infirmity for this Convention to make any provision of the kind. Not that the present law may not require amendment. I could suggest several, and one has been alluded to by my colleague. Let the creditor bear the expense, if the debtor obtains his discharge. Let the legislature modify the law, or sweep it away altogether, as they would have done, had the people demanded it, or had the gentleman from Pittsfield, from Salem, or from Boston, recommended it to the willing ears of the people of the Commonwealth.

In regard to the amendment submitted by the gentleman from Salem, (Mr. Lord,) I have to say, that it does not touch the real defects in the resolution; nor does the amendment nor the resolution remedy the true evils of false imprisonment in this Commonwealth. The gentleman from Salem knows very well, any lawyer who has had any practice knows, that the cases of imprisonment—wicked, malicious, and cruel imprisonment—do not arise from debts contracted, but are upon writs which are issued for petty slanders, assaults, and the like, on which poor men are arrested, ordered to be held to bail for exorbitant sums, in default of which they are committed to jail, and often lie there for months. Here, Sir, is an evil to be remedied. Why should a man be imprisoned, in a civil action, on a simple charge of slander or assault, on the mere statement of an enemy, before it is proved, and before a judgment has created an actual obligation?

But, again: I assert, if a man is honest, he is not and cannot be imprisoned for debt, if he desires to avoid it. If he is about to be taken on execution, in nine cases out of ten, he receives a card from the officer, and is notified to appear, with his bail, for the jail limits, at an appointed time; but he need not be imprisoned for an instant. He can then "swear out," in twenty-four hours, if he has no property; or by taking the benefit of the insolvent act, divest himself of his property, and discharge himself within the same period. So that, in fact, there is no actual imprisonment of an honest man, unless it be by his own voluntary act, or from an obstinate desire to obstruct and hinder the creditor from the recovery of a legal claim, at the expense of his own liberty. The law provides that the bond given upon execution must be taken at the jail; and this provision is a source of great annoyance and vexation, but may be easily remedied by the legislature, by providing that the officer, as well as the jailer, may take a bond for the prison limits. Adopt this resolution, with or without the amendment, and it will have a tendency to keep down

credits on the larger scale, and among the great dealers. But you cannot destroy the credit system altogether. It must exist among the grocers, and country traders, and mechanics; and this resolution will affect the poor man, as far as it has the tendency to destroy small credits, and will injure the small trader, who is obliged to trust, just so far as it destroys his remedy against the debtor.

I hope, therefore, that neither the amendment nor the resolution will be entertained by the Convention.

Mr. BIRD, of Walpole, moved the previous question.

Mr. SCHOULER, of Boston. I have no objection to the previous question being ordered. I understood the gentleman from Plymouth (Mr. Davis) as alluding to the new born zeal of this Convention in proposing this matter at this late period of the session, and I merely rose to observe that the gentleman would not, perhaps, deem it unfair, if I were to say that his new born zeal may possibly arise from the fact, that if this provision is passed, it will probably take away a part of his business. [Laughter.]

Mr. BIRD. I rise to a question of order. I moved the previous question, and I believe that no debate is allowed after such a motion.

Mr. DAVIS, of Plymouth. I understand the gentleman from Boston to state, that I made a charge that gentlemen acted upon this question from a spirit of demagoguism.

Mr. SCHOULER. Perhaps the gentleman did not correctly understand me.

The PRESIDENT. Debate is not in order.

Mr. WILSON, of Natick. I understand that the question is on ordering the main question, moved by the gentleman from Walpole, (Mr. Bird). I make it a habit to vote for the previous question, and shall do so on this occasion, although I should like an opportunity to say a few words in reply to the gentleman from Plymouth, who designated us who are in favor of the resolve as demagogues or fools.

Mr. KEYES, for Abington. It was my intention, also, to have replied to the remarks of the gentleman from Plymouth. I informed the gentleman from Walpole of that fact, but he said that if he could obtain the floor, he would move the previous question. He did obtain the floor, and, without affording an opportunity to reply to what has been said, made that motion. What I desire now is, to have the previous question opposed, so that it may not appear that we have indorsed any such sentiments as those we have just heard.

The question then being on the demand for the previous question, the demand was sustained, and the main question ordered to be now put.

The question being taken upon the motion of the gentleman from Salem, (Mr. Lord,) to amend the amendment of the gentleman from Northampton, it was decided in the negative.

The question was then taken upon the amendment of the gentleman from Northampton, (Mr. Huntington,) to insert the words "hereafter contracted," after the word "debt," in the resolution, and the amendment was adopted.

The question recurred on the final passage of the resolution, as amended, and being taken, it was decided in the affirmative.

So the resolution was adopted.

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CONSTITUTIONAL CONVENTIONS.—SARGENT—SUMNER.

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Amendments to the Constitution.

The next matter in the Orders of the Day was the resolutions reported by the Committee, concerning future amendments to the Constitution.

The resolves were read, as follows:—

1. *Resolved*, That it is expedient to provide in the Constitution, that—

A Convention to revise or amend this Constitution, may be called and held in the following manner: At the general election in the year 1873, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question, "Shall there be a Convention to revise the Constitution?" which votes shall be received, counted, recorded and declared, in the same manner as in the election of Governor; and a copy of the record thereof, shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same, and shall publish, in the newspapers in which the laws are then published, the number of yeas and nays given upon said question, in each town and city; and, if a majority of said votes shall be in the affirmative, it shall be deemed and taken to be the will of the people that a Convention should meet accordingly; and, thereafter, on the first Monday of March ensuing, meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives, which the towns and cities shall then be entitled to elect. And such delegates shall meet in Convention at the State House on the first Monday of May next ensuing, and, when organized, shall have all the powers necessary to execute the purpose for which such Convention was called; and may establish the compensation of its officers and members, and the expense of its session, for which the Governor, with the advice and consent of the Council, shall draw his warrant on the treasury. And, if such alterations and amendments as shall be proposed by the Convention, shall be adopted by the people voting thereon in such manner as the Convention shall direct, the Constitution shall be deemed and taken to be altered or amended accordingly. And it shall be the duty of the proper officers and persons in authority, to perform all acts necessary to carry into effect the foregoing provisions.

2. *Resolved*, That whenever towns or cities containing not less than one-third of the qualified voters of the Commonwealth, shall, at any meeting for the election of State officers, request that a Convention be called to revise the Constitution, it shall be the duty of the Legislature, at its next session, to pass an Act for the calling of the same, and submit the question to the qualified voters of the Commonwealth, whether a Convention shall be called accordingly; *provided*, that nothing herein contained shall impair the power of the Legislature to take action for calling a Convention, without such request, as heretofore practised in this Commonwealth.

3. *Resolved*, The foregoing provisions shall in no wise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

The question being on ordering the resolutions to a second reading,

Mr. SARGENT, of Cambridge. I hope, Sir, that these resolves will not be adopted. If I understand them correctly, they provide that the basis of representation which you have established, shall be taken as the basis for your future Conventions. Now, Sir, in order to ascertain precisely what we are asked to do, it will be necessary for me to call your attention again to

that basis of representation. In doing this, I do not propose to go over the ground that I have already gone over, or to institute the comparisons, or to repeat the arguments I have already advanced, when addressing the Convention in reference to the proposed basis of representation.

Mr. SUMNER, for Marshfield. Will the gentleman allow me to set him right? I understand the gentleman to say, that in case of future Conventions for the amendment of the Constitution, the basis of representation is to be in accordance with the existing representative basis. That is not my understanding of this proposition. The existing basis of representation is contemplated in the first amendment, but the second provides for Conventions to be held hereafter in any way that the legislature may determine.

Mr. SARGENT. I am aware, Sir, that the second resolution places the power in the legislature to call Conventions in any manner they may determine. But, Sir, you provide that for the Convention to be called in 1873 you shall take the basis of representation that has been established for the House of Representatives; and, Sir, I do not understand the second resolution as changing the principles, or as abridging the power of the minority in the least, to adopt that as the basis of any other Convention.

But, Sir, to proceed. I was saying that I did not propose to repeat the arguments which I had the honor of presenting to the Convention on a former occasion, when this subject was under consideration. Two amendments have been made in the system since that time; one reducing the mean increasing ratio from 5,000 to 4,000 for each additional representative above the second, which will give eight additional representatives; and the other striking out the limitation; so that the number of representatives will be increased at every decennial period.

These amendments affect the general provisions, or the practical operations of the system so little, that the considerations which I have heretofore presented, apply with equal force to the system in its present amended form. But, Sir, let us examine more critically this basis of representation which we have adopted, in order that we may ascertain whether it be such a basis as ought to be adopted as the basis of future Conventions to amend the Constitution.

In the remarks which I took occasion to make when this subject was under discussion before, I stated that, under the present existing Constitution, a change of sixteen representatives out of three hundred and seventy-two from four counties to four other counties, would equalize the present representation between the several counties. It has been contended, however, by the friends of this amendment, that voters would be a more just basis than population. I have prepared the following table, in order to ascertain the inequalities of the present system under the application of that rule:—

	Apportionment.	Equal Proportion on voters.
Suffolk, . .	46 4-10	46 1-10
Essex, . .	44 7-10	49 6-10
Middlesex, .	58 4-10	56 1-10
Worcester, .	55 6-10	52
Hampshire, .	15 6-10	15 1-10
Hampden, .	19 3-10	19 4-10
Franklin, .	16 2-10	14 2-10
Berkshire, .	21 9-10	19 8-10

	Apportionment.	Equal Proportion on voters.
Norfolk, . .	28	28 3-10
Bristol, . .	26 5-10	26 9-10
Plymouth, .	21 4-10	26 3-10
Barnstable, .	13 3-10	14 9-10
Dukes, . .	2 4-10	1 9-10
Nantucket, .	3	2 7-10
	372 7-10	372 3-10
Loss by fractions,		4-10

By this table it will be seen that the four counties which have sixteen more than their proportion, on population, have only eight and a fraction more than their proportion on voters; and it shows also that the difference between population and voters, as a basis, is not so great as some gentlemen have imagined. But, Sir, let us proceed to an examination of the system which has been adopted by the Convention. The following table will show the number of representatives to which each county is entitled under the first apportionment, as also the number to which each county would be entitled if apportioned equally upon population:—

	By Butler's Plan.	Equality on Population.
Suffolk, . .	37 6-10	60 7-10
Essex, . .	46 8-10	52 9-10
Middlesex, .	62 8-10	64 8-10
Worcester, .	61 2-10	52 7-10
Hampshire, .	20 8-10	14 2-10
Hampden, .	23	20 9-10
Franklin, .	21 2-10	12 8-10
Berkshire, .	28 2-10	20 3-10
Norfolk, . .	30 2-10	32 2-10
Bristol, . .	29 6-10	31 2-10
Plymouth, .	23 8-10	22 7-10
Barnstable, .	14 6-10	14 1-10
Dukes, . .	2 6-10	1 8-10
Nantucket, .	3	3 6-10
	405 4-10	404 9-10
Loss by fractions,		5-10

By the foregoing table it will be seen that the same four counties of Worcester, Hampshire, Franklin and Berkshire, are permitted to elect 131 4-10 members, while they would be entitled to 100 4-10 as their equal proportion of population; and I also find that they would be entitled to only 107 4-10 on voters, thus giving them on population 31, and on voters 23 5-10 more than their equal proportion. But, Sir, this does not exhibit clearly the inequalities of the proposed amendment. I have prepared another table, taking the county of Franklin as the basis, which will show more distinctly the inequalities of this system. That county is entitled to elect 21 2-10 representatives, or one for every 1,457 inhabitants. The following table exhibits the number which each county would have, if placed upon an equal footing with the county of Franklin:—

	Apportionment.	Equal Proportion with Franklin.
Franklin, . .	21 2-10	21 2-10
Hampshire, .	20 8-10	23 5-10
Hampden, .	23	34 4-10
Berkshire, .	28 2-10	33 5-10
Worcester, .	61 2-10	86 9-10
Middlesex, .	62 8-10	106 9-10
Essex, . .	46 8-10	87 2-10
Norfolk, . .	30 2-10	53 1-10
Bristol, . .	29 6-10	51 4-10

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	Apportionment.	Equal Proportion with Franklin.
Plymouth, .	23 8-10	37 4-10
Barnstable, .	14 6-10	23 3-10
Dukes, .	2 6-10	3
Nantucket, .	3	6
Suffolk, .	37 6-10	100
	405 4-10	667 8-10

Thus it will be seen, that the county of Franklin gets in a House of 405 4-10 members, the full proportion she would be entitled to in a House of 667.

But it may be objected, that it is unfair to present one extreme of the case, without exhibiting the other also. To meet this objection, I have prepared the following table, taking the county of Suffolk as a basis. That county elects one representative for every 3,876 inhabitants, and the following table shows what each county would be entitled to, if placed upon an equal footing with that county:—

	Apportionment.	Equal proportion with Suffolk.
Suffolk, .	37 6-10	37 6-10
Essex, .	46 8-10	32 8-10
Middlesex, .	62 8-10	40 1-10
Worcester, .	61 2-10	32 6-10
Hampshire, .	20 8-10	8 8-10
Hampden, .	23	12 9-10
Franklin, .	21 2-10	7 9-10
Berkshire, .	28 2-10	12 6-10
Norfolk, .	30 2-10	19 9-10
Bristol, .	29 6-10	19 3-10
Plymouth, .	23 8-10	14
Barnstable, .	14 6-10	8 7-10
Dukes, .	2 6-10	1 1-10
Nantucket, .	3	2 2-10
	405 4-10	250 5-10

Thus, the county of Suffolk is allowed in a House of 405 4-10, no more members than would be her equal proportion of a House of only 250 5-10 members. But, Sir, let us leave this corrupt and corrupting county of Suffolk,—this immense and dangerous power of centralization, which has been wielded with such crushing force over this Convention,—this congregated mass of foreign population, which gentlemen seem so to dread that they are unwilling they shall exercise any right, or any privilege, but the right to breathe, and the privilege to toil. Let us leave all these out of the question, and proceed to institute a comparison between different agricultural portions of the State. If you combine the population of the five western counties, (to wit, Worcester, Hampden, Hampshire, Franklin and Berkshire,) they are entitled to elect 164 4-10 representatives, or one for every 1,883 inhabitants. Now, if you were to give to the counties of Middlesex and Essex, a representative for the same number of inhabitants, they would be entitled to elect 150 2-10, while they now get but 109 6-10. They would be entitled to 40 6-10 more than they get under the proposed amendment.

The same proportion would give the six southern counties, instead of 103 8-10, which they now get, 134 8-10, or an increase of thirty-one members. But where have we actually placed the power?

I find there are eighty-four cities and towns, with a population of 651,245, which will, under this system, elect one hundred and ninety-four

members, or one for every 3,356 inhabitants, while the remaining two hundred and thirty-seven towns, with a population of 322,470, being 2,101 less than one-third the population of the State, will elect 205 members annually, or one for every 1,577 inhabitants, being a clear majority of eleven, and in the valuation year, they will have thirty-two additional, making their majority on that year forty-three, equal to an average annual representation of 211 4-10, or 17 4-10 majority.

The estimate does not include the seven towns which have been incorporated since 1850, and which will increase that majority.

Now, Sir, there is where you have placed the power in the House of Representatives, and we are asked to adopt a measure to perpetuate that power in the hands of this minority, for all coming time. Sir, if this was a mere temporary measure, as some gentlemen have professed to believe it to be—one which the people could alter or annul, at pleasure—it would be a matter of much less consequence. But when you propose to place in this minority a self-perpetuating power,—when you propose to place in their hands an uncontrolled and uncontrollable power to dictate all future amendments to the Constitution, a power far above and beyond the reach of the people, save by revolution,—it becomes a question of the greatest magnitude. Sir, do men willingly yield up power, when once placed within their grasp? The history of the world proves they do not. But I need not go beyond the history of this Convention, to prove that doctrine.

Sir, this Convention is controlled by a majority of delegates that represent only a minority of the people; and what is the consequence? Why, when the question was taken on the introduction of an equal system of representation, as presented by the gentleman from Taunton, (Mr. Morton,) that measure was defeated by a majority of 81 votes, the vote being—ayes, 117; noes, 198. And yet the 117 ayes represented a constituency more than thirty-five thousand greater than was represented by the 198 noes. Now, Sir, if we find on the part of the majority of this Convention, representing, as they do, only a minority of the people, no disposition to yield up any portion of the power they now possess, for the purpose of establishing an equal system of representation, a system which many of them acknowledge to be not only just, but strictly in accordance with the fundamental principles of a republican government, can we expect that those who come after them will more willingly yield up the still greater power with which you are about to invest them?

Sir, to whom are you to look to restore this power into the hands of the majority of the people? You are to look to this very minority in whose hands you now place it. For you can have no special Convention that the minority do not see fit to grant you; and you can have no amendments to your Constitution, that that minority do not approve. True, the people will have left in their hands the power to reject any amendments that such Convention may see fit to propose. But I submit, that they will have reserved in their hands no constitutional power to make any amendments to their Constitution, which they may wish to make, except such as that minority shall graciously condescend to permit them to make. And the gentleman for

Marshfield will perceive that it makes no kind of difference, that the power will be given to the legislature to call a Convention at any time, and to establish the basis of representation for that Convention; for it will be just such a basis as the minority pleases to adopt, and no other.

It is no answer to say "there is no danger that the power will ever be abused." It is our duty, in framing a Constitution, so to apportion the power, if possible, that it *cannot* be abused. There is danger, there is always great danger, when the many place power unconditionally in the hands of the few. I trust this Convention will pause and consider this matter well, before they adopt a measure by which all power over their Constitution will be yielded into the hands of a mere fraction of a minority. If this act shall be consummated, the majority of the people of this Commonwealth will have no more power "to alter and amend their Constitution of government," than had our fathers, as subjects of the British crown. The only power—the only right—they will have reserved to themselves, will be the power of supplication, or the right of revolution.

Mr. GRISWOLD, for Erving. I move to amend the first resolution, by striking out from the twentieth line the word "and" and inserting after the word "cities" the words "and districts," so that it will read "towns, cities and districts;" also in the next line, to insert after the word "elect," the words "in any year of that decennial period," so that it will read "and thereafter, on the first Monday of March ensuing, meetings shall be held and delegates shall be chosen, in all the towns, cities and districts in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives, which the towns, cities and districts shall then be entitled to elect in any year of that decennial period."

The question being taken, the amendments were adopted.

Mr. GRISWOLD. I move, also, to strike out from the twenty-second line of the first resolve, the word "Monday" and insert the word "Wednesday," so that if amended, it will read "and such delegates shall meet in Convention at the State House, on the first Wednesday of May next ensuing," &c.

The amendment was agreed to.

Mr. HALLETT, for Wilbraham. There is a verbal amendment which I desire to make. I move to strike out from the tenth line, the words "in the newspapers in which the laws are officially published," and insert after the word "shall" the word "officially," so that if amended, it will read "who shall thereupon examine the same, and shall officially publish the number of yeas and nays," &c.

The question being taken, the amendment was agreed to.

Mr. LORD, of Salem. I move to amend the first resolution, by inserting after the word "affirmative" in the thirteenth line, the words "and such majority shall be at least equal to one-half of the whole number of votes cast for the governor at such election." If gentlemen have observed the phraseology of this resolution, they will have noticed, that without any action upon the part of the government of the Commonwealth, the voters of the several towns will be called upon by the selectmen to vote upon the question whether

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there shall be a Convention to revise the Constitution. Now, Sir, without making any pretensions to the gift of prophecy, I venture to say, that when the time arrives for this proposition to be voted upon, but very few of the people will be aware of it, and consequently will not vote for it. Indeed, Sir, I believe the first period provided in the Constitution for the calling of a Convention, was allowed to pass by without any attention being paid to it whatever, and I submit whether in the present instance the same difficulty will not occur. It may be, however, that in some few of the towns, the people will be aware of the existence of such a proposition, and will vote for it. But, I appeal to the good sense of this body, if a Convention ought to be called upon such a basis as that—the votes which may be deposited in half a dozen towns. I know that it is said, that those who do not vote against the proposition, assent to it, but in the matter of calling a Convention to revise the fundamental law of the Commonwealth, I do not think that a sound principle. I think that of those who go to the polls when the time shall arrive and vote, at least a majority should vote in favor of calling a Convention. Under this provision, as expressed in the resolution now under consideration, it may be the case that a hundred men may call a Convention, if no more vote for it. Such a state of affairs would of course result only from inattention, but that very inattention and negligence, is brought about by the fact that a Convention is not needed. When the public mind is quiet, when public affairs are undisturbed, when the people of the Commonwealth are enjoying prosperity in all branches of industry, when nobody feels the hand of government pressing heavily upon him, then there comes along unannounced and unheralded this day on which the votes of the people are to determine whether or not there shall be a Convention. And yet, notwithstanding the people have no desire for it, five hundred persons who may happen to be aware of such a proposition, may, by depositing their votes, cause a Convention to be called, and with it all the necessary or unnecessary attendant expense. I hope, Sir, that we shall never consent to adopt any such self-acting, self-regulating provision, founded upon a distrust of every officer in the Commonwealth, except the Secretary of State, but that we shall amend it in such a manner that it shall receive a respectable number of votes, if any at all. I am aware that this amendment is to be voted down immediately; it has more than once been my fortune to suggest views here, which men quietly tell me ought not to be adopted, but yet they do not see exactly on what grounds to base their advice; and such is the case on the present occasion; gentlemen cannot see how they can answer the suggestions I have made, with any show of reason or argument, but they have a way to get rid of them more quietly, and it is the way in which all questions are to be settled. I deemed it my duty, however, to present these views, and to make the proposition I did, that when the day arrives for the question of the calling of a Convention to be decided, unattended, as it will be, by any official announcement, unaccompanied by any call upon the people to assemble and vote upon that question, we should provide that at least the votes of a majority of those who go to the polls, shall be in favor of calling such a Convention, so that it may not be

sprung upon the people of the Commonwealth by a few, more diligent, more active individuals than others, who may be aware of the existence of such a provision in the Constitution.

Mr. HOPKINSON, of Boston. I would inquire of the gentleman from Salem, whether some doubt may not exist whether the language would not imply that such a majority shall be more than half.

Mr. LORD. I suppose it does not make much difference what the words are; the result will be the same. The same ambiguity occurred to me, but I supposed that the Convention understood it.

Mr. BATES, of Plymouth, demanded the previous question.

Mr. LORD. Inasmuch as that applies to all the resolutions embraced in this Report, and as I know of no gentlemen who desire to make any remarks, or introduce any amendment, I call for the yeas and nays upon the previous question.

The question then being taken on ordering the yeas and nays, upon a division—ayes, 41; noes, 136—one-fifth voting in the affirmative, the yeas and nays were ordered.

Mr. GARDNER, of Boston, moved that the Convention do now adjourn.

The motion was not agreed to, there being upon a division—ayes, 66; noes, 90.

So the Convention refused to adjourn.

The PRESIDENT. The question is, "Shall the main question be now put?" Upon this question the yeas and nays have been ordered. The Secretary will call the roll.

The Secretary commenced the call.

Mr. BATES, of Plymouth. I will withdraw the motion for the previous question.

Mr. BIRD, of Walpole. Can the demand for the previous question be withdrawn after the yeas and nays have been ordered?

The PRESIDENT. It may, by general consent, be withdrawn.

Mr. BIRD. I object.

Mr. LORD. I believe it has been the uniform practice of this Convention, although it is different in congress, to allow the mover to withdraw a motion, unless objection be made. I am perfectly willing, however, to spend an hour in taking the yeas and nays, if the Convention desire it.

The PRESIDENT. The Chair would state, in regard to the withdrawal of the motion of the gentleman from Plymouth, (Mr. Bates,) that, by an express rule of the Convention, the gentleman has a right to withdraw it. The rule is as follows:—

"After a motion is stated or read by the President, it shall be deemed to be in the possession of the Convention, and shall be disposed of by vote of the Convention, but the mover may withdraw it at any time before a decision or amendment, except a motion to reconsider, which shall not be withdrawn after the time has elapsed within which it could originally be made."

Mr. BATES. I have no particular wish to withdraw it.

Mr. DANA, for Manchester. Is it in order to move an adjournment?

The PRESIDENT. The Chair rules that it is out of order to entertain any motion whatever.

Mr. GARDNER, of Boston. I supposed that a motion to adjourn was always in order.

The PRESIDENT. The Secretary has com-

menced calling the roll, and he will proceed with the call.

Mr. NAYSON, of Amesbury. I rise to ask information of the Chair. I understand, that after the President has given the order to the Secretary to call the roll, no debate or motion can intervene; and that, therefore, the motion of the gentleman for Manchester cannot be entertained at this time. Is that the decision of the Chair?

The PRESIDENT. The Chair will state the circumstances. The question was stated as usual; the Secretary was directed to call the roll, and commenced to call the roll before the gentleman for Manchester arose and addressed the Chair.

Mr. SCHOULER, of Boston. In my judgment, the decision of the Chair is correct.

The PRESIDENT. The Chair will state the question once more. The motion was made by the gentleman from Plymouth, (Mr. Bates,) for the previous question; pending that question, the gentleman from Salem (Mr. Lord) moved, that on that motion the yeas and nays be taken; that motion was agreed to, and a motion was made by the gentleman from Boston, (Mr. Gardner,) that the Convention adjourn, which did not prevail. The Secretary was requested to call the roll, and commenced to do so, when the delegate for Manchester, (Mr. Dana,) rose and addressed the Chair; the Chair recognized him, and ruled that it was not in order to make any motion whatever, and he still believes that decision to be correct. The Secretary will proceed to call the roll.

Mr. LORD. As we have no printed orders, I would inquire of the Chair whether the main question is upon ordering the resolutions to a final passage, or to a second reading merely?

The PRESIDENT. The main question is upon ordering them to a second reading.

The question then being taken by yeas and nays, on ordering the previous question, they resulted—yeas, 106; nays, 33—as follows:—

YEAS.

Allen, Parsons	Fay, Sullivan
Allis, Josiah	Fitch, Ezekiel W.
Alvord, D. W.	French, Charles A.
Austin, George	Frithrigham, R/d, Jr.
Baker, Hillel	Gale, Luther
Bancroft, Alpheus	Gardner, Henry J.
Bates, Moses, Jr.,	Gardner, Johnson
Beal, John	Gates, Elbridge
Bennett, William, Jr.	Gilbert, Wanton C.
Bird, Francis W.	Giles, Charles G.
Boutwell, George S.	Goulding, Jason
Breed, Hiram N.	Green, Jabez
Brown, Hammond	Griswold, Josiah W.
Brown, Hiram C.	Griswold, Whiting
Brownell, Joseph	Hallett, B. F.
Bryant, Patrick	Happgood, Lyman W.
Bumpus, Cephas C.	Happgood, Seth
Case, Isaac	Harmon, Phineas
Churchill, J. McKean	Hawkes, Stephen E.
Clark, Ransom	Hayden, Isaac
Clark, Salah	Heath, Ezra, 2d
Cole, Sumner	Hood, George
Davis, Charles G.	Howard, Martin
Davis, Isaac	Howland, Abraham H.
Day, Gilman	Hoyt, Henry K.
Dean, Silas	Huntington, George H.
Denton, Augustus	Hurlbut, Moses C.
Duncan, Samuel	Hyde, Benjamin D.
Eames, Philip	Jacobs, John
Easland, Peter	Knight, Jefferson
Easton, James, 2d	Knox, Albert
Eaton, Calvin D.	Ladd, Gardner P.
Edwards, Samuel	Langdon, Wilber C.
Ely, Joseph M.	Leland, Alden

Thursday,]

CONSTITUTIONAL CONVENTIONS, &c. — WHEELER — WILSON — BRIGGS.

[July 28th.

Loomis, E. Justin
 Merritt, Simeon
 Monroe, James L.
 Morton, Elbridge G.
 Morton, William S.
 Nash, Hiram
 Newman, Charles
 Osgood, Charles
 Packer, E. Wing
 Paine, Benjamin
 Partridge, John
 Penniman, John
 Phelps, Charles
 Pierce, Henry
 Rantoul, Robert
 Rawson, Silas
 Richardson, Samuel H.
 Ring, Elkanah, Jr.
 Ross, David S.

NAYS.

Adams, Benjamin P.
 Andrews, Robert
 Bartlett, Sidney
 Bradbury, Ebenezer
 Bradford, William J. A.
 Brinley, Francis
 Briggs, George N.
 Buck, Asahel
 Bullock, Rufus
 Carter, Timothy W.
 Cogswell, Nathaniel
 Cook, Charles E.
 Deming, Elijah S.
 Ely, Homer
 Giles, Joel
 Hale, Nathan
 Heard, Charles

ABSENT.

Abbott, Alfred A.
 Abbott, Josiah G.
 Adams, Shubael P.
 Aldrich, P. Emory
 Allen, Charles
 Allen, James B.
 Allen, Joel C.
 Alley, John B.
 Appleton, William
 Aspinwall, William
 Atwood, David C.
 Ayres, Samuel
 Ballard, Alvah
 Ball, George S.
 Banks, Nathaniel P., Jr.
 Barrows, Joseph
 Bartlett, Russel
 Barrett, Marcus
 Bates, Eliakim A.
 Beach, Erasmus D.
 Beebe, James M.
 Bell, Luther V.
 Bennett, Zephaniah
 Bigelow, Edward B.
 Bigelow, Jacob
 Bishop, Henry W.
 Blagden, George W.
 Bliss, Gad O.
 Bliss, William C.
 Booth, William S.
 Boutwell, Sewell
 Braman, Milton P.
 Brewster, Osmyn
 Bronson, Asa
 Brown, Adolphus F.
 Brown, Alpheus R.
 Brown, Artemas
 Brownell, Frederick
 Bullen, Amos H.
 Burlingame, Anson
 Butler, Benjamin F.
 Cady, Henry
 Caruthers, William
 Chandler, Amariah
 Chapin, Chester W.
 Chapin, Daniel E.

Royce, James C.
 Sprague, Melzar
 Spooner, Samuel W.
 Stevens, Charles G.
 Stevens, Granville
 Stiles, Gideon
 Sumner, Charles
 Sumner, Increase
 Swain, Alanson
 Thompson, Charles
 Tilton, Horatio W.
 Wallis, Freeland
 Walker, Amasa
 Ward, Andrew H.
 Weston, Gershom B.
 Whitney, Daniel S.
 Whitney, James S.
 Wood, Charles C.
 Wood, Ous

Foster, Aaron
 Foster, Abram
 Fowle, Samuel
 Fowler, Samuel P.
 Freeman, James M.
 French, Charles H.
 French, Rodney
 French, Samuel
 Gilbert, Washington
 Gooch, Daniel W.
 Gooding, Leonard
 Gould, Robert
 Goulding, Dalton
 Graves, John W.
 Gray, John C.
 Greene, William B.
 Greenleaf, Simon
 Hadley, Samuel P.
 Hale, Artemas
 Hall, Charles B.
 Hammond, A. B.
 Haskell, George
 Haskins, William
 Hathaway, Elnathan P.
 Hayward, George
 Hazewell, Charles C.
 Henry, Samuel
 Hersey, Henry
 Hewes, James
 Hewes, William H.
 Heywood, Levi
 Hillard, George S.
 Hinsdale, William
 Hobart, Aaron
 Hobart, Henry
 Hobbs, Edwin
 Holder, Nathaniel
 Hooper, Foster
 Hopkinson, Thomas
 Hubbard, William J.
 Hunt, Charles E.
 Hunt, William
 Huntington, Asahel
 Huntington, Charles P.
 Hurlburt, Samuel A.
 Ide, Abijah M., Jr.
 Jackson, Samuel
 James, William
 Jenks, Samuel H.
 Johnson, John
 Kellogg, Martin R.
 Keyes, Edward L.
 Kimball, Joseph
 Kingman, Joseph
 Kinsman, Henry W.
 Knight, Hiram
 Knowlton, Charles L.
 Knowlton, J. S. C.
 Knowlton, William H.
 Kuhn, George H.
 Ladd, John S.
 Lawrence, Luther
 Lawton, Job G., Jr.
 Lincoln, Abishai
 Little, Otis
 Littlefield, Tristram
 Livermore, Isaac
 Lothrop, Samuel K.
 Loud, Samuel P.
 Lowell, John A.
 Marble, William P.
 Marey, Laban
 Marvin, Abijah P.
 Marvin, Theophilus R.
 Mason, Charles
 Meader, Reuben
 Moore, James M.
 Morris, Joseph B.
 Morton, Marcus
 Morton, Marcus, Jr.
 Nayson, Jonathan
 Nichols, William
 Norton, Alfred
 Noyes, Daniel
 Nute, Andrew T.
 Ober, Joseph E.
 Oliver, Henry K.

Orcutt, Nathan
 Orne, Benjamin S.
 Paige, James W.
 Paine, Henry
 Park, John G.
 Parker, Adolphus G.
 Parker, Joel
 Parker, Samuel D.
 Parris, Jonathan
 Parsons, Samuel C.
 Parsons, Thomas A.
 Payson, Thomas E.
 Peabody, George
 Peabody, Nathaniel
 Pease, Jeremiah, Jr.
 Perkins, Daniel A.
 Perkins, Jesse
 Perkins, Jonathan C.
 Perkins, Noah C.
 Phinney, Sylvanus B.
 Pool, James M.
 Powers, Peter
 Prince, F. O.
 Putnam, George
 Putnam, John A.
 Read, James
 Reed, Sampson
 Rice, David
 Richards, Luther
 Richardson, Daniel
 Richardson, Nathan
 Rockwell, Julius
 Rockwood, Joseph M.
 Rogers, John
 Sampson, George R.
 Sanderson, Amasa
 Sanderson, Chester
 Sargent, John
 Schouler, William
 Sheldon, Luther
 Sherman, Charles
 Sherril, John
 Simonds, John W.
 Sleeper, John S.
 Smith, Matthew
 Souther, John
 Stacy, Eben H.
 Stetson, Caleb
 Stevens, Joseph L., Jr.
 Stevens, William
 Stevenson, J. Thomas
 Storow, Charles S.
 Strong, Alfred L.
 Stutson, William
 Taber, Isaac C.
 Taft, Arnold
 Talbot, Thomas
 Taylor, Ralph
 Thayer, Joseph
 Thayer, Willard, 2d
 Thomas, John W.
 Tileston, Edmund P.
 Tilton, Abraham
 Tower, Ephraim
 Train, Charles R.
 Turner, David
 Turner, David P.
 Tyler, John S.
 Tyler, William
 Underwood, Orison
 Upham, Charles W.
 Upton, George B.
 Viles, Joel
 Vinton, George A.
 Walcott, Samuel L.
 Wales, Bradford L.
 Wallace, Frederick T.
 Walker, Samuel
 Warner, Marshal
 Warner, Samuel, Jr.
 Waters, Asa H.
 Weeks, Cyrus
 Wetmore, Thomas
 Wheeler, William F.
 White, George
 Wilbur, Daniel
 Wilbur, Joseph

Wildes, Joel
 Wilkins, John H.
 Wilkinson, Ezra
 Williams, Henry
 Williams, J. B.
 Wilson, Henry
 Wilson, Milo
 Wilson, Willard
 Winn, Jonathan B.
 Winslow, Levi M.
 Wood, Nathaniel
 Wood, William H.
 Woods, Josiah B.
 Wright, Ezekiel

Absent and not voting, 280.

So the demand for the previous question was sustained, and the main question ordered to be put. The question then being on the adoption of the amendment of the gentleman from Salem, (Mr. Lord,) to the first resolve, it was taken, and decided in the negative.

So the amendment was rejected.

The question recurred on ordering the resolves, as amended, to a second reading, and being taken, it was decided in the affirmative.

On motion by Mr. EAMES, of Washington, the Convention then, at seven o'clock, adjourned.

THURSDAY, July 28, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President, at nine o'clock.

Prayer by the Chaplain.

The journal of yesterday was read.

Reconsideration.

Mr. WHEELER, of Lincoln, moved a reconsideration of the vote by which the resolve on the subject of Imprisonment for Debt, was passed.

The PRESIDENT. The motion will be placed upon the Orders of the Day for to-morrow.

Mr. WHEELER. I should be glad to have the rule suspended, so that the motion may be placed upon the Orders of the Day for to-day.

The PRESIDENT. The rule may be suspended so that the motion may be now considered, but the Orders of the Day are already made up.

Mr. WHEELER. I would prefer that the matter should be considered in a full house.

Mr. WILSON, of Natick. I move that the rule be suspended so that the motion may be considered at this time.

The motion was, upon a division—ayes, 80; noes, 22—decided affirmatively.

The question recurred upon the motion of the gentleman from Lincoln, to reconsider the vote by which the resolve on the subject of imprisonment for debt was finally passed.

Mr. BRIGGS, of Pittsfield. I suppose the object of the gentleman who moved the reconsideration, is, that it shall go upon the Orders of the Day, for to-day, somewhere, so that it may be considered when the house is full. I hope it will not be considered now, and I suggest that it be placed last on the Orders of the Day for to-day.

The PRESIDENT. If no objection be made, it will be so disposed of.

No objection was made.

On motion of Mr. WILSON, of Natick, the Convention proceeded to the consideration of the Orders of the Day, the first item being the resolve on the subject of the

Rights of the Jury.

The question being on its final passage,

Mr. GREENLEAF, of Cambridge. I would not trouble the Convention, if I did not think

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BILL OF RIGHTS.—GREENLEAF—MILLER—BRIGGS.

[July 28th.

that the operation of this resolve is probably misunderstood. If I am wrong, I can be easily set right. I understand it in terms to go to this extent: The jury in all criminal cases are to be judges of the law as well as the fact. In all criminal cases, the jury will only have the power of rendering a general verdict. The verdict is either guilty or not guilty, and in saying guilty or not guilty, they pass virtually upon the law as well as the fact. But, now it is proposed to give to the jury power, by the organic law, to be the final judges of all questions of law in criminal cases. When they go in favor of the accused, whatever right they have to ask for a new trial, they never exercise it, at least it never has been exercised. It may be considered now as gone entirely; it gives no new trial to the Commonwealth when the prisoner is acquitted. If he is convicted contrary to law, if convicted against the weight of evidence, so glaringly so that it would lead the mind irresistibly to the conclusion that the verdict was wrong, a new trial may sometimes be obtained. But, suppose the prisoner happens to be convicted contrary to law, and suppose he is an unpopular man; suppose he is on the unpopular side in politics; if you make the jury by constitutional provision judges of the law and the fact, the verdict can never be set aside. Never.

Now, the question is, whether the Convention is ready to do this. Every man has some legal right or other, if only a right to be hanged according to law; but if you transfer the right to judge of the law from the court to the jury, and the jury happens to be hurried away by the current of feeling against the prisoner, he is sure to be convicted, and that conviction is final. The idea of giving the jury, in express terms, the power of judging of the law as well as the fact, probably originated in a misunderstanding, and consequently an abuse of the law of libel; and the impression that some precaution was necessary, has finally acted upon the mind of the legislatures of all the States of the Union. In some of the States, it is provided by statute, as is the case with our own statute in regard to libel, that evidence may be given of the truth of the words declared to be libellous; but the question is, whether you will retain that power over the subject by making it subject to legislative act, or whether you will put it farther out of your hands until another Convention shall make it part of the organic law? Having stated what I think will be the operation of this provision, I have no farther argument to urge. It does not affect me, personally, any more than it does every other man in the community.

Mr. MILLER, of Wareham. I do not rise to discuss this question, but I desire to express one or two results which this proposition, if adopted, will have upon the trial of criminals in your courts. If the judge charges in favor of the prisoner, it is all very well for the jury. But, if he charges the jury, or in the course of the trial he advises the district-attorney, that the charges are not sufficient to convict the prisoner, the district-attorney can turn round and tell the judge that he is not the judge of the law; that the jury must decide that question. Now suppose a case should occur upon which the community were much excited, and the jury, under the influence of that excitement, should convict the prisoner against what would be considered law by the

best judges in the land; the judge has no right to set aside that judgment.

Again, suppose the judge should charge against the prisoner; and, suppose, in the opinion of all the other judges in the country, he charged the jury wrong; but, suppose that upon that charge the jury should convict the prisoner, there is no way in which that error can be corrected, and the prisoner must therefore suffer the penalty of the law wrongly administered. I hold that the adoption of this principle will have the effect to take away one of the private rights of the individual citizen. It will have directly the opposite effect from that intended by the mover. If it is inserted into the Constitution, its practical operation will be to render the security of every person less safe than it is under the Constitution as it now stands.

I have a word to say in relation to what the law is now. The courts say in their decisions—and it is now the law of the community—that the jury must take the law from the court, but they are not bound by it. They are to consider it as delivered by the court; but still, they have the right to decide the law, as well as the fact. But if the jury convict upon a wrong construction of law, the court has the power to set the verdict aside. It seems to me, therefore, that the community have greater security under the Constitution as it now stands, than they will have under the provision which it is now proposed to adopt. I shall, therefore, for this reason, vote against the passage of the resolve.

Mr. BRIGGS, of Pittsfield. I understand the ground upon which this provision is put, is to increase the security and safety of the citizen. It is said that the courts, even in our country, and in this Commonwealth, are constantly encroaching upon the rights of the jury. I believe one gentleman said, that in this respect, the courts had usurped powers which did not belong to them. Now, I confess, it would be strange to me if this was so. In the name of common sense, what motive is there for the court to trench upon the jurisdiction or vested rights of the jury? What possible interest or gratification would it be for the court to take from the jury a responsibility and right, which belongs to them?

Sir, the law favors the prisoner, and the courts favor the prisoner. By the present law, every decision of the judge, from the beginning to the end of the trial, in favor of the prisoner, is final. The prosecuting officer may be ever so much dissatisfied with the decision; he may feel ever so strongly that the judge is mistaken, the decision is final, and cannot be appealed from. Yet, if the judge, during the progress of the trial, makes any decision against the prisoner, the prisoner's counsel has the right to object to it, and he has the right to appeal to the highest judicial tribunal in the Commonwealth, to test its correctness. If in charging the jury, the judge charges in favor of the prisoner, and the jury acquit him, that is the end of the matter; but, if the judge charges them against the prisoner, and expounds the law wrongly, and upon it they convict the defendant, exceptions may be taken, the matter tested before the highest judicial tribunal, the error corrected, and the prisoner allowed the benefit of another trial. So that gentlemen must see that under the present law, everything goes to assert and carry out that great principle of humanity, as well as law, that every person is

deemed to be innocent until proved to be guilty. That is the law of the land.

There is one instance upon our records, within my recollection, where this scrupulosity of the court, in allowing the verdict of the jury to be set aside upon a mere technicality, which could not, of itself, be of the slightest importance; but, by means of which, the prisoner saved his life.

Forty years ago, in the county of Hampshire, a man was arraigned and tried for his life. He was convicted, but the verdict was set aside, upon the ground that he was not properly arraigned. The law required that a criminal indicted for a capital offence, should be arraigned and put to plead before a full court. A full court were in session in Northampton; but, on the morning before they had assembled, one of the judges went into court, the prisoner was brought to the bar, and plead not guilty. At a subsequent term he was tried and convicted; but, after the conviction, a motion was made to set aside the verdict, because he was not arraigned before a full court. That great man, and distinguished jurist, Chief Justice Parsons, in giving the opinion of the court, said everybody could see that it was perfectly immaterial to the prisoner, in a matter like this, whether he was placed at the bar and said, not guilty, before one judge, or before a full court. The objection made was a mere technical one—a mere legal quibble; "but," said he, "a man has a right to quibble for his life." They set aside the verdict. A new jury was impanelled, a new trial was had, and he was acquitted.

I name this circumstance to show how careful the courts are of human life, and human liberty. So it was then, and so it is now.

Now, will this alteration—will the incorporation into the Constitution, of the principle that the jury are to be the ultimate judges of the law as well as the fact, increase the security of liberty and of life? As it is now, if the judge gives the wrong law, and the jury convict a man upon it, a new trial is granted. If in a criminal trial the jury are wrongly instructed in the law by the court, and the prisoner is convicted, he has a remedy. I will not go into a discussion of the question, of which—all things considered—is the most likely to judge rightly, the judge upon the bench, or the jury summoned to the jury-box to sit for eight or ten days, to decide upon the facts of the case.

It must be admitted by every one, that there are in every community, subjects more or less exciting, which will extend even to the jury-box. Now, whatever the subject may be, if the excitement in relation to it is general, if it pervades the community, it will mingle itself with the discussion of the jury-room, and will have more or less influence upon the minds of the jurors. It is no implication upon the fairness or honesty of jurors, to say that they are subject to be influenced in their opinions like other men. I ask the question, which is the safest for the community or for the individual, to have the judge upon the bench, under his responsibility, the supervising power, to lay down the law to the jury, and for them to take it from him, and then to decide the law and the facts, or for the jury to take the matter into their own hands, and decide for themselves, what is the law of the Commonwealth? Take, for instance, the all-exciting subject of the license law. There has been great difficulty in various parts of the State, under the existing law, in getting verdicts,

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BILL OF RIGHTS.—BRIGGS—HUNTINGTON—TRAIN.

[July 28th.

because the juries are divided in opinion as to the character of this law. Now, suppose you make them the ultimate tribunal to settle the law, and indict men for its violation; let the counsel for defence defend the prisoners, as they will defend them, and as their zeal and ardor are awakened, and all their energies put in requisition, they turn from the bench to the jury—to those twelve men as the judges of the law—do you suppose they would be very likely to give a unanimous opinion upon that subject? I apprehend, if this amendment prevails, you will have very great difficulty in obtaining a concurrence of twelve minds in favor of the validity of your Maine law.

But, after all, my great objection to this amendment is this: you may calculate to an absolute certainty, that in a large number of cases, whether one in fifty or one in a hundred, I will not undertake to say, the jury will mistake the law, the prisoner will be improperly convicted, and he will have no remedy; you will have no means of carrying out that wise and humane maxim, that it is better to allow a hundred guilty men to escape, than for one innocent man to be punished. Having reference to this great principle, I ask if there is not danger of losing much, and doing great wrong, by making this change.

Then, again, what do you do to the judge? You take from him all responsibility. He can only say: "Gentlemen of the jury, my opinion of the law is this; but whether it is law or not, you are to settle." He cannot instruct them, they are to settle the matter, and whether they settle it right or wrong, there is no remedy. It seems to me that it is not the part of wisdom to adopt such a provision.

Mr. HUNTINGTON, of Northampton. I now offer the amendment which I should have offered yesterday, if I had not been cut off by the previous question. I propose to add at the close of the resolve, these words:—

But it shall be the duty of the court to superintend the course of the trial, and decide upon the admission or rejection of evidence; but upon all questions of law arising during the trial, upon collateral or incidental proceedings, to allow bills of exceptions.

I conceive that leaves the law where it stood previous to the decision in the case of the *Commonwealth vs. Porter*. I conceive that the provision reported by the Committee is liable to misconstruction. I have, therefore, proposed this amendment for the purpose of reducing the law to where it stood before the decision was made which may be found in the tenth of Metcalf, as decided by Chief Justice Parsons, and other judges of the supreme court. I think, in a case reported in the tenth of Metcalf, a judge changed the law, and that decision has never been set aside.

I believe all legal gentlemen will agree with me, that taking this resolution as it now stands, and construing it in the bold manner in which it recites its provisions, the court may say to the counsel for the defendant, in relation to any motion that may be made to set aside the verdict, or the ruling of the court: "The jury have passed upon that, and their decision must be final." For instance, a man is indicted before one of your courts, the court gives its ruling on the case, and the jury decide upon his guilt or innocence, and, by their verdict the defendant is found guilty.

The defendant then proposes to the court to allow exceptions to his ruling, but the court—a common pleas judge—will reply: "No; look at the Constitution. The Constitution declares that the jury shall determine the law and the facts of the case, you are not entitled to your bill of exceptions. I do not know whether the jury took the rulings of the court or not; they are the power to decide. It is of no consequence what were my rulings. The jury are to decide upon all matters of law and evidence. I do not know whether they followed my instructions or not. You are not entitled to a bill of exceptions." That will be the result, and the defendant cannot help himself. The jury may have erred in their construction of the law; and yet, as was stated yesterday, upon that construction, they may have sent a man to State Prison for life; for, as has been said, the question of what the law is, must depend upon the construction of twelve men.

Now, Sir, all I propose to accomplish by this amendment, is to bring the law back to where it stood previous to the decision in the case of the *Commonwealth vs. Porter*. I do not propose to change the principle. This is all I propose to accomplish, and, in the opinion of several gentlemen who are friendly to the resolution, and who have seen my amendment, it is what it is desirable to accomplish. It is to assert the rights of the judge as well as those of the jury. I do not understand the member for Wilbraham, (Mr. Hallett,) to advocate the right of the jury to decide upon the law and evidence in every case. It very often happens, in the course of a criminal trial, that evidence is introduced for a certain purpose; the court tell the jury they may receive and consider this evidence for one purpose, and reject it for another purpose. Now, as this resolution stands, if the court were to instruct the jury in this manner, as soon as they retire to their room they may say: "We are the judges of the law and evidence, and although the court chooses to rule out this evidence, yet we have the right, under the Constitution, to consider whether we will admit it." They may admit it, and thus a man may be convicted upon hearsay evidence.

Again, there is a disposition upon the part of the court, sometimes, to avoid responsibility. Practitioners before your courts well know that it is very often not with willingness, that the judges make judicial decisions. And if you incorporate into the Constitution this resolve, as it now stands, you will provide a means by which a judge may at any time shirk the responsibility of any decision, by saying that the Constitution has given the law to the jury.

It will make the judges careless in relation to their instructions to the jury, and negligent of the whole of that responsibility which rests upon them, by virtue of their office. They should discharge all the duties prescribed in the resolution. Now, they rule upon evidence, and determine as to the sufficiency of an indictment. Why, Sir, suppose a man is arraigned for a crime which may send him to the State Prison, and the defendant says the indictment is not sufficient; the court passes upon the indictment, and rules it to be sufficient, and the trial goes on, and the jury find their verdict of guilty. Or they go to their room and examine the case, and they say: well, the court, to be sure, has ruled this indictment to be sufficient, but we have a right to determine the law of the case, and that involves the suffi-

ciency of the indictment, and questions of evidence; and as the Constitution provides that we shall determine all the law in this case, though the court has ruled that the indictment is sufficient, we, or one man of us, may determine that it is not sufficient. Thus the prisoner may be discharged. As it, now stands, the question is in the power of one single man upon the jury of twelve men. I think that is going too far. I know that the gentleman who drew this resolution did not intend any such result as that, and I submit whether the amendment does not place the law as it always has been, from the foundation of our government down to the time of the decision of the case of the *Commonwealth vs. Porter*.

Mr. TRAIN, of Framingham. I desire to say a few words upon this proposition—not to discuss it, for it cannot be discussed within the time allowed to a single speaker, or to the Convention, with anything like the degree of care which its importance demands. In my judgment, it is a proposition which is more vital to the interests of the people of Massachusetts, than any which has been discussed in this Convention, and I desire to speak of it for a moment, with reference to no other object than simply to ascertain what is right. Suppose that we were now for the first time establishing a tribunal for the trial of persons charged with the violation of law,—for the first time to define the powers and duties of the court, and the rights and powers of the jury; if we wished to contrive the best mode by which truth should be ascertained, and the right and wrong determined, how would we go to work to do it? Trial by jury is a human invention, which has been perfecting itself for more than six hundred years; but assume now, that down to this morning, juries have had the right to find the law as well as the fact, in criminal cases, I beg the Convention to consider a moment if that is the best way.

Now, Sir, I do not purpose to go into the inquiry, so largely discussed here, whether juries have heretofore had the right, or not; because upon the best consideration I have been able to give the subject, I believe that the rights of prisoners and the security of human life and liberty, under our organization of society and government, require that the powers to ascertain and declare the law should be vested in a different portion of the tribunal than that which is to ascertain the facts; the one should be the peculiar province of the court—the other, the peculiar province of the jury. I do not agree with the gentleman from Northampton, as to the effect of his amendment upon the decisions of the courts of this Commonwealth.

"Can it for a moment be contended that twelve men in a jury-box, are to determine that not to be an offence, which the law under a penalty forbids? May they pronounce that to be manslaughter, or justifiable homicide, which the law declares to be murder? If so, then they may by their verdict abrogate, by rendering ineffective, every enactment of the legislature, and they become a court of appeal." The legislature enacts the law of the Commonwealth, and you place the power in the hands of every man in the jury-box to abrogate every enactment of the legislature, and the power which you have vested in the legislature. All that power may be thrown away, and the most sacred rights sacrificed, at the will of any

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one man, whose name you have authorized to be placed in the jury-box. That is the proposition.

Now, when gentlemen say that the decision in the case of the Commonwealth *vs.* Porter was wrong, I do not agree with them, because I understand that the jury have the power now—and they may have had the right—but I understand the court to have said, that juries have the power but not the right. So has the judge the power to give judgments contrary to law, if he chooses to disregard his oath. And so have the jury the power to return a verdict contrary to the law, if they choose to disregard their oaths. So that while I hold they have the power, they have not the right, and if they have the right, that right should be taken from them; because I say that the security of the prisoner, and security to liberty and life, require that the power to pass upon the law should be vested in a tribunal where a revision may be had, so that the law which is a science, shall be administered uniformly throughout the Commonwealth. So that what is my right in Middlesex, shall be the right of my neighbor in Suffolk.

No useful analogy can be drawn from the administration of law on the other side of the Atlantic. The distinction is broad and deep. There, the sheriff impanels a jury of *his* choice, and he is, or may be, the corrupt servant of the crown. Here, the jury is selected by lot, in a manner enabling us to secure a tribunal "as impartial as the lot of humanity will admit." There, by the constitution of the tribunal, the whole power of the crown may be brought to bear directly upon the prisoner, as the crown creates the tribunal that is to try. Here, the government has the same control over the tribunal that the prisoner has, and no other. If our judges were the corrupt tools of a tyrant, then the juries should be judges of the law as well as the fact. When judges take a stand for the rights of the crown, against the best interests and liberties of the people, then juries should stand between the crown and the people, for the protection of the latter. Here, the people are the crown, and the judge stands between the people and the prisoner, the maxim being "that the judge is counsel for the prisoner"; and the safety of the prisoner, and the rights of the people, are alike preserved. No power is, or can be, brought to bear upon the prisoner, save the power of the law, symbolized, and acting by the court. Our tribunals represent simply the people as a Commonwealth, seeking to preserve itself by preventing the commission of crime on the one side, and the prisoner defending himself, under the Constitution and laws, as one of the same Commonwealth, on the other; while the judge is alike independent of either, and sits between the people on the one side, and the prisoner on the other, that the rights of both may be preserved.

Now, upon the proposition which is offered here, you take the whole power of the Commonwealth and place it in the hands of twelve men in the jury-box, who are to pass upon the rights of the prisoner—and the prisoner has no protection against the popular will—you take from him all the protection which we can afford him, namely, the right that the jury shall take the law from the court. So far from enlarging the rights of the prisoner, you are seeking to limit and control them.

Now it seems to me, and I speak as a lawyer,

that if we were now about to establish a legal tribunal, we should so create it that the court and jury should be independent of each other, each in its own department, the court declaring the law, and the jury declaring the facts. Then if the court is mistaken in the law, the supreme court will revise and correct the error—if the law itself is wrong, the legislature will set it right by a new enactment. If you place this power in the hands of the jury, they make the law in every given case; and there can be no mode devised, notwithstanding I defer to the opinion of the gentleman from Northampton, by which a prisoner can be redressed for any injury he may suffer from a wrong verdict. I can conceive of no mode. The gentleman in the case which he has stated, assumes that the judge has instructed the jury improperly—then the prisoner may except; but suppose that the judge has given the law to the jury correctly, and the jury, taking the bits in their teeth, have run away with the case and convicted the prisoner, notwithstanding the instructions of the court, what has become of the prisoner then? God help him.

As a prosecuting officer merely, I have no objection to the adoption of this proposition. If prosecuting officers, in the language of the delegate for Abington, are mere legal butchers, who wish only to get verdicts, to bag game, they will not object to it. And I tell gentlemen that the prosecuting officers can get more verdicts, if you will remove the judge from between the prosecuting officer and the prisoner, then they can get now. Many a prisoner has escaped upon technical grounds, when, if the jury could have had their way he would have been convicted and punished for the commission of a crime; and yet no one would desire to have the law different in that respect.

One word more. I do not think appeals should be made to the Convention upon this proposition, as though it were a political matter, or that an effort should be made to array one portion of the people against another portion. This proposition does not affect "the craft" to which I belong.

The delegate from Lowell (Mr. Butler) very craftily called the attention of the Convention to the fact that "the craft was in danger," as he said. Sir, it is not so; adopt this proposition in your Constitution, allow the lawyers to argue the law, as well as the facts of every case to the jury, and you will increase their income thereby five-fold. Every case will then be argued, however clear it may be, upon the hope that out of twelve men one fool can be found upon the panel. So far from the profits of the craft being diminished by the adoption of this proposition, they will be increased most substantially; and so far, with the fellow-feeling which I have for my brethren, I have no objection to it.

But when the gentleman from Lowell was quoting Scripture, I could have pointed him to a record where the jury were judges of the law and of the fact; where, when the judge washed his hands before the multitude, saying, "I am innocent of the blood of this just person," the jury said, "Away with him! away with him! Crucify him! crucify him!" and that jury passed upon the law and the fact.

Sir, I do not wish to see in Massachusetts a tribunal created where the rights of my fellow-citizens will be affected by every popular breeze.

The courts of Massachusetts are the only tri-

bunals which stand unaffected by the popular will. Let your juries become judges of the law and the fact, and every man is tried by the popular impulse, and no man is secure in his rights. If offences in Massachusetts were merely political, there might be some show of reason in this proposition; but then, in times of great excitement, juries would exercise the power, whether they had the right or not.

These are, very briefly, my views in regard to this matter. I only regret that the subject cannot receive the consideration which its importance demands.

Mr. RANTOUL, of Beverly. I have listened to the arguments of the learned gentlemen who have spoken this morning, and I am more and more convinced of the necessity of having this amendment made in the Constitution. I think that gentlemen uniformly agree that the ancient right of jurors was to judge of the law as well as of the fact. No one of them has argued that this was not the ancient law of the country, from time immemorial, up to about fifteen or twenty years ago. Within that time, it is understood that there has been an attempt, on the part of the court, to usurp what was the ancient right of the jury—that is, they have undertaken to say that jurors had not the right to judge of the law, but merely had the power to judge of the law. Up to that time, I believe, the question was not raised but what the jury had not only the power but the right. This amendment of the Constitution which we propose, merely recognizes the rights of jurors as they existed previous to this innovation. I therefore hope that we shall adhere to the vote we have already passed upon this subject.

In respect to corruption and mistakes on the part of juries, those who are conversant with the matter could state some things with regard to the judges. Judges sometimes make mistakes, and are sometimes corrupt. Lord Jeffreys was corrupt, and if the jury had the independence which belongs to them, and could have exercised it, there would not have been the blood shed which there was shed under his administration. But the juries had not the independence to carry out their legal rights, and interpret the law according to their own view of it, rather than according to his ruling.

Lord Mansfield was not a corrupt judge. He undertook to usurp the rights of the jury with regard to a prosecution for a libel. He undertook to direct the jury that they had no right to inquire whether the person charged with the libel published the libel. That was considered so flagrant an infringement of the rights of the jury, that parliament made a law to remedy that particular branch of jurisprudence. But no man has claimed that the judges in this Commonwealth ever exercised such a power until within the past fifteen or twenty years.

I recollect a trial in Essex County, in 1805, when the court was held by a majority of the judges. I remember very well that the facts of that case were proved to the satisfaction of everybody; there was no question about the facts, but the issue was about the law. The judge instructed the jury with regard to the law; the jury retired upon that, and a certain portion of the jury held that the court had laid down the law different from their judgment of the law. They accordingly opposed a verdict—the jury did

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not agree—and they returned to court and reported that disagreement. The jury were then discharged, and the court never intimated but that the jury had the right, as well as the power, to consider the law. That case, I believe, was tried three times in the county of Essex, and no jury could be found to agree with the court on points of law. There was always the power to decide for themselves, and these juries exercised it, and resisted the decisions of the court, until finally the prosecutor concluded to give up the case. I mention this to show, that in 1805, within my own knowledge and observation, the court did not pretend to say to the jury that they had no right to judge with regard to the law. The court instructed the jury that they had a right to consider the law, as well as the facts, and bring in a verdict according to their views of the law and the facts. I mentioned before, the case of Judge Chace, who was tried upon impeachment. He was charged with interfering with the rights of the jury with regard to the law, and he denied the fact, and was acquitted of the charge. He not only denied the fact, but, in his reply to the impeachment, he also argued that it was the ancient right of the jury to judge of the law as well as of the fact, and he considered it a sacred right which ought not to be interfered with by the court. So late as the year 1805, we have the opinion of a majority of the supreme court of this State; and in 1802 or 1803, we have the opinion of a learned judge of the supreme court of the United States, to the effect that the jury had this right; and there was no question upon the part of learned men, that they had not only the power, but the right, to give a verdict upon their own views of law and the facts of the case. In addition to this, I may say that a very considerable number of the States of this Union, who have lately revised or adopted Constitutions, have introduced into them this very provision. They probably had the same apprehensions that we have reason to entertain; and, for one, I certainly have greater reason to entertain those apprehensions now, than I had when I came here. There is reason to fear lest the ancient rights of juries might be usurped by the courts; and therefore we ought to guard against it. In a great many of the States they have already introduced such a provision into their Constitutions, and I hope we shall introduce it into ours. I do not understand any of the gentlemen who have spoken, to deny but what this was always the law until very lately.

Mr. CHANDLER, of Greenfield. Every vote which I give in this Convention I want to give intelligently, but I am not prepared to vote intelligently in the affirmative on this proposition. I rise for information. I am not discussing the subject as a lawyer; I am not discussing it as a politician; I look at it simply with the idea of a country farmer; as a plain man who makes pretensions to a little common sense, but who claims, by no means, to be overburdened even with that. If I understand anything of the duty of a jurymen, it is to take the law as his rule, apply it to the conduct of the prisoner at the bar; and then, by a careful comparison, to judge whether the man is guilty or not guilty. This, I suppose, is universally admitted; and this being admitted, I ask now, where am I to obtain my rule? Where am I to obtain that knowledge of law upon which I can rely, so as to use it without hesitation as the rule by which to judge

of that man's conduct? This is the information which I want, and I have waited here and listened with great anxiety, to have the learned gentlemen who have spoken upon this question, tell me where I shall obtain that knowledge of law that will answer to rely upon in this case. I go into the jury-box ignorant, both of the law and the facts—I have them both to learn in the court-house. The facts I am to learn from the witnesses, and the law I am to learn from some other source. Whence am I to obtain it? Am I to look to the judge for it? If I take his positions, and apply that law to the conduct of the man, I am not in that case a judge of the law, but a doer of the law only, as I have always endeavored to be. But, if I am not to take my rules of law from the judge, am I to take them from the counsel? They are of opposite sides and different intellects. It certainly would be no more safe, as a general rule, to look to the counsel, than it would to look to the judge. But, suppose I do take my view of law from the counsel and apply it; that is not judging the law, but only doing what I suppose the law requires. I want to inquire again, what kind of a judgment it is that I am to have upon the law? Am I to judge whether the law, as laid down by the judge or the counsel, or by whoever I look to for information, is the law applicable to the case? How am I to obtain this information? The judge has told me that the law is so and so; and he, perhaps, to obtain his information, has gone through a hundred volumes of statutes, and I know not how many volumes of precedents and reports. Can I be expected to know more than the judge? Can my general information upon the subject of law, be supposed to render me capable of sitting in judgment on his opinions, and forming an idea superior to his? That would be becoming a judge of the supreme bench. Or am I to judge of the question whether the law by which this man is tried, is a wise and good law or not? Am I, in a word, to take it upon myself virtually to repeal all the laws that have been passed by the legislature, after the most full discussion and mature deliberation, which I do not like? Mr. President, I want information upon these subjects, and I would beg learned gentlemen to enlighten me as to these points; and then I shall be able, and not until then, to give a vote satisfactorily to my own mind; for though I claim all the privileges of a full blooded Yankee, yet I am so nearly allied to the aborigines of the country, that in a matter of such importance as this, I do not love to guess.

Mr. HALLETT. I wish, with the consent of the mover of this amendment, to add two or three words to it, which I deem important. I have, myself, the fullest conviction that the original proposition, as it stands reported, is explicit and sufficient; but still, as there has been so much learned ingenuity displayed here, in technical constructions adverse to the rights of juries and parties, I am afraid that there might be the same learned ingenuity displayed elsewhere; and that attempts may be made to evade the beneficial intent of this provision, as there always have been attempts by those in authority to evade or construe away laws which were made for the liberties of the people. Hence, to remove all doubt, I propose to add a clause conferring express power on the courts to grant new trials; because, I do not want a judge to have any ground to say that

the jury have settled the law in the trial of a cause, and therefore he will not undertake to grant a new trial upon any law or evidence which they have passed upon and determined in the case. In order to exclude such a possible conclusion, I move to add at the end of the amendment the following words: "And the court may grant a new trial in cases of conviction." This affirms precisely the right which now exists at common law, and by statute, for the court to grant new trials in criminal causes in favor of the defendant, and by so affirming it, all the technical cavils of bar or bench, at the effect of a jury passing upon the law as well as the facts of a case, will be done away.

Mr. HILLARD. We have in our youth read of a shield that was half gold and half silver, and of the two knights who approached this shield from different sides, and fought upon the question whether it was all gold or all silver. Now, this question of the rights of juries in criminal cases, has two aspects, like the shield that was half gold and half silver; and I think that those who call themselves the friends of the rights of juries, have looked at it only from one side. As I have before observed, in the common course of jury trials, in nine cases out of ten, it is not of the least practical consequence which rule or principle you adopt, because there will not be any bias in the minds of the jury which would lead them to call in question the law as laid down by the court. But now and then there is a case in regard to which there is a powerful current of popular sympathy. That current of popular sympathy may flow either in favor of the prisoner or against him. The gentlemen on the other side argue the case on the supposition that this sympathy will be always in favor of a prisoner. They fear that the rule as now laid down in our Commonwealth, will operate to convict a prisoner at the will of the court, against the inclination of the jury. Now, whenever a criminal is brought to the bar, and this public sentiment is strongly in his favor, there is an infirmity in the constitution of jury trials, because, through this popular favor, the law is virtually annulled and set aside. We must take this institution, like all others, with its incumbrances.

You remember that a year or two ago, in London, an assault was made upon Marshal Haynau, by the operatives in Barclay's brewery; and the cabinet of Austria demanded of the British government that these men should be brought to punishment. The answer of the English minister was, if we attempt to bring these men to trial, we must submit their case to a jury of twelve men, in the city of London; and with such a state of public sentiment as now exists, it would be impossible to find a jury in the city of London who would convict them; therefore we must take the institutions of our country as they exist, and act upon them. That was a sensible way of looking at the question; and wherever there is this powerful and overwhelming current of popular sentiment in favor of a man, he never will be convicted, let your laws and regulations be what they may. Take the other case, and see how it would be with an unpopular criminal; take a man who has been tried and convicted at the bar of public sentiment, before he is put upon the stand; take a man against whom the press has been directing all its powerful batteries; and I submit to men who have had experience

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at the bar that cases do occur, that when such a man stands arraigned the jury are hungering and thirsting for his conviction, and they stand like greyhounds on the slip, ready to fall upon the prisoner and tear him to pieces. Now what are the functions of a judge—what is it that gives that office its noble and exalted character? It is that the judge, not sharing in the passions of the people, may stand as a breakwater between that man at the bar, and the popular violence which is without; but if you take the responsibility from the judge, and throw it upon the jury—if you make your enactments so that the judge, if he be a timid man, will bow before the current of popular violence, and throw this man wholly into the hands of the jury—I submit, that there is danger that the interests of humanity and justice will suffer from the operation of this principle. This is a danger which gentlemen seem not to have apprehended. It seems to me that they have looked at it only from the other side; and I ask you—as lovers of humanity, and wishing that men should not be tried by public sentiment, but that they should be tried by justice and reason, and should have an impartial tribunal—whether it is not better to give the judge power, in such cases, to stretch forth the helping hand? There is one other consideration that I would urge in relation to this matter. If you make the jury judges of the law as well as of the fact, you increase the evil which now exists; that is, you give a man of talents at the bar an advantage greater than that which he now possesses. I hope my distinguished friend, the attorney-general, now absent, will pardon me if I draw an argument from his case. Suppose the prosecuting attorney to be a man of his knowledge and abilities, of his splendid oratorical powers, but without that moral sense, and tenderness of heart which I know will ever govern him; suppose you have an inferior man, without power or influence, for the defence; they are struggling before the jury, in a case where the life of the prisoner is at stake. The court is perfectly powerless to say how the jury shall understand the law, and it is laid down to them by these two men; on the one side, a man of eminent learning and abilities, not controlled by a moral sense of justice and humanity, and on the other side, a feeble, young, timid, inexperienced advocate—I submit to gentlemen if there is not here an element of mischief which may arise from the introduction of this principle, which, as humane men, we ought to look at? I am entirely in favor of the amendment proposed by my friend from Northampton, and I think it should be adopted; although it will leave a defective principle in force, practically, it will leave the operations of juries very much as they are now.

MR. MORTON, of Taunton. I have desired to gain the attention of the Convention on this subject, even at this late day of the session, for a few moments only. I have been unsuccessful in obtaining the floor. This, however, is my own fault. I complain of nobody; but the Convention will excuse me, if I relate a short anecdote which this circumstance brings to my mind.

I heard once, of a young, ardent, and eloquent man in the legislature, who was very anxious to speak, and so also were many others, at the same time. At every interval, dozens would rise on their feet, and exclaim, as loudly as their lungs would permit, "Mr. Speaker!" and getting out

of all patience at his ill success in one of these struggles, this young man shouted out, "Mr. Speaker! I must have the floor; I have a little speech which I want to get off; I must have the floor, for my speech will not keep." [Laughter.]

Now, I have no such reason as this young man had for desiring the floor. What I have to say is old. The principles I wish to advance, I have entertained for more than a quarter of a century; and on looking at them, I think they are just as bright as when they were new. At any rate, it will do no hurt to give them an airing.

MR. PRESIDENT: I rather propose to testify on this matter, than to argue, because I take it that the argument has been exhausted, and because, also, there is no time to go into an investigation of the subject. I felt somewhat anxious to express my views upon this question, because I suppose they will disappoint a good many individuals. All my sympathies are with the mover of this proposition; and if I were now placed in the same relation to that gentleman which I have borne to him in times past, I think I should conduct the business very much to his satisfaction, and according to the views which he has expressed. But I cannot but think that some of my friends who are so anxious to protect the rights of individuals and juries from encroachment, in their zeal for liberty, instead of strengthening the guards of liberty have weakened them; and I was sorry, on this subject, to differ from my friend for Manchester, (Mr. Dana,) yesterday; but I could not suppress my apprehension that his attempt to guard and strengthen the writ of *habeas corpus*, weakened the force with which it has been regarded in the Commonwealth, heretofore. But I must not refer to that subject. Time will not allow me to do so. I fear, however, that this proposition in relation to the rights of juries, instead of protecting and securing the rights of the people, will tend to weaken them, and expose those rights which gentlemen wish to protect, to greater danger than they were exposed to under the law as it existed before.

MR. PRESIDENT: In relation to what was advanced by some gentleman, yesterday—I do not now exactly remember who—upon the organization of juries, I must say that the provision does not reach it at all. If there is any imperfection in the law, in relation to the selecting or impanelling of juries, or the conduct of the officers in determining who shall sit on a jury, the present amendment does not remedy that imperfection; it does not profess to reach it. Now this amendment relates wholly to criminal trials. And what is the course and progress of such trials, as was very properly asked by my friend opposite, (Mr. ———,) a few moments ago? First, an indictment must be returned by the grand jury. The party is then brought up for trial, and the business of trying him seems to be divided between two classes of functionaries. In the first place individuals are selected to sit upon the bench as judges of your court, for the purpose of determining what the law is, whose duty it is to settle rules for the government of cases that come before them, and to decide upon their application to all the citizens of the Commonwealth. They are supposed to be selected for their integrity and character, and above all, for their knowledge of the law, and their experience, in its

application. It is supposed that they are to be able to explain the law. Then you have selected another class of functionaries, designated first, by the election of the different towns, and then selected by lot—who are supposed to be somewhat distinguished above their fellows, for their integrity and practical knowledge of the affairs of the world. It is their peculiar province to discern the facts of the case; and it is supposed, from their experience and knowledge of mankind, that they are better qualified to determine what credit is due to witnesses, and what inferences may be drawn from circumstances, than other classes of the community—even than the judges themselves, who, from the nature of their occupation, are somewhat withdrawn from society. The matter thus goes on between these two classes, both hearing the evidence, and the judge explaining the law. Now, how are the jury to determine the guilt or innocence of the defendant? In the first place they have the facts alleged in the indictment before them, and they must determine whether the evidence proves the facts alleged; and, if so, whether the facts, as proved, constitute a legal offence. On that subject they have the opinion and advice of the court as well as the testimony of the witnesses on the stand. They are to view all the circumstances, and to decide upon their own responsibility. If the jury, viewing the disclosures which are made before them, deliberately and conscientiously come to the conclusion that the evidence does not establish the fact, or that the law, though differently laid down by the court, does not warrant a conviction, they must say that the defendant is not guilty, and he then goes forever discharged. They must, of necessity, in returning a general verdict, decide both law and fact. If they disregard the testimony of respectable witnesses, they assume a fearful responsibility. If they disregard the instructions of the court, they also assume a responsibility not less fearful. Now I do not mean to say that the jury have not the power, and the right, or that it is not their duty, if it so happens that in their consciences they believe that they understand the law better than the court, to follow the convictions of their own minds, notwithstanding the instructions of the court, just as it is their right, upon receiving the testimony of the witnesses, to say according to their honest convictions that they believe, or do not believe it.

Now, in this state of the case, can we do anything to protect the rights of juries, or, more properly, the rights of individuals who may be brought before juries? I have no disposition whatever to impair or weaken, in the slightest degree, the rights of either of these classes of people. I would rather say, let them be preserved, to the fullest extent. But I would ask, whether this attempt to go into this matter and specifically enumerate and define the relative rights of these officers, does not endanger if not impair the rights of juries, or of those persons brought before them? This subject has been so fully argued, that I do not propose to go into much discussion of it. It is always dangerous, where you have general principles laid down and well established in the minds of the community, to renege them, or to draw them out into detail; for whenever you undertake to do anything in detail, there is great danger that your details may leave some particulars unenumerated, and the omissions may necessarily lead to constructions less favorable

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than the principles would warrant. *Expressio unius exclusio alterius.*

Now, I maintain, that the principles I have announced are not only well established, but that they are guarded, and protected, and fortified, by the well-established law, and in the minds of the community, more strongly than they can be by any constitutional provision. If any one entertains the apprehension or the supposition that your courts are desirous of exercising arbitrary power, this is one of those cases in which they never can do it successfully. You have now intelligent and independent juries, who will always take care to protect their own rights; and a court can never control them. If a jury chooses to say that a man is not guilty, whether upon their construction of the law or the evidence, no court has power to reverse their decision. You have, therefore, in the very nature of the principle, a guarantee stronger than you can obtain, either in a Constitution or anywhere else; because, from the very nature of things, this power never can be usurped by a court, and taken from a jury. It is impracticable to do so; and, in this connection, let me say, that we came here, in the first place, to remedy existing evils, not to speculate in theories, or to mould a new Constitution upon favorite schemes, which we may adopt, and which may appear well upon paper, with a design to supersede principles which have always operated well. Such would, indeed, be a dangerous experiment.

Let me now inquire, if anybody ever knew an instance in which any court, having common law jurisdiction, ever attempted to prevent a jury from deciding a criminal case by a general verdict of guilty or not guilty? It is said, that on examining the principles which our courts have laid down, some propositions may be found which are not sound; but, without inquiry into this matter, I wish to ask, whether, practically, there ever was an attempt, by any court, to interfere with a jury, or to deny to them the right of rendering a verdict of "guilty," or "not guilty," according to their discretion? No doubt the court have laid down the law, and given instructions to them; and, according to the provisions of this amendment, they are required to do so. No doubt the court have laid down the law, and the jury have passed upon that law as they have thought proper. No doubt, in all cases, they have respect for it, just as they have respect for the testimony of unimpeachable witnesses. They have the power and the right to act according to their own conscientious convictions, and the court cannot control them, and never has attempted to control them. I think that some complaint was made in regard to a judge in one court, by a gentleman who has advocated this proposition very ably; and it is possible that he might have been treated improperly; but that should not affect a general principle. I believe that he desired to address the jury in regard to the constitutionality of some law, and the judge demanded that he should address the court, and not the jury.

[The fifteen minutes having expired, the hammer fell.]

Mr. DANA, for Manchester. I wish the attention of the House for a moment or two, in relation to this subject. I will first ask that the resolution and amendment may be read, so that we may see exactly where we stand.

The resolution and amendment were accordingly read by the Secretary.

Mr. DANA. Perhaps before we get much farther there may be some more amendments accepted. I wish to put this to the Convention, as an argument for dropping the whole matter. Several days ago, the gentleman for Wilbraham came forward with a resolve materially affecting the life, liberty, and property of every citizen in the Commonwealth. It is presented, and laid upon the table for some time. Then the gentleman makes an argument in its favor, and is perfectly satisfied that it is all right. This morning the gentleman from Northampton comes in and says that he is in favor of the principle, but that you cannot pass the resolves, because juries will be made judges of the sufficiency of the indictment, of the admissibility of testimony, and of collateral issues, and of all that occurs in the course of a trial. He moves an amendment in four or five particulars, and the gentleman for Wilbraham at once accepts them all; and then the resolve is discussed; and then the gentleman for Wilbraham comes forward with another amendment, and says we ought to provide for a new trial; and then the gentleman from Northampton accepts that amendment; and so we go on.

Now, let me suggest that this resolution is on its final passage, and when it is passed, somebody may rise and say that there is occasion for another amendment. But it is then too late. Sir, the very first decision of any court will show that something has been overlooked, and you cannot then help yourselves. And what excuse can you give to the people? We may say that it came up at the end of the session, and that we had not much time to consider it; that we had the fifteen minutes' rule; that amendments were proposed on one side and on another side, and that we had not time to consider them properly. Then the people will say: "If you had not time to consider the matter properly, why did you not leave it to stand as it was?" And to that there can be no answer. Now, I submit to the Convention, whether it is worth while to place a great fundamental principle in the Constitution, affecting life and liberty, where it is unalterable, with amendment upon amendment, relating to the sufficiency of testimony, to collateral issues, and many other matters, the meaning of which a large portion of the Assembly does not understand, and the effect of which I do not pretend to understand at this moment? I cannot bring my mind to see what effect the amendment of the gentleman from Northampton will have on the amendment of the gentleman for Wilbraham, or the amendment of the gentleman for Wilbraham upon his own resolve or upon the amendments of the gentleman from Northampton.

We have the evidence of the learned gentleman from Taunton (Mr. Morton) against this resolve; and if the gentleman from Lenox (Mr. Bishop) was in the House, I would appeal to him to give his testimony, as I have no doubt he would, against it. I submit to the House that we had better drop the matter altogether. It was said, and properly, by the gentleman from Boston, (Mr. Hillard,) that if the government, as it always is, be represented by a man of superior talent and of great power over the jury, and the criminal, as is too often the case, is represented by any young man who is willing, or is appointed by the court, to take it in hand, what chance has the criminal? This very morning, Mr. President, I met a young lawyer, who told me that he had

been assigned to defend a man on trial for murder, against Mr. Choate as prosecutor,—the man not having a dollar to pay for counsel,—and asked me if I would consent to act as senior counsel. Now, I should like to know what kind of a chance the criminal stands of his life—hunting up charity counsel, against the head of the American bar, before a chance tribunal. The jury being the judges of the law, if the man is found guilty he never can know—to use a popular phrase—"what hurt him," whether it was the law or the facts. The jury cannot give their reasons, and cannot make known whether they found him guilty because of the law, or the manner in which they interpreted the law. You will have no settled law. There will be one law for one man, and another for another. A law will be constitutional for one man and not for another; and, what is worse, no man will ever know on what ground he was convicted or acquitted.

I say, as I had the honor to say yesterday to this Convention, that the division of power is the great security for liberty. I would not give the best court in Christendom power over the law and the fact, in jury cases. I do not wish to give to any twelve men who may be drawn, absolute power over the law and the facts. My security is in the distribution of power. Give me a court which shall be responsible for the law, and give me a jury responsible for the facts, and for the application of the law to the facts.

There is another consideration. If the judge errs in the law, you have a perfect remedy. You may go to the highest tribunal of the State, and set it aside. If the jury err in the law, you can never disturb the verdict—because you cannot know whether they err in the law or not. I put this question to the gentleman from Northampton, who says there should be the power to grant new trials: suppose the judge rules all the law in favor of the criminal, how shall he get a new trial? The supposition seems to be, that the judge rules against the prisoner; but suppose he rules in his favor, and the jury differ from the judge, the prisoner cannot get a new trial, because all the law was ruled in his favor. But, says the criminal, the jury found the law against me. The judge says, how do you know that? He cannot know it; no man outside of the jury-room can know it, for the jury do not tell how they found the law. So that if the jury differ from the court, against the prisoner, he cannot get a new trial.

Then, by this principle, you put the whole criminal law of the Commonwealth into the hands of one juror. One man out of twelve in the jury-box, has a right to defy the whole Commonwealth. You may pass law after law, but if an ingenious advocate can persuade one man on the jury into a misconstruction of the law, he can set the Commonwealth at defiance. But, if the judge make a mistake, you can correct it. Let me call attention to one protection which you will remove, if you adopt this resolve. The gentleman from Taunton, (Mr. Morton,) was perfectly right in saying that you are breaking down the safeguards of the accused person. If the judge err in the law, it is a matter of record, and you go to the higher court and get it reversed. Suppose they refuse to reverse it? Then you come before the legislature, and, if the judgment has not been executed, the legislature may repeal the law. Or, if you have been sentenced, the legislature may reimburse or reinstate you. Then, again, if convicted on an

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improper construction of the law, the government can protect you by a pardon. I was counsel in a case where the government pardoned a man upon that ground, and I beg the attention of the Convention to that single case. I defended the man, and the jury put a question to the court, as to the burden of proof. The court were divided upon the subject, but a majority of them were against the prisoner, and he was convicted. That was a matter of record. The case was presented to the governor, and he said, that as the court were divided as to the law, the man ought not to be hung, in so doubtful a case. The court also requested the governor to commute the sentence, because the law was so doubtful. Now, had that taken place in the jury-room, it never could have been legally known on what ground the man had been convicted, whether on the law or the facts. As the law now is, the grounds of acquittal or conviction appear on record, so that if unjustly convicted you appeal to the higher court, or to the legislature, or the executive, and the court, or the legislature, or the executive, may reverse, or pardon, or reimburse or reinstate the man. But what comes from the jury never can be known.

Mr. HALLETT. I desire to ask the gentleman if he means to say that the court cannot grant a new trial, when the verdict is guilty?

Mr. DANA. I said nothing of the kind.

Mr. HALLETT. Does the gentleman mean to say that the court cannot grant a new trial, when the verdict is "guilty," the charge of the judge being in favor of the prisoner?

Mr. DANA. If the court rule all the law in favor of the criminal, and the facts are sufficient to warrant a conviction, and the jury find him guilty, he cannot, under that resolve, have a new trial, because the court cannot know how the jury found the law.

Mr. HALLETT. Is not the petty jury sworn to decide the cause according to the evidence, and is not the law a part of the evidence as well as the facts; and, therefore, cannot the judge give a new trial, on the ground that the case is against evidence, or against the law, without specifying either?

Mr. DANA. I am glad that the gentleman has put the question, for two reasons: it suggests another infirmity in the resolve, and that is, that it makes the law a matter of fact, which has to be proved as a fact. Now I should like to see all the law of the Commonwealth proved, as a matter of fact, before a jury. We shall continue finding difficulties. But let me answer the gentleman's question by putting another; does he mean that a judge shall set aside a verdict in a criminal case, because the jury, in his opinion, probably erred in the law?

[Here the President's hammer fell, the fifteen minutes allowed for speaking, having elapsed.]

Mr. ABBOTT, of Lowell. I desire to say a few words upon this matter. I must say I am somewhat surprised at the kind of argument used by the gentleman for Manchester, (Mr. Dana,) the gentleman from Boston, (Mr. Hillard,) and others who oppose the passage of this resolve; and, Sir, I think in the history of all the discussion upon this matter, it will be the first time you ever heard arguments against the adoption of this great principle, in criminal trials, on the ground that it was something which would trench upon the rights of criminals. From the beginning to the end of this discussion, it has been claimed by

those in favor of the right of criminals, of persons accused of the commission of offences, that it was the great shield which was to stand between him and an unjust conviction. But, Sir, I do not believe it will ever be heard here, or anywhere else, in practise, that any man when brought before any court, will complain of this Convention, or any body which establishes the great principle, that the jury, by the common law, are the judges of the law as well as evidence. But it is claimed that we must pause, because we cannot tell what may be the operation of this resolve; that a variety of objections may hereafter be raised to it. This argument of my friend for Manchester, (Mr. Dana,) might just as well be brought against almost everything which we have attempted to do here. Here is a great principle, he says, which you propose to establish now, and do you know where you are going, what will be the results, and what objections can be raised? Sir, may not the moon be proved to be made of green cheese? Cannot my friend tell us what those objections are, if they exist? It is not a new question. It has been discussed year after year, and my friend has had his opinions upon the subject, and we have all had our opinions upon the subject, and if there is any objection to this matter, the gentleman for Manchester could state those objections to the Convention, if they are real, and I apprehend that a good many that are not quite so real could be made to appear plausible. Will any man be frightened from his consistency, because he fears that there may be some trouble arising hereafter? The amendment of the gentleman from Northampton, (Mr. Huntington,) as modified by the amendment of the gentleman for Wilbraham, covers all manner of difficulties, and if it did not, the learned gentleman from Taunton, (Mr. Morton,) the gentleman for Manchester, the gentleman from Boston, and all who are troubled upon this subject, could tell you where the trouble is. My friend from Boston (Mr. Hillard) told you, that we must stop short, because the adoption of the resolve would be injuring the criminal. I apprehend criminals would not choose such advocates of their cases. The judges, where the law is apparent upon the face of the indictment, will still have the control of the law. If there is no such law, you can make a motion to quash the indictment. If it is founded upon an unconstitutional law, the case need not go to the jury, for the right to quash the indictment is left with the court. The court now have the right to set aside the verdict of guilty because it is against evidence, and does any man in his senses really believe that, under the amendment of the gentleman from Boston, the court will not exercise the power, in any and every case where there is a decided ground of suspicion, that the jury have erred upon the law against the prisoner, to set aside their verdict? Sir, I apprehend that all these objections come to nothing. The real question is, shall we establish this great principle of the common law, as a part of the Constitution? I, Sir, for one, if this is voted down, desire to have something by which we shall know where we stand. I do not want that anomalous state of things, I may say, with all respect, that ridiculous state of things now existing in this Commonwealth. The law is now settled by the court, and I understand the learned gentleman from Taunton agrees to it, that the jury have the power to find the law, but no right so to do; that they must take the law from the

court, and if they exercise on that subject their own consciences and judgments, they violate their oaths. Yet, notwithstanding such is the established rule, the same court, laying it down, say that counsel may argue the law to the jury, although the jury have no discretion on that subject, but must follow blindly the directions of the court. To what absurdities and inconsistencies will not a defection from a great principle lead even grave and learned courts! What morality is here inculcated! The jury violate their oaths morally, if they disregard the instructions of the court on the law; still, counsel are permitted to argue to them, hour after hour, to induce them to do it; to commit moral perjury. The jury have the power, and a counsel may get up and argue a law to them, and then they have not the right, without a violation of their oaths, to undertake to exercise that power. You may argue a law to the jury all day long, and then the judge gets up and says to the jury: "Gentlemen, you have the power to find the law, but if you exercise that power, you violate your oaths; you must take the law from the court."

Mr. MORTON, of Taunton. I understand the gentleman says, that I denied that they had the right to decide what the law is. I said in so many words, if the jury, having heard the direction of the court, upon their consciences believe the law was not so, they had the power, and the right, and it was their duty to say so.

Mr. ABBOTT. I am delighted that the gentleman from Taunton goes with us, and if the court had so ruled, we should not have needed this resolve. I ask him to put it into the Constitution so that the judges cannot get by it, and say to the jury: "You have the power, but if you exercise that power against the instruction of the court, you violate your oaths." I say, let us have something definite upon this subject, that can be understood and appreciated. The argument of the gentleman from Taunton really cannot be worth much, that there is no evil to be met, because the evil has already arisen. The construction of the law, as given by the gentleman from Taunton, does not agree with the construction laid down by the highest tribunal of this Commonwealth. I want to constitutionally enact the statement of the law as laid down by the gentleman from Taunton, so that rightfully and legally, and without being told that a man violates his oath, one may have a right to do just what is his duty, and what his conscience tells him to do. So that when the whole matter is before the juryman, and he has received the law from the court, and has brought his conscience and judgment to bear upon the whole subject, he shall have not only the power, but the right, to say that he finds the fact and the law as his conscience directs him.

Mr. LORD, of Salem. I yesterday proposed an inquiry to the gentlemen who advocate this resolve. I now desire to inquire, in the first place, of the gentleman who represents Wilbraham, (Mr. Hallett,) whether, by this resolve, he does not give absolute power to the court over any finding of the jury? Does not he who stands here, to interfere and protect the rights of the jury against the judges, give by this resolve, the judges absolute power over any finding of the jury which convicts a criminal?

I understand he limits that power to the finding of the jury in case of conviction. "Now, is not the conviction of a guilty man as important

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as the acquittal of an innocent one? Have not the jury the same right to judge of guilt that they have to judge of innocence? Is it granting a proper power to say to the jury, the judge shall have power over you in case you decide one way, but he shall not have power over you in case you decide the other way? That is one inquiry which I should like to have the gentleman for Wilbraham, (Mr. Hallett,) answer.

I know of no other escape. If this resolve is adopted, the law is considered a matter of fact, to be proved by evidence. And how is that evidence to be introduced? According to this resolve, it is to be introduced under the direction of the judge. That is to say, you will give the jury the power of deciding what the law is as a matter of fact, and yet you will give the judge the power of saying what shall be the evidence of that fact. Now, we all of us who have had any practise in the courts, know that it is not the practise of the judges to allow the jury to read law books for themselves. But I want to know, if they are to be the judge of what the law is, why do you not secure to them the right to read the law? If what the law is, is a fact, that fact is to be proved. If an attorney on one side of the case gets up and reads from a book, and says that is law, they are not to be governed by what he says, but they should be allowed to take the book, and see if there is not something there, on the next page, to qualify the passage quoted, for we all know that lawyers generally select some passage, and read what suits their own purposes, without reading the clause that qualifies it, and does not suit their purpose; therefore a juror says: "I should like to take that book for a moment; I should like to see whether there is not some qualification to what you lay down as law." If the lawyer has read a part of a section, the juror says: "I should like to look into that book, and see if you have read the whole section." Now, Sir, I say that if the law of the case is to be reduced to a matter of fact for the jury to decide, they ought to have the means given them of determining intelligibly what the law is; and I say, therefore, that experts in the law should be called in to testify. When we want to ascertain what the law of any foreign country is, upon any particular subject, we call in some one versed in that foreign law, to testify in relation to it, and we prove it as a matter of fact. We prove it by the testimony of those who have practised in that law. Upon the same ground, if the law is to be made a matter of fact for the jury to decide, provision should be made for calling in experts to prove it; and I say this resolution is imperfect, until such a provision is made.

For instance, a man is indicted and brought before the court for an offence. I say, the charge is not sufficient to convict the man, and I propose to introduce testimony in respect to the law, to prove that fact to the jury. But the judge says, No, Sir; the same resolution which provides that the jury shall be the judges of the law as well as fact, says that the judge shall determine the admission of evidence, and this is a species of evidence you cannot introduce. Gentlemen propose to give the jury the right to decide upon the law as a matter of fact, and yet they refuse to give them the evidence upon which to decide it.

Now, I agree entirely with the gentleman from Taunton, that the difficulty with the resolution is not that it affords too much protection to the

party charged with crime, but on the other hand that it takes away that protection. I am not at all satisfied with the argument of the gentleman from Lowell, (Mr. Abbott,) upon this subject. I am not satisfied that under this resolution any judge in the Commonwealth will have the right to say there is no law upon which a prisoner can be convicted, when it is to be left for the jury to settle the question whether there is a law or not. Your resolve says that the question of law or no law, is to be settled by the jury. Do you mean to put into the hands of different tribunals to settle the question whether the proposition is law or whether it is not? Shall the judge settle it or shall the jury, or will you give them concurrent jurisdiction; that is, give it to the power which outstrips the other, for I believe that is the general principle upon which concurrent jurisdiction operates. The party that can get it in its power first, keeps it and exercises it against the right of the other party. Well, Sir, do you propose to constitute a concurrent jurisdiction on the subject of law or no law? Is it necessary to the security of the individuals? Sir, I want to hear the member for Wilbraham answer the last question put to him by the delegate for Manchester, (Mr. Dana). It is this: whether the friends of this resolve mean to give to the court the power of reversing the decisions of fact made by the jury? Do they mean that? And I want to know if the gentlemen who mean that, are not those who are standing up for the rights of juries against judges? I have not heard any gentleman say—there is not a gentleman upon this floor who dares to stake his reputation upon denying that the judge ought to have the power to revise the decisions of the jury. Yet, while they give the judges the power to set the verdicts of the juries aside, they will not give them the power to instruct the jury in law.

Now, Sir, I think the whole trouble has arisen out of confounding all offences with a particular class of offences; to wit, political offences. All this talk about juries being the judges of the law as well as of the fact, has arisen out of political questions, and nothing else. And political offences in this country, thank God, are pretty rare; and they will be rarer in the future than they have been in the past. Very few instances where protection is needed in cases of that character, are recorded in the past, or are likely to occur in the future. Well, Sir, the power the jury have and the rights they have upon that subject, in my judgment, are well enough, so far as political offences are concerned, under the present Constitution; and they are the only cases in which any one can desire to have it applied, or in which the principle claimed can be applied.

Now, Sir, we should either say that the jury should be subject to the court in matters of law, or independent of it. They must be one or the other. And if they are independent, the court has no right to revise their decisions.

Mr. HUNTINGTON, of Salem. Having been a member of the Committee, a portion of which submitted this resolve, I desire to submit a very few remarks concerning it. The subject is one which I regard of the greatest importance, but I am very sure that if the Convention fully understood the effect of the resolve—if they understood fully the designs of the gentleman who proposed it, they would not adopt it. I understand the gentleman to mean by this resolve—although

it is not expressed in terms—to mean by it that the jury shall have the right, in criminal trials, to determine matters of law against the decisions of the highest tribunals in the country, or the highest tribunals in the world, in every particular case.

Now, Sir, in one view which may be taken of the resolve, I see no harm in it, because, as I understand it, under the present Constitution, in every case the jury do determine the law and the fact. In most cases, the question submitted to the jury is a question of law and fact. They are sworn to try the issue between the Commonwealth and the defendant, and of course they pass, and must pass, upon the law as well as upon the fact. There is, however, no occasion for this resolve to accomplish this object, because it is already accomplished by the existing laws. The principle has never been doubted. They are to determine matters of law, under the direction of the court.

Mr. HALLETT, (interrupting). I would suggest to the gentleman that they have not absolute jurisdiction.

Mr. HUNTINGTON. I cannot yield to the gentleman to interrupt me. I say that if this resolve only declares that, it only declares what is now law, and what, from the very nature of the case, must be the fact. The jury, in a criminal case, have the law submitted to them as evidence, and they must bring in their verdict of guilty or not guilty upon their decision of the law as well as the fact, and therefore I say, in this view of the case, I can see no harm in the resolve. But the gentleman who introduced it means something different from this. He intends to provide that when general law, or if you please, constitutional law, has been determined by the supreme court of the Commonwealth, the jury may disregard that decision. He means that when a question of constitutional law has been carried from the judicial tribunals of this Commonwealth to the supreme court of the United States, and decided there, by the highest judicial authority in the country, that a jury of twelve men, brought into court for the first time in their lives, to try a particular case, involving these questions of law which have thus received the highest judicial decision, may disregard that decision.

But the friends of the resolve see difficulties in carrying out this principle. They have slept upon it over night, and they find some little difficulty in submitting absolutely, without control or remedy, all questions of law to a jury of twelve men; and this morning they propose an amendment, providing that, in case of conviction, the court may set aside the verdict, because the jury may have decided the law wrongfully. Now I submit that there is no reason in making this provision, whatever. The jury should either be the judges of the law, or they should not be the judges. If it is safe and right to make the jury the judges of the law, absolutely and independently, in any particular case, then say so. But gentlemen are not prepared for that. O no; they are not prepared to trust to the judgment of a jury of twelve men in case of conviction; they want the power, in that case, of appealing from the jury to the court. If the jury acquit, there is an end of the matter. There is no remedy. The community have no remedy, although the prisoner may have been ever so improperly acquitted. But if the verdict is guilty, then they may come in and ask the court to set aside the verdict. It

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shows that gentlemen are afraid of that principle. It shows that they are afraid to trust to the jury so important a principle, but, upon the contrary, they themselves want the privilege of appealing to the impartiality of the court, in case of conviction.

Mr. President: We live under a government of laws, and we have the right to the protection of law. We have the right to be judged by the laws of the Commonwealth, as they have been interpreted by the highest judicial authority, and as they are known to exist. Now I undertake to say, that if this resolve be adopted, and you give to it the force which the gentleman for Wilbraham claims for it, that the juries will become the absolute judges of the law, independent of the court, and independent of former judicial decisions, and no man knows what the law is. No man can tell one day, what the law will be the next. When two cases, arising upon precisely the same state of facts, one case is submitted to one jury, and they find a verdict of guilty; and the other case is submitted to another jury, upon the same state of facts precisely, and they find a verdict of not guilty. Is that a government of laws? Are we to be protected under laws thus decided, and thus administered?

Sir, I regard the judicial tribunal, as constituted in this Commonwealth, as the most perfect instrument ever invented by man. The discovery of a practical, learned, and impartial court to expound and interpret the laws, and of a set of impartial men, selected from the various classes of community, to judge of, and determine the facts of the case, I regard as the most important invention, and the most perfect instrument which ever emanated from the mind of man.

But with this resolve, as interpreted by the gentleman bringing it forward, I maintain we have no security. Ordinarily, in quiet times, I admit that perhaps it will make but little difference; but in cases of great excitement, upon which the public opinion is divided—and particularly in regard to a political offence—I maintain that this is a power which should not be given to a jury.

I mean to say, in cases where the public sentiment is much divided, because these gentlemen are disposed to put the law as well as the fact to the jury. I presume to say, that any gentleman who should undertake to argue the question of fact or law arising out of a case, where public opinion was strongly divided, could get one or two jurymen who would stand out. Sir, I pray gentlemen to consider the effect of this resolution as the gentleman designed it. I regard it as a very dangerous innovation, if that construction is put upon it, as I suppose it will be.

Mr. KEYES, for Abington. Sir, I hope that the Convention, in consequence of what has occurred here this morning, will not, at least, be frightened into a decision on this question. After having had it pretty thoroughly discussed yesterday, and a vote taken by a large majority in favor of these resolutions, and the end having arrived, as in ordinary cases of the end of a discussion, there has been a perfect avalanche of speeches on one side, as if by some combination it had been determined to frighten the Convention from its propriety, if there was any propriety in the decision of the Convention yesterday. Now, I do not know but there may have been a great deal of reason in the speeches which we have heard to-day, but at least, they have not

affected my nerves at all. If there is any virtue in persistence, the gentlemen on that side of the question have a great deal of virtue, I confess.

Sir, in what position does the case now stand? We have it confessed on all hands, and more completely by the gentleman who has just taken his seat, that the provisions of this resolution are now the law, that they have always been the law. We all know that judge after judge, sitting on the bench, has told the jury himself that that was the law, and asked them to decide in that manner and on that principle. Now, where is the danger? Where have been the immense evils which have been pictured before us to-day so brilliantly, and who has seen them? The story has been repeated over and over again, and after all, these frightful effects have been proved to be only imaginary. Why not adopt this, and make universal what is now only partial? It is confessed that this same principle was adopted and was universal till 1828; and whether universal or not, there were a thousand cases which could be pointed out where the judge on the bench himself has told the jury before him, that they had all this power. And, how have they exercised it? Have any of these evils resulted from it, of which there is said to be so much danger? Not one. There is no pretence that one of them has ever resulted from it.

Now, with regard to that point which the gentleman for Manchester, (Mr. Dana,) made, that they were to be the judges of evidence. I do not think there is much necessity for this very amendment which has been offered this morning. The resolution does not touch any present power of the judges. If they can now grant a new trial, they can as well under this resolution, without the amendment. Now, I say that the decision of the judge on the admissibility of evidence, does not prevent the jury from entertaining an opinion, and being influenced by the opinion of the judge on the question of the evidence. Who ever sat on a jury that did not know that the very fact of listening to what it was proposed to prove by a witness, had its effect, though the witness was rejected? It would have as much weight on a jury as if the testimony had been received. Suppose a witness is brought on and the counsel tells what he means to prove, and gives the reason for it; and suppose the judge rejects the witness. The jury will decide in their own minds whether he is properly rejected or not, and on what grounds he is rejected. At any rate, whether they allow themselves to take notice of the precise language which it is said the witness would utter, or not, the purpose for which he was introduced, and the reasons for which he was rejected, will have an influence on the minds of the jury. They cannot help it; they never ought to help it; but every step in the progress of the trial, and every decision that that judge makes, all go to affect the minds and opinions of that jury.

Now, this resolution, as originally stated, leaves all the present power of the judges to them. They reject the evidence or admit it, or grant a new trial or not, in the same manner as they would under this amendment.

But I only rose to speak of the position that we occupied yesterday, compared with what appears to be the position of some to-day. Whether our old men saw visions and our young men dreamed dreams last night, or not, I cannot say. But I should suppose they had all eaten hearty suppers and fed

on horrors, that they should be so harrassed and alarmed to-day, when they were so quiet and calm yesterday. I have seen nothing of these horrors which we are to have result from this. We have had experience on this subject; and the experience of a hundred years is better than all their imaginations. And when the judges in the past, in all these years, have informed juries that they had this power and that they might exercise it, and when it is supposed they did exercise it, we still hear how dangerous it is. There is no danger, as has been proved; and there has not been an example brought forward to show that it is not as safe as any other mode.

I will now refer to the case spoken of by the gentleman from Boston. He says, that in nine cases out of ten, it will make no difference. I agree that it will make no difference, because the tendency of the juries is to take the law from the court. The judge, sitting in authority, and clothed with knowledge and character, always has an overpowering influence over the jurymen, and the tendency is always in that direction, to take away from the jurymen their responsibility. If the jurymen were to have more of the credit or the disgrace of a decision thrown upon them, then they would seek of the learned judge his knowledge to qualify them to come to a correct decision. But this is really the case; it may happen, sometime or other, that the popular sentiment may have an effect on the decision of a case. It is just as likely to have an effect on the judge as on the jury; and the question is, where shall we put this authority—into the hands of this one man, when affected by popular sentiment, or into the hands of twelve men? I would as soon leave the decision to one jurymen, as to one judge. I believe that judges are not infallible. I believe that a volume has been published to the world, to show the inconsistencies of judges in making their decisions, and their mistakes. There is such a volume as that. Then, you see, the judges are not entirely perfect. By putting more responsibility upon the jurors, I ask you if you will not induce them to act more cautiously, to maintain their own characters? Because, these jurors are respectable men, who wish to maintain a proper standing in society, just as much as the judges do; and it will be an extra inducement for them to seek from the judge the knowledge which he has, and which they lack themselves. The more that responsibility is placed on them, the more they will feel the necessity of acquiring that knowledge from the judge which they have not themselves. For these reasons, although I have no objection to the amendment, it strikes me there is no danger in passing the resolution, as we adopted it yesterday; and I do not believe the heavens would fall if we were to pass it in that way.

Mr. ROCKWELL, of Pittsfield. No man is more disinclined, for a single moment, to interrupt the progress of this Convention, than I am myself. It is because I consider the question to be in the condition that it is, that I wish to say a few words expressive of my opinion on the subject. It is because there is a persistence, upon both sides of this question, and for the reason that time and time again might be given, for the consideration of important questions here, that the rules which govern us have been adopted, as I apprehend. And time and time again does it happen, as every man knows who knows any-

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BILL OF RIGHTS.—ROCKWELL—DAY—DANA—BROWN.

[July 28th.

thing about legislative assemblies, that propositions which have passed their first and second stages by a great majority, have been defeated by common consent at the last or a subsequent stage.

Now this is a practical question. The heavens will not fall, however we may decide it to-day; the heavens may never fall, however it may be decided. Nevertheless, it may be, as I deem it to be, of great importance to this community upon which it is to operate.

Now, Sir, my practise has been in the country part of the Commonwealth, and I confess here that there have been times, when the law has been pressed hardly upon my clients, when I was ready to go out of the court-room, dissatisfied with the law as laid down by the bench, and ready to vote, and give my influence to give that question to the jury, with whom I might have supposed I would have a better chance for the relief of my client. But, upon cooler reflection, I have been led to doubt how I could follow up these impulses of my mind properly thereafter. Now, what is the situation of those persons usually, who are indicted in the counties in the country? Most of them are poor, without pecuniary means; most of them unable to demand counsel. They have against them always the friends of the Commonwealth; they have against them the most respectable men to take care of the Commonwealth. They must either have no counsel at all, or such counsel as may be induced to volunteer for them, or be obtained by other motives than those which they can present in a pecuniary form. There is the judge upon the bench, perfectly understanding the law. No matter who their counsel is, so that he present all the points that can be presented in the case. And if any one of them is such that the court can recognize it as a protection to the accused, then he has the benefit of the law as fully as though he were defended by the ablest counsel that money could obtain. Now how is it that so many persons are indicted every term, and that, in so many cases, the law steps in to relieve them? Every-body knows it, that knows anything of the practise of our criminal courts. Is this worth nothing? Consider if you were indicted, as any man may be indicted; consider if you were brought to the bar of the court of common pleas in this Commonwealth; consider that you have an able district-attorney learned in the law and armed with experience; consider that he may call to his aid, also, the best legal talent in the Commonwealth, even the present attorney-general; consider this to be the situation of the person indicted, and whether he ought not to have, also, the influence of the law and the influence derived from the power to instruct the jury, which the learned judge has.

But, Sir, this matter may come up perhaps, not to your or my experience, but to the experience, however, of some of our posterity, or of the citizens of this Commonwealth, in times of political excitement, when that spirit rages which no man who has attempted has succeeded in controlling; when that mob spirit, which, in the power of the tempest, has no parallel in the comparison, and of which hurricanes and earthquakes are but feeble illustrations—when that rages abroad in the community, and the accused is brought to the bar where the public opinion is arrayed against him and he receives his doom. What then? We all claim, every-body claims who knew him, that he was a peace-loving man. What then will be the

influence upon that jury, I ask? Now, it will be said, here has been a verdict of public opinion against the popular sentiment. But a learned judge has declared the law, is bound to declare the law to the jury, and the jury under that instruction has given its verdict. But suppose the judge could walk above that enraged community, and could say that the jury have given a verdict which I would not have given; I have not instructed them at all; I am under no responsibility. Then comes upon the devoted heads of those twelve men, unprotected by the shield of the law, the indignation of the excited community. I do not overdraw this picture at all. I believe there are elements in this community, that in time, may produce these effects. And I have seen them, and any man who has seen them will never forget them. Now the judge is bound—and this is my safety and yours also—the court is bound to declare the law. As it has been decided, and is the law, that the court is bound to declare it, the judge upon the bench has more reasons than one why he should declare it so. In the first place, his legal reputation, which is, in most instances, his only property, is at stake. In the next place he is liable to impeachment; and the fact that he has given a flagrant decision and flagrant instructions to the jury, under circumstances which may lead to corruption, or may be the effect of corruption, is a portion of the evidence which may lead to conviction upon a trial for impeachment, and he knows it.

Then the protection of the individual is, that in the first place every safeguard which can be given has been thrown by the law around the law itself, and also in the opportunity which he may have before the jury in setting forth the facts of his case. To say nothing of any other reasons, it seems to me that this is conclusive why we should not now allow this innovation to be made. It has been suggested to me by some gentlemen, for whose opinions I have a great respect, that this is one of the reforms of the present time, and that all reforms are resisted, but that all reforms prove to be beneficial. Let us consider that matter. There are millions of reforms proposed, while there are but thousands or perhaps hundreds adopted; and those are only adopted after undergoing the agony of investigation and argument, persistent argument on both sides, stage after stage, and time after time. It is only reforms of that kind which are finally adopted, and which are beneficial. Whether this is one of those, will depend upon the issue of this debate. It is not enough to say to us that this comes in the shape of a reform; it may be one of those which, like millions of others, has only to be examined in order to be rejected.

Mr. DAY, of Templeton, then moved the previous question.

Mr. DANA, for Manchester, moved that the resolve and amendments be laid upon the table.

Mr. EARLE asked the yeas and nays upon the motion of Mr. Dana; and they were ordered.

Mr. BROWN, of Medway, moved a reconsideration of the vote by which the yeas and nays were ordered; which was agreed to.

The question then recurred upon the motion for the yeas and nays—and they were again ordered, more than one-fifth voting therefor.

The question being then taken on the motion of Mr. Dana, the result was—yeas, 153; nays, 182—as follows:

YEAS.

Adams, Benjamin P.
Aldrich, P. Emory
Allen, Joel C.
Allen, Parsons
Alley, John B.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Ball, George S.
Barrows, Joseph
Bartlett, Russel
Bartlett, Sidney
Bates, Eliakim A.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Jacob
Bliss, Gad O.
Bradbury, Ebenezer
Bradford, William J. A.
Braman, Milton P.
Brewster, Osmyn
Brimley, Francis
Briggs, George N.
Buck, Asahel
Bullock, Rufus
Bunpus Cephas C.
Carter, Timothy W.
Chandler, Amariah
Chapin, Chester W.
Chapin, Daniel E.
Childs, Josiah
Coggin, Jacob
Cogswell, Nathaniel
Cole, Lansing J.
Conkey, Ithamar
Coolidge, Henry F.
Copeland, Benjamin F.
Crittenden, Simeon
Crockett, George W.
Crosby, Leander
Crowell, Seth
Curtis, Wilber
Dana, Richard H., Jr.
Davis, Solomon
Dawes, Henry L.
Deming, Elijah S.
Denison, Hiram S.
Dorman, Moses
Eames, Philip
Eaton, Lilley
Edwards, Samuel
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fay, Sullivan
Foster, Aaron
Fowle, Samuel
Fowler, Samuel P.
French, Charles H.
Gale, Luther
Gardner, Henry J.
Gilbert, Wanton C.
Giles, Joel
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Hale, Artemas
Hammond, A. B.
Harmon, Phineas
Haskell, George
Hathaway, Elnathan P.
Hayward, George
Heard, Charles
Henry, Samuel
Hersey, Henry

Hillard, George S.
Hinsdale, William
Hobart, Aaron
Hobbs, Edwin
Hopkinson, Thomas
Houghton, Samuel
Howland, Abraham H.
Hubbard, William J.
Hunt, William
Huntington, Asahel
Hurlburt, Samuel A.
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kendall, Isaac
Kinsman, Henry W.
Knight, Joseph
Knowlton, Charles L.
Kuhn, George H.
Ladd, John S.
Littlefield, Tristram
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marvin, Theophilus R.
Miller, Seth, Jr.
Mixer, Samuel
Morey, George
Morton, Elbridge G.
Noyes, Daniel
Oreutt, Nathan
Park, John G.
Parker, Adolphus G.
Parsons, Thomas A.
Peabody, George
Perkins, Jonathan C.
Plunkett, William C.
Pomroy, Jeremiah
Putnam, John A.
Read, James
Reed, Sampson
Rockwell, Julius
Sampson, George R.
Sanderson, Chester
Sargent, John
Schouler, William
Sikes, Chester
Sleeper, John S.
Smith, Matthew
Souther, John
Stetson, Caleb
Stevens, Charles G.
Stevens, Granville
Sumner, Increase
Talbot, Thomas
Tilston, Edmund P.
Train, Charles R.
Turner, David
Upham, Charles W.
Walcott, Samuel B.
Wallace, Frederick T.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
Wilbur, Joseph
Wilder, Joel
Wilkins, John H.
Wilson, Milo
Winn, Jonathan B.
Woods, Josiah B.

NAYS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, James B.
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Bates, Moses, Jr.
Beal, John
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.

Thursday,]

CONSTITUTIONAL CONVENTIONS, &c. — MORTON — LORD — JENKINS.

[July 28th.

Boutwell, George S.
 Boutwell, Sewell
 Breed, Hiram N.
 Bronson, Asa
 Brown, Adolphus F.
 Brown, Alpheus R.
 Brown, Artemas
 Brown, Hammond
 Brownell, Frederick
 Brownell, Joseph
 Bryant, Patrick
 Burlingame, Anson
 Caruthers, William
 Case, Isaac
 Clark, Henry
 Clark, Ransom
 Clark, Salah
 Clarke, Alpheus B.
 Clarke, Stillman
 Cleverly, William
 Cole, Sumner
 Crane, George B.
 Cressy, Oliver S.
 Cushman, Thomas
 Cutler, Simeon N.
 Davis, Charles G.
 Davis, Ebenezer
 Davis, Robert T.
 Day, Gilman
 Dean, Silas
 Denton, Augustus
 Dunham, Bradish
 Earle, John M.
 Easton, James, 2d.
 Eaton, Calvin D.
 Edwards, Elisha
 Ely, Joseph M.
 Fellows, James K.
 Fisk, Lyman
 Foster, Abram
 Freeman, James M.
 French, Charles A.
 French, Rodney
 French, Samuel
 Frothingham, R., Jr.
 Gardner, Johnson
 Gates, Elbridge
 Gilbert, Washington
 Giles, Charles G.
 Gooding, Leonard
 Graves, John W.
 Green, Jabez
 Greene, William B.
 Griswold, Josiah W.
 Griswold, Whitting
 Hadley, Samuel P.
 Hallett, B. F.
 Hapgood, Lyman W.
 Hapgood, Seth
 Haskins, William
 Hawkes, Stephen E.
 Hayden, Isaac
 Hazewell, Charles C.
 Heath, Ezra, 2d.
 Hewes, James
 Hewes, William H.
 Hobart, Henry
 Hood, George
 Hooper, Foster
 Howard, Martin
 Hoyt, Henry K.
 Hunt, Charles E.
 Huntington, Charles P.
 Hurlbut, Moses C.
 Hyde, Benjamin D.
 Ide, Abijah M., Jr.
 Jacobs, John
 Johnson, John
 Keyes, Edward L.
 Kimball, Joseph
 Kingman, Joseph
 Knight, Hiram
 Knight, Jefferson
 Knowlton, J. S. C.
 Knowlton, William H.

Knox, Albert
 Ladd, Gardner P.
 Langdon, Wilber C.
 Lawrence, Luther
 Leland, Alden
 Loomis, E. Justin
 Marcy, Laban
 Marvin, Abijah P.
 Mason, Charles
 Merritt, Simeon
 Monroe, James L.
 Moore, James M.
 Morss, Joseph B.
 Morton, Marcus, Jr.
 Morton, William S.
 Nash, Hiram
 Nichols, William
 Nute, Andrew T.
 Orme, Benjamin S.
 Osgood, Charles
 Packer, E. Wing
 Paine, Benjamin
 Paine, Henry
 Parris, Jonathan
 Partridge, John
 Pease, Jeremiah, Jr.
 Penniman, John
 Perkins, Daniel A.
 Perkins, Jesse
 Perkins, Noah C.
 Phelps, Charles
 Pierce, Henry
 Pool, James M.
 Powers, Peter
 Rantoul, Robert
 Rawson, Silas
 Rice, David
 Richards, Luther
 Richardson, Daniel
 Richardson, Nathan
 Richardson, Samuel H.
 Ring, Elkanah, Jr.
 Rogers, John
 Ross, David S.
 Royce, James C.
 Sanderson, Amasa
 Sherrill, John
 Simmons, Perez
 Simonds, John W.
 Sprague, Melzar
 Spooner, Samuel W.
 Stacy, Eben H.
 Stevens, Joseph L., Jr.
 Stevens, William
 Stiles, Gideon
 Strong, Alfred L.
 Sumner, Charles
 Swain, Alanson
 Taft, Arnold
 Thayer, Joseph
 Thayer, Willard, 2d
 Thomas, John W.
 Thompson, Charles
 Tilton, Abraham
 Tilton, Horatio W.
 Underwood, Orison
 Viles, Joel
 Vinton, George A.
 Wallis, Freeland
 Walker, Amasa
 Ward, Andrew H.
 Warner, Samuel, Jr.
 Waters, Asa H.
 Weston, Gershom, B.
 White, George
 Whitney, Daniel S.
 Wilbur, Daniel
 Williams, Henry
 Williams, J. B.
 Wilson, Henry
 Wilson, Willard
 Wood, Charles C.
 Wood, Otis
 Wood, William H.
 Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
 Allen, Charles
 Appleton, William
 Ballard, Alvah
 Bancroft, Alpheus
 Banks, Nath'l P., Jr.
 Barrett, Marcus
 Beach, Erasmus D.
 Beebe, James M.
 Bishop, Henry W.
 Blagden, George W.
 Bliss, William C.
 Booth, William S.
 Brown, Hiram C.
 Bullen, Amos H.
 Butler, Benjamin F.
 Cady, Henry
 Chapin, Henry
 Choate, Rufus
 Churchill, J. McKean
 Cook, Charles E.
 Cross, Joseph W.
 Crowninshield, F. B.
 Cummings, Joseph
 Cushman, Henry W.
 Davis, Isaac
 Davis, John
 Dehon, William
 DeWitt, Alexander
 Doane, James C.
 Duncan, Samuel
 Durgin, John M.
 Eastland, Peter
 Fiske, Emery
 Fitch, Ezekiel W.
 Gooch, Daniel W.
 Greenleaf, Simon
 Hale, Nathan
 Hall, Charles B.
 Heywood, Levi
 Holder, Nathaniel
 Huntington, George H.

Absent and not voting, 84.

So the motion was not agreed to.

The question then recurred on the motion of Mr. Day, of Templeton, that the main question be now put; which was agreed to.

The first question was on the amendment of Mr. Huntington, of Northampton, to add at the close of the resolve, the following:—

But it shall be the duty of the court to superintend the course of the trial, to decide upon the admission or rejection of evidence, upon all questions of law raised during the trial, and upon all collateral and incidental proceedings, and also to allow bills of exceptions; and the court may grant a new trial in cases of conviction.

The amendment was agreed to; and the resolve, as thus amended, was passed.

Amendments of the Constitution.

The resolves on the subject of Amendments of the Constitution were then taken up, and read the second time, as amended; and the question was stated on their final passage.

Mr. MORTON, of Quincy. Mr. President: This subject has been considered by the Convention at length; the resolves have been printed, and put into the hands of every member of this body, so that there has been a full opportunity to examine the whole subject, and I think we are prepared to vote upon it without any farther discussion. I therefore move the previous question.

Mr. LORD, of Salem. I want to know if the previous question was not ordered on this matter last night, on the ground that the question was

not on the final passage of the resolves, and that there was to be another stage; and was it not the express understanding that when they came up on their final passage, there would be an opportunity afforded to discuss them farther? That is the way that I understood it. I do not believe that this Convention is quite ready to put this matter through without another word being said about it. It is a most important proposition, and I desire to have it thoroughly understood before we proceed to vote upon it; and I am not ready to believe that the Convention will order the previous question without allowing an opportunity for farther amendments to be proposed. Mr. President, I move that when the question be taken upon ordering the previous question, it be taken by yeas and nays.

Mr. DANA, for Manchester. The gentleman from Salem is right in his statement.

Mr. MORTON, of Quincy. If the gentleman will allow me, in order to stop discussion, I withdraw the motion for the previous question.

The question then recurred on the final passage of the resolves, as amended.

Mr. JENKINS, of Falmouth. Mr. President: In all future Conventions of the people for the purpose of amending their Constitution, I think it is obviously just and proper that delegates shall be so elected as fully and fairly to represent the will of a majority of the people of the Commonwealth. But, Sir, as I understand it, these resolves do not so provide; and to this I object. For the purpose of remedying what I consider to be a defect, I propose to introduce an amendment to the first resolve. I think it is desirable that in all Conventions the people should be fairly and fully represented; but how is it in this Convention? Here is one of the north-western counties in this Commonwealth, having a population of thirty thousand, and it is represented upon this floor by twenty-six delegates; and here is another county, having a much larger population, or fifty thousand, which has only twenty-three delegates. Is this a fair representation? I ask members of this Convention if they regard this as fair and equal? Now, Sir, these resolves, as they are reported, are designed to perpetuate this inequality; and it is this provision that I wish to strike out. Sir, the gentleman from Boston, upon my left, said, the other day, that the chain was put about our necks but this provision designs to rivet it there. I agree with him in that expression. Sir, if one portion, and one section, of this Commonwealth is to be disfranchised in part, I think that the emblem of industry in this hall should be taken down. I do not wish to have it there as a memorial of oppression; and in the name of that portion of the people whom I have the honor to represent here, I protest against this. The amendment which I propose is this: to strike out the following words, immediately after the word "ensuing," in the first resolve, "Meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives, which the towns and cities shall then be entitled to elect," and to insert in lieu thereof the words: "The qualified voters of each senatorial district in the Commonwealth shall elect, in the same manner as they shall elect senators to the general court, — delegates." I leave the blank for the Convention to fill with such num-

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CONSTITUTIONAL CONVENTIONS, &c. — BRADFORD — BRADBURY — ALVORD.

[July 28th.

ber as they shall think proper; and upon the amendment I ask the yeas and nays.

Mr. BRADFORD, of Essex, moved to amend the amendment, by striking out all after the word "chosen," to the end of the sentence, and inserting, in lieu thereof, the following:—

In the same manner as the senators shall by law be chosen, in the proportion of — to each senator, to be elected by general ticket in each senatorial district, unless before that time the State shall be by law divided into single districts for that purpose, or for the election of representatives; in which case, one delegate shall be chosen for each district thus constituted.

The question being taken on the amendment to the amendment, it was not agreed to.

The question being taken on ordering the yeas and nays on the amendment of Mr. Jenkins, on a division there were—ayes, 72; noes, 158—so the yeas and nays were ordered.

Mr. BRADBURY, of Newton. This is a proposition I did not expect to hear, but it is one I very much like. I think it may reach and remedy the enormous evils which must naturally and inevitably result from the constitution of the House of Representatives, as settled by this Convention.

If the question were simply whether we should now undertake to establish the organic basis for a future Convention, on the principle upon which this body is instituted, I could not give my vote for it, because I should deem it an unjust violation of popular rights. The injustice of such a basis was clearly demonstrated during the discussions of the basis of the House. It was shown that a small minority of the people, as represented in this Convention, had undertaken to establish what shall be the present and prospective constitution of the House of Representatives; but I shall not now go into that question, or comment upon what has been definitely decided by the Convention.

If we are to have another Convention, either in ten, or twenty years, or at any other period, let its constitution rest upon contemporary facts and considerations—let it be based upon the population of the period. I cannot believe that this body fully comprehends the prospective operation of the last modification it gave to the basis of the House of Representatives. That modification was submitted but thirty minutes previous to the final vote, and no adequate examination was, or could be, given to that radical proposition.

Sir, in 1873, by the resolves under consideration, a much smaller minority of the people will be here, constituting a controlling majority of a Convention for modifying your organic law,—a minority smaller than that which all men know—in and out this house—controls the action of this body upon all questions of the *division of power*, and the assignment of representative rights.

But this unjust inequality will be constantly augmenting by the legitimate action of the system attempted to be fastened upon the State. By the estimated census of 1870 it will be enormously increased. It will then be but a small portion of the Commonwealth which will possess a control over its legislation, and that same small portion will, by the resolves under consideration, be invested with a power that can, in a Constitutional Convention, effectually secure that power in its own hands. That small minority can, as it pleases, preserve, for its own advantage, the basis

of representation, or it can surrender its advantages and consent to alter the most vital part of your organic law, as an act of magnanimity. The question submitted in such a case will be this: Will you retain the political power with which you are now constitutionally clothed, or surrender magnanimously what has been wrongfully held, if not improperly acquired?

Sir, if we are to have a Convention in 1870, founded on the basis of the representation that will then exist, it will be utterly impossible, in any degree, to modify the basis of the House of Representatives.

There have been, as gentlemen well know, without reference to particular instances, numerous cases of unequal representation in the political history of the older States of this Union, which have been the result of popular changes and the unequal growth of different sections represented.

I need but advert to a single instance under the Constitution of Virginia. The slave-holding and planting sections of that State controlled the government completely. Less than a third of the free people held a majority of legislative power over the two-thirds, and this minority succeeded, for twenty years, in resisting all attempts at an equalization of representation. But, in 1830, after violent agitation, and an apprehended division of that State, a Convention was obtained. Upon the question of representation, those sections of the State in possession of an undue share of legislative power, clung tenaciously to the retention of the power they had enjoyed, and by an adroitness of management not exceeded by minorities elsewhere, they succeeded, at a late day, in shutting the door to all farther concessions of power to the popular majority. How? By limiting the future distribution of representatives to counties and cities, so as not to disturb certain lines between slavery and freedom. And here we have from gentlemen who detest the motives that guided the minority of that Convention, a carefully prepared plan, having the same object—the establishment of a constitutional guarantee of unjust authority and power against the popular majority.

Sir, there is some extenuation for that community that endures inequalities of representation which have grown up gradually, as the unavoidable result of popular changes, and the varying ratios of increase in its different sections. It is impossible that any advancing community should not change the relations of its different parts, and no honest man will advocate an organic law, destitute of a provision to meet and equalize these relations. All will admit the necessity of some provision of this kind, and no man expects or dares to go before his constituents to defend its omission.

Now if we are to establish a mode of effecting a change of our organic law, let us have reference to the condition of things which may demand it, and not attempt to bind the future action of the people by an iron rule, made for the present condition of things. Let us not attempt to confine the people in their future action upon their organic law, by a rule founded on the present interests, condition, or politics of the State. Let us not say to the future that it shall act only in the manner which we, under existing circumstances, consider it proper to proceed.

Sir, I have not the statistics here, but I am sure

that a much smaller minority will have the power of determining the time and manner in which the Constitution is to be amended again; the power of determining what shall be the basis of the House; and whether, and how long, an increasing majority of the people of the Commonwealth shall submit to a waning minority. There can be little doubt that the number of members of the House of Representatives will, in 1870, be four hundred and forty, exclusive of those from the new towns, which will be created between now and then. And how many such will be incorporated within that period? Why, Sir, we made seven within the last three years, and according to that ratio, it will give us fifty additional by the creation of new towns up to 1873. Then, Sir, we shall have four hundred and ninety representatives, and the majority of the people in that House will have some thirty per cent. less power to rectify that inequality, if this is to be the basis of a Constitutional Convention. I would ask, Sir, what any honest, liberal man, can say against a rule which shall be precisely in proportion to the people as they exist in different parts of the State? Why should you fix a rule that in 1873 will give to about one-fourth of the people of Massachusetts—and I am certain I speak within bounds—the right to elect a majority of a Constitutional Convention which is to have submitted to them the question whether they will retain or surrender that proportion of the law-making power. Sir, it is an enormity that cannot be found in the history of law-making or Constitution-altering in the whole country, enormous as they have been, and condemned as they have been, by every man in Massachusetts who has looked at them. Sir, the Rhode Island revolution proceeded from the same grasping of power.

Our forefathers submitted to a rotten-borough system and its enormities, for a while, but they did not from choice. It grew up with the peculiar institutions under which they lived. And here we are, without any excuse or extenuation, sending out, at the last hour of a protracted Convention, a system of representation which we know will grow more and more unequal every year. And more—and more inexcusable—we now propose, as a *future* remedy for the inequalities we have created, to submit the question of their rectification to the magnanimity of their beneficiaries! If an aggrandized minority choose to grant the principle of equal representation, the people will gain their rights, if not, they must endure them for two more decades for a new chance.

Sir, I wish some gentleman, better posted up in these prospective legislative statistics than I am, had risen to present to the Convention more clearly the inequalities thus produced, and the enormous injustice of submitting the question—whether we shall have the Constitution altered in 1783 to a legislature elected by one-fourth of the people of Massachusetts. Sir, I want the people to settle the question; and I hope that this amendment will be adopted.

Limitation of Debate.

Mr. ALVORD, for Montague. In order to let in a motion for the limitation of debate upon this subject, I move that the Orders of the Day be laid upon the table.

The motion was agreed to.

Mr. ALVORD. I now move that debate cease

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CONSTITUTIONAL CONVENTIONS, &c.—ASPINWALL—GRISWOLD—THOMPSON—LORD.

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upon this subject, and that we proceed to take the vote upon this question at fifteen minutes past one o'clock.

Mr. ASPINWALL, of Brookline. I move that when the question is taken on that motion, it be taken by yeas and nays.

A division was called for on the demand for the yeas and nays, and resulted—54 in the affirmative and 133 in the negative—and, there being more than one-fifth in favor of the yeas and nays, the yeas and nays were ordered.

Orders of the Day.

Mr. ALVORD, for Montague. I move that the Convention now proceed to the consideration of the Orders of the Day.

Mr. GRISWOLD, for Erving. I wish the gentleman for Montague would withdraw that motion for a moment. I wish to make a motion that will occupy no time.

Mr. ALVORD. I withdraw the motion for the Orders of the Day.

Hour of Adjournment.

Mr. GRISWOLD, for Erving. I understand that there are some matters now pending which it is important should be disposed of to-day, so that they may go to the Committee on Enrollment to-night. I therefore move that our session this afternoon may be continued until eight o'clock.

The PRESIDENT. The question pending before the Convention is on the motion limiting debate on the Orders of the Day, which has just been laid on the table, and fixing the time for taking the question at fifteen minutes past one o'clock. The Chair is of opinion that the motion of the gentleman for Erving is not in order at this time. It may be accomplished by moving to lay the question limiting debate upon the table.

Mr. GRISWOLD. Then I make that motion. The question was accordingly laid upon the table.

Mr. GRISWOLD. I now move, that in our afternoon session the Convention shall sit until eight o'clock this evening.

Mr. GARDNER, of Boston. I wish to inquire whether, if this motion is adopted, it will preclude the Convention from adjourning at an earlier hour?

The PRESIDENT. The Convention can adjourn at any time it pleases.

Mr. GARDNER. Then I do not see the object of the motion of the gentleman for Erving.

Mr. GRISWOLD. I think, for the reasons I have stated, it will be necessary for the Convention to sit until that time, and I merely make the motion with the view of giving the members notice, so that gentlemen might not leave us without a quorum.

Mr. THOMPSON, of Charlestown. I very much doubt the expediency of that motion, for I think that long before that period we shall be left without a quorum. We intended last evening to sit somewhat later than usual, but we found that long before seven o'clock there was not a quorum here. It appears to me to be inexpedient to pass such a vote when it has been thoroughly proved that we cannot have a quorum. And I would ask whether it is possible to act here without a quorum? If not, I think we had better wait till the afternoon, and see whether members are here.

The question on the motion to continue the

session until eight o'clock was then taken, and on a division, there were—ayes, 106; noes, 109. So the motion was not agreed to.

Priority of Motions.

Mr. GRISWOLD. I now move to take the motion of the gentleman for Montague from the table.

Mr. LORD, of Salem. I am as desirous of hurrying business as anybody, and am sorry to see these motions made, which merely tend to the consumption of time. I move that we proceed to the consideration of the Orders of the Day.

The PRESIDENT. The Orders of the Day are upon the table.

Mr. LORD. Precisely, Sir; so I understood; and I move to take them up from the table.

The PRESIDENT. The first question in order is the motion of the gentleman for Erving, (Mr. Griswold,) to take from the table the motion of the gentleman for Montague, (Mr. Alvord).

Mr. LORD. I move that the Convention proceed to the consideration of the Orders of the Day, and I make that motion as a privileged motion.

The PRESIDENT. The Orders of the Day are upon the table.

Mr. LORD. I am aware of it, and move to take them up.

Mr. GRISWOLD. I wish to inquire whether the motion which I made has not precedence of the motion of the gentleman from Salem?

The PRESIDENT. The Chair is of opinion, without having time to reflect upon or consider the subject, that the motion to take up the Orders of the Day will have precedence over the motion fixing the time for closing debate.

The question was then taken on the motion to proceed to the consideration of the Orders of the Day, and, a division being demanded, there were—ayes, 87; noes, 126.

So the motion to take up the Orders of the Day, was not agreed to.

Mr. GRISWOLD. I now move to take from the table the motion of the gentleman for Montague.

The motion was agreed to.

The PRESIDENT. The question now recurs on the motion to limit debate on the first question in the Orders of the Day, to fifteen minutes past one o'clock.

Amendments of the Constitution.

Mr. SCHOULER, of Boston. I now move to take the Orders of the Day, from the table.

The question was put, and the motion was agreed to.

The PRESIDENT. The question is upon the amendment of the gentleman from Falmouth, (Mr. Jenkins).

Mr. JENKINS, of Falmouth. I desire to modify my amendment by striking out the last four lines, all after the word "and," and insert the words "the legal voters of each senatorial district shall, by general ticket, in the manner then provided by law for the election of delegates, choose — delegates."

The PRESIDENT. The question is upon the amendment as modified, and upon that the Convention have ordered the yeas and nays.

Mr. SCHOULER. I would inquire if the hour of two o'clock should arrive before the calling of the roll shall be finished, would the Convention be adjourned at that time?

The PRESIDENT. If the Convention come to divide, the rule in relation to the time of adjournment will not interrupt the proceeding.

The question was then taken, and there were—ayes, 90; nays, 161—as follows:—

YEAS.

Aldrich, P. Emory	Hurlburt, Samuel A.
Andrews, Robert	Jackson, Samuel
Atwood, David C.	James, William
Barrows, Joseph	Jenkins, John
Bartlett, Sidney	Kellogg, Giles C.
Bates, Eliakim A.	Kinsman, Henry W.
Bigelow, Jacob	Kuhn, George, H.
Bradbury, Ebenezer	Ladd, John S.
Braman, Milton P.	Lawton, Job G., Jr.
Bronson, Asa	Lincoln, Frederic W., Jr.
Brownell, Frederick	Littlefield, Tristram
Carter, Timothy W.	Livermore, Isaac
Cogswell, Nathaniel	Lord, Otis P.
Coolidge, Henry F.	Lothrop, Samuel K.
Copeland, Benjamin F.	Lowell, John A.
Crosby, Leander	Miller, Seth, Jr.
Crowell, Seth	Morey, George
Curtis, Wilber	Morton, Marcus
Davis, Charles G.	Noyes, Daniel
Davis, Solomon	Oliver, Henry K.
Dawes, Henry L.	Orne, Benjamin S.
Denison, Hiram S.	Park, John G.
Dorman, Moses	Parker, Samuel D.
Eaton, Lilley	Peabody, George
Fiske, Emery	Perkins, Daniel A.
Fowler, Samuel P.	Plunkett, William C.
Frthingham, Rich'd, Jr.	Rantoul, Robert
Gardner, Henry J.	Read, James
Gilbert, Wanton C.	Reed, Sampson
Giles, Joel	Sargent, John
Gould, Robert	Stevens, Charles G.
Gray, John C.	Talbot, Thomas
Hale, Artemas	Thompson, Charles
Hale, Nathan	Tileston, Edmund P.
Haskell, George	Train, Charles R.
Hathaway, Elnathan P.	Upham, Charles W.
Heard, Charles	Upton, George B.
Hersey, Henry	Wales, Bradford L.
Hillard, George S.	Walker, Samuel
Hinsdale, William	Weeks, Cyrus
Hooper, Foster	Wetmore, Thomas
Hopkinson, Thomas	Wheeler, William F.
Hubbard, William J.	Wilkins, John H.
Hunt, William	Williams, Henry
Huntington, Asahel	Wilson, Milo

NAYS.

Abbott, Josiah G.	Crane, George B.
Adams, Shubael P.	Cressy, Oliver S.
Allen, Charles	Cutler, Simeon N.
Allen, James B.	Davis, Isaac
Allen, Joel C.	Dean, Silas
Allen, Parsons	Denton, Augustus
Alvord, D. W.	Dunham, Bradish
Baker, Hillel	Eames, Philip
Ball, George S.	Earle, John M.
Bancroft, Alpheus	Eaton, Calvin D.
Barrett, Marcus	Edwards, Elisha
Bates, Moses, Jr.	Edwards, Samuel
Bennett, William, Jr.	Ely, Joseph M.
Bennett, Zephaniah	Fay, Sullivan
Bigelow, Edward B.	Fellows, James K.
Bird, Francis W.	Fisk, Lyman
Booth, William S.	Foster, Aaron
Boutwell, Sewell	Foster, Abram
Breed, Hiram N.	Freeman, James M.
Brimley, Francis	French, Charles A.
Briggs, George N.	French, Rodney
Brown, Artemas	French, Samuel
Brownell, Joseph	Gale, Luther
Bryant, Patrick	Giles, Charles G.
Cady, Henry	Gooding, Leonard
Case, Isaac	Goulding, Dalton
Chapin, Daniel E.	Graves, John W.
Churchill, J. McKean	Green, Jabez
Clark, Henry	Griswold, Josiah W.
Clark, Ransom	Griswold, Whiting
Clark, Salah	Hallett, B. F.
Clarke, Stillman	Hapgood, Lyman W.

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Hapgood, Seth
 Harmon, Phineas
 Hawkes, Stephen E.
 Hayden, Isaac
 Heath, Ezra, 2d.
 Hewes, James
 Hewes, William H.
 Hobart, Henry
 Hobbs, Edwin
 Hood, George
 Howard, Martin
 Howland, Abraham H.
 Hoyt, Henry K.
 Huntington, Charles P.
 Huntington, George H.
 Hurlbut, Moses C.
 Ide, Abijah M., Jr.
 Jacobs, John
 Kendall, Isaac
 Keyes, Edward L.
 Kimball, Joseph
 Kingman, Joseph
 Knight, Jefferson
 Knowlton, J. S. C.
 Knowlton, William H.
 Knox, Albert
 Ladd, Gardner P.
 Lawrence, Luther
 Leland, Alden
 Lincoln, Abishai
 Loomis, E. Justin
 Merritt, Simeon
 Monroe, James L.
 Moore, James M.
 Morton, Elbridge G.
 Morton, Marcus, Jr.
 Nash, Hiram
 Nayson, Jonathan
 Nichols, William
 Nute, Andrew T.
 Osgood, Charles
 Packer, E. Wing
 Paine, Benjamin
 Parris, Jonathan
 Partridge, John
 Pease, Jeremiah, Jr.
 Penniman, John
 Perkins, Jesse
 Perkins, Noah C.

ABSENT.

Abbott, Alfred A.
 Adams, Benjamin P.
 Alley, John B.
 Allis, Josiah
 Appleton, William
 Aspinwall, William
 Austin, George
 Ayres, Samuel
 Ballard, Alvah
 Banks, Nathaniel P., Jr.
 Bartlett, Russel
 Beach, Erasmus D.
 Beal, John
 Beebe, James M.
 Bell, Luther V.
 Bishop, Henry W.
 Blagden, George W.
 Bliss, Cad O.
 Bliss, William C.
 Boutwell, Geo. S.
 Bradford, William J. A.
 Brewster, Osmy
 Brown, Adolphus F.
 Brown, Alpheus R.
 Brown, Hammond
 Brown, Hiram C.
 Buck, Asahel
 Bullock, Rufus
 Bullen, Amos H.
 Bumpus, Cephas C.
 Burlingame, Anson
 Butler, Benjamin F.
 Caruthers, William
 Chandler, Amariah
 Chapin, Chester W.

Phelps, Charles
 Pierce, Henry
 Pomroy, Jeremiah
 Pool, James M.
 Rawson, Silas
 Rice, David
 Richards, Luther
 Richardson, Daniel
 Richardson, Nathan
 Richardson, Samuel H.
 Ring, Elkanah, Jr.
 Rockwood, Joseph M.
 Rogers, John
 Ross, David S.
 Royce, James C.
 Sanderson, Amasa
 Sherril, John
 Simonds, John W.
 Smith, Matthew
 Spooner, Samuel W.
 Stacy, Eben H.
 Stevens, William
 Stiles, Gideon
 Taft, Arnold
 Thayer, Willard, 2d
 Thomas, John W.
 Tilton, Abraham
 Tilton, Horatio W.
 Turner, David
 Turner, David P.
 Viles, Joel
 Vinton, George A.
 Wallace, Frederick T.
 Wallis, Freeland
 Ward, Andrew H.
 Warner, Samuel, Jr.
 White, Benjamin
 White, George
 Whitney, Daniel S.
 Whitney, James S.
 Wilson, Henry
 Wilson, Willard
 Winslow, Levi M.
 Wood, Charles C.
 Wood, Otis
 Wood, William H.
 Woods, Josiah B.
 Wright, Ezekiel

French, Charles H.
 Gardner, Johnson
 Gates, Elbridge
 Gilbert, Washington
 Gooch, Daniel W.
 Goulding, Jason
 Greene, William B.
 Greenleaf, Simon
 Hadley, Samuel P.
 Hall, Charles B.
 Hammond, A. B.
 Haskins, William
 Hayward, George
 Hazewell, Charles C.
 Henry, Samuel
 Heywood, Levi
 Hobart, Aaron
 Holder, Nathaniel
 Houghton, Samuel
 Hunt, Charles E.
 Hyde, Benjamin D.
 Jenks, Samuel H.
 Johnson, John
 Kellogg, Martin R.
 Knight, Hiram
 Knight, Joseph
 Knowlton, Charles L.
 Langdon, Wilber C.
 Little, Otis
 Loud, Samuel P.
 Marble, William P.
 Marcy, Laban
 Marvin, Abijah P.
 Marvin, Theophilus R.
 Mason, Charles
 Meader, Reuben
 Mixer, Samuel
 Morss, Joseph B.
 Morton, William S.
 Newman, Charles
 Norton, Alfred
 Ober, Joseph E.
 Orcutt, Nathan
 Paige, James W.
 Paine, Henry
 Parker, Adolphus G.
 Parker, Joel
 Parsons, Samuel C.
 Parsons, Thomas A.

Payson, Thomas E.
 Peabody, Nathaniel
 Perkins, Jonathan C.
 Phinney, Silvanus B.
 Powers, Peter
 Preston, Jonathan
 Prince, F. O.
 Putnam, George
 Putnam, John A.
 Rockwell, Julius
 Sampson, George R.
 Sanderson, Chester
 Schouler, William
 Sheldon, Luther
 Sherman, Charles
 Sikes, Chester
 Simmons, Perez
 Sleeper, John S.
 Souther, John
 Sprague, Melzar
 Stetson, Caleb
 Stevens, Granville
 Stevens, Joseph L., Jr.
 Stevenson, J. Thomas
 Storrow, Charles S.
 Strong, Alfred L.
 Stutson, William
 Sumner, Increase
 Swain, Alanson
 Taber, Isaac C.
 Taylor, Ralph
 Thayer, Joseph
 Tower, Ephraim
 Tyler, John S.
 Tyler, William
 Underwood, Orison
 Walcott, Samuel B.
 Walker, Amasa
 Warner, Marshal
 Waters, Asa H.
 Weston, Gershom B.
 Wilbur, Daniel
 Wilbur, Joseph
 Wilder, Joel
 Wilkinson, Ezra
 Williams, J. B.
 Winn, Jonathan B.
 Wood, Nathaniel

Absent and not voting, 168.

So the amendment was rejected.

The hour of two o'clock having arrived, the Convention then adjourned.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

On motion of Mr. HOLDER, of Lynn, the consideration of the Orders of the Day, being the resolves in relation to Conventions to Revise the Constitution, was resumed.

Mr. HOOPER, of Fall River. We have directed the census to be taken in 1855, and every ten years thereafter; consequently, it will be taken in 1865 and in 1875; so that, if this provision is adopted, the Convention will be held the year before the census will be taken. For this reason I move that the figures "1873" be stricken out, and "1875" inserted, in the following part of the first resolve:—

A Convention to revise or amend this Constitution, may be called and held in the following manner: At the general election in the year 1873, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question, "Shall there be a Convention to revise the Constitution?"

Mr. ASPINWALL, from Brookline. I suggest to the gentleman, that the census will be

taken in May, 1875, and it will be impossible to apportion the representation before the time provided for holding the Convention, and therefore, the delegates to the Convention of 1875 cannot be elected on the basis of the representation of 1875. It seems to me that the year should be changed, if changed at all, to 1876, if the intention is that the Convention shall be regulated by the basis of representation of 1875.

Mr. HOOPER. I accept the suggestion, and modify my motion accordingly.

The question was then taken upon the motion of Mr. Hooper, and there were, upon a division—ayes, 54; noes, 80.

So the amendment was rejected.

Mr. LORD, of Salem. I would inquire if there is any amendment pending?

The PRESIDENT. There is not.

Mr. LORD. I move, then, to insert after the word "affirmative," in the first resolve, in the thirteenth line, the words, "and if the number of affirmative votes shall be at least in number two-fifths of the whole number of votes cast for governor at such election," so that that portion of the resolve shall read:—

Which votes shall be received, counted, recorded and declared, in the same manner as in the election of Governor; and a copy of the record thereof, shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same, and shall publish, in the newspapers in which the laws are then published, the number of yeas and nays given upon said question, in each town and city, and if a majority of said votes shall be in the affirmative, and if the number of affirmative votes shall be at least in number two-fifths of the whole number of votes cast for Governor at such election, it shall be deemed and taken to be the will of the people that a Convention should meet accordingly.

I do not propose to make any extended remarks at this stage of the proceeding. I proposed an amendment yesterday afternoon, which received no attention whatever.

The PRESIDENT. The Chair would remind the gentleman, that the Convention have ordered that no debate should be had after a certain hour, which hour is already passed.

Mr. LORD. That being so, I move the yeas and nays upon the amendment.

The House was divided upon ordering the yeas and nays, and there were, upon a division—ayes, 18; noes, 153.

So the yeas and nays were refused.

The question then recurring upon the amendment offered by Mr. Lord, it was put, and there were, upon a division—ayes, 30; noes, 136.

So the amendment was rejected.

Mr. ALVORD, for Montague. I move to amend the resolves by striking out the last one, which is as follows:—

3. *Resolved*, The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

Mr. SIMMONS called for the yeas and nays upon the motion, but they were not ordered, twenty members only voting in favor thereof.

The question was then taken upon the amend-

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ment, and there were, upon a division—ayes, 25 ; noes, 143.

So the amendment was rejected.

Mr. WILSON, of Natick. I now move to strike out the words "and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority," in the following third resolve :—

3. *Resolved*, The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

The PRESIDENT. The amendment is not in order, because the Convention have decided that the resolve shall stand as it is.

Mr. GILES. Is it in order to move to strike out and insert?

The PRESIDENT. It is.

Mr. GILES. I then move to strike out the same words moved to be struck out by the gentleman from Natick, (Mr. Wilson,) and to insert in lieu thereof the words "according to their will legally expressed."

The question was taken, and the amendment was rejected.

Mr. LORD. I move to amend the first resolve at the same place where I moved to amend it before, by inserting the words "and if the number of affirmative votes shall be at least, in number, one-third of the whole number of votes cast for governor, at such election."

The PRESIDENT. The Chair is of opinion that the amendment is substantially the same as the one before offered by the gentleman, but the Chair will put it to the Convention.

Mr. LORD. I demand the yeas and nays upon it.

The yeas and nays were not ordered.

The question was then taken, and the amendment was not agreed to.

The question then recurring upon the final passage of the resolves,

Mr. GILES, of Boston, asked for a division of the resolves, so that the question should be taken on the last resolve by itself.

The question was then taken upon the final passage of the first and second resolves, and it was decided in the affirmative.

The question was then taken upon the third resolve, and there were upon a division—ayes, 142 ; noes, 64.

So the resolves were passed.

Mr. SCHOULER. I now move to reconsider the vote by which the last resolve was passed, and I do it not for the purpose of consuming the time of the Convention, for I am as anxious as any one to finish our labors. But I do not believe that this Convention would pass the third resolve, if they wholly understood it. Nearly the whole debate has been upon the mode of choosing delegates, and this third resolve has not been considered at all. I think if gentlemen will look at it, they will see that it is nothing more or less than legalizing anarchy.

Mr. STETSON, of Braintree. I rise to a question of order. I desire that the motion to reconsider be placed upon the Orders of the Day for to-morrow, under the rule.

Mr. SCHOULER. Then I move to suspend

the rule, in order that the motion may be taken up and considered at this time.

The question was taken, and the motion was agreed to.

Mr. SCHOULER. Now, Mr. President, I ask the attention of the Convention to this third resolve. I should like to have some gentleman who advocates it, explain what it means. If it means anything, it means nothing but anarchy. Without any form of law, any number of men in this Commonwealth may call a Convention to amend the Constitution. What does it say? It is this :—

The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

What does that mean? Are the people in their sovereign capacity to make any kind of change outside of the legislature, and without its being done by legislative rules? Are we to have a form of law in calling a Convention, or shall an unauthorized mass of people call a Convention? If the gentlemen who advocate the resolve can explain what it means, will they tell us what that meaning is. I know a majority of this Convention will go for no such thing, if they understand it. If there is to be a Convention, it should be under legal forms, there must be a vote, and that vote should be legally given, and legally returned, and these can only be had under law. Now, I want to know if this resolve does not mean something else? Perhaps gentlemen who are anxious about this matter, can tell what it means.

Mr. LORD, of Salem. Before the gentleman for Wilbraham answers the questions, I desire to know if the gentleman for Wilbraham should draw up a subscription paper to this effect: "We hereby agree that the Bill of Rights be stricken from the Constitution," and should get the signatures of a majority of the people of the Commonwealth, whether that would not alter the Constitution, for the Bill of Rights is a part of the Constitution. The resolve says :—

The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

If it means anything, it means that if I should get the subscription of a majority of the people of the Commonwealth to such a paper, that would alter the Constitution. I desire that gentlemen who voted this thing through with a rush, without giving us the yeas and nays, should hear my protest against altering the Constitution by a subscription paper. If that resolve does not mean that, it is meaningless. Anything which shall get the full opinion of the people, will alter the Constitution. Now, Sir, I am not going to ask the yeas and nays upon this proposition, because the Convention have made up their minds not to do anything of that kind, if I may judge from the vote just passed.

But I desire that it shall not pass without my protest. If the Convention would only allow me to record my vote upon a question so important

as this, I should not trouble them with these remarks; but, upon a question which legalizes anarchy and confusion, if I cannot be permitted to record my vote, I may be permitted to protest against it.

Mr. WHITNEY, of Conway. I hope the motion to reconsider the vote by which the Convention adopted the resolution, will prevail, but not for the reason given by the gentleman from Salem, (Mr. Lord). Sir, if this resolution has any effect at all, its effect will be as the gentleman from Boston, (Mr. Schouler,) has said, to introduce anarchy and misunderstanding of what is the proper mode of proceeding when the people desire to revise the Constitution. What does the resolution provide for?

Resolved, The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity.

Now, I take it, that if the people have "reserved rights," they cannot be interfered with if the resolution should be rejected, for those rights are not only reserved, but it is declared elsewhere in the Constitution, that rights not granted are "reserved rights." I think they are more fully provided for; and, therefore, this resolve so far is worthless, and will have no effect at all. But the resolve goes on :—

And by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

Now, Sir, we have provided in a preceding resolve, for calling a Convention to revise the Constitution. We have provided that the people shall vote upon the question for calling a Convention at certain specified times, and at any other time when the legislature shall see fit to submit the question to the people. So that we have provided already, that every twenty years, and as much oftener as the legislature think proper to submit the question, a legitimate mode for the people to "reform, alter, or totally change that Constitution and Frame of Government," as they may choose, shall be had. And now, I ask, what do you want more? Why indicate that these are not the proper modes of accomplishing that result? As the gentleman from Salem said, by this resolution the people may alter and reform the Constitution by circulating a subscription paper, or in any other way. Sir, it does seem to me that this resolve is only calculated to lead to misunderstanding among the people as to the proper mode of revising the Constitution.

I agree that the major will of the people have the right "to alter, reform, or totally change their Constitution and Frame of Government" at any time. I go as far as the gentleman for Wilbraham in support of that doctrine; but, I wish to provide some definite and proper method by which the will of the people shall be expressed and ascertained, and that we have provided in the preceding resolves. Now, I repeat that this resolution is either worthless, or else it means to legalize undefined action. Why, Sir, what, I ask again, is there in the foregoing resolutions, that is calculated to "impair the reserved rights of the people in their sovereign capacity?" I can see nothing that takes away these rights. I hope the

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motion to reconsider will prevail, and that the resolve will be stricken out.

Mr. HOOPER, of Fall River. I hope this resolve will be retained, as it seems to me there are sufficient reasons why it should be. The first two resolves are framed to provide for calling a Convention upon the basis of the House of Representatives, as agreed to in this Convention. Now, Sir, no man can say, at this day, what will be the practical operation of that basis in future. It may be, that under the system we have adopted, within twenty years from this time, a majority of the House of Representatives can be elected by one-fifth, or even one-eighth of the people. I believe it may so work, and if it does, and a Convention is called on the basis of the House, as these resolves provide, one-fifth or one-eighth of the people will elect a majority of that Convention. Now, Sir, did you ever know any man, or set of men, voluntarily to give up political power? Suppose a Convention should be called upon such a basis—do you suppose the majority of that Convention, representing one-fifth or less of the people of the Commonwealth, would adopt measures that would allow the whole people to be equally represented? No, Sir; it would be in Massachusetts, as it was in Rhode Island, several years ago, when the agitation commenced there. One-fifth of the people there elected the legislature, and whenever a Constitutional Convention was called, it was always upon the same basis as the representative body that called it, to reform the Charter and establish the Constitution. But, Sir, the minority held the power, and they never gave it up till compelled, which they were in part, by the Dorr Rebellion.

Now, Sir, we may be under the necessity, at some future time, of calling a Convention outside of the government; and there is something here upon which we could found such a proceeding, should it ever be found necessary for the purpose of equalizing representation. I, for one, hold the doctrine declared in that resolution as a sound one. It is the doctrine by which, in 1842, we carried the State of Massachusetts; and it is one I am unwilling to give up at this time. I hope, therefore, that this vote will not be reconsidered, but that this resolve will be permitted to stand as it was passed, and that the rights of the people will be declared to be beyond the power of the legislature, or any other power, to overthrow them.

Mr. STEVENSON, of Boston. I have no intention of occupying the time of the Convention for a single moment. I rise simply for the purpose of making an inquiry. This resolve, which it is proposed, and which the Convention have once voted to put into the Constitution, makes a requirement concerning alterations to the Constitution. Now, I desire to ask the gentleman who proposed the resolve, who are to be the judges of whether that requirement has been complied with; who is to judge whether the "will of the people" has been fairly collected? It seems to me we have made a requirement, and put it into the Constitution, without any conceivable tribunal to determine whether that requirement has been properly complied with. I hope, therefore, for that simple reason, if for no other, that this vote will be reconsidered, and that this resolve will be stricken out.

Mr. MILLER, of Wareham. I suppose there is no member of this Convention who is more willing

that those who come after us shall have full power to alter and revise this Constitution, whenever it shall be the wish of a majority of the people so to do, than I am. I also believe, that there is not a man in this Commonwealth—no sober, wise, and discerning man—who would desire, for a moment, to put any provision into the Constitution which may hereafter be so construed as to have a tendency, in any manner, to produce collision, war, and bloodshed. I believe there is not a man in the Convention who would be willing to put anything in the Constitution which could possibly lead to such a result; but that it is the wish of all, that hereafter, we may have peace and quietness in all our borders.

Now, I ask, if, aside from this resolution, we have made all the provision that any reasonable man could require, for the alteration of the Constitution at any future period of time? In the first place, we have provided, that once in twenty years, the people of the Commonwealth shall vote upon the question, whether they will have a Convention to revise the Constitution, or not. That is one mode. Again, you require, by a second section, that whenever one-third of the voters in the various cities and towns of the Commonwealth declare their wish to call a Convention, it shall be the duty of the legislature to call a Convention. And again, in the same section, it is provided that the legislature may, at any time they may think proper, submit the question to the people. Now, it seems to me, that this is making all the provision that it is desirable to make, for this purpose. All any man wants is a guarantee to those who come after us, that they shall have control of the matter, and that is provided in the previous resolves. I submit, that this third resolve can produce no good result that will not be produced without it, and that it may, if adopted, lead to the most disastrous consequences. I shall, therefore, vote against it, when the question comes up; and I hope every member of the Convention will do the same. Let me call the attention of the Convention to the phraseology:—

3. *Resolved*, The foregoing provisions shall in no wise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

Now, suppose some distinguished man in the city of Boston should write to the selectmen of every town in the Commonwealth, to take the vote of the people upon the question of calling a Convention, and suppose one-fourth of the people of the State should, in that manner, express their opinions in favor of calling a Convention—if there was a majority of all the votes given, it might be considered as the will of the people, fairly collected, and they might go on and form a Constitution; and we might thus have two governments going on at the same time. It might lead to civil war and bloodshed. I hope we shall not have any such provision put into the Constitution.

Mr. GILES, of Boston. I wish to state one or two reasons why I want this vote reconsidered for the purpose of amending the resolution. My friend for Wilbraham, (Mr. Hallett,) knows that I go with him in the object he seeks to accomplish; but my objection to this third resolution

is, that it is a limitation upon the Bill of Rights as it now stands. So far as it can have any legal or constitutional effect, it is to restrict the rights of the people as they are now secured to them. It is impossible to declare the absolute and inalienable right of the people to reform, alter, and amend their Constitution in stronger language than is used in the Bill of Rights, as it now stands, to wit:—

"Therefore, the people alone have an incontestible, unalienable, and inalienable right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it."

Now, when it comes to that pass, and the people undertake to exercise that right, I do not wish to impose upon them any restriction. I will allow them to exercise it in any manner they may see fit; and posterity will judge for themselves what that manner shall be when the emergency shall arise. When it shall become necessary to assert that right outside of the Constitution, the people will exercise it according to their sovereign will; and I do not wish to restrain them by saying that they must do it by such mode of proceeding as shall fairly collect the will of the majority. I will leave that right to their sovereign pleasure.

Another objection is this: By this resolution you will place the people of the Commonwealth, if they should ever have occasion to exercise this right, in a position of hostility against their own government. You will have a Constitution *felo de se*, and may set the people to cutting their own throats by law and Constitution.

These are my objections. I do not wish to take up the time of the Convention by elaborating them.

Mr. WILSON, of Natick. Mr. President: I hope the motion made by the delegate from Boston, (Mr. Schouler,) will prevail—that this resolution will be reconsidered, and either amended or stricken out altogether. By the provisions of the 7th article of the Bill of Rights, "the people alone have an incontestible, unalienable, and inalienable right to institute government, and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it."

That is an unlimited and unqualified admission of the right of the people, to alter, or amend, or abolish altogether their government whenever they shall see fit. There is no qualification or limitation whatever of this right, and they are the sole judges of the whole question—of the time and mode. Now, by the provisions of this resolution, we repeat this doctrine, but we repeat it with limitations and restrictions. Sir, I am opposed to putting qualifications or restrictions upon the sovereign rights of the people of this Commonwealth or of this country, to change, or modify, or alter, or abolish their government whenever they may see fit to do so—whenever they believe their happiness will be promoted by so doing.

I therefore hope this third resolution will be reconsidered, and either stricken out altogether, or amended by striking out all after the word "capacity," down to the words "at all times," so that the resolution would read:—

Resolved, That the foregoing provisions shall in no wise restrain or impair the reserved right of the people, in their sovereign capacity, at all times

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to reform, alter, or totally change their Constitution and Frame of Government.

This is the achieved American doctrine.

It will then be but a repetition of the declarations laid down in the 7th article of the Bill of Rights. But I am opposed to putting anything into this Constitution that shall limit or restrict the people in the exercise of their sovereign rights and powers. I hope that amendment will be made, or that the section will be stricken out altogether, and that this Convention will not put into the Constitution any provision that shall limit the rights of the people, declared in the 7th article of the Bill of Rights, which was placed there by the men of 1780, who laid the foundations of our Constitution upon the eternal doctrine of the unlimited sovereignty of the people and the equal rights of man.

Mr. HALLETT, for Wilbraham. I certainly have no desire to limit the power of the people. I never heard that accusation brought against me before, in my life. The trouble generally is with those who differ from me on the principles of government, that I want too little governing power, and too much liberty for the people. Sir, I am not alarmed about the probable fate of this resolution. The great principle of success in life, is the calm perseverance of moral courage. When you have fixed upon a sound principle, be not pertinacious, nor dogmatical, but patiently persevere, and you must carry it through. If you cannot do it to-day, wait until you can carry it; to-morrow, or next year, or, if need be, the next generation. Now here is a sound principle. If we cannot secure the adoption of this principle now, it will grow, and there will be those who will try it again, twenty years hence, in another Convention. That is my position in relation to all the great principles of government which I have endeavored to maintain here. If gentlemen vote them down, I am not voted down; it is the principle which the Convention has voted down. I am nothing to this principle, nor do I consider myself in any personal manner identified with its success. But, Sir, if this principle does not prevail now, I am satisfied it will prevail at some future time. What is it? The gentleman from Natick misunderstands it. He says, the Bill of Rights declares that the people have at all times the right to alter, amend, or totally abolish their frame of government. That is all very well said, but when you come to the point, how is it to be done? The answer, and the only answer is, either by the bayonet, or by the will of the majority. Now, how will the gentleman get at the will of the people in spite of the bayonets? I hold to the right of revolution by the bayonet; but I hold to the right of peaceful revolution also, by the ballot-box. And how are you to accomplish a peaceful revolution? Why, by fairly and fully collecting the will of the majority of the people. That every-body pretends to believe in, but when you undertake to collect the will of the people, where there is not an express law for it, then comes the bayonet. Sir, I maintain that the people of this Commonwealth, have the right peacefully to assemble and express their wishes in relation to any change they may desire in their government, and that the will of the majority in making organic laws, is the will of the people. But, if the legislature, or the government, will not let the people express their will peacefully, but declares

martial law, and pronounces the people's assemblies riotous; of what practical use is that declaration in the Bill of Rights?

What is the gentleman going to do with the people's right to make a Constitution? We are all for the people's rights on paper; but when it comes to the action of this sovereign people without the consent of their servants, the legislature, what will the people's rights do for us when they are like a flock of sheep, with an army sent after them from Washington to put down domestic violence proclaimed by your governor? I wish to carry out in this new Constitution, the principle of Mr. Buchanan, laid down in the Michigan case, in 1836; and that is a sufficient answer to the gentleman from Salem. This is what Mr. Buchanan says, touching this very question of the people having a right of revolution without being obliged always to fight for it.

"Is it the position, that if in any one of the States of this Union, the government be so organized as utterly to destroy the right of equal representation, there is no mode of redress but by an act of the legislature authorizing a Convention, or by open rebellion? Must the people step at once from oppression to open war? Absolute submission or absolute revolution? *Is there no middle course?* This is found only in the principle established by the whole history of American government, that the people are sovereign, and that a majority of them can alter or change their fundamental laws at pleasure. This is neither rebellion, nor revolution. It is an essential, recognized principle in all our forms of government."

That is the doctrine of James Buchanan, a man who knows something about the government of this country. And this I hold is the true doctrine of American liberties. I deny, emphatically, that in changes of government, the people of the States, in this Union, hold the "sacred right of revolution," subject to be hanged for treason if they fail? This is the right of serfs and slaves. American citizens claim a higher right, unalienable and practical as a great political right. Not a mere physical right of revolution by force, which, whenever resorted to must be at the risk of all the penalties attached to an unsuccessful resistance to established authority.

For, if the people of a State are practically denied a change by revolution, and can get no change without the previous consent of the legislature, the legislature and not the people are sovereign in government; and in practice, whatever may be our theory, we are not a free people.

Hence, if you would have a popular sovereignty, that can act without a conflict of blood with the government, you must take care to provide for it in the organic law, so that the legislature cannot make it treason, or the executive call in the military power of the United States to put it down as a case of domestic violence.

Now, what do we propose in this amendment? Merely to provide that the people may lawfully do what the supreme court of the United States, in the Rhode Island causes, were obliged to admit, that if, in any Constitution or law of that State it had been provided the people might do, would have established a popular government in Rhode Island. They decided that there must be recognized as lawful in the people, some form of proceedings by which they could fairly and fully collect the will of the majority. And because there was no such form recognized in Rhode

Island, the courts of that State pronounced the choice of delegates, the holding of a Convention, and all the meetings—the primary and town meetings—lawless assemblies; and the supreme court of the United States followed the decision of the State court. That is, the decision which renders the Bill of Rights a mere rhetorical flourish. I want a shield in the Constitution to cover the rights of the people against any such legal construction to render those rights inoperative. You say that, by the Bill of Rights, the people have a right to meet and petition, or vote a Convention; but what if the courts pronounce that a seditious meeting, because there is no law for it! you have no appeal but to arms. But if you declare in the Constitution that the meetings of the people shall be lawful, and may be held in such a mode as will fully ascertain the will of the majority, then if the people meet in town meetings, and endeavor peaceably to ascertain the will of the majority, the government cannot send an army to shoot them down, or read the riot act to disperse them; and the courts of the country must put a construction upon such a constitutional provision that will enable the people to ascertain what is their will, and whether a majority are in favor of holding a Convention, or changing their form of government. That would, doubtless, be an extreme case, but that is the right of the majority, or the majority has no right to make or change government.

Now these three resolutions render the whole system perfect; and if gentlemen will only adhere to them as they have adhered to them before, in their votes, I am sure we shall go out from this Convention with a more honorable and effective declaration as to the rights of the people in government, than was ever before laid down. First, we have proposed a mode for revising the Constitution periodically, every twenty years, without asking the legislature beforehand to do anything. We have a second resolution, which authorizes one-third of the voters of the Commonwealth to make a proposition requiring the legislature to put the question to the people on calling a Convention; or the legislature may put out a proposition, at any time they see fit, for calling a Convention. And lastly, comes behind that, the great reserved sovereignty of the people; and we simply say, in that declaration, that when the people assemble together for the purpose of collecting and executing their will, they shall not be pronounced rebels, but shall be recognized by the constituted authorities. Adhere to these provisions, and you will ingraft a great American principle upon the Constitution, and other popular governments will hereafter follow your example, until revolution will mean something more than bayonets and bloodshed.

Mr. SCHOULER, of Boston. If the Convention understand the definition given to these resolutions by the gentleman from Wilbraham, and the gentleman from Fall River, I think they will agree with the gentleman from Natick, that this motion of mine ought to prevail. There will be nothing but anarchy and revolution in the Commonwealth, if the resolutions are adopted, according to the argument of both the gentlemen, (Messrs. Hallett and Hooper). These gentlemen want something outside of the Constitution; and when you go outside of the Constitution, you go to anarchy. If the advocates of the higher law like that, I am not one who does. I know no

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right, not given by the statute and common law of the country; and if they are going to put these resolutions into the Constitution, so as to make anarchy whenever a portion of the people wish to call a Convention, I want the sober sense of this Convention to understand it, and let them see whether they will vote for it or not. I do not want to legalize a Dorr Rebellion, in the Constitution of Massachusetts; and that seems to be the object of the gentleman for Wilbraham, in a number of motions which he has made. I do not know what he said at that time, but I do say that, so long as we live in a State where we have a Constitution and laws, I am ready to stand by them. I know no way in which we can call a Convention; I know no way in which we can have a liberty worth preserving that is not a liberty founded upon constitutional law and other laws. I do not deny the right of revolution; but there is no use in putting that into the Constitution of the Commonwealth, any more than there is to put in the right to knock another man down, when he comes up to insult you. That is a revolution on a small scale; it is taking the law into our own hands. But we are here forming a Constitution, making a bundle of laws, and laying down principles, and I want nothing revolutionary in it. The gentleman asks if a number of men meet together for the purpose of calling a Convention without any law, whether we shall have to bring out our bayonets to put them down? I believe that if we put nothing of that sort into the Constitution, there are no men in the State so foolish as to attempt it; and yet the gentleman who thinks that such a principle as that is such a wondrous stretch of power, if a poor fugitive slave should come to Boston, would think we had a revolution, and we might hear of troops coming from Washington to Boston, to put it down by martial law, as we did hear about it a few years ago.

I say these resolutions are not required in the Constitution, that they will produce nothing but anarchy, if carried out; and that seventh resolution, of which my friend from Boston speaks, I do not understand as he does. I say that every article in the Bill of Rights, and in the Constitution, is intended to be carried out legally. The framers of the Constitution of 1780 never meant that there should be any such assemblies, not recognized by law, to overturn the State. The people have the power, I admit; but when they express their voice and will, it is to be done through legal means and legal forms of changing the Constitution, and, unless it is done so, it is only a mob which acts, and I do not believe the framers of our government ever meant that mob law should rule in Massachusetts.

I acknowledge the right of revolution, but that is not what is attempted; the attempt is to ingraft into the Constitution a provision by which every act of the government can be overturned by an unauthorized body, acting without law. I say the minority have rights which are secured by the Constitution and law, and if it was not for preserving the rights of minorities, there would be no necessity for any Constitution or any law. And we ought to guard, and we do guard, the rights of minorities; and, in making constitutional law we should preserve ourselves from the reproach of instituting any mode by which our government can be changed or overturned by a number of men collecting on Boston Common, or

on Sudbury Meadows, or anywhere else, and saying they are the people, and the Constitution must be overturned. I know of no such right; and I say, that if this is put into the Constitution, it will not be worth having, and it ought to be kicked and spurned by the people of Massachusetts, instead of being adopted by them.

Mr. ALLEN, of Worcester. If the Convention is not too tired of this debate to listen farther, I will make a remark or two on the subject. The condition of Massachusetts and of Rhode Island a few years since, are very unlike. The people of Rhode Island, I understand, wanted to frame a constitutional government. There was no provision, by any fundamental law, by which a Convention could be called. The legislature refused to present the question to the people. They had no remedy, except to resort to irregular modes, to express their opinion in favor of a Convention and a Constitution. Therefore they proceeded in the way and manner which was left to them, and acted and voted upon the subject. Whether that was the wisest course or not I will not now undertake to say, or to give any opinion with regard to the proceedings of that day in Rhode Island, except this: that they were under restraints which, I think, were of an unreasonable character; that the government having delayed too long, by far, to call a Convention, or submit the question of calling one to the people, drove the people to seek by other and irregular modes a way of carrying out their intentions.

But that is not the condition of things, and has not been our condition, in Massachusetts. We declare, in the Bill of Rights, the principle that the people have a right at all times to change their government. We provide a way by which amendments may be made by successive legislatures submitting amendments to the people. Then we provide for a revision of the Constitution, on the question whether the Constitution shall be submitted to the people once in twenty years. That must be done absolutely. Farther than that, we provide that upon application of a small portion of the people to the legislature, it shall be the duty of the legislature to submit the whole question to the people at any time, either in one, five, ten, or twenty years. We have provided, in this way, in the most ample manner, without the adoption of these resolutions, for amendments to be made to the Constitution whenever the people shall desire it; not in one way or manner, but in several.

Having done that, it seems to me to be unnecessary to go farther, and unwise to say that the people, or any part of the people, may depart from the modes prescribed in the Constitution, and by any irregular action, altogether unnecessary, determine that we shall have a new Constitution, or shall have a Convention for the purpose of revising the existing one. Sir, the reasons which might render such action proper in Rhode Island, would render it altogether indiscreet and unwise, and, I apprehend, wrong, in Massachusetts. Suppose this Constitution could be adopted, and the people of Massachusetts, or any portion of the people, in the western part of the State for instance, should desire a revision of the Constitution; what course would I recommend them to take? Would I recommend to them to hold caucuses in some portion of the interior of the State, and request, through that caucus, that the selectmen, without the authority of law, would

convene the people of their several towns, and in that way obtain the opinion of the people in respect to the proposed revision of the Constitution, leaving it, of course, to the selectmen of the several towns to call or withhold the meeting at pleasure; so that in some portions meetings would be held, in others not; in some towns in one manner, and in others in an entirely different manner? The result would be confusion inextricable. The true sense of the people might not be known in regard to the matter. But let them take either of the means pointed out in the Constitution, let them pass a law, such as the Constitution directs for calling a Convention, and then the whole subject will be fairly before the whole people of the Commonwealth, and, through the forms of law, and through the constituted officers of the people, their sense is taken, not of one section only, but every part of the State, with regard to a change of the Constitution or a Convention for its revision.

It seems to me that the insertion of a general provision, like that contained in the third section, which may enable portions of the people to set aside the regular and orderly mode of ascertaining public sentiment, pointed out in the Constitution, and to resort to some other mode not contained in the Constitution, and undefined, would, so far from propogating the rights of the people, tend to bring those rights into great jeopardy; for the result would be, that it would be contended that the people were desirous of an amended Constitution, founded upon the action of this portion of the State and another portion of the State, and still founded upon the irregular returns of irregular meetings; and the result might be, that great injustice and evil might be done; that a false idea might be presented on the issue, and a Convention might be called, or rejected, through an entire misapprehension of public sentiment.

Sir, if there is any act to be done by the people of the Commonwealth, peculiarly solemn in its character, it is that of a revision of their fundamental law. Let it be done, then, by all means, in a regular and orderly manner; let there be no let nor hindrance to the people, and yet let the mode be through the forms of law, through the agency of constituted and sworn officers of the people, so that the true sense of the people may be ascertained, and that the act which purports to be theirs may be in conformity with their deliberate and solemnly expressed will, through regular channels and constituted organs.

Sir, if we are obliged to resort to irregular modes to obtain redress of grievances, or ascertain the will of the people as to the necessity of a change of the Constitution, then, I say, resort to it, even to revolution; but while no such necessity exists, and while the way is open, I would no more say that the Constitution should be revised, except in certain modes pointed out by the Constitution, than I would say that your selectmen, or your representatives, might be elected either according to the mode indicated by the Constitution, or by any other manner which the people may designate.

Sir, I hope the Constitution, being entirely sufficient to protect the rights of the people, we shall not jeopard those rights by attempting an unnecessary act, by inserting in the Constitution a provision which leads, it seems to me, to anarchy and to the practice of fraud with regard to the sentiments of the people, while it will in no way promote their honest will.

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Mr. KINGMAN moved the previous question, which was seconded, and the main question was ordered to be now put.

The question being then taken on the motion to reconsider, on a division, there were—ayes, 195; noes, 33—so it was agreed to.

Mr. ALLEN, of Worcester, moved to amend the resolves by striking out the last one.

The PRESIDENT stated that this motion had already been put once and negatived.

Mr. ALLEN. If it is in order, I move to reconsider the vote by which the Convention refused to strike out the words standing as the last resolve.

The PRESIDENT. That motion is in order, and the question is on the motion to reconsider.

Mr. HOOPER, of Fall River. I am in hopes that this resolve will not be stricken out; and I wish to recall to the minds of gentlemen the doctrine which has been put forth in Massachusetts, and which, in 1842, received the sanction of the people of Massachusetts. For the purpose of refreshing the memories of members of this Convention, the names of many of whom I find attached to this document which I hold in my hand, I wish to read the doctrine which was then put forth and made the issue of that election, and which received the sanction of the people of the State; and I ask gentlemen if it is not precisely the doctrine contained in this resolve:—

“Throughout the country, parties have divided upon the Rhode Island question. They have done so because it involves the great American principle that lies at the foundation of all free government. Both parties have heretofore professed belief in the sovereignty of the people. This question has demonstrated that if the Whig party hold to this principle in theory, they deny it in practice.

“The details of the Rhode Island question, or the conduct of the respective parties, is not the issue between those who take opposite sides on that question. The principle that lies at the threshold is, whether the maxim laid down by Thomas Jefferson, in the Virginia Bill of Rights in 1776, and substantially adopted by every State in the Union, not excepting Rhode Island herself, is true, namely: ‘A majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish government in such a manner as shall be judged most conducive to the public weal.’

“This, we hold to be the American doctrine of government. To restrict it to anything less than a majority, so as by any form of existing laws or limitations of suffrage, to compel the majority of the citizens of a political community to ask the consent of authorities chosen by a qualified or a favored minority, to alter, reform, or abolish the government, is to run into the doctrines of the legitimate governments of Europe.

“The doctrine now avowed by the most prominent men in the Whig party, is, that it is unlawful for the people of Rhode Island to frame a Constitution unless by consent of the legislature.

“This is the precise doctrine of the Holy Alliance, put forth in the famous Layback circular, upon the restoration of the Bourbons:—

“‘In the name of the most Holy and Indivisible Trinity, their Majesties the Emperor of Austria, the King of Prussia, and the Emperor of Russia, solemnly declare, that useful and necessary changes in legislation and administration ought only to emanate from the free will and intelligent conviction of those whom God has rendered responsible for power. All that deviates from this line necessarily leads to disorder, commotions, and evils far more insufferable than those which they pretend to remedy.’

“We can see no distinction between this doc-

trine of ‘legitimate’ government, and the practical application of it by the governor of this Commonwealth, and the leaders of the Whig party, to Rhode Island. They care not whether the Constitution was adopted by a majority of the whole people or not. Their only question is, did the Constitution emanate from the free will of the constituted authorities, ‘those whom God has rendered responsible for power’—the charter assembly? If not, they hold it void, and all who acted under it, rebels.

“These are general principles applicable to the great American question, involved in the recent struggle of the disfranchised majority of the free people of an American State, to obtain for themselves equal rights with the minority in the choice of her rulers. It seems to us that they must commend themselves not only to every Democrat, but to every man who has an American heart in his bosom. If they are not true, the whole theory of our government is false, and the Layback circular ought to take the place of the American Declaration of Independence.”

This is the Address which was sent out by the Democratic members of the legislature in 1842, and made the issue before the people at that election; and it then received the sanction of the people of Massachusetts. As I remarked, there are the names of quite a number of the members of this Convention attached to this circular, but I will not read them. It is asked, who shall be the judges upon this matter? What said Thomas Jefferson? He says: “A majority of the community hath an indubitable, inalienable, and indefeasible right,” &c. They are the ones who are to judge in this case. The doctrine of Jefferson places the matter in its true position. Now, I ask the gentleman from Boston, if, upon the principle which he lays down, it may not be safely declared that this Convention is illegally called, and that we are sitting here without any legal authority? And if so, I ask him where he finds the authority in the Constitution for our being here to-day? Where does he find the authority for the initiative steps in calling this Convention? It strikes me that the doctrine which he has advanced, and which his friends have advocated, goes to the full extent of declaring that we are here now without authority.

Mr. SCHOULER, of Boston. If the gentleman desires it, I will answer his question. We came here under the act of the legislature, the representatives of the people; and that is sufficient authority for our assembling in Convention.

Mr. HOOPER, of Fall River. Then let me inquire where the representatives got their authority to pass the act calling the Convention?

Mr. SCHOULER. They got it from the people.

Mr. HOOPER. Very well; the representatives would not have had it unless they had got it from the people. Now, if the people could give this power to their representatives to call a Convention, I want to know why they cannot exercise it themselves; and that is all that we claim in this resolve; more especially if this authority is contained in the original agreement or compact upon which this Constitution was made. I hope that we are not going backwards—I hope that those gentlemen who stood upon this ground in 1842, are ready to stand upon it to-day, and that instead of retrograding, we shall be a progressive party.

Mr. WHITNEY, of Boylston. I do not rise to debate this question at all, but I wish to say that

I think it has been discussed about long enough. Why should we spend our time upon this matter? I think I can assure gentlemen who are making provision for other Conventions, that the people will remember us long enough not to want a Convention for a good many years to come. [Great laughter.] That is my judgment about the matter. I do not think that we need to trouble ourselves at all about any other Constitutional Convention for the next ten years; and we have already got a provision so that one can be called in twenty years. I am willing for one, to wait until that time, and if we can get the reforms which we desire then, we shall be more fortunate than I fear we shall be. I remember hearing a story about a woman who said that she was afraid her visitor would never come again; but when the reason was told, it was because she was afraid she would never go home. [Laughter.] I do not know but that will be the way with us. Sir, I move the previous question.

Mr. LORD, of Salem. I would like to make a suggestion to the gentleman from Worcester, for I am exceedingly anxious to hurry the business along, although when I made a motion of that kind, this morning, it was voted down. In order to save the necessity for a reconsideration, I was about to suggest, that the gentleman will accomplish his whole object by simply asking for a division of the question; and, therefore, those who are in favor of the two first resolves will vote for them, and those who are opposed to the last will vote against it. As the previous question is moved on the reconsideration, if he will withdraw that motion, I suppose the previous question will drop through, from having its bottom knocked out; and I do not know that anybody else desires to debate it.

The question being put on ordering the main question, it was agreed to.

The question being then stated on the motion of Mr. Allen, to reconsider the vote by which the Convention refused to strike out the third resolve, Mr. HOOPER asked for the yeas and nays; but they were not ordered.

The question being taken, the motion to reconsider was agreed to.

The question then recurred upon the amendment to strike out the third resolve.

Mr. HALLETT, for Wilbraham, then moved to amend the resolve proposed to be stricken out, by striking out from it the following words: “And by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority,” so that the resolve would read as follows, if so amended:—

3. *Resolved*, That the foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, at all times to reform, alter, or totally change their Constitution and Frame of Government.

Mr. BIRD, of Walpole, moved the previous question; which was ordered.

The question being then taken on the amendment of Mr. Hallett, upon a division, there were—ayes, 159; noes, 58—so it was agreed to.

The question then recurred on the motion of Mr. Alvord, to strike out the third resolve, as amended; and the question being then taken, upon a division, there were—ayes, 158; noes, 59—so it was agreed to.

The PRESIDENT. The question is on the

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final passage of the resolves, and on that question the Convention has ordered the main question.

Mr. HUBBARD, of Boston. I call for a division of the question—that is, that the question be taken upon the resolves separately.

The PRESIDENT. The Chair stated on a previous occasion, that the resolves were not divisible; but upon a more accurate examination, he is now of a different opinion.

Mr. LORD. I desire to inquire, whether at any time the yeas and nays have been taken upon these resolves?

The PRESIDENT. The Chair understands that they have not been taken upon the final passage.

Mr. LORD. Have they been taken upon any stage of them? My opinion is, that they were passed last night without a quorum being present, and that the yeas and nays have not been taken in any stage of these resolves.

The PRESIDENT. The yeas and nays have been had on amendments.

Mr. LORD. But I desire to have them on the final passage; and as a division has been asked for, and the question is to be taken upon each resolve separately, I will say, that I merely desire the yeas and nays on the first resolution.

The question being taken on a division, on the demand for the yeas and nays, there were—ayes, 59; noes, 198.

So the yeas and nays were ordered.

Report from a Committee.

Mr. MORTON, of Taunton. There is a matter which was specially referred to the Judiciary Committee, and they were authorized to sit during the sessions of the Convention. They have prepared a Report which is of some length, and it is of a good deal of importance that its purport should be known, so that it may go before the Revising Committee. It is supposed to be necessary to print it, and, I therefore ask the unanimous consent of the Convention, to submit the Report at this time, because it will farther the progress of business very much.

No objection was made, and the Report was read, as follows, and ordered to be printed:—

1. *Resolved*, That persons holding office by election or appointment under the present Constitution, shall continue to discharge the duties thereof until their term of office shall expire, or officers authorized to perform their duties, or any part thereof, shall be elected and qualified, pursuant to the provisions of this amended Constitution; when all powers not reserved to them by the provisions of this amended Constitution shall cease: *provided, however*, that Justices of the Peace, Justices of the Peace and of the Quorum, and Commissioners of Insolvency, shall be authorized to finish and complete all proceedings pending before them at the time when their powers and duties shall cease, or be altered as aforesaid.

2. *Resolved*, That the legislature shall provide, from time to time, the mode in which commissions or certificates of election shall be issued to all officers elected pursuant to the Constitution, except in case where provision shall be made therein.

3. *Resolved*, That the Governor, by and with the consent of the Council, may at any time, for cause shown, remove from office, Clerks of Courts, Commissioners of Insolvency, Judges and Registers of Probate, District-Attorneys, Registers of Deeds, County Treasurers, County Commissioners, Sheriffs, Trial Justices and Justices of Police Courts: *provided, however*, a copy of the charges

upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence.

4. *Resolved*, That whenever a vacancy shall occur in any elective office, provided for in this Constitution, except that of Governor, Lieutenant-Governor, Councillor, Senator, member of the House of Representatives, and town and city officers, the Governor for the time being, by and with the advice and consent of the Council, may appoint some suitable person to fill such vacancy, until the next annual election, when the same shall be filled by a new election, in the manner to be provided by law: *provided, however*, Trial Justices shall not be deemed to be town officers for this purpose.

5. *Resolved*, That all elections provided to be had under this amended Constitution shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, A. D. 1854.

Dispensing with Yeas and Nays.

Mr. FRENCH, of New Bedford. The motion for ordering the yeas and nays was not understood in this part of the Convention, and the number above one-fifth was so small that we think the yeas and nays might be dispensed with. I think that those gentlemen who voted for ordering them will not insist on the demand. I therefore move a reconsideration of the vote by which they were ordered.

The motion was rejected.

Mode of Voting at Elections.

Mr. WILSON, of Natick. I move that the Orders of the Day be laid upon the table, for the purpose of taking up the motion of the gentleman from Walpole, (Mr. Bird,) to reconsider the vote by which the resolves on the subject of elections by plurality, &c., were finally passed.

The motion to lay the Orders of the Day upon the table was agreed to.

Mr. BIRD, of Walpole. I made this motion, Mr. President, in the hope that if the reconsideration is accorded, either myself or some one else might propose some amendments which would make the resolves more acceptable to the Convention. I believe that that can be done, and for the purpose of indicating what the amendments I propose to offer are, if the motion to reconsider should be carried, I will, with the permission of the Convention, read what I propose to do. I shall move to amend the first and fourth resolves, so as to read as follows:—

1. *Resolved*, That it is expedient to provide in the Constitution that a majority of all the votes given shall be necessary to the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth, until otherwise provided by law, but no such law providing that the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, Attorney-General, and Representatives to the General Court, or either of them, shall be elected by plurality, instead of a majority of votes given in, shall take effect until one year after its passage; and if at any time after the enactment of any such law, and the same shall have taken effect, such law shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in default of any such law, if at any election of either of the above named officers, except the Representatives to the General Court, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the

persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be Governor, or other officer to be elected.

4. *Resolved*, That in the election of all city or town officers such rule of election shall govern as the legislature may by law prescribe.

Without saying anything farther in relation to this matter, I will only express the hope that the vote carrying these resolves to their final passage may be reconsidered, and then I will present these amendments in their order, and say a very few words explanatory of the object of each amendment.

The question being taken on the motion to reconsider, it was, on a division, decided in the negative—ayes, 112; noes, 118.

So the motion to reconsider was rejected.

Mr. DAVIS, of Plymouth. I believe that the question on the last vote was not properly understood—I mean on the motion to reconsider. I think some gentlemen near me did not understand it.

The PRESIDENT. The attention of the Chair has been called to the result of the vote. The gentleman from Plymouth will pardon the Chair till the vote is again announced. Several gentlemen have expressed the opinion that the announcement of the Chair was incorrect; but on a second examination of the figures, the Chair finds that the vote was correctly announced.

Mr. DAVIS, of Plymouth. I understand from several gentlemen in this quarter, that the question on the motion to reconsider was not distinctly understood, the gentleman from Walpole (Mr. Bird) not being distinctly heard. If it is in order, I would like to move that the question be taken again.

The PRESIDENT. It can only be done by general consent.

Mr. LORD, of Salem. I object.

Mr. DAVIS. Then I call for the yeas and nays.

The PRESIDENT. The yeas and nays may be taken, if they are ordered by the Convention.

Mr. LORD. Do I understand the President to decide, that the yeas and nays may be taken after a formal announcement of the vote on a division of the House?

The PRESIDENT. They may. The yeas and nays are for a verification of the vote taken by count. The Chair has no doubt whatever, that in this state of the question, before proceeding to the consideration of any other business, the yeas and nays may be ordered. This has been repeatedly done during the session of the Convention, and the recollection of the Chair is, that it has been done on the demand of the gentleman from Salem himself.

Mr. LORD. Never upon any motion of mine.

The PRESIDENT. The Chair may be in error as to that, but such is the impression of the Chair at this moment.

Mr. LORD. I may have called for the yeas and nays before the vote was verified by a count, or I should say before the result of the count was announced, but never after the announcement; for I did not conceive it at all possible that it could be done according to parliamentary usage. I suppose it is not competent for any member who has voted affirmatively or negatively in a count, to change his vote when taken by yeas and nays, for the purpose of changing the result. With such a practice, we might go on, *ad libitum*, and

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results might be changed in this way, at any time.

Mr. ASPINWALL, of Brookline. I understand that there is no motion before the Convention. The question has been taken on the motion to reconsider, and, on a division, was rejected. That, if I understand anything, entirely disposes of that matter.

The PRESIDENT. The gentleman from Brookline overlooks the fact, that when the question was first taken on the motion to reconsider, the Chair declared the vote to be in the affirmative. A division was then demanded, and, a count being taken, the vote was declared in the negative—there being a majority of six against the reconsideration. And now the gentleman from Plymouth desires that that vote may be verified by the yeas and nays, which the Chair decides to be clearly in order.

Mr. GRAY, of Boston. I dislike to dissent from any opinion entertained by the Chair on a question of order, but I beg leave to suggest to the Chair, that when a vote has been declared on a division, by the Chair, and that vote is not questioned before—

Mr. WILSON, of Natick. I rise to a point of order.

The PRESIDENT. The gentleman from Natick will state his point of order.

Mr. WILSON. It is that the Chair has already decided the point of order, and that it is not farther debatable unless upon an appeal.

The PRESIDENT. The Chair asks the advice of the gentleman from Boston, (Mr. Gray,) and he can accordingly proceed with his remarks.

Mr. GRAY. What I have to say, is, that when a vote is declared, and that declaration is not questioned, the matter is placed on a different ground. I am satisfied, however, with the declaration of the Chair.

The PRESIDENT. The question is on ordering the yeas and nays.

Mr. DAVIS, of Plymouth. Before the yeas and nays are ordered, I should like the gentleman from Walpole to restate the object of his amendments, so that they may be understood by the Convention.

The PRESIDENT. It is not in order. The question is on taking the yeas and nays on the motion to reconsider the resolves.

Mr. BUCK, of Lanesborough. Is it in order to have the resolves read?

The PRESIDENT. It is in order. The motion is on the final passage of certain resolves. The gentleman from Lanesborough asks that the resolves may be read. The gentleman has that right.

The resolves were read accordingly.

Mr. BUCK. My object in asking for the reading of the resolves was, that we might vote understandingly. I would like now to hear the amendments read.

The PRESIDENT. It is not in order to read the amendments, the motion being on reconsidering the vote by which these resolves were ordered to their final passage.

Mr. HATHAWAY, of Freetown. Does not this motion to reconsider, open the whole question involved in the resolves?

The PRESIDENT. If the Convention order a reconsideration of the vote, the whole question is then opened. But at present the question is on ordering the yeas and nays, for the purpose of

verifying the vote as taken upon a division. The Chair will read the third rule of the Convention.

"He [The President] shall declare all votes; but, if any member doubts a vote, the President shall order a return of the number voting in the affirmative, and in the negative, without any further debate upon the question. When a vote is doubted, the members for or against the question, when called on by the President, shall rise and stand uncovered till they are counted."

Question of Order.

Mr. STEVENSON, of Boston. I am sorry to be under the necessity of stating what I am about to state; but, under the circumstances, I feel it my duty to appeal from the decision of the Chair, as to the power of the Convention again to vote on the motion to reconsider, after that vote has been solemnly declared on a count of the House.

The PRESIDENT. With the permission of the gentleman from Boston, the Chair will again state the position of the question. It is this: The gentleman from Walpole moves the reconsideration of a vote. After stating the purpose for which he makes the motion, the question is put to the Convention, and the Chair declares it to be carried affirmatively. A count is demanded, and being taken, the Chair declares the vote to be in the negative; and the gentleman from Plymouth asks for the yeas and nays. The Chair, considering the yeas and nays merely a matter of verification of the vote by count, admits the motion for the yeas and nays, and from that decision the gentleman from Boston (Mr. Stevenson) takes an appeal. The question, therefore, is—shall the decision of the Chair stand, as the judgment of the Convention.

Mr. STEVENSON. The President is certainly aware, if no others in the Convention are, that I would not appeal from any decision of his, unless I felt in duty bound to do so. I understand the rule of the Convention, and of all parliamentary bodies, to be, that it is the right of any member, when the presiding officer has declared, under circumstances under which there can be a doubt—namely, as where the manner in which the voices of members fell upon his ear—as to what the vote is, then it is the right of any member of the Convention, or of any other parliamentary body, to doubt whether the Chair has decided correctly; and when any such member so doubts, then it becomes the duty of the Chair to make it certain whether or not he has announced correctly what the vote was, by calling upon members to stand up and be counted. That when the Chair has proceeded so far, and has called upon members of the assembly to stand up in their places and be counted, as to how they voted, that then that decision is final, and the vote is passed. And I appeal, not only to the assembly, but to the Chair, and ask him, what the record shall be which the Secretary is bound to make of the proceedings of this Convention, if the decision of the Chair shall now stand? What is the record of the Secretary? That Secretary has already made his record; and if he has not yet made it, he has not performed his duty. What is the record? That the question having been put upon the motion of the gentleman from Walpole, (Mr. Bird,) the Chair decided that it was not a vote; that it was doubted; that a division was called for; that a division being had, and a count being taken—the thing being made certain—the Chair had de-

cided that it was not a vote, and therefore the motion of the gentleman from Walpole had been rejected. And after that record, what motion is there before the Convention? After that record, what question is there upon which any gentleman upon this floor can get up and ask the yeas and nays of the Convention? If the Orders of the Day be up, I submit, that immediately upon that fact being announced, the next article in the Orders of the Day is before the Convention; and there is no question upon which gentlemen can call for the yeas and nays. Now, let me state a reason why it should be so, if it were not perfectly palpable that it were so. It should be so, if you desire, that in every deliberative assembly, it should be in the power of no man to undertake to alter a vote, under any influence whatever. You desire that each vote which any member shall give, in any deliberative assembly, shall be the honest expression of his own opinions, uncontrolled by the opinion of anybody else. We, four hundred men, have stood up here and given expression, each of us, of our honest opinion, and given that expression upon a motion which our rules declare shall not be reconsidered or reviewed, and then gentlemen ask for the yeas and nays upon the same question. We have each, here in this assembly, voted upon the question, whether or not the motion of the gentleman from Walpole ought to be adopted; and the reason why you have provided in your rules that when an assembly has refused to reconsider a vote, the same motion shall not be presented to them again is, that it operates to prevent your undertaking to take the vote again upon the same question. If it may not be offered again, may it be voted upon again? I ask, if the decision of the Chair stand, what the record is? It will be the duty of your Clerk to declare, upon his record, that this assembly has voted yeas and no to the same proposition, and that a proposition, mind you, Mr. President, is completed, which stands as the fact? Will it which your rules declare, when once voted upon, it shall not be reviewed; and, Sir, when that record be the fact, that this assembly have refused to reconsider, according to the record as it stands now, or will it be the fact that they have reconsidered, in case a vote for a different decision be passed? Each of the entries upon the journal of the Secretary states the fact. They cannot both be the fact. Which shall be the record? No, Sir, I do not understand, with yourself—although I am very apt to agree with you in opinion, as you are aware—I do not understand, with yourself, that the purpose of the yeas and nays is to make certain the result of a vote. It has another purpose. The purpose of a division is to make certain the result of a vote. Not only is that so in the understanding of every-body, but it is so according to our rules. When a member doubts, and therefore asks for a division, the rule says, members shall stand in their places and be counted; and when they have done so, and have been counted, that vote is decided. And I ask, whether, under the rule that a motion to reconsider shall not be entertained again, you will entertain it again, after it has been passed upon and decided, and put upon your journal, because it may be stated by the Chair that the yeas and nays are a mode of ascertaining the result of a vote? The yeas and nays are for ascertaining a very different thing. They are not for the purpose of deciding what the result of a vote was;

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for, Sir, the yeas and nays are called for before anybody doubts what the result of a vote is. The ordinary fact is, that he who calls for the yeas and nays, in a deliberative assembly, is a man who knows what the result of the vote will probably be, or who thinks he knows, and therefore, before anybody can doubt whether the presiding officer has decided correctly as to the result of the vote. The yeas and nays are for a different purpose. After a vote has been decided and gone, there is nothing pending before an assembly upon which a member can ask for the yeas and nays. Your rule is, when any measure is pending upon which a vote is to be taken, one-fifth may order the yeas and nays upon it. That rule is not, Sir, that after the question has been decided by the Convention, the yeas and nays may be called for, to see if you cannot induce some gentlemen to change their votes.

I submit the question contrary to my own wishes, for I voted for the reconsideration. I am impelled entirely by a sense of duty, for I am in favor of a reconsideration; for I wish this assembly would reconsider the vote by which they passed that strange thing. I desire that they should reconsider, and, if possible, put it in the right shape, before they present it to the people. But, Sir, when the presiding officer of this body says that, after the body itself has, by its vote, decided either with me or against me, that another member may to-day, to-morrow, or next week, ask for the yeas and nays on that question, I shall be under the necessity of appealing from any such decision of the Chair. That question has, under our rules, gone out of our possession as completely as if it were a week hence that we were talking about the yeas and nays. If you may ask them now, why not to-morrow, why not on Saturday, why not on Monday? The purposes of the two things are entirely different, namely: the "division," and the "yeas and nays." A division is a right inhering in each member of the Convention. The yeas and nays are a right inhering in one-fifth of the Convention, and in not less. A division is anything which any man who doubts whether the speaker is incorrect in opinion as to which way men voted, can call for. The yeas and nays are a thing which not less than one-fifth can demand. A division, under the rules, is for the purpose of deciding whether a speaker was right or not in declaring the vote. The yeas and nays are for no such purpose. They are for the purpose of informing the constituents of the members how each man in the assembly may have voted on each question before them. The two have different objects and different purposes. They are under different control. And yet, the decision which you have made, Mr. President, depends entirely upon the suggestion which you made at the same time, that the yeas and nays are called for the same reason that a division is demanded. A division may be demanded by any one member. Each of us, as we sit in our seats, have just as much right to our opinion as to whether the yeas or the noes prevailed, as the presiding officer has. The presiding officer has the power to announce to the assembly what he thinks on that one point. He who doubts whether he thinks correctly has the same power which the presiding officer has, and he may not refuse to make it certain which is correct in that respect—the presumption being that each man in an assembly like this votes in the same way,

whether he votes in his seat unseen, or rises in his place to be counted.

[Here the hammer fell; the gentleman having occupied the fifteen minutes allowed by the rule limiting debate.]

Mr. STEVENSON. I would ask the Chair whether there is any limitation to debate upon a question of appeal?

The PRESIDENT. The rule of the Convention is as follows:—

July 16th. "Resolved, That on and after Monday next, no member of this Convention shall speak more than fifteen minutes on any subject, without leave."

Mr. LORD, of Salem. I never, that I recollect, took an appeal from the decision of any presiding officer, with one exception, and then merely for the purpose of expressing an opinion on the subject, and not for the purpose of having the decision reversed. In my judgment it is a matter which should be entertained with a great deal of care, and should be entertained and considered not for any temporary purpose, but as a matter of judicial decision and precedent. To that end it is always usual in any case of importance to settle the appeal upon the record by the yeas and nays. I believe that is the universal practice, and before I sit down, I propose to ask the yeas and nays upon this matter of appeal. But I hope the President will reconsider his determination. I understand that this motion has never been entertained in either branch of congress. Several members of congress, now members of this Convention, have stated that within their knowledge, there never has been such a motion entertained, after the decision was announced, and I have yet to hear the first person state a single instance in which, after the vote has been verified by a count, and after it has been declared, in which there has been no mistake, and in which count there has been no mistake, such a motion has been entertained. I know the question was discussed in the last House of Representatives, and it arose upon the question whether the yeas and nays could be called, after the Chair had called upon the House to divide. The entire minority of that body held that after the Chair had called upon the House to divide, the yeas and nays could not be called, but the Speaker, sustained by a majority of the House, ruled that the yeas and nays might be called at any time before the vote had been verified and announced from the Chair.

Now, Sir, if there is any reason for this rule, I desire to hear it. We shall, of course, hear the reasons of the President, and in order that not only that gentleman but the whole assembly may stand exactly right upon this matter of precedent and law, I move that when the question upon this appeal is taken, it be taken by yeas and nays.

A division being called for upon the motion, it was, by a vote of—ayes, 60; noes, 161—decided in the affirmative.

So the yeas and nays were ordered.

Mr. WILSON, of Natick, moved that the appeal be laid upon the table.

Mr. GRAY, of Boston. I rise to a question of order. Can that motion be entertained? It appears to me that under the rule of the Convention no other business is in order until the question of appeal has been decided.

The PRESIDENT. The Chair will state the

question. The question of appeal was pending when the gentleman from Natick moved that the appeal lie upon the table; upon that the gentleman from Boston rose to a question of order, whether it is competent to lay the appeal upon the table. There are two usages and principles upon which this question will be decided. It is the practice of the House of Representatives, invariably, where appeals are taken from the decision of the Chair, to entertain the motion to lay the question of appeal upon the table. The practice of the Senate of the United States, however, is different; and several years since—in 1843 or 1844—at least one or two days were expended in debate by the first men of the nation, whether the question of appeal could be laid upon the table, and it was the judgment of that body that the appeal could not be laid upon the table. Since that time and before, however, the practice of the House of Representatives has been different, and inasmuch as the Chair prefers to adhere to the usage of that body contrary to its own inclination, the Chair rules that the motion to lay the appeal upon the table is in order.

Mr. GRAY, of Boston. If I may be allowed the indulgence of the Convention for a few moments, I desire to state that whatever has been the course pursued in congress, it has ever been the ruling of the Chair of this House, that an appeal shall be decided before any other business is transacted. I am sorry to be compelled to dissent from the decision of the Chair, but an experience of twenty years has taught me that in this Commonwealth, at least, the practice is different. If the Chair adheres to its decision, I shall call for the yeas and nays on the motion to lay the appeal on the table.

The PRESIDENT. The Chair does not doubt that the gentleman is correct so far as the usage of this State is concerned. The Chair desires to say, moreover, that confident in the opinion he has given, he would rather that the Convention should decide this matter for itself. And if a motion is made, he will rule upon it as he has stated.

Mr. LORD. I desire to ask, what will be the effect if the appeal is laid upon the table, and whether the decision of the Chair will then be considered as affirmed?

The PRESIDENT. It is for every gentleman to decide for himself in regard to the effect.

Mr. LORD asked for the yeas and nays.

The PRESIDENT. The yeas and nays have been already demanded.

The question was then taken on ordering the yeas and nays, and it was decided in the affirmative.

Mr. STEVENSON, of Boston. Before the yeas and nays are taken, if the gentleman will allow me, I desire to read the second rule. It is as follows:—

"The President shall preserve decorum and order; may speak to points of order in preference to other members; and shall decide all questions of order subject to an appeal to the Convention on motion regularly seconded; and no other business shall be in order till the question on the appeal shall have been decided."

Would it, under this rule, be in order to proceed to any other business until the appeal has been disposed of?

The PRESIDENT. Certainly not. The laying of the appeal upon the table disposes of it.

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QUESTION OF ORDER.—BRIGGS—HALLETT—LORD—BUTLER—BATES—MORTON.

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Mr. BRIGGS, of Pittsfield. It always gives me pleasure to sustain the decision of the Chair. According to the practice of the House of Representatives at Washington, I believe that the last decision is correct, though I think the practice of the Senate of the United States is somewhat different. I recollect several instances where appeals have been laid upon the table in the former body. But, I regret to say that I cannot sustain the decision of the Chair in relation to another point, that is, the taking of the yeas and nays after the result of a division has been announced.

The PRESIDENT. The Chair would say, that if the practice of the House of Representatives is different, he is in error.

Mr. BRIGGS. I would state to the Chair, that in twelve years experience, I have no recollection of a different course being pursued from that to which I have alluded. In the House of Representatives they take questions by standing up and counting, and by tellers. And I have frequently known the call for the yeas and nays, which is a constitutional right, being made, after the House had passed between the tellers, and before the announcement of the result was made, but never after the decision of the tellers has been reported to the Chair. My recollection is that it was always pronounced too late to make a demand for the yeas and nays after such a decision had been announced.

The PRESIDENT. The gentleman from Pittsfield will find, upon examination, that there are frequent cases where, after the vote has been announced, and the result of the division has been placed upon the journal, the yeas and nays have been ordered. The Chair is confident that that is the practice, and upon that it bases its decision. If it is not the practice of the House of Representatives, the Chair is in error. With the leave of the Convention, the Chair will state the principles upon which this decision is made, aside from the practice of the House of Representatives at Washington, to which the Chair has adverted. It is that the yeas and nays are ordered, not only as a method of determining a vote, but for the purpose of a record. One-fifth of the members have a right to order the yeas and nays to be taken upon all questions for the purpose of obtaining a record. There is no record, and can be none, except the yeas and nays be taken, and this is provided for by a rule of the Convention. The Chair, regarding this question of reconsideration as a question embracing a principle as vital as any other, believes it to be the right of one-fifth part of the Convention to have the record by yeas and nays upon this question, as upon every other where it is demanded. And the mere fact that it may have been determined by a vote of sound, or by the raising of hands, or by the report of monitors, which it is at the option of the Chair or the Convention to require or not, can produce no record. The record is the responses of members to the call of their names, and, unless the Convention direct the call, there can be no full and perfect record.

But, aside from this theory, the Chair stands upon the usage of the House of Representatives. It is, that when a question has been taken by sound, and declared, and a decision again declared upon the count of the Chair, and another count still, ordered by tellers, and such count is taken and announced to the House, one-fifth of the members present, if a quorum be present, still

have a right to a verification and a record of the vote by yeas and nays. The rule of the Convention is clear and explicit upon this subject, and is substantially the same as the constitutional provision relating to the House of Representatives of the United States.

This is one of those questions upon which one-fifth of the members present have a right to have the yeas and nays taken in verification of the record. The Chair has no doubt of the correctness of the decision, upon the well established principles of American parliamentary law; and is impressed with the conviction that it is sustained by the usage of the first and highest deliberative assembly in the world.

Mr. WHITNEY of Conway moved the previous question.

The PRESIDENT. The Chair desires to say, that he would prefer to have this question decided by the Convention at the present time.

Mr. WILSON, of Natick. After the statement which has just been made by the Chair, I will withdraw my motion to lay the appeal upon the table, as it is a matter personal to the Chair.

Mr. HALLETT, for Wilbraham. I renew the motion of the gentleman from Natick, to lay this appeal on the table. I wish to make an explanation myself, for I shall be unable to sustain the decision of the Chair. I do not wish to make a personal issue with that gentleman, however, and I think we can all vote to lay the question upon the table. I see no necessity for any controversy of this kind upon a nice point of order, and I therefore renew the motion of the gentleman from Natick, (Mr. Wilson,) for it seems to me to be the only quiet way of disposing of the subject.

Mr. ASPINWALL, of Brookline. I would inquire of the President, if it is not competent for any member after the present appeal is laid upon the table, to appeal from the decision of the Chair?

The PRESIDENT. If this appeal is laid upon the table, it will be held by the Chair to be finally disposed of.

Mr. LORD. Suppose that it is laid upon the table by a vote of this body, can any gentleman move to take it up again?

The PRESIDENT. Certainly.

Mr. LORD. I would then inquire if a matter which is laid upon the table is permanently decided, and until it is decided, can we go on with any other business under this rule, to which I desire to call the attention of the President? It is the second rule.

Mr. BUTLER, of Lowell. I rise to a point of order.

The PRESIDENT. The gentleman from Salem is addressing the Chair.

Mr. BUTLER. His remarks are in the nature of debate; and I submit that this is not a debatable question.

Mr. LORD. I desire merely to make an inquiry of the Chair, in regard to the disposition of this subject. The second rule requires that:—

“The President shall preserve decorum and order; may speak to points of order in preference to other members; and shall decide all questions of order, subject to an appeal to the Convention on motion regularly seconded; and no other business shall be in order until the question on the appeal shall have been decided.”

Although the practice under the rule may be

different, yet if I can move to take a matter from the table when it has been ordered to lie there—

Mr. BATES, of Plymouth. I should like to know what question the gentleman from Salem is discussing? I believe there is no question before the House that is debatable.

The PRESIDENT. The gentleman for Wilbraham, (Mr. Hallett,) has moved that the appeal be laid upon the table; and the gentleman from Salem, (Mr. Lord,) rose to a point of order. The Chair has not yet ruled upon that question of order. If the gentleman will indulge him for a moment, the Chair would say, that the motion for the previous question does not cut off the motion to lay upon the table.

Mr. BATES. Is the motion to lay upon the table debatable?

The PRESIDENT. It is not. The gentleman from Salem rose to a point of order.

Mr. LORD. The point which I was suggesting, and to which I only desire to call the attention of the President, was this—

Mr. BATES. I call the gentleman to order. The question is on ordering the appeal to lie upon the table, and that question is not debatable. I therefore insist upon my point of order.

The PRESIDENT. The gentleman from Salem does not state the question of order; the question is on the motion of the gentleman for Wilbraham to lay the appeal upon the table.

Mr. LORD. I propose to state the point of order, if the gentleman will allow me to proceed without interruption; but I cannot do it without using language. My proposition is this: that by a rule of this House, no business is in order after an appeal is taken from this decision of the Chair, until that appeal has been decided; not temporarily disposed of, but decided. Now, the Chair has already ruled, that it is competent to take this subject from the table; after it has been laid there; but I believe there is a parliamentary rule which says, that after a matter has been once disposed of, by laying it upon the table, it is not in order to take it up again, unless there has been an intervention of business in the meantime. So that if this subject is now laid upon the table, we can do no business under the rule, until it has been permanently settled by a decision upon it. Now, I desire to know of the Chair, not by any rule of precedent; not by any rule of the Senate, or House of Representatives of the United States; but, whether under the rules of this body, any business can be done until a question of appeal has been permanently decided, except it be to adjourn. Although a motion to lay upon the table may possibly be in order, yet if we can do nothing but adjourn, after taking that course—because having just laid it down, we cannot take it up again or proceed to other business in the meantime, under the rules of the Convention—shall we make any advance by such a course? I call this fact to the attention of the Chair, not because I have not a great respect for the decision of the Chair, for I have; but because it seems to me, and I think it will strike other gentlemen in the same way, that laying a subject upon the table is not such a final decision of the question, as the rule contemplates.

Mr. MORTON, of Taunton. I rise to a question of order. I desire to call the attention of the Chair to the course of events here. If I understand the state of affairs correctly, the gentleman from Conway (Mr. Whitney) rose and

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moved the previous question. Afterwards, the gentleman for Wilbraham (Mr. Hallett) moved to lay the question of appeal upon the table. What, therefore, is the question pending?

The PRESIDENT. The immediate question pending, is the motion to lay the appeal upon the table.

Mr. MORTON. Does that supersede the motion for the previous question?

The PRESIDENT. It supersedes it for the present. The Chair will read the rule on this point:—

"When a question is under debate, the President shall receive no motion but to adjourn, to lay on the table, for the previous question, to postpone to a day certain, to commit, to amend, or to postpone indefinitely; which several motions shall have precedence in the order in which they stand arranged."

Mr. HALLETT, for Wilbraham. If the gentleman from Taunton, (Mr. Morton,) will give way, I desire to say a single word. The previous question, I understand, is superseded by the motion to lay upon the table. I made the motion to lay the appeal upon the table, for the purpose of having an opportunity to express my opinion as to the best mode of getting rid of the question; but as the President has intimated that he is desirous of meeting the question, and as I am ready to meet it and vote upon it honestly and courteously, I will withdraw my motion.

Mr. MORTON, of Taunton. I wish, in a few words, to give the reasons why I shall vote to sustain the Chair in his decision, though they may be somewhat different from those which have been submitted by other gentlemen. I am told, however, that the previous question has been demanded; I do not desire to interfere with that.

Mr. WHITNEY, of Conway. I will withdraw my motion for the previous question, if the gentleman will renew it.

Mr. MORTON. I never made a motion for the previous question in my life, and never intend to do so.

Mr. WHITNEY. I will withdraw it if the gentleman desires.

Mr. MORTON. I wish to state a few of the reasons which will influence me in voting to sustain the decision of the Chair. And, in order to understand this question properly, it is necessary we should look for a moment at the course of events which brought it before us. A motion was made to reconsider the resolves on the subject of elections by plurality; it was put to a vote, and the President announced the decision. A division was then called for—the decision first announced, of course not being final in its character—the votes were counted, and the President announced the result. Some gentlemen, however, doubted the correctness of that statement, supposing that an error had arisen either in computing the returns of the monitors or in the monitors themselves. The President listened to the statements made, reexamined his figures, and again announced the result as before. This not being satisfactory to the minds of several individuals, the yeas and nays were then called for, and ordered. These are briefly the facts of the case, as I understand them; and I maintain, Sir, that there never was a final enunciation of the decision. The subject was then under consideration, and if any person in this Convention had demanded another count, I have no doubt that the

President would unhesitatingly have ordered it at once, and every one would have acquiesced. If this was the case, therefore, the question was still undecided, and the motion for the yeas and nays was perfectly in order.

Mr. DAVIS, of Plymouth. If the gentleman will allow me to interrupt him a moment. Objection was made by me before the final announcement of the vote; and having commenced making my statement, the Chair desired me to wait until a new count was had, and in the meantime several gentlemen stated to me that they had not voted, because they did not understand what the question was.

Mr. MORTON. I was arguing upon the state of the facts, as I regard them, and the fact now stated by the gentleman from Plymouth, is additional evidence which very much strengthens the view I took.

If, therefore, it was an open, undecided question at the time the division was called for, no gentleman will deny that it was entirely within the rule; and consequently, it was proper and legitimate to demand the yeas and nays. Gentlemen were entitled to have them taken, for the rule provides that on all questions whatever, the yeas and nays shall be ordered if one-fifth shall demand them. I contend, therefore, that it was perfectly correct to order the yeas and nays, and the argument of the gentleman from Boston, (Mr. Stevenson,) ingenious and able as it was, was based upon the mistaken supposition that they were to be taken upon the final passage of the resolves, instead of being intended, as they were, solely to verify the decision of the Chair.

Mr. BUTLER, of Lowell. I wish to say a word in regard to the settlement of this matter in dispute; and in doing so, I shall rely not so much upon precedent, as upon principle and right. As I understood the gentleman from Boston, (Mr. Stevenson,) his argument was, that when a question is once announced as finally determined, there can be no such thing as any farther verification of the same by yeas and nays, but that such determination must forever remain as the decision of the body. That is the ground of his appeal, and of the argument which supported it.

Yeas and nays are simply a method of verification. Now, suppose by accident or design, that a hundred men were crowded into these seats, as was the case once in the French Assembly, who did not belong here, that they stood up and were counted by the monitors, and the final announcement of the vote had been made, when some gentleman should arise in his place and state that he had reason to believe that the vote was incorrect, and in order to verify the vote, and arrive at a more satisfactory conclusion, he should demand the yeas and nays. I want to know, if in such a case as that, when such a demand is made, that the yeas and nays would not be strictly in order. Who is to say that it can be done in one case, and cannot be done in another? Therefore, I am ready to sustain the decision of the Chair upon that point, and shall also vote for the yeas and nays which have been demanded. What are we here for, but to arrive at the deliberate judgment of this assembly; to get at the feelings and wishes of this body? And I submit, if it is not a little like child's play, that we are to be told because the President has announced a vote after a division, that there is no way of getting at the voice of this Convention in a more certain manner; that we

are to be tied hand and foot in our deliberations, to be seized by a sort of snap-judgment from which there is no escape. I ask is that according to parliamentary principle and usage?

The question was asked what is the deliberate voice of this Convention upon a certain question? The vote was taken by a division; a gentleman having some doubt in regard to the result which had been announced, desired to have the vote recounted. It was accordingly done. Still it was unsatisfactory, and the yeas and nays were demanded for the purpose of verifying the vote with greater accuracy. The yeas and nays were ordered, and the gentleman from Boston appealed from the decision of the Chair, and for what reason? Because, forsooth, the Convention had voted once upon the question, and it was not in order to verify that vote in another manner. Upon questions of parliamentary usage, I have many times yielded to him; but on the present occasion, I feel constrained to differ with him, and shall therefore record my vote to sustain the decision of the Chair, relying, as I said in the beginning, more upon principle than precedent.

Mr. BRIGGS, of Pittsfield. I desire to say but a single word upon this matter. I much regret that a question of this character has arisen, but since it has come before us, I trust that we shall proceed to act upon and consider it with deliberation and caution. But above all things, in the last hours of the session, I hope we shall not allow ourselves to be excited or irritated by the introduction of such a subject. As for myself, I shall be compelled, from my construction of the parliamentary law, to vote against the decision of the Chair. The President has stated the true grounds on which the yeas and nays were ordered—that is, that they were for the purpose of making a record of the vote of every member of this Convention, upon one side or the other, and not for the purpose of verification, as some gentlemen have contended. If the Chair is correct in this statement, the whole foundation of the speech of the gentleman from Lowell is removed, but if not correct, his arguments would certainly be very strong.

But let me inquire what is the mode of verifying a vote? The President rises, puts the question, takes the sound of the voice, and makes a decision accordingly. The vote is doubted, and the rule requires him to take a count. What is the object of that? Simply for the purpose of verifying the vote. The division of the House takes place, and the Chair announces the result. But what is the case here? The result of the first vote was questioned. A division was ordered, and the monitors reported; the Chair announced that one hundred and twelve had voted in the affirmative, and one hundred and eighteen in the negative, so that the motion to reconsider was lost. Some gentleman, not being perfectly satisfied as to the correctness of that vote, requested the President to reexamine his figures; he did so, and announced the same result as before. After some little pause, the gentleman from Plymouth, (Mr. Davis,) arose, and said, Mr. President, there is some mistake about this matter.

Mr. DAVIS, of Plymouth. I arose and addressed the Chair before the announcement of the vote was made.

Mr. BRIGGS. Yes, Sir; he certainly did address the Chair, but what did he say? He said

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that gentlemen here did not understand the vote, and asked if the yeas and nays could not be taken. But did he call for the yeas and nays then? or ask to have a record made? No, Sir; but in the discussion as to what might be done, the Chair suggested that the gentleman might call for the yeas and nays; and in accordance with that suggestion, the yeas and nays were demanded. These, I believe, are the true facts of the case.

Now, if the gentleman from Plymouth had arisen in his seat before the Chair had made the second, affirmed statement, and had questioned the vote, then, as the gentleman from Taunton (Mr. Morton) says, it would have been the duty of the Chair to have tried the vote again, if demanded, by yeas and nays; but he did neither. The question stands, therefore, as I have stated. As I said before, I am sorry to differ from the Chair as to the congressional practice, but I understand the practice to be this: that any member has a right to demand the yeas and nays at any time before the result is announced by the Chair. I am certainly desirous of acting liberally in this matter, but I am equally desirous of observing the law; for the dignity, decorum, and character of all bodies, depend entirely upon so doing. If I supposed that, by allowing this matter to pass by we should be acting in compliance with parliamentary usage, I would, with pleasure, vote to sustain the decision of the Chair; but under the present aspect of the case, I do not believe we should be acting in accordance with that law, and I shall therefore be compelled to give my vote against him.

Mr. HALE, of Bridgewater. I do not propose to discuss this question, after so much has been said. As to precedent, I merely wish to observe that in all the experience I have had, here or elsewhere, in legislative bodies, I have never known an instance where the demand for the yeas and nays was made and sustained upon a question after the decision of the Chair. I have known them to be called for, but it was always ruled by the Chair to be too late.

I do not understand that, in the present case, the purpose of calling the yeas and nays was to verify the vote, because the gentleman distinctly stated that the object he had in view was to accommodate some gentlemen in his neighborhood, who did not understand the question, and wished to have the vote taken again.

Mr. WATERS, of Millbury. I call for the previous question.

The PRESIDENT. By leave of the Convention, the Chair desires to say to the gentleman from Bridgewater, that there are many precedents in the House of Representatives at Washington.

Mr. HALE. I merely referred to my own experience and observation, and I believe that it is the opinion of every ex-member of congress in this body, that the yeas and nays would not be in order after an announcement of a vote by the Chair had been made.

The question being upon sustaining the decision of the Chair, the yeas and nays were taken, with the following result—yeas, 167; nays, 62.

YEAS.

Abbott, Josiah G. Allen, Parsons
Adams, Benjamin P. Alley, John B.
Adams, Shubael P. Allis, Josiah
Allen, James B. Alvord, D. W.
Allen, Joel C. Austin, George

Baker, Hillel
Ball, George S.
Bancroft, Alpheus
Bates, Moses, Jr.
Bennett, William, Jr.
Bennett, Zephaniah
Bird, Francis W.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Breed, Hiram N.
Brown, Adolphus F.
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Bullock, Rufus
Bumpus, Cephas C.
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Caruthers, William
Case, Isaac
Chapin, Chester W.
Childs, Josiah
Churchill, J. McKean
Clarke, Alpheus B.
Cleverly, William
Cole, Sumner
Coolidge, Henry F.
Crittenden, Simeon
Cross, Joseph W.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Robert T.
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Easton, James, 2d
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Frothingham, R., Jr.
Gale, Luther
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Giles, Joel
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Haggood, Lyman W.
Harmou, Phineas
Haskins, William
Hawkes, Stephen E.
Heath, Ezra, 2d
Hewes, James
Hobart, Henry
Hood, George
Howard, Martin

Aldrich, P. Emory
Andrews, Robert
Aspinwall, William
Ayres, Samuel
Bartlett, Russel

Howland, Abraham H.
Hoyt, Henry K.
Hunt, Charles E.
Huntington, George H.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jacobs, John
Kendall, Isaac
Kingman, Joseph
Knight, Hiram
Knowlton, Charles L.
Knowlton, William H.
Knox, Albert
Langdon, Wilber C.
Lawton, Job G., Jr.
Little, Otis
Loomis, E. Justin
Marvin, Abijah P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Nichols, William
Nute, Andrew T.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parker, Adolphus G.
Parris, Jonathan
Partridge, John
Penniman, John
Perkins, Daniel A.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pomroy, Jeremiah
Rawson, Silas
Richards, Luther
Richardson, Samuel H.
Ring, Elkanah, Jr.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sherill, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Sprague, Melzar
Spoonor, Samuel W.
Stevens, Granville
Stevens, William
Strong, Alfred L.
Sumner, Increase
Swain, Alanson
Thompson, Charles
Tilton, Horatio W.
Turner, David P.
Tyler, William
Wallace, Frederick, T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
White, George
Whitney, James S.
Williams, J. B.
Wilson, Henry
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wood, William H.
Wright, Ezekiel

NAYS.

Bartlett, Sidney
Bradbury, Ebenezer
Brewster, Osymn
Brinley, Francis
Briggs, George N.

Cogswell, Nathaniel
Conkey, Ithamar
Curtis, Wilber
Dawes, Henry L.
Ely, Homer
Gardner, Henry J.
Gilbert, Wanton C.
Goulding, Jason
Gray, John C.
Hale, Artemas
Hale, Nathan
Hallett, B. F.
Haggood, Seth
Heard, Charles
Henry, Samuel
Hillard, George S.
Houghton, Samuel
Hubbard, William J.
Hunt, William
Huntington, Asahel
Hurlbut, Samuel A.
Jenkins, John
Kellogg, Giles C.
Kinsman, Henry W.
Knowlton, J. S. C.
Lincoln, Frederic W., Jr.
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Marvin, Theophilus R.
Miller, Seth, Jr.
Mixer, Samuel
Morey, George
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Parker, Samuel D.
Plunkett, William C.
Preston, Jonathan
Rockwell, Julius
Schouler, William
Stevenson, J. Thomas
Stiles, Gideon
Train, C. R.
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Weeks, Cyrus
Wilkinson, Ezra
Wilson, Milo
Woods, Josiah B.

ABSENT.

Abbott, Alfred A.
Allen, Charles
Appleton, William
Atwood, David C.
Ballard, Alvah
Banks, Nathaniel P., Jr.
Barrows, Joseph
Barrett, Marcus
Bates, Eliakim A.
Beach, Erasmus D.
Beal, John
Beebe, James M.
Bell, Luther V.
Bigelow, Edward B.
Bigelow, Jacob
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Bradford, William J. A.
Braman, Milton P.
Bronson, Asa
Brown, Alpheus R.
Brown, Artemas
Buck, Asahel
Bullen, Amos H.
Carter, Timothy W.
Chandler, Amariah
Chapin, Daniel E.
Chapin, Henry
Choate, Rufus
Clark, Henry
Clark, Ransom
Clark, Salah
Clarke, Stillman
Coggin, Jacob
Cole, Lansing J.
Cook, Charles E.
Copeland, Benjamin F.
Crane, George B.
Cressy, Oliver S.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Ebenezer
Davis, Isaac
Davis, John
Davis, Solomon
Day, Gilman
Dehon, William
Denison, Hiram S.
DeWitt, Alexander
Doane, James O.
Dorman, Moses
Eaton, Lilley
Eustis, William T.
Farwell, A. G.
Fiske, Emery
Fitch, Ezekiel W.
Fowler, Samuel P.
French, Charles H.
Gardner, Johnson
Gooch, Daniel W.
Gooding, Leonard
Gould, Robert
Goulding, Dalton
Graves, John W.
Greenleaf, Simon
Hadley, Samuel P.
Hall, Charles B.
Hammond, A. B.
Haskell, George
Hathaway, Elhanan P.
Hayden, Isaac
Hayward, George
Hazewell, C. C.
Hersey, Henry
Hewes, William H.
Heywood, Levi
Hinsdale, William
Hobart, Aaron
Hobbs, Edwin
Holder, Nathaniel
Hooper, Foster
Hopkinson, Thomas
Huntington, Charles P.
Hurlbut, Moses C.
Jackson, Samuel
James, William
Jenks, Samuel H.
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Knight, Jefferson
Knight, Joseph
Kuhn, George H.
Ladd, Gardner P.
Ladd, John S.
Lawrence, Luther
Leland, Alden
Lincoln, Abishai
Littlefield, Tristram
Lowell, John A.
Marble, William P.
Marcy, Laban
Meader, Reuben
Moore, James M.
Morse, Joseph B.
Newman, Charles
Norton, Alfred

Thursday.]

ELECTIONS BY PLURALITY, &c. — BIRD — TRAIN — ALVORD — GARDNER.

[July 28th.]

Noyes, Daniel
 Ober, Joseph E.
 Orne, Benjamin S.
 Paine, Henry
 Park, John G.
 Parker, Joel
 Parsons, Samuel C.
 Parsons, Thomas A.
 Payson, Thomas E.
 Peabody, George
 Peabody, Nathaniel
 Pease, Jeremiah, Jr.
 Perkins, Jesse
 Perkins, Jonathan C.
 Perkins, Noah C.
 Pool, James M.
 Powers, Peter
 Prince, F. O.
 Putnam, George
 Putnam, John A.
 Rantoul, Robert
 Read, James
 Reed, Sampson
 Rice, David
 Richardson, Daniel
 Richardson, Nathan
 Rockwood, Joseph M.
 Rogers, John
 Ross, David S.
 Sampson, George R.
 Sargent, John
 Sheldon, Luther
 Sherman, Charles
 Sleeper, John S.
 Smith, Matthew
 Souther, John
 Stacy, Eben H.

Stetson, Caleb
 Stevens, Charles G.
 Stevens, Joseph L., Jr.
 Storrow, Charles S.
 Stutson, William
 Sumner, Charles
 Taber, Isaac C.
 Taft, Arnold
 Talbot, Thomas
 Taylor, Ralph
 Thayer, Joseph
 Thayer, Willard, 2d
 Thomas, John W.
 Tileston, Edmund P.
 Tilton, Abraham
 Tower, Ephraim
 Turner, David
 Tyler, John S.
 Underwood, Orison
 Viles, Joel
 Vinton, George A.
 Wales, Bradford L.
 Walker, Samuel
 Warner, Marshal
 Wetmore, Thomas
 Wheeler, William F.
 White, Benjamin
 Whitney, Daniel S.
 Wilbur, Daniel
 Wilbur, Joseph
 Wilder, Joel
 Wilkins, John H.
 Williams, Henry
 Wilson, Willard
 Winn, Jonathan B.
 Wood, Nathaniel

Absent, and not voting, 189.

So the decision of the Chair was sustained.

Elections by Plurality.

The question recurred on the motion to reconsider the vote on the subject of elections by plurality, upon which the yeas and nays had been ordered.

Mr. FRENCH, of New Bedford, moved to reconsider the vote by which the yeas and nays were ordered.

The motion was agreed to, and the question being taken, the demand for the yeas and nays was not sustained.

The question then being taken on the motion to reconsider the vote on the subject of elections by plurality, it was upon a division—ayes, 138; noes, 49—decided in the affirmative.

So the motion to reconsider, was agreed to.

The question being on the final passage of the resolves on the subject of elections by plurality, they were read, as follows:—

1. *Resolved*, That it is expedient to provide in the Constitution, that a majority of all the votes given, shall be necessary to the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth: *provided*, that if at any election of either of the above named officers, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be Governor.

2. *Resolved*, That in all elections of Senators and Councillors, the person having the highest number of votes, shall be elected.

3. *Resolved*, That it is expedient so to amend the Constitution, as to provide that a majority of the votes shall be necessary for the election of Representatives to the General Court, until otherwise provided by law.

4. *Resolved*, That in the election of all city and town officers, the same rule shall govern as in case of Representatives to the General Court.

5. *Resolved*, That in the election of all county and district officers, the person having the highest number of votes shall be elected.

6. *Resolved*, That in all elections where the person having the highest number of votes may be elected, and there is a failure of election because two persons have an equal number of votes, subsequent trials may be had at such times as may be prescribed by the legislature.

Mr. BIRD, of Walpole. I regret, exceedingly, that I have been the cause of so much uneasiness for the last hour, but as the matter has been finally settled, I desire to submit a few amendments. I move to amend the first resolve by inserting after the word "Commonwealth," in the fourth line, the words "until otherwise provided by law." If this amendment is adopted, I propose to submit the following as a new resolve, to be inserted after the third resolve:—

Resolved, That any law providing that the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, Attorney-General, and Representatives to the General Court, or either of them, shall be elected by plurality instead of majority, shall not take effect until one year after its passage.

I also propose to add the following in place of the fourth resolve:—

Resolved, That in the election of city and town officers, such rules shall govern as the legislature may prescribe.

It will be seen that the effect of the first amendment which I propose, will be to give to the legislature the power to prescribe that the plurality shall elect the six State officers, instead of the majority. The first resolve now provides that a majority of the votes given shall be necessary to the election of these six State officers. If this amendment is adopted, the legislature will have the power to provide for their election by plurality, but the fourth resolve provides that any such change by the legislature, shall not go into operation until one year after its passage. That is, if the legislature pass a plurality law, an opportunity shall be given to the people to revise the proceedings of that legislature by the election of another body, who shall meet and act upon the matter. If they please to repeal the proceedings of the preceding legislature, they can do so, but if not, the law stands ratified. One great object of this change was to provide something which should look, and be, in reality, more uniform, and which would give something more of symmetry to the system than it at present possesses. As a friend of the majority rule, I feel that I can now retain that rule as applied to the election of the six State officers named in the resolution, until a majority of the people of the Commonwealth, through their representatives, express the desire that it shall be changed; but at the same time, provision is made that such a change shall not take effect until one year afterwards. The object of this is merely to prevent an accidental majority from passing this law, and also to prevent the trickery of politicians, who may desire to subserve their own particular and selfish ends. There is a slight change, also, in the third resolve, to which I have proposed an amendment. As the resolve now stands, representatives are to be chosen by majority until otherwise provided by law. The only change this amendment will make is, that this provision

will not go into operation until a year after its passage.

The next proposition is to strike out the fourth resolve. I can see no reason why the election of town officers should be the same as the election of State officers, and I have therefore proposed to substitute a provision that the election of those officers shall take place in such manner as the legislature shall provide. I take it there can be no objection to such a provision, for it is evident that if the people desire to have a different law, they may, through their representatives, obtain one. So far as my acquaintance extends, however, there is no practical difficulty in the election of town officers at the present time, and I think none need be anticipated.

It is unnecessary to argue these points to any great extent, for they are plain, intelligible, and will be easily understood. We of the majority would prefer to retain that rule in the Constitution, without leaving it to the power of the legislature to change it; but, for one, I am entirely willing to submit this matter to the people. If they are desirous of making this change, let them have it; and we shall have an opportunity of changing it, if necessary, at the succeeding legislature. At any rate, by adopting such a provision, we shall be preventing any hasty action on the part of legislative bodies.

I trust that those who have acted with me in this matter, and who are in favor of the majority principle, will look at these propositions carefully before they vote against them. I am aware that it is said we are yielding too much to plurality, but it strikes me that this is not the case, strictly speaking. We yield to the will of the people and to that alone, and if they demand the plurality let them have it. No one will deny that the tendency is towards the adoption of the plurality rule in all elections, and let us have an opportunity to try it first in the election of county and district officers. If we find that it works well in this instance, if we find that the interests of the community will be promoted by the change, we can make the change, and apply the rule to the election of other and more important officers. But if, on the contrary, we do not like its operation, we can come back to our present system and retain this.

Mr. TRAIN, of Framingham. I move to amend the amendment to the first resolve, by striking out, in the second line, the words "majority of votes given;" also to strike out the amendment of the gentleman from Walpole, (Mr. Bird,) and add after the word "Commonwealth," the words "and the person having the highest number of votes shall be duly declared to be elected."

The PRESIDENT. It is not competent, at this stage of business, to submit such an amendment, as it is in the nature of a substitute to the amendment proposed by the gentleman from Walpole, (Mr. Bird).

Mr. ALVORD, for Montague, called for the previous question.

Mr. GARDNER, of Boston. I trust that the gentleman for Montague does not intend to force us to a vote, by making such a demand.

Mr. ALVORD. I will withdraw my motion, if the Convention will agree to take the vote upon this question at a quarter before eight o'clock.

Mr. GARDNER. I really hope that the gentleman will not force the main question at this

Thursday,]

ELECTIONS BY PLURALITY.—WILSON—LORD—GRAY.

[July 28th.

time. Here is a new proposition made to us, under the color of an amendment, at the very last stage of this question, a question of grave importance, and of great consequence to every portion of the State, and to every individual in it. We have spent some three or four hours in the discussion of preliminary questions, and now the amendment of the gentleman from Walpole is introduced. Hardly has it been stated to the Convention, when the gentleman for Montague rises and moves the previous question, before one word can be said by any member of the House except the gentleman who introduced these important propositions. I believe that if the previous question is ordered now, it will result in the loss of much valuable time to this Convention. There are gentlemen here, who desire to express their views upon this subject, and I hope that no attempt to gag them, or shut them off in this manner, will be sustained. Gentlemen have met here to discuss the propriety of making provisions which may probably be a part of the organic law of the Commonwealth for the next twenty years; they are sent into this assembly for the sacred, solemn purpose, of providing an organic law for this State, and I submit whether they ought to be debarred from the privilege of considering and debating such questions as may come before them? I do not believe that the majority of this Convention will sanction such a step, and, unless the gentleman withdraws his motion, I shall be compelled to call for the yeas and nays.

The question being taken on ordering the yeas and nays, it was, upon a division—yeas, 44; noes, 94—one-fifth voting in favor, decided in the affirmative.

So the yeas and nays were ordered.

Mr. WILSON, of Natick. I would suggest to my friend for Montague, that it would be better to withdraw his motion, so that we can move to lay the subject upon the table for the present. We have agreed not to adjourn until eight o'clock, and I think we can dispose of the subject this evening.

Mr. LORD, of Salem. I understand that the President of the Convention has ruled, that after the yeas and nays have been ordered upon the previous question, the motion cannot be withdrawn but by universal consent.

The PRESIDENT. The Chair has made no such decision within his recollection.

Mr. LORD. I am aware it was not the decision of the present occupant of the Chair.

Mr. GRAY, of Boston. I believe that such a decision was made by the President *pro tempore*, the other day.

The PRESIDENT. The Chair is of the opinion, that the ordering of the yeas and nays would not preclude the withdrawal of such a motion.

Mr. LORD. I supposed that such was the case, although it was differently ruled by the gentleman who occupied the Chair of the Convention the other day. Now, Sir, I do not want the motion for the previous question withdrawn, for the purpose of laying the orders upon the table, for the purpose of rescinding a vote, for the purpose of having an evening session, to crowd through this resolution which nobody knows anything about. But I think we had better adjourn until to-morrow morning, and, in the meantime, have the amendments printed, so that we may know what they are. We are acting upon a

fundamental law, with which, perhaps, a few gentlemen may be fully acquainted; but it is quite important that the Convention should be, also, fully acquainted with it. It is important, too, that a proposition of the character of this, should not be forced through in a single night, because I do not think it would be right to adopt a principle in our Constitution, contrary to the recorded judgment of this Convention. It is for this reason that I am opposed to going on with the consideration of this subject at the present time. We do not, all of us, know what is the amendment which has been proposed, and some gentlemen have not even heard it read. If we adjourn, there are two desirable objects which would be attained. In the first place, the Secretary will have the amendments printed, so that we can know where we stand upon this matter, and be ready to vote upon it in the morning. In the next place, if we call the yeas and nays now upon ordering the previous question, they cannot be taken before eight o'clock, when the time will have arrived when this Convention must adjourn. Now, Sir, in order to accomplish both of these desirable results, and get rid of the previous question, I move that the Convention do now adjourn.

The question was taken, and, upon a division—yeas, 56; noes, 103—the motion was not agreed to.

Mr. LORD demanded the yeas and nays.

A division being called for on the motion, there were—yeas, 38; noes, 109—one-fifth voting in the affirmative.

So the yeas and nays were ordered.

The question recurred on the motion of the gentleman from Salem, to adjourn, and being taken by yeas and nays, it was decided in the negative—yeas, 56; nays, 144—as follows:—

YEAS.

Adams, Benjamin P.
Aldrich, P. Emory
Andrews, Robert
Aspinwall, William
Barrows, Joseph
Bell, Luther V.
Bliss, Gad O.
Bradbury, Ebenezer
Brimley, Francis
Buck, Asahel
Cogswell, Nathaniel
Conkey, Ithamar
Crittenden, Simeon
Crosby, Leander
Crowell, Seth
Davis, Solomon
Dawes, Henry L.
Dennison, Hiram S.
Edwards, Elisha
Eustis, William T.
Gardner, Henry J.
Gilbert, Wanton C.
Goulding, Jason
Gray, John C.
Hale, Artemas
Hale, Nathan
Harmon, Phineas
Hillard, George S.
Hinsdale, William
Houghton, Samuel
Hubbard, William J.
Hunt, William
James, William
Jenkins, John
Kellogg, Giles C.
Lincoln, Fred. W., Jr.
Livermore, Isaac
Lord, Otis P.
Marvin, Theophilus R.
Miller, Seth, Jr.
Morey, George
Noyes, Daniel
Oliver, Henry K.
Orcutt, Nathan
Parker, Samuel D.
Perkins, Daniel A.
Plunkett, William C.
Sherrill, John
Stevenson, J. Thomas
Thompson, Charles
Train, Charles R.
Weeks, Cyrus
White, Benjamin
Wildor, Joel
Wilkinson, Ezra
Wilson, Milo

NAYS.

Adams, Shubael P.
Allen, James B.
Allen, Parsons
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Ball, George S.
Bangroff, Alpheus
Bates, Moses, Jr.
Beal, John
Bennett, William, Jr.
Bird, Francis W.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Breed, Hiram N.
Brown, Adolphus F.

Brown, Hammond
Brown, Hiram C.
Brownell, Joseph
Bryant, Patrick
Bumpus, Cephas C.
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Caruthers, William
Case, Isaac
Chapin, Chester W.
Churchill, J. McKean
Clarke, Alpheus B.
Clark, Ransom
Cole, Sumner
Cushman, Thomas
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Robert T.
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Earle, John M.
Easland, Peter
Easton, James, 2d
Eaton, Calvin D.
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Freeman, James M.
French, Charles A.
French, Rodney
Gale, Luther
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hallett, B. F.
Hammond, A. B.
Hapgood, Lyman W.
Hapgood, Seth
Hathaway, Elhanan P.
Heath, Ezra, 2d
Hewes, James
Heywood, Levi
Hobart, Henry
Hood, George
Howard, Martin
Howland, Abraham H.
Hoyt, Henry K.
Huntington, George H.
Hurlburt, Samuel A.
Ide, Abijah M., Jr.
Kendall, Isaac
Kingman, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Little, Otis
Loomis, E. Justin
Marcy, Laban
Marvin, Abijah P.
Mason, Charles
Merriitt, Simeon
Monroe, James L.
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nute, Andrew T.
Ober, Joseph E.
Osgood, Charles
Packer, E. Wing
Parris, Jonathan
Partridge, John
Penniman, John
Phelps, Charles
Phinney, Sylvanus B.
Pierce, Henry
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Samuel H.
Rockwood, Joseph M.
Ross, David S.
Royce, James C.
Sanderson, Amasa
Schouler, William
Sikes, Chester
Simmons, Perez
Simonds, John W.
Sprague, Melzar
Spoonor, Samuel W.
Stevens, Charles G.
Stevens, Granville
Strong, Alfred L.
Swain, Charles
Sumner, Charles
Sutter, Alanson
Thayer, Joseph
Tilton, Horatio W.
Turner, David
Turner, David P.
Tyler, William
Upton, George B.
Wallace, Frederick T.
Wallis, Freeland
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
Whitney, James S.
Williams, Henry
Wood, Charles C.
Wood, Otis
Wood, William H.

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Allen, Charles
Allen, Joel C.
Alley, John B.
Appleton, William
Atwood, David C.
Ayres, Samuel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Rufus
Bartlett, Sidney
Barrett, Marcus
Bates, Eliakim A.
Beach, Erasmus D.
Beebe, James M.
Bennett, Zephaniah
Bigelow, Edward B.
Bigelow, Jacob
Bishop, Henry W.
Blagden, George W.
Bliss, William C.
Bradford, William J. A.
Braman, Milton P.
Brewster, Osmyn
Briggs, George N.
Bronson, Asa
Brown, Alpheus R.
Brown, Artemas
Brownell, Frederick
Bullen, Amos H.
Bullock, Rufus
Carter, Timothy W.
Chandler, Amariah
Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Choate, Rufus
Clark, Henry
Clark, Salah
Clarke, Stillman
Cleverly, William

Thursday,]

ELECTIONS BY PLURALITY, &c. — STEVENSON — HALE — BUTLER — SCHOULER.

[July 28th.

Coggin, Jacob
 Cole, Lansing J.
 Cook, Charles E.
 Coledge, Henry F.
 Copeland, Benjamin F.
 Crane, George B.
 Cressy, Oliver S.
 Crockett, George W.
 Cross, Joseph W.
 Crowninshield, F. B.
 Cummings, Joseph
 Curtis, Wilbur
 Cushman, Henry W.
 Cutler, Simeon N.
 Davis, Ebenezer
 Davis, Isaac
 Davis, John
 Dehon, William
 DeWitt, Alexander
 Doane, James C.
 Dorman, Moses
 Duncan, Samuel
 Dunham, Bradish
 Durgin, John M.
 Eames, Philip
 Eaton, Lilley
 Ely, Homer
 Farwell, A. G.
 Fiske, Emery
 Fitch, Ezekiel W.
 Foster, Aaron
 Foster, Abram
 Fowle, Samuel
 Fowler, Samuel P.
 French, Charles H.
 French, Samuel
 Frothingham, R'd, Jr.
 Giles, Joel
 Gooch, Daniel W.
 Gooding, Leonard
 Gould, Robert
 Goulding, Dalton
 Graves, John W.
 Greenleaf, Simon
 Hadley, Samuel P.
 Hall, Charles B.
 Haskell, George
 Haskins, William
 Hawkes, Stephen E.
 Hayden, Isaac
 Hayward, George
 Hazewell, Charles C.
 Heard, Charles
 Henry, Samuel
 Hersey, Henry
 Hewes, William H.
 Hobart, Aaron
 Hobbs, Edwin
 Holder, Nathaniel
 Hooper, Foster
 Hopkinson, Thomas
 Hunt, Charles E.
 Huntington, Asahel
 Huntington, Charles P.
 Hurlbut, Moses C.
 Hyde, Benjamin D.
 Jackson, Samuel
 Jacobs, John
 Jenks, Samuel H.
 Johnson, John
 Kellogg, Martin R.
 Keyes, Edward L.
 Kimball, Joseph
 Kinsman, Henry W.
 Knight, Hiram
 Knight, Jefferson
 Knight, Joseph
 Knowlton, Charles L.
 Kuhn, George H.
 Ladd, John S.
 Lawrence, Luther
 Lawton, Job G., Jr.
 Leland, Alden
 Lincoln, Abishai
 Littlefield, Tristram
 Lothrop, Samuel K.
 Loud, Samuel P.

Lowell, John A.
 Marble, William P.
 Meader, Reuben
 Mixter, Samuel
 Moore, James M.
 Morss, Joseph B.
 Nayson, Jonathan
 Newman, Charles
 Nichols, William
 Norton, Alfred
 Orne, Benjamin S.
 Paige, James W.
 Paine, Benjamin
 Paine, Henry
 Park, John G.
 Parker, Adolphus G.
 Parker, Joel
 Parsons, Samuel C.
 Parsons, Thomas A.
 Payson, Thomas E.
 Peabody, George
 Peabody, Nathaniel
 Pease, Jeremiah, Jr.
 Perkins, Jesse
 Perkins, Jonathan C.
 Perkins, Noah C.
 Pomroy, Jeremiah
 Pool, James M.
 Powers, Peter
 Preston, Jonathan
 Prince, F. O.
 Putnam, George
 Putnam, John A.
 Rantoul, Robert
 Read, James
 Reed, Sampson
 Richardson, Nathan
 Ring, Elkanah, Jr.
 Rockwell, Julius
 Rogers, John
 Sampson, George R.
 Sanderson, Chester
 Sargent, John
 Sheldon, Luther
 Sherman, Charles
 Sleeper, John S.
 Smith, Matthew
 Souther, John
 Stacy, Eben H.
 Stetson, Caleb
 Stevens, Joseph L., Jr.
 Stevens, William
 Stiles, Gideon
 Storrow, Charles S.
 Stutson, William
 Sumner, Increase
 Taber, Isaac C.
 Taft, Arnold
 Talbot, Thomas
 Taylor, Ralph
 Thayer, Willard, 2d
 Thomas, John W.
 Tileston, Edmund P.
 Tilton, Abraham
 Tower, Ephraim
 Tyler, John S.
 Underwood, Orison
 Upham, Charles W.
 Viles, Joel
 Vinton, George A.
 Walcott, Samuel B.
 Wales, Bradford L.
 Walker, Amasa
 Walker, Samuel
 Warner, Marshal
 Wetmore, Thomas
 Wheeler, William F.
 White, George
 Whitney, Daniel S.
 Wilbur, Daniel
 Wilbur, Joseph
 Wilkins, John H.
 Williams, J. B.
 Wilson, Henry
 Wilson, Willard
 Winn, Jonathan B.
 Winslow, Levi M.

Wood, Nathaniel
 Woods, Josiah B.

Absent and not voting, 219.

Wright, Ezekiel

So the Convention refused to adjourn.

The PRESIDENT. The question is upon ordering the main question, and upon that the yeas and nays have been ordered.

Mr. STEVENSON, of Boston. I hope that the Convention will not, at this late stage of the proceedings, order the main question to be put; and my reason is this: Here is a proposition for a radical change in the Constitution, submitted, which has never before been suggested in the Commonwealth; a proposition entirely new, and which has had none of the consideration of the members of this Convention upon this floor, whatever may have been its consideration elsewhere; and, consequently, no opportunity has been allowed to see what will be the effect produced by its adoption, and how it will operate. And yet, it is proposed here, that we shall vote, yea or nay, upon it, without having any such opportunity afforded.

Now, I ask, for what reason can the previous question be ordered, under such circumstances? It must be for the purpose of saving time; but I ask if it will save any time?

Mr. HALE, of Bridgewater. I rise to a question of order. Is there not a vote of the Convention, to adjourn at eight o'clock?

The PRESIDENT. The Chair has no knowledge of any vote to that effect.

Mr. HALE. I am confirmed in that opinion, from the fact that the Chair proposed, a few moments ago, that the subject be laid upon the table, so that the Convention might be able to adjourn at 8 o'clock, to meet again this evening.

The PRESIDENT. The Chair will read the Secretary's record, respecting the vote to which the gentleman refers. It is as follows:—

"Mr. Griswold moved that the session be extended to eight o'clock this evening, and it was carried."

The Chair accordingly rules, that it is competent for the Convention to sit as long as it may feel disposed. The gentleman from Boston can proceed with his remarks.

Mr. STEVENSON. I was observing, when interrupted, that this is a question of saving time. But I submit, that but one vote can be taken upon these amendments which have been proposed, and a motion may be made to reconsider to-morrow, and the discussion would then probably occupy a much longer time than it would this evening. So that, in fact, there is little or no time to be gained by it. There is another objection, which I have, and that is, that I hold in my hand an amendment, which I desire to propose, and which I believe will receive the approval of many members of the Convention, and as yet no opportunity has been allowed me to propose it.

Now, I appeal to gentlemen, as a matter of justice—is it right, in a body like this, to allow the previous question to be sustained before members have had time or opportunity to reflect upon the matter under consideration? Is it right, that the moment a gentleman has submitted an important proposition, and given us his views in regard to it, another member should at once rise and demand the previous question, thus cutting off all debate and amendments? Is it the way in

which we have conducted our business heretofore, or the way in which a body of the dignified character and importance of this, should conduct its labors at any time? Is there any reason why a member of this body should not have an opportunity to ask the mover of a proposition, what is its effect—what is its purpose? If we adopt the previous question now, nobody can propose any amendments. And I do not believe it is intended to recommend to the people of Massachusetts to adopt amendments to the Constitution of the State, which we ourselves have never considered.

I am perfectly aware that it is not in order to state objections to the proposition of the gentleman from Walpole, (Mr. Bird,) but it is in order to state, that, as I heard it read, I saw objections which would, I believe, if laid before this Convention, move the minds of gentlemen to no small degree.

In regard to the other point, whether you shall settle the question to-night or to-morrow morning, that is a matter which must be left with the Convention, who have a right to sit here as long as they choose. But I submit, whether it is proper for such a body as this to ask the people of Massachusetts to alter the fundamental law in a manner which they themselves have not considered. As one of the minority of this Convention, I appeal to the majority, in good faith, whether it is right to drive members to vote upon a proposition of this character; and whether it is not due to every individual here, that before he records his vote upon any subject, he should be allowed to express his views in regard to it.

I hope the previous question will not be sustained. No good motive for it has been or can be shown, but on the contrary there are many palpable objections to such a course being taken at this time.

Mr. BUTLER, of Lowell. I do not wish to say but a single word upon this matter. And first, the gentleman from Boston says there is no good reason why we should sustain the previous question.

Question of Order..

Mr. SCHOULER, of Boston. I rise to a point of order. I desire to know, if the Chair has decided that this Convention did not vote to adjourn at eight o'clock?

The PRESIDENT. The Chair has read the vote which was passed. The Convention voted it would hold an evening session until eight o'clock.

Mr. SCHOULER. I want the decision of the Chair itself upon this point.

The PRESIDENT. The Chair will again read the vote, from the journal.

The entry made by the Secretary was accordingly read.

The PRESIDENT. In accordance with this resolve, the Chair does not consider it imperative upon him to adjourn the Convention at eight o'clock.

Mr. SCHOULER. Then I appeal from the decision of the Chair.

Mr. BUTLER, of Lowell. I rise to a point of order.

The PRESIDENT. The delegate from Boston has appealed from the decision of the Chair.

Mr. BUTLER. Still, I rise to a point of order; and that is, that no gentleman has a right to make inquiries while another is speaking, in order

Thursday,]

QUESTION OF ORDER.—SCHOULER—ALVORD—GRISWOLD—LORD—JENKS—DAVIS.

[July 28th.]

to get a decision of the Chair upon which to base an appeal. I wish farther to know whether the decision of the Chair can take away my right to the floor?

Mr. DANA, for Manchester. I would inquire if the question before the House is upon the previous question or upon the appeal?

The PRESIDENT. The question was upon ordering the main question, pending which the gentleman from Boston (Mr. Schouler) appealed from the decision of the Chair, that it is not imperative for the Chair to adjourn the Convention at eight o'clock.

Mr. SCHOULER, of Boston. I will state the grounds of my appeal. By a vote of the Convention, we decided not to adjourn until seven o'clock. I had the floor, and was about to address the Convention, when the gentleman for Erving (Mr. Griswold) asked me to allow him to make a motion. I complied with his request, and he then moved to extend that rule to eight o'clock. That was the motion made, I care not what it says upon the journal. And I will leave it to the gentleman himself whether in making that motion he intended to raise a quibble, or whether he honestly expected to extend the time to eight o'clock when the Convention should adjourn?

Mr. ALVORD, for Montague. I rise to a point of order. Some little time ago, I understood the gentleman from Bridgewater, (Mr. Hale,) to make an inquiry of the Chair concerning the hour of adjournment. The Chair in reply read the resolution which had been passed, and stated distinctly that in his opinion the Convention could remain in session as long as it saw fit. No appeal was taken from that decision, and I submit—as other business has intervened before the gentleman from Boston rose to a point of order—whether it is not too late for an appeal?

Mr. SCHOULER. I ask the gentleman for Erving to answer my question.

Mr. GRISWOLD, for Erving. As the gentleman has made a personal appeal to me, I am perfectly willing to state what I did and what was my object. My design in making that motion to extend the session, was to give notice to the Convention that there would be an evening session, so that we might close up the business as early as possible, and have it ready for the Committee. That is the reason I made the motion. I had no particular idea one way or the other in regard to the hour of adjournment; but if any existed, it was that the Convention might sit beyond that hour if it chose to do so.

Mr. ALVORD, for Montague. I rise to a point of order. I submit that the appeal is too late.

The PRESIDENT. The Chair understands the question to be this: The person now occupying the Chair was placed in it at a quarter past eight o'clock, when the question was raised by the gentleman from Bridgewater, (Mr. Hale,) in regard to the hour of adjournment. The Chair read the vote of the Convention, and still believes that under that vote he has no right to adjourn this body, but the Convention must say for itself when it will adjourn.

Mr. SCHOULER. I would inquire of the Chair if I am in order? I was called to order by the gentleman for Montague.

The PRESIDENT. The Chair would say that he does not desire to press this matter, or to assume any arbitrary power, but merely desires

to act in accordance with what he believes to be right.

Mr. SCHOULER. I know the good nature of the Chair, and his desire to decide properly in this matter, and I am the last man to take an appeal from any decision that the Chair may make, but I do not think that he understands the motion of the gentleman for Erving, (Mr. Griswold,) as I understood it. A motion, however, was made about seven o'clock this evening, by the gentleman now occupying the chair, to lay the orders upon the table, in order that the time of adjournment might be extended until eight o'clock, which is conclusive proof to my mind that the Chair understood the order precisely as I understood it.

Now, Sir, passing from that subject, we are here very near the close of our session. There is no desire on the part of any one to extend the session, and after having thus far gone through with our labors without any serious trouble, I trust that we shall not make the last day's proceedings a scene of excitement or uproar, but allow every subject which is to come before us to be acted upon in perfect harmony. I think that if we adjourn now and have the amendments printed, we can come in to-morrow and vote upon them understandingly, and if necessary, I am willing to vote to meet at eight o'clock.

Mr. BUTLER, of Lowell. I rise to a point of order. The gentleman is not discussing the appeal, but some other subject.

The PRESIDENT. The Chair rules that the gentleman must confine his remarks to the question of appeal.

Mr. SCHOULER. If the Chair still rules that this Convention ought not, in accordance with its vote, to adjourn at eight o'clock, I hold my appeal to be good.

The PRESIDENT. The Chair will state the question as he understands it, and the gentleman may then make such explanation as may be necessary. The Chair understands the matter to be this: The gentleman for Erving, (Mr. Griswold,) moved that the Orders of the Day lie upon the table. The motion was agreed to, and the gentleman then moved that the session be extended until eight o'clock. That motion was also agreed to, and under that vote the Chair holds that it is not his duty to adjourn this Convention until he is authorized by a specific vote to do so. The delegate from Boston, (Mr. Schouler,) appeals from the decision of the Chair, and the question therefore is, shall the decision of the Chair be sustained?

Mr. LORD, of Salem. I desire to make an inquiry of the Chair. During almost the whole of the session we have had a rule to adjourn at one o'clock, except on Saturdays, when the session was extended by a vote of the Convention until two o'clock. I would ask whether the same form of motion was not used in the present case, as is used in extending the session on that day? if so, I contend that the same rule ought to be applied here.

Mr. ELY, of Westfield. I would inquire if there has been any rule by which the afternoon session has been adjourned at a particular hour?

Mr. LORD. Will the Chair be kind enough to answer my inquiry, whether the vote by which the Convention adjourned at two o'clock in the afternoon, is not precisely in the same form as the order which has been read?

Mr. BATES, of Plymouth. I rise to a point of order; the gentleman is not discussing the question of appeal.

The PRESIDENT. The Chair must rule that the questions propounded by the gentleman from Salem, (Mr. Lord,) are not proper to be answered by the Chair. If the gentleman requests it, the Secretary will be directed to read the vote to which he refers.

Mr. JENKS, of Boston. I would like to say a word upon a question of order. It seems to me that the vote taken by the Convention was this: that the afternoon session shall be extended to eight o'clock. Now what did that vote mean? Did it mean to imply that the session should close at eight o'clock, this evening, or that we should remain in session until eight to-morrow morning? I want to know whether a man who is sentenced to be hung at eight, and is not hung until nine o'clock, is hung lawfully? [Laughter.]

Mr. EARLE, of Worcester. I would inquire of the Chair, whether he has decided the appeal from the decision of the Chair to be in order?

The PRESIDENT. The Chair has decided that the appeal taken from the decision of the Chair by the gentleman from Boston, (Mr. Schouler,) is in order, and the question before the Convention is, shall the decision of the Chair stand as the judgment of this Convention?

Mr. EARLE. I would inquire whether, when a question has been settled and other business has intervened, it is competent to take an appeal from the decision of the Chair?

The PRESIDENT. The Chair is not able to decide that question.

Mr. DAVIS, of Plymouth. I rise to a point of order. I submit that this is not an appeal from the decision of the Chair; but if anything, it is an appeal from the record of the Convention, and there would be just as much propriety in appealing from a resolution which has been passed, as from this vote, for such in fact it is, after it has once been recorded upon the journal.

I think that it is not a matter upon which the Chair is competent to decide, for I consider it to be entirely beyond his jurisdiction, it being an appeal from the record of the Convention, and not from the decision of the Chair. I submit, therefore, that it is not in order.

Mr. LORD, of Salem. In order to avoid this difficulty which has arisen, and prevent the calling of the yeas and nays which have been ordered, and in order also to be good natured all around, believing still, however, that the outside limit should be eight o'clock, I move that this Convention do now adjourn.

Mr. BUTLER, of Lowell. I rise to a question of order. My legislative experience has been confined to the last winter, and then it was decided over and over again, that after a motion to adjourn had been made and decided in the negative, another motion was not in order until some subsequent business had been acted upon. I found fault with this decision, not that there may not be business intervening, but the question with me was, what constitutes such business? Does the President decide that the motion to adjourn is in order, under the present circumstances?

The PRESIDENT. The question before the Convention is on the appeal taken from the decision of the Chair by the gentleman from Boston, (Mr. Schouler,) and the gentleman from Salem (Mr. Lord) moves that the Convention do

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QUESTION OF ORDER, &c.—BRADBURY—BUTLER—HILLARD—WESTON—LORD—BALL.

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now adjourn. The Chair is of opinion that the motion to adjourn is in order.

The question being taken, it was, upon a division—ayes, 68; noes, 118—decided in the negative.

So the motion to adjourn did not prevail.

The question recurred on sustaining the decision of the Chair?

Cries of "Question!" "Question!"

Mr. BRADBURY, of Newton. I have stood here too many times in defence of my parliamentary rights, to be silenced by this call for the question.

I rise merely to state the reasons why I cannot concur in the decision of the Chair, that, under the order adopted to-day, this session does not terminate at eight o'clock. The record which has been read seems to indicate that this session should close at that time.

But, in order to be certain what is demanded by good faith, we must ascertain what is the apparent meaning of the order, and the manifest understanding with which it was adopted; and, in order to this, I desire that the Secretary refer to the language of the standing order terminating our morning sessions at one o'clock, and also to the subsequent order by which, for Saturdays, it was extended to two o'clock. And it seems, if I were occupying your Chair, Mr. President, that the form in which I should find those orders, would guide me in giving a decision in the present instance.

Besides, Sir, under such an order as has been read to us by the Secretary, gentlemen had reasonable ground to expect that this session would terminate at eight o'clock. It looks to me like a breach of faith to absent members, to continue this session beyond eight o'clock, under existing circumstances; and I would as soon cut off a right hand as vote to do so with these impressions.

Mr. BUTLER, of Lowell. I would inform the gentleman that there has been no hour fixed, by any rule whatever, for this Convention to adjourn in the afternoon.

Mr. BRADBURY. The record will show us the nature of the order. We are assembled here to act upon grave questions, and they must soon be settled definitively. We owe to ourselves and the public our most considerate action upon these questions. They should be settled in a full Convention, and if there is dereliction of duty in the absence of members, I submit that it is not at this time the fault of the minority. And I farther submit to this Convention, whether, under existing circumstances, we ought not now to adjourn, to meet to-morrow morning, when we can act upon the subjects before us more deliberately and understandingly than by sitting here to-night?

Mr. HILLARD, of Boston. In my younger days I studied a book called "Paley's Moral Philosophy," and in that is laid down this moral rule, that when A makes a contract with B, A shall execute it according to the way in which he knows B to understand it. Now, I can, with justice, apply that rule to this Convention. The order which has been read, is a contract between the majority and the minority; and I ask whether, in accordance with this moral rule, the majority is not to interpret the contract, or vote in the sense in which they suppose the minority understand it? Now, if the majority vote that the session of the Convention shall be extended to eight o'clock, I should like to know

whether there is a man in that majority, possessing natural common sense, who does not believe that it is the understanding of every person in the minority that it is intended to adjourn at eight o'clock, and at no other time? If that be so, I put it to the moral sense of every gentleman here if they are not now bound to stand by that construction.

The PRESIDENT. The motion made by the delegate for Erving, (Mr. Griswold,) was, that the session be extended to eight o'clock this evening. The order of adjournment at one o'clock, reads as follows:—

That the Convention hereafter adjourn at one o'clock in the afternoon, until otherwise ordered.

Mr. WESTON, of Duxbury. I am surprised that gentlemen profess not to have understood the motion of the gentleman for Erving. For their information, I will state that when that motion was made this morning, a gentleman arose and asked the Chair whether, if the motion should prevail, it would make it imperative upon the Convention to adjourn at eight o'clock, and it was the decision of the Chair that it was not imperative upon the Convention, but that it was an open question, to adjourn at eight o'clock, or extend the session beyond that hour.

Mr. LORD, of Salem. If the gentleman will allow me, I desire to make a correction. The inquiry was this: whether we might not adjourn before that time; and the decision of the President was, that the Convention might do so if they desired; but there was no statement that the session could be extended beyond eight o'clock.

Mr. GARDNER, of Boston. I merely desire to say, that when the gentleman for Erving (Mr. Griswold) made that motion, I inquired of you, as President *pro tempore* of the Convention, whether that motion compelled us to remain in session until eight o'clock, and your reply was, that the Convention might adjourn at any time it saw fit before that hour. I understood nothing, however, in regard to remaining in session after that time.

Mr. WESTON. The decision of the Chair, as I understood it, was that the vote did not make it imperative upon the Convention to adjourn before or after eight o'clock; and it seems very strange to me that gentlemen pretend that we were to be confined to that hour.

Mr. BALL, of Upton. One of the gentlemen who has risen to discuss this question, has laid down a principle of moral philosophy, and I hold that I am bound, and we are all bound, to act in accordance with that principle. Now, this question was talked over by the gentlemen in the eastern gallery, who are known by those who have watched their votes, to be in favor of completing the business of this Convention at the earliest day possible, that we may go to our homes and families; and we decided, without the dissent of a single member, that if the rest of the Convention would do so, we would stay here until eight o'clock to-morrow morning. The proposition was made in the Convention to extend the session until eight o'clock, but it was the understanding of members in the gallery, that we might extend that hour still farther, if the state of the business should demand it; and accordingly, gentlemen were prepared to remain here so long as the session should continue. Now I appeal to gentlemen whether it is not about time to close the labors of this Convention, and allow

those who reside at a distance, to return to their families. My business requires that I should be at home now, and there are many others equally as impatient as myself, to be released from the deliberations of this body.

In regard to another matter. I think that the majority of the Convention will do themselves great harm, if they order the main question to be put at this stage of the proceedings. At any rate, I shall be compelled to vote against it. I hope that the Convention will be ready to come together, and discuss the question which has been proposed, in good spirit, as much so as may be necessary, and take the vote upon it, and close up the business at as early a day as possible.

The question was then taken on sustaining the decision of the Chair, and it was decided in the affirmative.

Elections by Plurality.

Mr. BUTLER, of Lowell. When interrupted, I was about saying that I could adduce many reasons why the main question should be put now, and among others, was the action of certain gentlemen who had a habit of calling for the yeas and nays upon the most unimportant questions, thus causing a delay in the proceedings of the Convention. Another reason, and a very important one, too, is, that I now see more of the solid men of Boston in this hall, than I have seen since the commencement of the session, and I do not wish to have them detained from their families any longer than possible. I hope that the main question will be ordered, if for no other purpose than to accommodate them. Another reason is, that if we do not pass these resolves to-night, they will lie over until to-morrow, when they would, in all probability, be postponed until the next day, a result which, I trust, the good sense of the majority will not permit to be brought about.

Now I propose—for I have not an overbearing disposition—to allow every gentleman who desires it, to discuss this question fully and fairly. The gentleman from Boston, (Mr. Stevenson,) says that he desires to submit an amendment, and whether he desires to speak or not, we are all here ready to sit and listen to him, though I, myself, happen to be one of those unfortunate men who have had to go without their suppers. [Laughter.] I think, therefore, that it is better that the previous question should be withdrawn, and we will then fix the time at half-past ten for the question to be taken. In the mean time, let every gentleman prepare his amendments, and we will proceed to consider them with all good nature and harmony possible.

Mr. TRAIN, of Framingham. I hope gentlemen understand that this will be a final vote.

Mr. BUTLER. My friend from Framingham says that this will be the final vote; it certainly is the case, but if necessary, a reconsideration may be moved.

Mr. ALVORD, for Montague. I once offered to withdraw my motion for the previous question, provided I could be permitted to substitute a motion to close debate at a particular hour. I am willing to do this at any moment, and place that hour as late in the night as gentlemen may think advisable. I therefore now withdraw my motion for the previous question.

Mr. BUTLER moved that the Orders of the Day be laid upon the table.

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The motion was agreed to.

Mr. BUTLER. I now move that the debate upon the question cease at ten o'clock.

Mr. HALE, of Bridgewater. I admire the good nature of the gentleman from Lowell, and I hope that the Convention will follow his example, for by so doing, I believe we shall much sooner arrive at the object we have in view. I think that we may make a compromise in this matter, provided gentlemen will agree to yield a little to each other. As has been already suggested, I believe that we had better separate to-night, and fix upon some hour in the morning for taking the question. This will give every opportunity to members to express their views upon this important subject; but if it is settled to-night, the result will be by no means satisfactory, and may even tend to extend the session much longer than we now anticipate. I would suggest, therefore, that the most appropriate course for the Convention to pursue, will be to adjourn to-night, after fixing some hour in the morning for debate to cease upon this question; we can then meet and consider this subject in a much more satisfactory manner than would be the case if we continued in session to-night.

Mr. LIVERMORE, of Cambridge. I believe I am as good natured as my friend from Lowell, and just as desirous of closing up this session as he is. But I cannot see that we shall gain anything by continuing our labors to-night. I therefore move to amend the motion of the gentleman, by substituting ten o'clock to-morrow morning, in place of the words half-past ten this evening.

Mr. SCHOULER, of Boston. If this question is to be decided so good naturedly, I think I may be allowed to say a word or two. [A laugh.] I think that this is a perfectly fair proposition, and it would be doing no more than justice to the minority of the Convention, to give them the opportunity which this proposition would afford, of offering their amendments, and expressing their views in regard to the question. It is true, a little bad blood has been stirred up, but it has now entirely subsided, and we are prepared to act harmoniously and deliberately.

I hope that the gentleman from Lowell, (Mr. Butler,) will consent to amend his motion, in the manner suggested, to adjourn to-night, meet to-morrow morning, at an early hour, and, at ten o'clock, take the vote upon the question.

Mr. DANA, for Manchester. I would ask for information, so that there may be no misunderstanding, whether this question can be again reconsidered, the gentleman from Walpole having once moved to reconsider it? Many gentlemen may vote under the impression that it can be reconsidered after it has been finally disposed of.

The PRESIDENT. The Chair would inform the gentleman for Manchester, that the question before the Convention has been reconsidered, and amendments have been submitted by the gentleman from Walpole, (Mr. Bird,) so that it would not be properly in order to entertain a motion to reconsider a second time.

Mr. GARDNER, of Boston. I am afraid that the Convention will think that all the good nature is contained within the sixth division. I was about to rise for the purpose of making the same inquiry which the gentleman for Manchester has made, because I felt a serious apprehension that if the final vote was taken at ten o'clock, this evening, the question having once been recon-

sidered, a second motion to reconsider could not be entertained.

The PRESIDENT. That is the understanding of the Chair.

Mr. GARDNER. Under these circumstances, and as there are, moreover, but very few members of the Convention who have heard the resolutions and amendments read, or know their meaning, I submit to the good sense and judgment of gentlemen, whether it is not best to postpone farther action until to-morrow morning? In the meantime, the resolves and amendments can be printed; we can read and consider them at our leisure, and submit, if necessary, such additional amendments as may be suggested to our minds.

Mr. ALVORD, for Montague. I wish to call the attention of gentlemen to the fact, that after we have disposed of the matter now before the Convention, we have still to act upon the motion of the gentleman from Taunton, (Mr. Morton,) in reference to the submission of an alternative proposition to the people, on the subject of Representation; and also upon the Report of the Committee on Revision. Members can judge for themselves of the time which will be required to complete this business; and, if this motion is adopted, to adjourn until to-morrow, I think it will be utterly impossible to close our session until sometime next week. I hope, therefore, we shall dispose of this matter to-night, and leave only those two questions I have named to be considered by the Convention.

Mr. EARLE, of Worcester. I have endeavored to get the floor for the purpose of making the suggestions to which we have just listened. It seems to me, that if we intend to get through with our labors this week, we must finish the consideration of this question to-night. There are present, as will be perceived from the last vote which was taken, as many members as there are at any time in the course of the day; there is a disposition to go on with the business, and I hope that there will be no objection to our proceeding and settling this matter to-night. The propositions which have been submitted are simple in their character, and have been discussed over and over again, in all their bearings, and I have no doubt that they can be decided in a very short time, if members will consent to sit an hour or two longer. Gentlemen are desirous of returning to their homes as soon as possible, and are therefore anxious to do as much as can be done when there is an opportunity afforded, and I have not the slightest doubt, if we settle this matter to-night, that we shall be able to adjourn this week.

Mr. UPTON, of Boston. I cannot say like some gentlemen here, that I am too full for utterance, for I have not yet had my supper. [Laughter.] If there is a disposition, however, on the part of the majority to stop and make a night of it, I am willing and ready to meet them. I would, therefore, propose to the gentleman from Lowell to withdraw his motion, and let us go on with the discussion of the question. We can ascertain by midnight, whether the Convention is ready to take a vote or not; and if not, we can then adjourn, and resume the discussion to-morrow.

Mr. BUTLER, of Lowell. If the course suggested by the gentleman from Boston, can be taken, I will withdraw my motion, with pleasure.

Mr. WALKER, of North Brookfield, moved

that the Orders of the Day be taken from the table.

The motion was agreed to.

The question being on agreeing to the amendments to the resolutions,

Mr. GARDNER, of Boston, asked for the reading of the resolutions.

They were accordingly read by the Secretary. Mr. SCHOULER, of Boston, moved that the resolutions be acted upon separately.

The motion was agreed to.

The question was, therefore, upon adopting the first amendment submitted by the gentleman from Walpole, (Mr. Bird.)

Mr. SCHOULER. If it is in order, I move to amend the first resolution, by striking out the words "a majority of all the votes given shall be necessary to the election," and inserting the words "the person having the highest number of votes shall be deemed and taken to be elected," so that if amended, it will read:—

That it is expedient to provide in the Constitution, that the person having the highest number of votes shall be deemed and taken to be elected in the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth.

The question being taken, the amendment was rejected.

The question being on adopting the amendment of the gentleman from Walpole, (Mr. Bird.)

Mr. STEVENSON, of Boston. If I understand the amendment of the gentleman from Walpole, he is making no constitutional provision at all, except that the law which may be passed by one legislature upon this subject, shall not take effect until it shall have been ratified by a second legislature, and then it may be made a part of the Constitution. It seems to me, that by the adoption of such a provision, we shall be throwing into that body every year a party quarrel in regard to the election of these six State officers named, although the gentleman has attempted to guard against such an occurrence, by providing, that the plurality law which may be passed by one legislature may stand, unless the people choose a body the next year for the sole purpose of repealing it. Now, if the gentleman is correct in saying, that this is submitting this question to the people, I should like to know what is the objection to our submitting it to the people at once? Surely, if he has so much confidence in them as he professes to have, I see no reason why he should have made it incumbent upon two successive legislatures to establish the law.

While the Committee were considering this subject, a compromise was proposed,—not like the one now introduced by the member from Walpole; but a compromise in which some distinction could be drawn,—to this effect: that an arrangement should be made, providing for the election of some officers by the plurality, and of others by the majority principle; but in both cases, the election of officers of the Commonwealth to be left in the hands of the people. It was proposed that the Convention should recommend, that the plurality should rule in those cases where, after repeated trials, the failure to elect was not provided for, and leave the majority rule to be employed in those cases where election would take place upon the first or second ballots; always leaving the power to elect, however, in the

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hands of the people, instead of transferring it to the legislature.

Now, I can see no advantage which will result from the resolution, if it is amended in the manner proposed by the gentleman; but, on the contrary, it introduces not only into the legislature a party contest as to what the law shall be, but also at the polls, in regard to those who may be sent here to legislate with reference entirely to that one question. And, Sir, I do not believe, that the people of Massachusetts desire to choose representatives for any such purpose. If the amendment suggested by the gentleman from Walpole gives the question to the voters when the law has been passed by the legislature, what earthly reason can there be, why we should not submit it to them directly? Do not set a political firebrand of this character in the legislature; but let us recommend one or the other of these two rules: The majority or plurality directly to the people; and let them determine which one they will have, when they vote upon the adoption of the Constitution. The gentleman gains nothing by his amendment, and the probability is, that it would only result in producing disorder and danger.

We all know the unpleasant consequences which result in a legislature, where, in a contest for election, members have been voted for with reference, especially, to one particular question. We know that the result has been that that question has been log-rolled more than any other question in the State House. And in regard to forming a constitutional provision, there is but one plain, proper mode of dealing with the people, as to how they shall vote for it; and that is, to propose it to them directly, fairly, and openly, instead of submitting it to them in the indirect way proposed by the gentleman from Walpole. It has been found, that whenever there has been dragged into an election of candidates to the legislature a question upon which the people are divided, it has been made the centre around which log-rolling has been going on. There never was, and never will be, a legislative body where this will not be the case. The amendment of the gentleman proposes nothing, neither a majority nor a plurality rule, but simply leaves it with the legislature to act upon the subject or not, as it may feel disposed.

As I said before, I think that the Convention has but one step to take in the premises; and that is, to submit the plurality principle to the people with the Constitution, and let them vote upon it as they please; if they want it, they will, of course, make it known by their votes; but, I hope that we shall not consent to let the matter be placed in the hands of the legislature, to be there made a matter of party contest and turmoil. For these reasons, I hope that the amendment will not be adopted.

Mr. HILLARD, of Boston. I desire to ask but a single question, and that is, whether the gentleman means to give to all subsequent legislatures the power of repealing the act, and whether it is a matter that may be hereafter acted upon like any other legislative question?

Mr. BIRD, of Walpole. I think that the gentleman from Boston is far more competent to answer that inquiry than I am. The question is simply whether one legislature can repeal an act passed by the preceding legislature.

Mr. UPTON, of Boston. I hope that the

amendment of the gentleman, as it now stands, will not be adopted. Gentlemen who have been in the legislature, know as well as I do, that whenever any question of amendment to the Constitution has been proposed, it has been kept as a foot-ball for years, and especially would it be the case were we to allow so important and vital a question as this is, to be placed within their reach. Sir, I hold it to be not only unsound in principle, but it is something to which I might apply much stronger language, to leave the manner of electing the six State officers named in the resolution, to be determined by a body so fluctuating and changeable in its character as the legislature of our Commonwealth. I hope that this Convention will not so settle a fundamental law of Massachusetts.

As I understand this matter, if we adopt the amendment now under discussion, the question will arise in the next legislature, whether the governor and other State officers shall be elected by the plurality, or be elected as they are at the present time. If this question is passed upon affirmatively, it then goes over to the succeeding legislature, when it will come up for consideration again.

If that body do not repeal it, it will then, of course, be an open question, and, from that time henceforward, instead of amendments to the Constitution, you will for years and years have a useless, exciting question, which will cost the Commonwealth thousands upon thousands of dollars to settle; when this Convention has the power to submit it directly to the people, and ascertain from them, at once, what are their wishes in regard to it.

Sir, I submit that it is trifling with the voters of this Commonwealth, to undertake here, in the fundamental law, to leave this question subject to legislative action, year in and year out, undetermined and undecided. I would either put in the Constitution the majority rule or the plurality rule, and decide one way or the other, before I would consent to leave this an open question for future legislation. It would be a shame, disgraceful to the Commonwealth of Massachusetts, and disgraceful to the proceedings of this Convention, were we to leave a proposition of the importance of this, to be kicked about like a foot-ball, from one legislature to the other. So far as the amendment affects the first resolve, I hope that it will not be adopted.

Mr. BUTLER, of Lowell. I would not have spoken upon this question, were I not the chairman of the Committee which reported these resolves which are now proposed to be amended. And, while I am in favor of them, I desire to state to the Convention the reasons why I hope they will be adopted, and the inducements which weigh upon my mind, trusting that they will have the same effect upon the minds of gentlemen of the Convention. When I made this report, the thing which most troubled me was the charge which has been brought by the minority, that we have left these five or six great State officers to be trucked and dickered about; and they seemed to intimate that it was for some foregone political purpose that it was so. Well, Sir, I admit that it did have a look which would give uncharitable men an opportunity to suppose it was the case; and it occurred to me, that whatever could be done to remove this apprehension, should be done. Now, what do we propose to do? One part of

the Convention want the majority rule, the other part want the plurality rule; neither know exactly what rule the people do desire, although we of course, have our opinion. Now, we say we will put the majority system forward as the judgment of the Convention, but in order not to tie up the people, to confine them to this, we will leave it to the legislature to alter it whenever the people may feel disposed to choose a body for that purpose. It may be, and is said, that the question will be used for political purposes; but the next amendment provides that that law shall not take effect until the second legislature has passed upon and agreed to it, and after it has been thus passed upon, there can be no such thing as repealing it, because it has become the settled policy of the Commonwealth. No man can calculate two years ahead as to what will be the political state of the Commonwealth, and, consequently, it cannot possibly be made to subserve political or party ends.

Mr. SCHOULER, of Boston. The third legislature may repeal it if the people do not like it.

Mr. BUTLER. So it may, provided the people desire it; but it cannot be made a political engine. If the people want the plurality, which fact we shall know from their votes, the legislature will adopt it, and so long as they have that desire, it will be a moral impossibility to repeal it. And it is for the sole purpose of removing any unjust or uncharitable supposition on the part of our minority friends, that this proposition is intended to truck and dicker with, that we have said that we will leave it with the people to fix the matter as they please. If the majority of the Convention, however, choose to establish the plurality or majority principles, so be it; I am perfectly content with that result, and hope that other gentlemen will regard it in the same manner. These are, briefly, my reasons why I shall sustain the resolutions and amendments.

Mr. WHITNEY, of Conway. The gentleman from Lowell has anticipated my remarks, but there has been a single consideration urged here against this amendment, which, I believe, has not been met, and is not, in fact, entitled to much weight, though it deserves a reply. It is this: that if the legislature shall, in future, adopt the plurality rule, it will become a foot-ball in that body, to be constantly kicked about from one session to the other. Now, I think we have some of the past history of Massachusetts to guide us upon this subject. In 1851, we adopted the plurality rule so far as it applied to the election of members of congress. Has that been made a foot-ball? No, Sir; nor do I believe that any legislature for ten years to come will agitate the question. It has been settled, permanently settled, that representatives to congress shall be elected by the plurality rule. It has been said, too, that this will prove a log-rolling machine; but, Sir, I think that is an argument entitled to little weight. The gentlemen from Boston predicted that such would be the case in regard to the election of members of congress, but so far as the rule has been applied there, it has been perfectly successful and satisfactory. It has not been a matter of agitation as yet, and there seems but little probability, at the present time, that it ever will be.

I desire, for a moment, to call the attention of gentlemen to the history of these resolutions. The subject of plurality was introduced in the

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early part of the session, and was one of the first matters discussed in Convention. When we came to vote upon it, we found that the Convention was about equally divided in regard to the adoption of the plurality rule. Under these circumstances, it was thought best to recommit the subject to a Select Committee; this was done, and the Committee, in due time, reported resolutions to the effect, that in the choice of the following officers, to wit: senators, representatives, and other officers elected by the people, where there was a failure to elect by the first ballot, the plurality rule should be applied thereafter.

Now, Sir, I like those resolutions as they then stood, and, although they were once adopted, the Convention afterwards reversed their original decision. The proposition is now made to leave so much of the resolution as relates to the governor, lieutenant-governor, and other State officers, to the jurisdiction of the legislature, and, in my opinion, it is a perfectly proper amendment. If gentlemen desire the plurality rule they can reach it there. Does the gentleman from Boston feel that the legislature will not sustain the plurality? If he does, we ought not to put it in our Constitution, where it cannot be reached. If the people favor the plurality rule, we shall be sure to get it through the legislature; if not, the present system will stand as heretofore. But it will not be made a foot-ball, to be bandied and kicked about at the mercy of some political party. There is nothing in the history of the Commonwealth to warrant such an intimation, or lead to any such conclusion, nor will it be the history of the Commonwealth if this amendment should prevail.

Mr. HALE, of Bridgewater. Was not an attempt made in the legislature, two or three years ago, to adopt the plurality?

Mr. WHITNEY. It may have been attempted in one portion of the legislature, but it was not sustained. I do not know that the proposition cost much money, or produced much agitation in the Commonwealth; certainly I never heard that such was the case. And, since gentlemen are so nearly divided in their opinion in regard to the majority and plurality, it has been proposed to refer the matter to the decision of the legislature. But, if it is incorporated in the Constitution, without any power being allowed to the legislature to act upon it, the probability is that we should be necessitated to call another Convention in the course of a few years, to provide against the difficulties which would result from this proposition. The question is one that may be safely left with the legislature, and why will gentlemen, who acknowledge themselves to be in favor of the plurality principle *in toto*, object to such a course being taken? We have already referred to that body so much of the resolution as relates to the choice of representatives by this rule, and I cannot see what reason there is why we should not also refer to them the clause in question. I hope that gentlemen will consider this as a matter of compromise. As for myself, I am entirely in favor of the plurality rule, but I do not think it would be acting wisely to incorporate it in the Constitution before we have heard from the people their opinion in regard to it, and before it is so fully matured as might be desired. Therefore, I think it was wisely proposed to leave the matter with the legislature. In regard to the difficulties which have been suggested as likely to result from such a reference, I merely wish to say,

that all such intimations of danger, are founded on no good, substantial reasons, growing out of the past history, or from any prospective view that we may take of the action of the people of the Commonwealth; and consequently no faith or confidence should be placed in them. I hope that the amendment will prevail.

Mr. SCHOULER, of Boston. I move to amend the amendment of the gentleman from Walpole, by adding after the words "until one year after its passage," the words, "and if repealed, the same shall not take effect until one year after its passage."

Mr. BIRD. I accept the amendment.

Mr. GARDNER, of Boston. The gentleman from Conway, (Mr. Whitney,) says he thinks that the objection which was urged in debate, that if this amendment was adopted by the Convention, it would introduce log-rolling and party spirit into the legislature, making this entirely a political question, is entitled to great weight, provided the past history of the Commonwealth sustained that idea; and he has argued that the past history of Massachusetts does not sustain that idea. That is the point at which his remarks were aimed.

Now, Sir, the gentleman from Conway is usually pretty well informed in these matters; but, if he had been acquainted with the facts of this case, he would not have arisen, as he did, for this purpose of alluding to the past history of Massachusetts as bearing upon this subject; and if I could convince him that the past history is what my colleague claimed, I may safely say that his vote would be cast against the proposition. The facts are these: Three years ago, one branch of the legislature, in this building, enacted that electors and members of congress should be chosen by the plurality rule, on the second trial; and the very next year, the other branch passed a law that the electors for president and members of congress should be elected by the majority rule. The question was discussed for several days, and when the vote was taken there were but five or six majority who voted against changing the law. My friend is mistaken when he says it caused no party division; it did. It commanded almost the whole strength and support of a certain party, and had it not been for three or four gentlemen whom I see here to-night, who broke from party and party trammels, it would have been repealed. And one or two gentlemen who now sit near the gentleman from Conway, were of the small band who voted in favor of sustaining the plurality. It came within a mere handful of votes of being reconsidered and repealed. So much for the past history of the Commonwealth in regard to this matter.

Now the gentleman from Walpole, (Mr. Bird,) has introduced a proposition here which varies the action of the Convention hereafter in several very important particulars, though the difficulty which would result from it has been obviated to some extent by his acceptance of the amendment of my colleague, (Mr. Schouler,) so that it now provides that it shall require the action of two consecutive legislatures to establish the plurality principle, and the action of two consecutive legislatures to repeal it. I should like to know if, under such circumstances, any subsequent legislature could touch the subject thereafter? But why are gentlemen so much afraid of the people, that instead of submitting the question directly

to them for their decision, they should provide that two consecutive legislatures should be required to create the law? So that, in fact, the people themselves have nothing to do or say about the matter. Why is this invidious distinction made?

Then again, this Convention has decided that members of the House of Representatives shall be elected by a plurality vote, but the amendment of the gentleman makes it necessary that two legislatures shall also be required to authorize this law. Now, I ask, what are those who are in favor of plurality to gain by such a compromise as that? The original compromise was that members should be elected by the plurality; the second was that it should require one legislature to enact the law, and now the third compromise is that two consecutive legislatures shall be necessary for this purpose.

Sir, I fear that if this Convention does not adjourn, we shall make another compromise still, that a half-a-dozen legislatures shall be required to pass upon this provision before it can become a law of the land. The more talk there is, the more compromises are made.

Now I want to ask where it is, what part of the State it is, which is deprived of its representatives by a non-election? Why, Sir, it is in those towns which are entitled to one representative only; they are the ones upon whom the loss most heavily falls. And I want to ask the delegates from those towns, thus situated, whether they are in favor of piling Ossa upon Pelion? Now we require the sanction of two consecutive legislatures to authorize the small towns to send their representatives here by a plurality vote. If the towns are to be represented, it is to be brought about by the plurality principle, and by this alone. In the early part of the session there was an amendment submitted by a gentleman, proposing a very important alteration; it was introduced as a kind of compromise, and was, in fact, the only tub thrown to the whale, having been passed by a majority of the Convention; but of which I have heard nothing since that time. And now it is proposed to go back and change all that has been done.

This is the advantage of compromises; but I did not expect this Convention to be so favorably disposed towards them. I have heard the voices of many of the prominent members of this body raised in opposition. I have listened to the most eloquent diatribes against this vile compromise; but yet, the only argument which can be adduced in favor of the amendment under discussion is, that it is in the nature of a compromise, and will be more acceptable to the people.

As for myself, I have voted for this question of plurality from the first to the last, in accordance with my sentiments, uniformly and conscientiously, and I am free to say that I should prefer to see the plurality question settled here, rather than have the amendment of the gentleman from Walpole adopted as the sense of this body. Indeed, I may say that I would vastly prefer to see the majority principle reestablished, rather than to have this hermaphrodite principle which gentlemen are endeavoring to instill into our minds. I desire to stand fairly, honestly, and openly in this matter; to have something tangible upon which to rely, so that when the question is asked me, What has been the action of the Convention? I need not be compelled to search through

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a half-a-dozen volumes of law books, constitutions, amendments, compromises, and public documents for a reply. I desire to have the matter plain and explicit; so that it can be understood by all the people.

If we do not adjourn on Saturday, I am afraid we shall be undoing, or digging up other plain questions that have already been acted upon and decided by the Convention, and enclosing and enveloping them in such obscurity that we ourselves cannot tell what has been the result of our proceedings here. In conclusion, let me tell my friends that if they expect the people to accept the Constitution we shall present to them, they must make such provision that when the people ask for fish, we shall not give them a serpent; and when they ask for bread, they shall not receive a stone; we must give them something that when it is presented to them, they will not be compelled to stop and taste of it to ascertain its quality.

Mr. WHITNEY, of Conway. I directed my remarks particularly to the question of the election of members of congress, and I believe that I am right, so far as the matter of history is concerned. In the matter of the election of electors for the office of president, it was agitated in the legislature, but not to any extent among the people. The subject of members of congress, however, I am free to say, has had no very considerable agitation anywhere, though it is a matter of considerable importance in times of high political excitement, such as we have about the period of the presidential election.

Mr. SCHOULER. The statement made by the gentleman from Conway, I believe, is perfectly correct in regard to the action of the House upon the repeal of that part of the plurality law which relates to the election of electors. It passed the Senate and came into the House, and without debate was laid upon the table.

Now, Sir, I presume that the amendment of the gentleman from Walpole is going to pass, and as he has accepted my amendment, which I hope will be adopted also, I have no farther doubt in regard to it.

Mr. BATES, of Plymouth. I will detain the Convention but a moment. I understood the gentleman representing Barre, (Mr. Aldrich,) when he first arose, to state that it had been conceded on all hands, that the people of Massachusetts were unanimously in favor of the plurality principle.

Mr. ALDRICH. The gentleman misunderstood me. I did not say so.

Mr. BATES. Sir, I do not believe that the people are so much in favor of the new principle, as many gentlemen imagine. I shall vote for this thing, because I believe it gives a little more to the majority than it did before. I came here in favor of the majority principle, and shall vote with great reluctance for anything which goes to sustain the plurality. I shall vote for the amendment of the gentleman from Walpole, however, because it gives the power to the legislature to regulate the election of the various officers named, and if the people desire any change, they can obtain it by electing representatives for that purpose.

Mr. MIXTER, of New Braintree. I desire to state my views in regard to the matter under consideration, and as I have not before intruded myself upon the Convention, it being the first time I have addressed the Chair, I trust that I

may be indulged for a few moments. Nor would I now break the silence which I have hitherto preserved, did I not believe that the importance of this question demanded that I should, in common with other gentlemen, express my views in regard to it.

Sir, I believe that the people of the town which I represent, as well as of other towns in the vicinity of my home, expected that this Convention would establish the plurality principle throughout, when it came together; and as near as I can judge, I am led to believe that this was the main reason why the people were willing and ready to vote for the calling of this Convention. From the beginning, I have been in favor of the plurality system, and am so still; but I am not in favor of the system which will be established by the adoption of this amendment. I think that we came here for the purpose of making a Constitution that should be acceptable to the people of this Commonwealth; we came here to consult and deliberate as to the best mode of promoting their interests and welfare, and not for the purpose of making a sliding rule, so to speak, which may be turned over and changed by the legislature. While we are here, it is our duty to adopt either the majority or plurality rule; we have been considering the plurality rule, but from the votes which have been taken, I am inclined to believe that we have in a great measure departed from that principle. Certainly, there is no principle at all in the course we have taken, and which gentlemen seem disposed to take this evening in adopting this amendment. If we are to have either of the systems, the majority or plurality, let us have the principle of the thing, for when we curtail it, it is no longer a principle, but simply a rule of action.

Now, we have established the plurality rule for the election of some officers of the government, and the majority rule for the election of some others; and this is the kind of Constitution which we are to send out to our constituents as the result of our labors here. But, this is not all. The attempt is now made to establish a sliding scale, by which we shall allow the legislature of Massachusetts to alter the organic law of the land without the sanction of a direct vote of the people, so that at any time when that body is in session, it may make such amendments to the Constitution as it may be disposed to make.

Again, by the adoption of this amendment, the operation of the plurality law is to be suspended for two years, in order to give time to two legislatures to act upon it, and repeal or accept it, as the circumstances may be. Amendments may therefore be made to the Constitution by two legislatures, without the concurrence of the people. And, mark ye, Sir, these legislatures are to be assembled and elected under a rule established by this Convention, which is admitted by every gentleman who has examined it, to be unjust and unsound. I ask why are we not willing to make such a Constitution as we were sent here to frame? We have provided a basis of representation whereby the legislature is to be elected by less than a majority of the people, and it is to be allowed to assemble here and make laws, and amend our Constitution without the concurrence of the people, and without allowing them to express by their votes, their opinion upon those changes.

Sir, I enter my protest against any provision of

this kind; I do not believe that it is required; I do not believe we were sent here to vote upon any such proposition. I think that its operation will be most injurious to the interests of the people, and that it will introduce difficulties in every election that may hereafter take place. It is our duty to make a Constitution such as our consciences may tell us is right, give it to the people, and let them act upon it just as they may think proper. But, as for this mongrel system, which we are preparing to send out—this unjust basis of representation, this election of officers of government partly by one rule and partly by another, and last of all, this reposing of so much power in the hands of the legislature—I am entirely opposed to it. For these reasons, I shall feel bound to vote against the amendment.

Mr. WALKER, of North Brookfield. The amendment now before us provides, that all the State officers, governor, lieutenant-governor, secretary of state, attorney-general, &c., and also all representatives to the general court, shall be placed on one platform, and elected by a majority of votes; and, also, that the legislature shall have power to provide by law, that they may be elected by a plurality, the law making the change not to take effect until one year after its passage.

That I understand to be the sum and substance of this amendment. This is, in fact, to throw the matter into the hands of the people, and if it be their will that we shall be governed by a plurality instead of a majority, they will say so at the polls and through their representatives; and, as one legislature will intervene, they cannot have the measure sprung upon them contrary to their wishes. They will understand the whole matter, and have ample opportunity to repeal the act should it be obnoxious to them.

Now, I think it marvellously strange, that certain gentlemen here, belonging to the party now in power in this Commonwealth, should manifest such extreme anxiety to defeat the proposition before us. They have been very solicitous, during the whole session, to establish the plurality principle, and now, when it is proposed to give the legislature power to do this very thing, they are out in violent hostility to the measure! They have discovered that it is not safe and proper to trust the people, through their representatives, with this power, and they are in great alarm and trepidation about the matter. Such is the pretence, Sir; but I suppose the real fact is, that they foresee that this provision, as it renders our Constitution consistent, and virtually gives the people the alternative of majority or plurality, will make that instrument so perfect and popular, that they shall not be able to rally even their own party against it.

They did expect to make a great deal of political capital out of the fact, that we had provided that the governor, lieutenant-governor, &c., should be elected in one way, and representatives in another. Now they see, distinctly, that the present amendment is to remove that objection, and destroy all reasonable ground of opposition. This is the explanation of the affair.

I am opposed to the plurality system, but I say if the people want it, let them have it. If they want the majority rule, let them have it. I have no faith in the plurality principle myself, and I agree with the gentleman for Wilbraham, (Mr. Hallett,) who has declared here, that, whenever the government is chosen by any number

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less than a majority, it ceases to be a democracy. I believe that to be true, hence I am opposed, and have been throughout, as every-body knows, to the plurality system. But I cannot conceive anything inconsistent in my voting for this amendment, because it provides for election by majority in all cases, except in that of senators and county officers; and, in regard to these, for obvious reasons, there cannot be two trials. But, in regard to all the State officers, we establish the majority principle, and, at the same time, generously throw it out to the people, to say whether they prefer the plurality principle. Now, if they want it, let them have it.

Mr. LORD. I wish to ask the gentleman a question. My difficulty is, I have not been able to see this resolution, and I do not know whether I understand it. I understand that for all the higher officers, the majority rule is in force. Do these resolutions propose to submit to the people whether the plurality rule shall be adopted?

Mr. WALKER. I have repeatedly said, the majority principle is to be enforced hereafter, in regard to those officers, until the legislature shall otherwise determine.

Mr. LORD. I beg pardon. I understood it was to be left to the people to pass upon the question.

Mr. WALKER. It is now proposed, by the amendment before us, that it be left to the legislature, whether any change of principle shall be made.

Mr. LORD. Then I understand that the gentleman does not wish to allow the people to decide it, but prefers to put it through the legislature.

Mr. WALKER. That is one of the gentleman's own inferences. I have said that I wish to have the majority principle established by this Convention, but am willing the legislature should have power to change it, in the manner provided in the amendment under consideration. That, I regard the same thing, in effect, as submitting the question directly to the popular vote, because, as the law making the change cannot go into effect until after one year, another legislature will intervene, and the people will have an opportunity to reverse the action of the previous legislature if they choose to do so. It is, therefore, virtually submitting the question to the people in the best manner possible.

Now, while I am most heartily and unequivocally in favor of the majority principle, I think I am consistent in being in favor of the proposed amendment, because it makes our Constitution uniform in regard to all State officers, and places the power of changing the principle really in the hands of the people, where, of course, it most properly belongs.

Mr. SCHOULER, of Boston. I wish to ask one question, which is, wherein this amendment changes, substantially, the Constitution from what it now is? The legislature has already the power to change the mode of voting in two years.

Mr. DAVIS, of Plymouth. I am extremely reluctant to intrude upon the Convention, and I do not do so to make an argument, but merely to make a statement, inasmuch as I fully agree with the opinion of the gentleman from North Brookfield, (Mr. Walker,) in regard to the question of plurality and majority, but I am willing, for one, to vote for this proposition. It seems to me that those gentlemen who are opposed to the

plurality principle, may safely unite upon it, and those who consider the majority system a matter of principle, will be very unwilling to vote for such a principle as one to be incorporated into the organic law.

I merely rose to correct what I supposed might be an erroneous impression in the mind of the gentleman from Walpole, in regard to the amendment of the gentleman from Boston. I understand its effect to be this: that in case the plurality system be adopted by one legislature, and the sanction of the next legislature be withheld, the system not having gone into operation, might be repealed without going into operation at all. I submit that the original amendment, as it now stands, is contradictory. The latter part of it contradicts the former. I suppose the intention was, that it should be repealed after going into operation, although such repeal should not take effect until a year afterwards. As it now reads, if one legislature passes the law, and the next repeals it, it will go into effect notwithstanding. I would, therefore, suggest to the gentleman from Walpole, the propriety of amending his amendment.

The PRESIDENT. Did the gentleman from Plymouth propose any amendment?

Mr. DAVIS, of Plymouth. Yes, Sir. I move to insert after the word "repeal," the words, "and if repealed, such repeal shall not go into operation until one year thereafter."

Mr. TRAIN, of Framingham. I rise to a question of order. I believe this is an amendment in the third degree.

The PRESIDENT. No, Sir. The gentleman from Walpole accepted the amendment of the gentleman from Boston.

Mr. TRAIN. I am sorry, Sir, to detain the Convention for a single moment upon this subject, at this late hour. We have outlived the moles and the bats. They have been with us and have departed, save one solitary specimen of the latter that I see flitting about still, within these walls, wondering, no doubt, at this unusual intrusion upon his domain. I, Sir, came to this Convention a plurality man, that is, an advocate of the plurality system; I have continued to be a plurality man, and shall go away a plurality man. And I do not wish that this Convention should submit any proposition to the people that will require of me an effort to explain. And now I say, if the Convention pass this provision, as submitted by the gentleman from Walpole, they will not only need to go to school to be enabled to understand it, for it will be bad grammar, but it will be necessary that we should go into a discussion in reference to it, in order to persuade the people that it is suitable to be adopted. And there are three sets of principles, or rules, to be advocated. Sir, they cannot be successfully defended. There is no consistency about the matter. And the gentleman from North Brookfield, (Mr. Walker,) and others, have no right to take the ground that they concede something, and express surprise because we are not satisfied with their concession. Sir, who would be satisfied with the concession which allows the people to say next November, whether they will elect their representatives by majority or plurality? There is no concession about it. It is neither fish, flesh, nor good red herring. It is neither the will of the people expressed at the polls, nor the will of the people expressed through the legislature, but a mixture of both. Sir, if I understand what was the sit-

uation of this Convention, down to the time when the resolutions on this subject were laid upon the table, as stated in the leading journals of the day, the plurality rule was opposed on the ground that it was wrong in principle, and would be wrong in practice. Sir, I find in the report of a speech of the gentleman from Natick, the following:—

"I oppose the plurality system, because I believe it tends to degrade the politics of the country, and to demoralize the politicians of the country. I think this has been the experience of the country. It has increased the power of the caucus, the convention, party organizations, great combinations, great interests, and the influence of political leaders, and it has diminished the power of the people, who follow their higher and better sentiments."

"The majority system gives the men of principles, ideas and sentiments, the power to resist the schemes of party leaders, and to make them feel, whenever they enter the caucus and the convention, that they must not outrage the higher sentiments of the best men of their parties. Now, Sir, adopt the plurality rule in all your elections, and you make the caucus and the convention omnipotent; you give full sway to the political chiefs who are controlled by interest and ambition. The whole tendency of the system is to debauch the public sentiment of the country, and to en throne the omnipotent power of the caucus and the convention. Politicians go into the caucus or the convention prompted by ambition and interest, adopt their own schemes of policy, and when the day of election comes, and the men who are governed by their higher and better sentiments assemble around the ballot-box, they are told that they must take the 'choice of evils,' that they must vote for a candidate they know to be unworthy, whose 'nomination was not fit to be made,' or his and their political opponent will be elected. They know the contest must be then and there decided. They feel the pressure. They pause, hesitate, yield, vote for a candidate they know to be unworthy, and go home degraded in their own eyes, and more ready to yield again to the demands of the caucus and the convention. The whole machinery of caucuses and conventions in this country is one of the worst features of our democratic institutions. The majority system gives the people the power to checkmate their influence; the plurality system lets them have free course and be glorified."

Now, Sir, that gentleman is the exponent of the views of his party. He spoke the faith of the party. He was followed by his party. If it was true in his belief then, it is true to-night. If right then, they are bound to stand by it now. And they have no right to concede to the friends of plurality.

I put it to gentlemen, if they intend to be consistent. I oppose this amendment, because it does not give me plurality. What does it propose? That the legislature every two years may agitate the question. It is nothing but a miserable make weight, and when you go to the people and tell them here is plurality, when in fact it is not so much as you have had for the last ten years. And now gentlemen come in here with a proposition designed to cheat the people into the belief that they are getting the plurality system, when in fact they are getting no such thing at all. And the gentleman from North Brookfield, (Mr. Walker,) who, I have no doubt, has read Ten Thousand a Year, and will recollect a certain legal gentleman therein described, and will have no trouble in recognizing him as his own counterpart, tells us that if the people wish for the plurality system, they will express their opinion through the legislature, and he will go home and

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tell his constituents that he is consistent, beautifully consistent. If that is consistency, I know not what consistency means. No, Sir, it is no consistency. You propose to let the people pass upon what shall be the fundamental law; but you cannot do it in this way. I am willing to let the people say whether they will have plurality or majority; but if you undertake to say that the legislature shall first pass a law to establish it, and then be at liberty to pass another law repealing it, what sort of a provision are you likely to have? It will have to stand for a year upon the statute book before it will have any vitality. For these reasons, I am opposed to the proposed amendment. I wish to have a Constitution that shall be consistent. I wish the people to have an opportunity to say whether they will have the majority or the plurality rule. And I challenge gentlemen on the other side to defend, on principle, this proposition if they can. The six highest officers in the Commonwealth to be chosen by a majority, and county and town officers by such law as the legislature shall hereafter see fit to direct. If the principle is right in the election of any of your officers, it is right in relation to your senators, your governor, &c. Sir, as we were told by the gentleman from Natick, the difficulty was, the truck and dicker stuck right straight out. It left the highest officers to be bargained for. Now, the same charge applies still. It still leaves these officers to be made a matter of trade. The plurality law is to be a matter of trade. Now I have said substantially, earnestly, courteously, I hope, what are my views in regard to this matter. I trust the proposed amendment will be voted down, and that we shall have a clear and distinct proposition substituted for it, if we are to have any provision on the subject. As an amendment is not now in order, I suppose I must give notice that at some time, when in order, I shall take occasion to move to strike out "majority" and insert "plurality."

Mr. SPOONER, of Warwick. Will the gentleman tell us what he means by a legislature chosen by one-third of the people? If he refers to the House of Representatives, particularly, I will say to him there is no system of representation, town, district, nor any other, which more truly, fairly, thoroughly indicates the popular sentiment of Massachusetts, than the House of Representatives, as at present constituted. Compare it with the Senate. The Senate has been set forth as representing politically the people of Massachusetts. Who are the people? What is meant by the phrase people? It means those who have a voice in the election of representatives. Will the voters of Framingham and Berkshire, have as much voice as those of the large cities in this Commonwealth? No, Sir. Far from it.

Gentlemen tell us that the people are asking for the establishment of the plurality rule. They are asking for no such thing. They do not want it. They only want to adopt the plurality in cases where they are obliged to have it, where they cannot get along without it, and nowhere else. Where the majority principle occasions delay and expense beyond endurance, there the people are willing that the plurality shall be used to avoid the difficulty, and nowhere else. And, this amendment does the very thing that is wanted; it provides for the plurality where the people really want it, and must have it, and saves the majority rule wherever it can be preserved

without occasioning inconvenience and delay. The great cause of delay and inconvenience in the legislature heretofore, has been in filling up the Senate, the Governor's Council, &c. Well, we have reduced the number of officers to be chosen by the legislature, from fifty to about five. This number does not furnish a sufficient capital to trade upon; it does not furnish an inducement to create delay and difficulty. I hope the amendment will be adopted.

Mr. HURLBUT, of Sudbury. I do not propose, at this late hour—almost midnight as it is—to detain the Convention with any remarks at length, but I desire, in a few words, to meet this question in all candor. Gentlemen are well aware of the position which I have heretofore taken and maintained on this subject. From the beginning, until the present time, at the last hour of the Convention almost, I have been a majority man, and acknowledge none other as my principle. I believe that none other is correct; but I am not prepared to say as the gentleman from Framingham (Mr. Train) said, that I came into this Convention a majority man, that I have continued here a majority man, and that I will go out of it a majority man, and will take nothing else. No, Sir; I am prepared to maintain here and elsewhere that my views on this question are correct; but, because I cannot have my desire wholly gratified, I shall not act contrary to the general will of this body. I am ready to meet the gentleman from Framingham half way, and shake hands with him over a compromise. That gentleman knows, as well as myself, that neither of us can have what we should like in a matter of this kind. But, what shall we do? Shall he stand up here and say, I will have nothing but a plurality system, and shall I say I will accept nothing but the majority system? I acknowledge the plurality as a principle; I see how that gentleman can advocate that principle according to his views of it; but yet, I acknowledge the majority as a still better principle. Neither of us can carry out our principles here, however, and the question arises, what shall we do? I thought the other day, when this question was up, that it had been settled finally, completely, so far as the action of the Convention was concerned, and that I then surrendered all that the general good required; though when I did this, I by no means surrendered the principle which I shall ever maintain. It was for the sake of compromise only. And now the subject has again come up for consideration, and an amendment has been offered, purporting to be what gentlemen on the other side of the house call nothing. Again I am called upon to surrender something; I am called upon to let the legislature determine whether we shall have a plurality in time or not; and I am willing to concede even that, if the people of this Commonwealth so ordain. If that be their will, I say amen to it, and still I retain my integrity in regard to the great principle that the majority ought to rule. As I said before—without farther extending my remarks—if the gentleman from Framingham will meet me half way in a compromise, I am willing to go with him cordially; but I trust that the gentlemen of this Convention who are so much in favor of the plurality system, will not urge me to surrender yet another step by asking my concurrence in any more amendments that may be proposed.

Mr. LORD, of Salem. I was much amused by the plain spoken, honest speech which came from the gentleman on the other side of the house. I mean the gentleman from Lowell, (Mr. Abbott,) especially when he said that the lion's skin was not one-quarter big enough to cover up what was beneath it. He did not say right out that there was a jackass there. That was not necessary. They have endeavored to patch up this plurality creature, but instead of covering it with the lion's skin, as they intended, their operations have only resulted in exposing a greater part of the jackass beneath.

The gentleman from North Brookfield has accepted this proposition, under the pretence that he was willing to yield his individual preference to the judgment of the people. Why not put into your Constitution this plurality doctrine, and see whether the people will take it or not? When the majority are talking about a matter which they do not desire to be changed, or when they wish to accomplish some end, do they say that they will give the power to the legislature to do it? No, Sir; they say that the legislature ought not to be trusted; and their whole action has been upon this basis, that the legislature are not fit to be trusted with the rights of the people. You have said this very day, in an amendment which you have adopted, that the legislature shall not be trusted upon the question of calling another Convention, but that the people themselves shall act directly upon it? What new light is that which has broke in upon the gentleman, that he is so willing to allow the people to take charge of this matter of plurality, and act as they feel disposed, by means of the legislature?

Now, Sir, I have no doubt at all that when the enormity of this is exposed, that gentleman will get up and say this certainly is an enormity, but yet it isn't quite so bad as it might have been. And in this manner they will answer every objection that we may make. If we say you have made the House of Representatives as unequal as you could make it, they will reply, what of that, have n't we made the Senate a great deal worse? If these are to be the arguments employed by the advocates of the various propositions which have been made, I must confess they are fully prepared to sustain themselves in any controversy that may arise. But, does it satisfy the people, to say that though we have done wrong, we might have done a great deal worse? Away then, with this sort of argument, and let us begin to rectify before it is too late to do so.

Now, Sir, in regard to this proposition, coming as it does from the gentleman from Walpole, I must confess it is much beyond anything I had ever given him credit for; he has mixed up more elements even than there were at first, and made this more of a mongrel creature than it ever was before. And how is it that gentlemen get up one after the other, and say I go for this proposition because I have been persuaded to trade off such and such proportion of my principle in return for it. I think, says one, that the majority is the correct principle, but my constituents have sent me here to do what is right, but my conscience requires me to stand by the majority of the Convention. Gentlemen bow with great submission to the people, but yet are unwilling to let the people act upon this matter. I say, give the people their right to consider and decide upon

Thursday,]

ELECTIONS BY PLURALITY.—STEVENSON—BATES—CHURCHILL—TRAIN—HATHAWAY.

[July 28th.

this question for themselves; adopt the amendment which my friend from Framingham, (Mr. Train,) proposes, and say that there shall be a plurality unless the people alter it by their legislature. Let the majority and plurality principles, I care not how, be so presented as to give the sovereigns the privilege of choosing between the two for themselves. But, gentlemen are not willing to let the people pass upon the subject; the member from North Brookfield, (Mr. Walker,) dares not let the plurality system go before them; he will not let them decide but through a body that does not represent them. Now, I submit to that gentleman, whether it is not better to let the people act upon this matter for themselves; is he wiser than they, or does he know their wants better than they do themselves? While here, if we act in accordance with our own honest convictions as to what is right, and leave to our constituents to pass upon our doings, in the end, we shall be better satisfied with ourselves, and with the result which we have assisted to produce.

Mr. STEVENSON, of Boston. I wish to remind gentlemen of the fact that if we pass this resolve, the election will still go to the legislature, unless a majority of the votes be cast for some one or other of the candidates. The amendment proposes to confer upon the legislature the power to alter the Constitution without an appeal to the people. I hope it will not prevail.

Mr. BATES, of Plymouth. I desire simply to call the attention of the gentleman from Framingham, (Mr. Train,) who has been talking about inconsistency, to one fact which appears to have escaped his scrutiny. He has read from the debates of this Convention, as far back as May 27th, to show what the opinions of certain gentlemen were at that date. Now, I wish to refer him to two or three other passages in the proceedings of the Convention on that day, which he did not read. The gentleman from Boston, (Mr. Hillard,) on that day made the following proposition:—

"I propose," said Mr. Hillard, "in case the amendment of the gentleman from Plymouth (Mr. Bates,) should not be adopted, to offer another amendment. I make this statement now, because the amendment which I desire to propose may influence the action of the Convention upon the particular amendment now before them, and therefore with your leave and that of the Committee, I will state that at the proper time, I shall move to amend the resolution by striking out all after the word 'resolved,' and insert the following:—

"That it is expedient so to amend the Constitution as to give to the legislature the power of enacting that in all elections by the people of officers under the Constitution, the person receiving the highest number of votes shall be deemed and declared to be elected."

This, I apprehend, would be giving, in the broadest possible manner, the power to the legislature to decide that in all elections by the people a plurality should determine the result. This doctrine the gentleman from Framingham this evening repudiates, and has had much to say in favor of consistency upon this question. Now, it may not be improper, as the gentleman is so strongly in favor of consistency, to ascertain what his own views were on the occasion referred to.

In the report of the proceedings of this Convention, on this same 27th of May, occurs the following language:—

"Mr. TRAIN, of Framingham. I have thus far taken no part in this debate, nor do I desire to do so now. I simply rise for the purpose of suggesting—which I shall do before I sit down—an amendment to the amendment of the gentleman from Plymouth."

A little farther on in this same speech, and before the gentleman sat down, he thus alludes to his proposed amendment:—

"I propose that they shall leave it to the legislature. Where they cannot go the source, let them go as near to the fountain as they can; if we cannot get the people to pass upon the question, we will leave it in the hands of the legislature; and therefore I propose an amendment to the amendment, to this effect: that all civil officers whose election shall be provided for in the Constitution, may be elected by a majority or plurality, as the legislature shall hereafter determine."

Mr. CHURCHILL, of Milton. I was originally, and on principle, and am still, in favor of the majority rule; but, Sir, I shall vote in favor of the proposition of the gentleman from Walpole; because I think there is a great deal of force in the argument which has been used regarding the expense and inconvenience attending a strict adherence to that rule in all cases. The time and expense that the same elections entail upon the people, are arguments of so much force, that they cannot fail to influence those of us who stand on convenience before matter of principle, in this respect.

I hardly think the gentleman from Salem treated the gentleman from North Brookfield with entire fairness, when he said, in one breath, that he is unwilling, or rather that he dare not, trust this question to the people, and in the next breath taunts him with trusting part of it, at least, to the people. Sir, I contend that this proposition does trust the whole question to the people. It allows the people to adopt the plurality system out and out, in all elections, for it provides expressly that several of the officers, senators and others, shall be chosen upon the plurality principle; and that the people, through their legislature may, if they see fit, ordain that all the other officers may also be chosen by plurality. Thus, the plurality principle is within the reach of the people; the very thing they have been contending for here, is within their reach. And yet we behold the most strenuous opposition from all quarters, because the thing does not come in that peculiar shape which suits their views. Sir, I maintain that, on principle, we should have stood by the majority system here, as we should by the district system; but as it is, to some extent, impracticable, the only way to accomplish any reasonable result is to compromise on some such basis as is proposed here.

Mr. TRAIN. The Convention has had a laugh at my expense, and I enjoyed that laugh; for, in truth, the discovery of inconsistency made by the gentleman from Plymouth, is rather more fanciful than real. When the discussion to which he has referred, was going on, the controversy was—what it should be here to-night—whether we should adopt the majority or the plurality rule. I put it to the Convention then—and if the question were now the same, I should take the same ground—that if the question be submitted to the people, whether they will have plurality or majority, it should not be left to the legislature to determine. Well, now the Convention has deter-

mined that they will submit to the people the question whether they will elect one portion of their officers by plurality or by majority, and will leave the question, so far as relates to the remainder, to the legislature. If they will not leave the whole matter to the people, without reservation, then, I say, leave the whole to the legislature. I maintain, that when you yield the principle, you have no right to send one portion to the people for their decision, and reserve another portion.

Mr. BATES, of Plymouth. The question on the occasion which has been referred to, was precisely what the question is here to-night. It was proposed that certain officers should be elected by a majority, until otherwise ordered by the legislature. That was the purport of the amendment proposed by the gentleman from Boston. The gentleman from Framingham got up and said he gave notice that he should move an amendment, which was the very same as the amendment now before the Convention, only it went farther. Now, if it is proposed to leave the election of a part of the officers in the hands of a majority, unless otherwise directed by the legislature, I ask if the principle is not the same as when it was proposed to have all officers so elected, unless otherwise determined by the legislature? I presume it to be precisely the same. There is no escape for the gentleman; he need not squirm, or dodge. He comes in here, and argues against the amendment before the Convention, as a matter of principle; yet I have shown that in the very same page, or the one preceding that from which he has quoted, he proposes an amendment to leave this matter to be regulated by the legislature, precisely as the amendment of the gentleman from Walpole, now under discussion, proposes to leave it. There is no possible difference in the two cases; and it is useless for the gentleman to attempt an escape from his position, uncomfortable as it is.

Mr. TRAIN. My friend from Plymouth certainly misapprehended my ideas on this subject, or else I cannot read. The closing sentence is this:—

"If gentlemen are afraid to leave this matter to the people, I propose that they shall leave it to the legislature. Where they cannot go to the source, let them go as near to the fountain as they can: if we cannot get the people to pass upon the question, we will leave it in the hands of the legislature, and, therefore, I propose an amendment to the amendment of the gentleman from North Brookfield, to this effect: That all civil officers whose election shall be provided for in the Constitution, may be elected by a majority or by a plurality, as the legislature shall hereafter determine. My idea is, that instead of leaving a portion of the officers to be elected by the legislature, as suggested by the member for North Brookfield, to leave the whole to the legislature."

I said, if we could not have the question of plurality submitted to the people, leave it, as the next best thing, to the legislature. Now, I want to have the Convention remember another thing, that my proposition, as well as that of the gentleman from Boston, was to leave to the legislature an open question. I would prefer to leave it to the people to say whether the elections should be by majority or plurality, and leave to the legislature to alter it if they choose to do it. Where, then, is the inconsistency which the gentleman thinks he has discovered?

Mr. HATHAWAY, of Freetown. I do not

Friday,] ELECTIONS BY PLURALITY, &c. — HATHAWAY — UPTON — PERKINS — HUBBARD — LIVERMORE. [July 29th.

rise, at this late hour, for the purpose of making an argument. I do not know but we have fallen upon times similar to those we read of in the Good Book, when, to avoid much importunity, the unjust judge granted the prayer of the widow. There is no question that has been so much agitated here as this question of elections by plurality, since this Convention met. This has been the foremost of all, and it is likely to be the last.

There have been many matters introduced into the debate this evening that seemed to me to have very little to do with the question. Perhaps it is owing to the obtuseness of my perceptions that I do not see the force of the arguments that have been used. It has been said that we have tried the experiment in reference to our representation in congress. I had occasion to say, some time since, that that was a matter entirely beyond our reach; one with which neither we nor the people of Massachusetts had anything to do. It is a matter that is settled by the Constitution of the United States, which directs the legislature to prescribe the time, place, and manner of holding elections for members of congress. All that the people have to do with it, is to comply with the directions given by the legislature, to whom the Constitution of the United States has given this power. We have nothing to do in reference to putting in operation that part of the machinery of our government. That is already settled.

I have had occasion upon this question, heretofore, to say, in reference to a proposition that had been introduced here, that I did not understand quite so clearly as some of those associated with me do, or pretend to do, the precise nature of the proposition. I have asked several times for the reading of such propositions as were offered in the shape of amendments. Unfortunately, sometimes, I have not been accommodated. And I have made up my mind, long ago, that I would not ask for the reading of any proposition in future, but I meant always to vote on the safe side, by voting against any proposition that I did not understand. I would inquire of you, Sir, and I put it to every member of this Convention, how shall we stand, if we adopt the amendment of the gentleman from Walpole? If we look at the proposition as it originally stood, and at his proposition, we shall find a very great discrepancy—a very great inconsistency. The gentleman's proposition is, that until otherwise provided, the legislature may enact a law by which these officers may be elected by plurality; but the law shall not go into operation until one year from the date of its enactment. Then, if you look at the latter part of your constitutional law, where this provision comes in, you will find, that in case the individual voted for does not have a majority of all the votes given, he *shall*—not may—he shall be elected by a majority of the legislature, by *viva voce* vote—I mean as to the whole catalogue of officers there named. Well, now, what sort of patch-work is this? And yet, gentlemen would have us adopt this at midnight, and force it upon the people for their approval.

But I have another objection, and it has been adverted to by those who have spoken upon this question. It is this: You do not propose, under this amendment, to enact an organic law for the people to pass upon, but you propose to enact an organic law that the municipal corporations of this Commonwealth are to pass upon. And thus a majority of those municipal corporations, so far

as their representation is concerned, is to make your Constitution.

Mr. UPTON, of Boston. When this debate commenced, I made a suggestion, in good faith, that the yeas and nays should not be called on ordering the previous question. Now, I am perfectly willing to forego any remarks I might desire to make upon the subject under discussion, if gentlemen will allow the question to be now taken on the first amendment. There must be an end to the debate, at some time or other, and it appears to me we had better close it now.

Mr. BIRD, of Walpole, accepted the amendment of the gentleman from Plymouth, as a modification of his own, and made a farther modification in accordance with the suggestion of the gentleman from Boston.

Mr. PERKINS. It appears to me, that this subject has been pretty well argued, and that it is about time to put it to the people, and let us see how it will work. We have got rather a complicated proposition before us, and the longer it is considered and debated, the more complicated it becomes. I have always thought, until this evening, that I would vote for the amended Constitution. I do not say that I will not now; but let me tell gentlemen, that I doubt very much whether it will be accepted by the people. They will hardly be able to understand what it means.

Mr. HUBBARD, of Boston. I do not rise to make a speech, but merely wish to call the attention of the Convention to one single provision of the amendment, which seems to me a very objectionable one. I allude to the amendment of my colleague in regard to the repealing provision. Power is given to the legislature to adopt the plurality rule. The majority rule is to prevail, until otherwise provided. Now, my impression is, that having exercised the power once, they will have no farther control. The amendment of my colleague seems to me to be a highly objectionable feature. I should like to have it withdrawn from the control of the legislature. I therefore move that that part be stricken out.

The motion was not agreed to.

The question being on the amendment proposed by the gentleman from Walpole, as modified, Mr. WEEKS asked for the yeas and nays.

They were not ordered.

The amendment was, upon a division—ayes, 77; noes, 62—adopted.

The question being on the final passage of the resolves, as amended,

Mr. TRAIN, of Framingham. I give notice that I wish to offer an amendment, but I do not wish to offer it at this late hour. Let it go over until to-morrow morning.

Mr. LORD, of Salem. The mover of the amendment which has just been adopted, has found it necessary to make three or four alterations in his amendment; I therefore suggest, that it had better not be finally acted upon to-night, but that the vote be taken five minutes after the subject shall be taken up to-morrow.

Mr. BUTLER. I think the proposition is a reasonable one, and if no one else makes the motion, I will move that the question on the final passage of the amended resolves, be taken at ten o'clock, on Friday morning.

Mr. DAVIS, of Plymouth. I hope the motion will not prevail. It has been the understanding, that if the debate was allowed to go on, the question might be taken to-night, on the amendment,

and on the final passage of the resolves, without the yeas and nays, and many gentlemen have stayed here for that purpose.

Mr. TRAIN. The gentleman seems to think we are under an obligation to vote upon the final passage of these resolves to-night. If so, I for one, am willing to withdraw all opposition.

Mr. WHITNEY, of Conway. I think the proposition that we will take the question at ten o'clock, is a fair one, and for one, I am decidedly in favor of adjourning.

Mr. ELY, of Westfield, moved that the Convention adjourn.

The motion did not prevail.

The question was taken on the final passage of the resolves respectively, excepting the fourth, which had been amended by the adoption of the amendment of the gentleman from Walpole, and they were passed.

Mr. BUTLER renewed his motion, that the question be taken on the final passage of the fourth resolve, as amended, this (Friday) morning at ten o'clock.

The motion was agreed to.

Reports from a Committee.

Mr. BATES, of Plymouth, from the Committee on Reporting and Printing, submitted two Reports, which, without being read, were placed upon the Orders of the Day.

Mr. OLIVER, of Lawrence, moved, that the Convention adjourn until half past eight o'clock.

Mr. CHURCHILL suggested that a great proportion of the members would not be apprized of the change of the hour of meeting.

Mr. OLIVER withdrew his motion, and moved that the Convention adjourn.

The motion was agreed to, and the Convention, at half past one o'clock, adjourned until nine o'clock, A. M.

FRIDAY, July 29, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President, at nine o'clock.

Prayer by the Chaplain.

The journal of yesterday was read by the Secretary.

Leave of Absence.

The PRESIDENT read a communication from Mr. Cogwell, of Dennis, asking for leave of absence, for the remainder of the session, on account of sickness in his family.

On motion by Mr. DAVIS, of Worcester, leave was granted.

The Pay Roll.

Mr. LIVERMORE, of Cambridge, from the Committee on the Pay Roll, reported the following order:—

Ordered, That the pay accounts of members, for attendance and travel, be made up, including Monday next.

Mr. LIVERMORE. I believe it is generally understood that this Convention can adjourn to-morrow, although it will, of course, be at a late hour, and not in season to enable members residing at a distance to reach their homes before

Friday,]

HOUSE OF REPRESENTATIVES, &c.—BATES—MORTON.

[July 29th.

Monday next. It is possible that our session may be protracted so as to include a part of the day on Monday. It is expected, however, that we can adjourn to-morrow night. But it must be perfectly understood, by all the members of this Convention, that some time is necessary for the Committee on the Pay Roll to make up the roll, which will embrace some four hundred and twenty names. I have offered this order at this time, in order to have the pay roll made up to-morrow in season to have a warrant drawn upon the treasury, by the Governor and Council, who, I understand, will be in session to-morrow afternoon, for that purpose. The order includes Monday next, because the members will, undoubtedly—most of them, at least—be detained here over Sunday, and cannot reach home until Monday. It is the usual custom, I believe, in the legislature, to make up the pay roll including Sunday, when they adjourn on Saturday.

The question being on the adoption of the order,

Mr. BATES, of Plymouth, moved to amend the same, by adding thereto the following words :

And no member shall be entitled to pay beyond that time.

The amendment was agreed to, and the order, as amended, was adopted.

Representation.

The Convention proceeded to the consideration of the Orders of the Day, the first item being the resolve submitted by the gentleman from Taunton, (Mr. Morton,) respecting the mode of submitting the question of representation to the people.

The resolve was read, as follows :—

Resolved, That the Committee "appointed to reduce such amendments as have been, or may be, agreed upon, to the form in which it will be proper to submit the same to the people, for ratification," be instructed so to prepare the amendments in relation to the House of Representatives, as to submit to the people the following questions :—

First. Shall the twelfth amendment in the present Constitution be abrogated ?

Second. Shall the system of representation by towns, in the form accepted by the Convention, be ratified and adopted as a substitute for the said twelfth amendment ?

Or, shall the system of representation by districts, in the form hereto subjoined, be ratified and adopted as a substitute for the twelfth amendment aforesaid ?

And if a majority of the legal voters voting thereon, shall be in favor of abrogating the said twelfth amendment, then the one of the two proposed systems of representation which shall receive the greatest number of votes, shall be deemed and taken to be ratified, and shall become a part of the Constitution, in lieu of the twelfth amendment of the present Constitution : *provided*, that if the two proposed systems shall receive an equal number of votes, then the system agreed upon by the Convention, shall be deemed and taken to be ratified, and shall become a part of the Constitution, as above stated.

[Proposed system of Representation by Districts, before referred to.]

The House of Representatives shall consist of two hundred and sixty-one members. Said members shall be apportioned among the several counties, as nearly as possible, according to the number of legal voters in each.

The Senate, at its first session after the ratification of this amendment, and at its first session

after each decennial census, shall divide each county into such representative districts, composed of contiguous territory, as they may deem expedient, so that the basis of each representative shall be the same number of legal voters, as nearly as possible, without the division of towns, or the wards of cities : *provided*, that no district shall be so large as to entitle it to more than three representatives ; and *provided*, that Nantucket and Dukes County, shall each form one district, and be entitled to at least one representative.

Mr. MORTON, of Taunton. I will ask the attention of the Convention for a very short time. They may be sure I shall not detain them long—I would say less than fifteen minutes, but I believe it would be safer to go on and say what I have to say, in as few words as possible, without making any promise. It is impossible under the rule—and I do not object to it—to go into any argument upon the general subject ; and I will therefore state as briefly as possible, my reasons for presenting the resolve before the Convention, and leave the question to their consideration and decision, without going into any discussion of the principal matter.

I had hoped that this proposition would come up under rather more favorable auspices ; and I must confess, that at the present time there is but one unpropitious circumstance, that is, the lateness in the session, and the consequent necessary impatience of members.

I think there is much in the conciliatory tendency and fairness of the proposition to recommend it to the favorable consideration and the adoption of the Convention. I must hope that, even at this late period of the session, gentlemen will give me their attention upon this proposition for ten or fifteen minutes, and I have no doubt they will.

Mr. President : This resolve applies to the most interesting and important subject which has been before the Convention during its session, one which has been most fully discussed, maturely considered, and one upon which, as might be expected, there is very much difference of opinion. The various projects which have been offered, have been thoroughly investigated, and, I presume, every gentleman has made up his mind in relation to them. One project is founded upon town representation, and the other upon representation by districts. The advantages and disadvantages of these two systems have been fully examined ; and if they had not, I have no time to discuss them now.

There is a settled difference of opinion in relation to these systems, among the members of the Convention. A portion of them—the majority—are in favor of representation by towns ; and a minority—a respectable minority, in numbers at least—are in favor of representation by districts. There is, then, these settled and well-matured opinions, differing as they do, between these two sections of the Convention, which no one can expect to change. But, I hope, however, and believe, there is a disposition upon each side to conciliate and yield a little, for the purpose of bringing their opposing views nearer together. I will not say compromise, for it is a word I dislike ; it is sometimes used for proper and honest purposes, and then it is well enough ; but it is so often employed to cover up log-rolling intrigue and fraud, that I dislike very much to use it at all. I hope, however, there is a spirit of conciliation among us which will enable us to meet

upon some neutral ground, without much yielding of opinion upon either side.

I suppose that every member of the Convention is willing that our constituents should have such a mode of representation as they like. It has been said that we here represent the whole people of the Commonwealth, and that we are, therefore, virtually an assembly of the whole people. I suppose in some sense that may be true, but in others it is not, because if it were, our decision upon the questions before us would be final. I maintain, therefore, that no decision of ours has directly, or by implication, or in any other way, indicated that the people would prefer the town system to the district system.

Now, I propose, by these resolves, to submit the whole question directly to the people. I suppose I may say, for both sides, that the members of the Convention are willing that the people should settle the question. I trust there is no gentleman present who would be disposed to say that we shall arbitrarily determine this question for the people. I suppose they are willing to allow the people to express their wishes upon the subject, and that a majority of the people should decide the question finally. If that is really the desire of the Convention—if they really wish the people to settle the question what system of representation they shall have, I have now presented a scheme by which that wish may be easily and fairly accomplished. Here is now an opportunity by which, so far as it is possible to accomplish it, every member can be exactly satisfied.

I am not tenacious as to the details of a system of representation, if it provides for an equal, righteous representation. But these two systems have been matured as far as we have been able, and I now desire that the people should have the opportunity of judging between the two, and of deciding whether they will have the district system or the town system. If this is not a reasonable proposition—if it is not one that will commend itself to every gentleman, and meet the wishes of every one, I certainly have mistaken their reasonable wishes, and the desires which all have earnestly professed.

It really seems to me, that if gentlemen wish to have the people judge of the relative merits of the two systems, here is an opportunity, which presents no obstacle in the way. The motion may be submitted to the people, and they can take town representation or district representation, just as they choose.

If gentlemen want the Convention to decide the matter finally, and to deprive the people of the opportunity of expressing their opinions upon the subject, they can do it by voting down this proposition, and by refusing to submit the question to them. If, on the other hand, we are really willing and desirous that our constituents all over the Commonwealth should be allowed to say yes or no to this proposition, why certainly we have now an opportunity to do it. I am at a loss to find any reasonable objection to such a proposition, and therefore I know of no argument to combat upon this subject.

But there are some things which I think specially commend these resolves to our favorable consideration and adoption. It does seem to me a measure of conciliation between the different sections of the Convention. It presents itself in that peculiar form that both the minority and the majority may be gratified. It is an instance, very

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rarely occurring, in which both sides may be successful. The minority would be satisfied with an opportunity of presenting their scheme to the people, and as the action of the Convention can avail nothing of itself, the majority should be satisfied with the same opportunity of presenting to the people their plan, with the indorsement of the adoption by the Convention. If the majority are willing that the people should express their minds upon the merits of the two systems, I see no possible objection that they can have to passing the resolves.

But there are other considerations which are entitled to much more weight. There is not only a difference of opinion on the merits of the different systems between the different sections of the Convention, but the members seem to differ widely, very widely, as to the relative favor with which each of the different systems is regarded by the people of the Commonwealth. 'All are, I doubt not, honest and sincere in their convictions; each side seems to be fully persuaded and entirely confident that the people are with them—that the people prefer their system. I have no doubt, as I remarked, that both are equally honest. In my opinion—and it is worth but little—if this question goes to the people, they will prefer the district system for the sake of equality of representation, and of justice and fairness. Other gentlemen are equally confident that the people will prefer town representation. Let the people decide between us. This is all we ask.

There are a portion of the members of this Convention who have very strong objections to town representation; who think it unreasonable, unequal, and unjust. There are individuals in and out of this Convention, whether they are right or wrong in their opinions, who think it so unrighteous they cannot vote for a Constitution containing it. If, therefore, the Constitution is submitted to the people without this proposition—if they are compelled to vote upon only one system of representation—I submit there is great danger that they will vote against the whole, and that all our labor will be lost. There is great danger that the people will prefer the old system to the new, so that gentlemen will not only lose their new system of town representation, but they will also fail in the accomplishment of many other objects which they have in view, and which the people desire. But, on the contrary, if you submit these alternative propositions to the people, you will gain very many votes for the whole work. The friends of each system would suppose that his favorite system would prevail, and therefore would vote for the whole. Many who prefer the district system will vote for the whole, for the purpose of obtaining their object, and many others who prefer the town system, will vote for the whole, for the purpose of obtaining their system of representation. This, therefore, is a very strong argument in favor of submitting this proposition to the people. Deny the right of the people to select for themselves, and you will arouse a spirit which will reject the whole.

There are one or two other facts which I think will recommend this proposition very strongly—and I believe the facts to which I am about to refer are well known to the Convention. I have not made the computation myself, but I am told that it is susceptible of demonstration, that in no one instance has a majority of the people of this Commonwealth, as represented in this Conven-

tion, voted in favor of a system of town representation. Those who have examined the subject—and I understand it has been explained in the Convention—have ascertained to a certainty that whenever this matter of town representation has been presented in this Convention and voted upon, in no one instance have one-half, or anything near one-half of the people of the Commonwealth, by their representatives upon this floor, voted for it. If you will compute the number of the constituents, upon the strongest vote given here in favor of town representation, the constituents of the gentlemen who voted for that system will be found to be less, by more than fifty thousand, than one-half the people of the Commonwealth, so that those who did not, by their representatives, vote for it, exceeded those who did, by more than one hundred thousand people.

Now, if you will carry that computation a little farther, and see how many voted, through their representatives, in favor of a district system, you will find in some respects a similar result, though in other respects you will find a wide difference. Although on no occasion has one-half of the people of the Commonwealth, through their representatives, voted for the district system, yet, if you look at the number of the constituents of the respective parties, you will find that those who voted for the district system represented more than thirty-five thousand people more than those who voted against it.

Now, under these circumstances, ought it not—is it not entirely reasonable—is it not entirely just, that this thing should be submitted to the people to say whether they will decide in favor of those who advocate the town system, or those who advocate the district system? Will the minority, because they have by unequal representation the control of this Convention, exercise the power which accident has given them, not only to dictate to the majority here, but to unjustly and unfairly deprive the people of the power to act on the system of the majority, and compel them to take the system of the minority or nothing? I will not believe until I see it done.

These are some of the reasons, without going into the general merits of the question, why I think we should submit this question to the people. There are some other reasons, however, which might be presented. We have had a protracted session; we have had discussions upon a great variety of subjects upon which there has been a great variety of opinion, and the opinions entertained by gentlemen upon the different sides of the questions that have been before us, have been adhered to pertinaciously; but it has given me great pleasure to notice the amenity of deportment and debate that has been observed, the suavity of manner and courtesy which has prevailed between the members of the Convention. I think we may be proud of the dignity and decorum of our discussions, and the conciliatory disposition of which members who advocated—pertinaciously, perhaps—their different opinions, have uniformly manifested towards each other. I am happy to be able to say, that during the whole of our proceedings there has been that decorum, that gentlemanly deportment, that parliamentary regard for rules and orders, which is a prominent characteristic of a patriotic, intelligent, and high-minded body. I am told, Mr. President—I am glad I did not witness it—that upon one occasion the debate became a little squally.

I believe that no voyage, however successful and prosperous, and however happy the passengers and seamen may have been, was ever brought to a close without some clouds. Indeed, a little rough weather is quite necessary to break the monotony, and to give interest to the voyage. I am told that upon a recent occasion, the very last evening, there appeared some threatening clouds which interrupted the composure, and disturbed, to some little extent, the pleasant intercourse which had heretofore prevailed. But I am delighted to know that, like all other squalls, it cleared off, and was succeeded by sunshine and fair weather, the more pleasant for having been interrupted. I hope we shall be able to carry this out till the close of our labors, and that we shall have nothing but the kindest feelings towards each other.

Now, in relation to the resolves before the Convention, let us meet the subject fairly and favorably. Let us submit the question to the people. No one can lose anything by it, unless it be an unjust advantage. We have important reforms which we all wish the people to adopt, some upon which we are pretty generally agreed, and others upon which there is much difference of opinion. But, Sir, let us conciliate upon this great question; let us submit this to the people, and then, I trust, the others will meet a favorable reception. So far as our labors have terminated for good, the people will ratify them, and if in any respect they have been injudicious, the community will sift out the chaff and save the wheat. At any rate, I hope we shall impress upon the minds of the community that we desire to recommend to their favorable consideration, the labors of the Convention.

I will say, in conclusion, that I have very strong fears that unless upon this all-important subject, in which we all feel so deep an interest, which we all consider so vital to the welfare and increasing prosperity of the Commonwealth, I say, that unless we concur in some proposition by which the subject may be thrown open for the consideration and decision of the people, I fear our whole labors may be lost. Let us give them, what I am sure we all desire, a system of representation that shall be in exact conformity with the wishes of the community. [Here the hammer fell.] I have watched the clock, and was just going to add that I was very glad to conclude what I had to say without the interposition of the President's hammer.

Mr. PHELPS, of Monroe. Mr. President: I feel a degree of reluctance to occupy the time of the Convention under the circumstances in which we find ourselves this morning. After the able and eloquent speeches which we have had, and the instruction we have received, it seems almost a work of supererogation for me to attempt to enlighten this Convention; and especially do I feel as though I could expect to receive but little attention, when the pay roll is about to be made up, and there seems to be considerable interest in that matter. But if I could gain the attention of the Convention for a few moments, I should be very glad to do it, inasmuch as I represent one of the small towns, which has a deep interest in the result of this question relating to the basis of the House of Representatives—as great, perhaps, as any town can have. Nevertheless, I made up my mind, when this discussion commenced, that I would not say a word upon the subject. And

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I would have adhered to that determination, had it not been for certain ideas advanced by gentlemen on both sides of the question, and especially the idea advanced by the gentleman who represents Wilbraham, when this question was up before. I am sorry that I do not see that gentleman in his seat at the present time. He advanced an idea which has gone to the country, and gone upon the record, giving an impression upon the members from the small towns which is rather unpleasant. That gentleman said that if the members from the small towns did not come to the rescue and help hold up the hands of Moses, he should have to vote for the district system. That statement has gone upon the record, and to the country, and it implies that the small towns have some Moses here to take care of their interests, or else their interests will not be taken care of. I do not believe that gentleman meant what he said; but it is upon record, and it will have the same effect, as it goes out to the country. That gentleman, I suppose, argued the question of town representation as a principle; and I never knew that gentleman forsake what he considered a principle, in regard to any matter whatever.

Sir, it seemed rather hard, after that gentleman had become as it were a sort of acknowledged leader for the small towns, and after he had acknowledged our right in the disputed conflict, and led us on to victory, and the enemy began to scatter in all directions, just because we made one false step, to have the general face about and say: "Soldiers, if you do that again, I will throw up my commission, and go over to the enemy and enlist as a private soldier."

The members from the small towns have occupied but a small part of the time of this Convention, comparatively; and if any apology is wanted, I would say for myself, and I might for many others, that one reason why the members from the small towns have not said more in this Convention, is because speech-making is not their trade or their occupation. They came here with the intention of voting according to the best of their judgment, and only talking when it was actually necessary; to hear all that was said on all sides, and making up their minds so as to vote understandingly, and in a manner to meet the views of their constituents, and accomplish the great object for which this Convention was called.

Another reason why they have not spent the time in speaking upon many questions, is, that there have been plenty of advocates among all parties—gentleman who knew how to talk, who wanted to talk, and did talk. Having plenty of advocates, we thought it not necessary to spend the time in speech-making upon any question whatever. If this is not apology enough, I would say, for one, that after hearing some fifteen or twenty sixty-four pounders, one after another, fired off in regular succession, which had been loaded to the muzzle and rammed down with the iron ramrod of intellect, by men of great experience—after hearing the booming of those mighty cannon, I could not expect to accomplish much by throwing up fire crackers.

After the chairman of the Committee who made this Report had made his candid, able, and telling argument upon this question, and in favor of town representation, we were satisfied to rest the matter there for the time being. But that gentleman was soon assailed and accused of

selfishness; figures were made and results announced, showing, as they said, great injustice and inequality. Then, Sir, came forward the untiring, energetic members from Lowell, and they offered to sacrifice, upon the altar of principle, a part of their own power, to preserve town representation. But here it soon became evident that there must be a yielding on both sides. We of the small towns were asked to meet them on some ground of compromise. Yes, Sir, gentlemen from both sides came and urged the members from the small towns to yield something, and give up some portion of their representation, and enter into what was called a compromise. We did so; and over fifty towns consented to yield one-half, so as to be represented every other year. Well, Sir, what thanks did we get for that? The first thing they did was to twit us of surrendering our principle. Yes, Sir, they tell us we abandoned our principle; and, having no principle to stand upon, they very politely ask us to come over to the district system. After each of us had consented to become half a man, or we had yielded up one-half of our representation, we supposed we might ask something from the other side.

The next thing we hear from them is, that it takes three men in Boston to equal one in the country; and they very gravely ask, is it right that one man in the country should equal three in the city? That question has been repeated here time and again.

I would now ask gentlemen who opposed the calling of this Convention, if they were satisfied with the existing Constitution? That is a question which I wish to put distinctly to gentlemen, whether they were satisfied with the present Constitution? I take it for granted they were satisfied; because, if they were not satisfied, why did they not vote for calling the Convention?

I now come to the question of inequality, and I will answer that question by asking another. Is it right for one man in the city of Boston to be made equal to two hundred and twenty men in the country? I wish gentlemen who opposed calling this Convention, to understand that I consider that they were satisfied with the existing Constitution; and now I ask them if it is right, as that Constitution provided, that one man in Boston should be considered equal to two hundred and twenty in the country? For that is the fact under the present Constitution. My proof is this: Every legal voter in the city of Boston has a right to vote for forty-four representatives, every year casting forty-four votes. Well, Sir, I have the right to cast one vote once in five years for a representative—so that they can vote five times forty-four times while I vote once. Now, I ask if that is right? We have not heard a word of complaint on their part on account of its not being right, though it is beyond all dispute a fact that one man in Boston equals two hundred and twenty in some of the small towns.

After having voted down proposition after proposition on the districting system—and the last time by over one hundred majority—then the gentleman from Taunton proposes to put in his old rejected claim, a claim which we had time and again declared we would not indorse. With all due respect to the gentleman who introduced it, I consider it a great absurdity.

Does the gentleman wish to carry out the principle? Then why does he select this particular and take no other? Why take up a proposition

which has been voted down by so large a majority, and say nothing about other matters which were passed with a very close vote? Why not send out the whole judiciary question in all its bearings, and let the people say whether they will have the judges elected or appointed—whether they will have the tenure of their office five, seven, ten, or fifteen years, or for life? How do we know how the people would like to have it? Is he afraid to trust the people? If not, then let them have their choice. Then send an alternate proposition concerning the Council, and let the people say whether they will have them elected or appointed. There is a great difference of opinion as to which is the true principle, the majority or plurality. Why do the friends of plurality, who have talked so long and loud upon the subject, ask leave to send both propositions to the people, so that the people can have what they want? Why not say to the people, and done with it, that their delegates cannot agree, unanimously, upon anything; and therefore they, the dear people, may look over our discussions and vote upon all the propositions, and those that receive a majority of votes shall become part of the Constitution. Sir, the people sent us here for no such purpose as this. We were sent here to say what alterations were wanted, to discuss the matter, then vote upon it, and whatever the majority voted for, send to the people; and if it suited them they would accept it; if not, they would reject it. Sir, they did not send us here to get up a proposition for districting the State, and send it back to them, saying that we rejected it in Convention by a very large vote, and we thought it a miserable concern; nevertheless, we did not know but the people might take a fancy to it. So we concluded that if you wanted it, you might have it. Mr. President, I for one, cannot think the people will thank us for pelting them with rotten eggs.

Not a word was said about a district system, before the calling of this Convention. No, Sir; but the argument was: see to it, you of the small towns, go for the Convention, that you may not be annihilated; now is your last chance to preserve town representation. That was the argument. Now, where are those gentlemen who threw the documents all over the country, calling upon us to take our last chance and be saved? Sir, I trust that they are here, and ready to tell by their votes what they have told with their mouths. I trust, Sir, that this project of the gentleman from Taunton will be rejected, with as much unanimity as the others have been. It is high time that we said less and did more. We have already remained here longer than it was expected we should. The people are getting impatient, and no one can blame them. If we had discussed nothing but what was reasonably expected we could carry, and had confined ourselves to the question before us, we might have been at home long ago.

But, Sir, not only the fugitive slave law, but a variety of other subjects have been discussed, that had no relation to our duties here. Sir, members from the small towns will remember with gratitude, not only the able and persevering member for Erving, (Mr. Griswold,) but also the untiring exertions of the very able delegate from the city of Lowell, (Mr. Butler,) and the mild, pleasant, and able arguments of the learned member from Worcester, (Mr. Earle,) the musical and

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earnest arguments of the gentleman from New Bedford, (Mr. French,) and many others whom it is not necessary to indicate by name.

Mr. WHITNEY, of Boylston. I wish to say a word or two on the proposition which is now submitted. It seems to me to be a very extraordinary proposition. It amounts to this simply: that inasmuch as the large towns and cities have got precisely what they want, they turn round and ask us in the small towns to accept what we do not want. Why cannot gentlemen be satisfied with having their own way in the cities and large towns? If you are districted as you wish to be in the cities and large towns, why do you wish to have the small towns put the rope around their own necks and be drawn up to what they do not want? It seems to me to be a very strange proposition that we of the small towns are to come here and give the large towns what they want, and then put the rope upon our necks and put the other end in their own hands, and let them hang us up to kick. That is the whole of the proposition. I think the cities and towns should be satisfied if they have got all they want. Cannot they permit that Mordecai shall sit at the king's gate if they can have all they desire, until they strangle him upon their gallows? I think we will not consent to it. But if the Convention, contrary to what has been expected all along, should permit this double proposition to go forth to the people, I wish to amend it. I have a proposition or two which I wish to have go to the people. Now, with all due deference to the learning and judgment of the delegate from Taunton, I must be permitted to say that I think the enfranchisement of one-half the people of the Commonwealth, right straight out, is of more consequence than a little inequality which may exist now. And I think the disfranchisement of five hundred, either in the city or country, is of more importance than these side issues where there is a little inequality.

I wish to say one word on the subject of official oaths, whether they shall be abolished. I wish that question to go out among the questions which are to go to the people. And, in the second place, I wish the word "male" to be stricken from the qualification for voting, in the Constitution. I have an inkling that the people are a little ahead of the Constitution in that respect. They are satisfied that no good comes from swearing, and that no evil would come from striking out the word "male." I wish it to go to the people. I will not say that I shall be satisfied with their decision, because I will not be satisfied with anything that is wrong, whether it is done by a million or by one man. I may submit to it. I am not satisfied with the decision that eighteen millions may trample on the rights of three millions. I say it is wicked and cowardly, and we have no right to do it, either as Democrats, as Christians, or as men.

I wish to say one word as to the limitation of the exercise of power by majorities. There is a limitation of majorities. They may not do everything. You may refuse my proposition here, but suppose this Convention say I shall be hung on the Common, have they a right to do it, or have all the men in Massachusetts a right to do it, or have all the men in the Union a right to do it? I say no, and I do not submit to it. Suppose you act on the question of my liberty. Without my being convicted of any crime, have

you a right to take away my liberty? I say no. If every man in Massachusetts is engaged in doing it, would that make it right? I say no; and if the whole Union engage in it, I still say no. I feel that I have a right to liberty and life, and there is no principle in democracy or religion, which will authorize you to deprive me of them. If there is a single human being in this great family of nine hundred millions, who is to be deprived of liberty without being convicted of crime, I see no reason why I should not be the man. Therefore, I do not consent to any man's being subjected, without being convicted of crime, either to the penalty of death, or to the penalty of slavery. There is a great disposition in this Convention, it seems to me, to puff up and adore this Union, and to express a great reverence for it. Permit me to say, Mr. President, that I have some misgivings upon this topic. I cannot consent to glorify this Union while it refuses to give freedom to its people. I say it is cowardly for nineteen millions of Anglo Saxons to tread upon three millions of negroes and mixed races. It is un-democratic and un-Christian, and against the Bible; and, although some of our doctors of divinity have caved in, and have carried some of our old friends away with them, by proclaiming that the Bible sanctions slavery, yet, Sir, I choose, so far as I am concerned, to interpret the Bible for myself, and not to have doctors of divinity interpret it for me.

Now some things have been said, in this Convention, with reference to these two propositions which I bring forward here, and considerable liberty has been taken, as I understand; for, although I was not here, I have been informed that some of my friends have been assailed in a manner which was not altogether becoming to the dignity of such a Convention as this. A great many harsh things have been said here, against the rights of women, and against come-outers. Sir, I have a great reverence for come-outers. Abraham came out from his father's house, and from the religion of his fathers. The Puritans were also come-outers, and came over the seas to enjoy their religious sentiments unmolested. I believe, Sir, that if the truth was known, we are all come-outers, more or less, but some of our friends are older, and have gone to seed a little. They came over so long ago that they have forgotten it, and have gone to seed; and perhaps we shall go to seed too, if we live long enough. It seems to me, that if gentlemen have nothing better to say against this proposition, than to apply the term "Mr." to one of the most womanly women in this Commonwealth, one who is educated and refined, and who has graduated at one of your colleges; and to apply the term "Miss" to such a man as Wendell Phillips, they must be in a desperate situation for want of arguments; and we are driven to institute a comparison between the blackguardism and wit of the fish market and the grog saloons, and that which is introduced here by a distinguished doctor of divinity—we are driven to institute a comparison to see which is the most dignified, and which is to be regarded as the most worthy of men who take part in the proceedings of this body.

Mr. DAVIS, of Fall River. I rise to a question of order. I desire to know what the question is, and if the gentleman from Boylston is speaking to the question?

The PRESIDENT. The gentleman from Boylston will be good enough to state his amendment.

Mr. WHITNEY. I propose to amend the proposition of the gentleman from Taunton, by adding to it the following questions: "Shall official oaths and affirmations be abolished?" and "Shall the term male be stricken from the Constitution?"

The PRESIDENT. The gentleman from Boylston will perceive that both of these propositions relate to a subject different from that which is under consideration, and are therefore excluded by the rule. He can introduce them in a separate resolve, but they are not in order at this time.

Mr. CHAPIN, of Webster, moved the previous question.

Mr. WILSON, of Natick. I hope the gentleman will withdraw that motion, and that we shall proceed to act upon the special assignment. That can be taken up and disposed of in a few minutes.

Mr. CHAPIN. I had concluded from the two last speeches that have been made, that it was about time to take the question. I have no objection to withdrawing the motion, if the gentleman from Natick desires it.

Mr. WILSON. I now move to lay this subject on the table, with a view of taking up the special assignment, being the resolves upon the subject of plurality.

The motion to lay upon the table was agreed to.

The Plurality Question.

On motion by Mr. WILSON, the Convention proceeded to consider the first and fourth resolves on the subject of plurality, which were read, as follows:—

1. *Resolved*, That it is expedient to provide in the Constitution that a majority of all the votes given shall be necessary to the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth, until otherwise provided by law; but no such law, providing that the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, Attorney-General, and Representatives to the General Court, or either of them, shall be elected by plurality, instead of a majority of votes given in, shall take effect until one year after its passage; and if at any time after the enactment of any such law, and the same shall have taken effect, such law shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and, in default of any such law, if at any election of either of the above named officers, except the Representatives to the General Court, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be Governor, or other officer to be thus elected.

4. *Resolved*, That in the election of all city or town officers, such rule of election shall govern as the legislature may by law prescribe.

The question being on the final passage of the resolves,

Mr. TRAIN moved to amend the first resolve, so that it shall read as follows:—

1. *Resolved*, That it is expedient to provide in the Constitution that a plurality of the votes given shall be necessary to the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth, until otherwise provided by law; but no such

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law, providing that the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, Attorney-General, and Representatives to the General Court, or either of them, shall be elected by a majority of votes given in, shall take effect until one year after its passage; and if at any time after the enactment of any such law, and the same shall have taken effect, such law shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in default of any such law, if at any election of either of the above named officers, except the Representatives to the General Court, no person shall have a plurality of the votes given, the House of Representatives shall, by a plurality of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be Governor, or other officer to be thus elected.

Mr. BIRD, of Walpole. I believe that precisely the same amendment was moved yesterday in the Convention, and it was rejected. The proposition was made, I think, by the gentleman from Boston, Mr. Schouler.

The PRESIDENT. The Chair has inquired of the Secretary, and finds no record of such a motion. The Chair supposes that this precise question has not been presented.

The question being then taken on the motion of Mr. Train, on a division, there were—ayes, 120; noes, 194—so it was not agreed to.

The question then recurring on the final passage of the resolves, Mr. BUTLER asked for the yeas and nays, and they were ordered; and, being taken, resulted—yeas, 184; nays, 169—as follows:—

YEAS.

Abbott, Josiah G.	Cushman, Henry W.
Adams, Shubael P.	Cushman, Thomas
Allen, James B.	Cutler, Simeon N.
Allis, Josiah	Dana, Richard H., Jr.
Alvord, D. W.	Davis, Charles G.
Austin, George	Davis, Isaac
Baker, Hillel	Davis, Robert T.
Barrett, Marcus	Day, Gilman
Bates, Eliakim A.	Deming, Elijah S.
Bates, Moses, Jr.	Denton, Augustus
Beal, John	Duncan, Samuel
Bennett, Zephaniah	Dunham, Bradish
Bigelow, Edward B.	Durgin, John M.
Bird, Francis W.	Eames, Philip
Bliss, Gad O.	Earle, John M.
Booth, William S.	Easland, Peter
Boutwell, Geo. S.	Edwards, Elisha
Boutwell, Sewell	Fay, Sullivan
Bradford, William J. A.	Fellows, James K.
Breed, Hiram N.	Fisk, Lyman
Bronson, Asa	Fiske, Emory
Brown, Adolphus F.	Foster, Aaron
Brown, Artemas	Foster, Abram
Brown, Hammond	Fowle, Samuel
Brownell, Frederick	Freeman, James M.
Brownell, Joseph	French, Charles A.
Bryant, Patrick	French, Rodney
Burlingame, Anson	French, Samuel
Butler, Benjamin F.	Gale, Luther
Cady, Henry	Giles, Charles G.
Caruthers, William	Gooch, Daniel W.
Case, Isaac	Gooding, Leonard
Chapin, Daniel E.	Green, Jabez
Chapin, Henry	Griswold, Josiah W.
Childs, Josiah	Griswold, Whiting
Churchill, J. McKean	Hadley, Samuel P.
Clark, Henry	Hagood, Lyman W.
Clark, Salah	Hagood, Seth
Clarke, Stillman	Haskins, William
Cleverly, William	Hawkes, Stephen E.
Crane, George B.	Hayden, Isaac
Cressy, Oliver S.	Heath, Ezra, 2d
Cross, Joseph W.	Hewes, James

Hewes, William H.	Perkins, Noah C.
Hobart, Henry	Phelps, Charles
Holder, Nathaniel	Phinney, Silvanus B.
Hood, George	Pool, James M.
Hooper, Foster	Putnam, John A.
Howard, Martin	Rantoul, Robert
Hunt, Charles E.	Richards, Luther
Huntington, Charles P.	Richardson, Daniel
Huntington, George H.	Richardson, Nathan
Hurlbut, Moses C.	Richardson, Samuel H.
Hyde, Benjamin D.	Ring, Elkannah, Jr.
Jacobs, John	Rockwood, Joseph M.
Johnson, John	Rogers, John
Kendall, Isaac	Ross, David S.
Kimball, Joseph	Sanderson, Amasa
Knight, Hiram	Sanderson, Chester
Knight, Jefferson	Simmons, Perez
Knowlton, Charles L.	Simonds, John W.
Knowlton, William H.	Sprague, Melzar
Knox, Albert	Spooner, Samuel W.
Langdon, Wilber C.	Stevens, Joseph L., Jr.
Lawrence, Luther	Stevens, William
Lawton, Job G., Jr.	Stiles, Gideon
Leland, Alden	Strong, Alfred L.
Lincoln, Abishai	Thayer, Joseph
Little, Otis	Thayer, Willard, 2d
Littlefield, Tristram	Tilton, Abraham
Loomis, E. Justin	Turner, David P.
Marble, William P.	Tyler, William
Marcy, Laban	Underwood, Orison
Marvin, Abijah P.	Vinton, George A.
Merritt, Simeon	Walker, Amasa
Moore, James M.	Ward, Andrew H.
Morton, Marcus, Jr.	Warner, Samuel, Jr.
Morton, William S.	Waters, Asa H.
Nash, Hiram	Weston, Gershom B.
Nayson, Jonathan	White, George
Nichols, William	Whitney, Daniel S.
Nute, Andrew T.	Whitney, James S.
Ober, Joseph E.	Wilbur, Daniel
Orne, Benjamin S.	Wilbur, Joseph
Osgood, Charles	Williams, J. B.
Packer, E. Wing	Wilson, Henry
Paine, Benjamin	Winn, Jonathan B.
Paine, Henry	Winslow, Levi M.
Parris, Jonathan	Wood, Charles C.
Partridge, John	Wood, Nathaniel
Peabody, Nathaniel	Wood, Otis
Penniman, John	Wright, Ezekiel

NAYS.

Adams, Benjamin P.	Copeland, Benjamin F.
Aldrich, P. Emory	Crittenden, Simeon
Allen, Charles	Crockett, George W.
Allen, Joel C.	Crosby, Leander
Allen, Parsons	Davis, Ebenezer
Andrews, Robert	Davis, John
Aspinwall, William	Davis, Solomon
Atwood, David C.	Dawes, Henry L.
Ayres, Samuel	Dean, Silas
Ball, George S.	Dehon, William
Bancroft, Alpheus	Denison, Hiram S.
Barrows, Joseph	Doane, James C.
Bartlett, Russel	Dorman, Moses
Bartlett, Sidney	Eaton, Liley
Beebe, James M.	Ely, Homer
Bell, Luther V.	Farwell, A. G.
Bennett, William, Jr.	Fowler, Samuel P.
Bigelow, Jacob	French, Charles H.
Bradbury, Ebenezer	Frothingham, Rich'd, Jr.
Brewster, Osmyn	Gardner, Henry J.
Brinley, Francis	Gardner, Johnson
Briggs, George N.	Gates, Elbridge
Buck, Asahel	Gilbert, Wanton C.
Bullock, Rufus	Gilbert, Washington
Bumpus, Cephas C.	Giles, Joel
Chandler, Amariah	Gould, Robert
Chapin, Chester W.	Goulding, Dalton
Clark, Ransom	Goulding, Jason
Clarke, Alpheus B.	Gray, John C.
Coggin, Jacob	Hale, Artemas
Cole, Lansing J.	Hale, Nathan
Cole, Sumner	Hallett, B. F.
Conkey, Ithamar	Hammond, A. B.
Cook, Charles E.	Harmon, Phineas
Coolidge, Henry F.	Hathaway, Elnathan P.

Hayward, George	Plunkett, William C.
Hazewell, Charles C.	Pomroy, Jeremiah
Heard, Charles	Rawson, Silas
Henry, Samuel	Read, James
Hersey, Henry	Reed, James
Heywood, Levi	Rice, David
Hinsdale, William	Rockwell, Julius
Hobart, Aaron	Royce, James C.
Hopkinson, Thomas	Sargent, John
Houghton, Samuel	Schouler, William
Howland, Abraham H.	Sherrill, John
Hoyt, Henry K.	Sikes, Chester
Hunt, William	Sleeper, John S.
Huntington, Asahel	Smith, Matthew
Hurlbut, Samuel A.	Southon, John
James, William	Stetson, Caleb
Jenkins, John	Stevens, Charles G.
Kellogg, Giles C.	Stevens, Granville
Kinsman, Henry W.	Sumner, Increase
Knight, Joseph	Taft, Arnold
Knowlton, J. S. C.	Thomas, John W.
Kuhn, George, H.	Thompson, Charles
Ladd, Gardner P.	Tilston, Edmund P.
Lincoln, Frederic W., Jr.	Tilton, Horatio W.
Livermore, Isaac	Train, Charles R.
Lord, Otis P.	Turner, David
Lothrop, Samuel K.	Upham, Charles W.
Loud, Samuel P.	Upton, George B.
Lowell, John A.	Viles, Joel
Miller, Theophilus R.	Walcott, Samuel B.
Miller, Seth, Jr.	Wales, Bradford L.
Mixter, Samuel	Wallace, Frederick T.
Monroe, James L.	Wallis, Freeland
Morey, George	Walker, Samuel
Morris, Joseph B.	Weeks, Cyrus
Morton, Marcus	Wetmore, Thomas
Noyes, Daniel	Wheeler, William F.
Oliver, Henry K.	White, Benjamin
Orcutt, Nathan	Wildor, Joel
Park, John G.	Wilkinson, Ezra
Parker, Adolphus G.	Williams, Henry
Pease, Jeremiah, Jr.	Wilson, Milo
Perkins, Daniel A.	Wilson, Willard
Perkins, Jesse	Woods, Josiah B.
Pierce, Henry	

ABSENT.

Abbott, Alfred A.	Kellogg, Martin R.
Alley, John B.	Keyes, Edward L.
Appleton, William	Kingman, Joseph
Ballard, Alvah	Ladd, John S.
Banks, Nathaniel P., Jr.	Mason, Charles
Beach, Erasmus D.	Meader, Reuben
Bishop, Henry W.	Morton, Elbridge G.
Blagden, George W.	Newman, Charles
Bliss, William C.	Norton, Alfred
Braman, Milton P.	Paige, James W.
Brown, Alpheus R.	Parker, Joel
Brown, Hiram C.	Parker, Samuel D.
Bullen, Amos H.	Parsons, Samuel C.
Carter, Timothy W.	Parsons, Thomas A.
Choate, Rufus	Payson, Thomas E.
Cogswell, Nathaniel	Peabody, George
Crowell, Seth	Perkins, Jonathan C.
Crowninshield, F. B.	Powers, Peter
Cummings, Joseph	Preston, Jonathan
Curtis, Wilber	Prince, F. O.
DeWitt, Alexander	Putnam, George
Edwards, James, 2d	Sampson, George R.
Eaton, Calvin D.	Sheldon, Luther
Edwards, Samuel	Sherman, Charles
Ely, Joseph M.	Stacy, Eben H.
Eustis, William T.	Stevenson, J. Thomas
Fitch, Ezekiel W.	Storow, Charles S.
Graves, John W.	Stutson, William
Greene, William B.	Sumner, Charles
Greenleaf, Simon	Swain, Alanson
Hall, Charles B.	Taber, Isaac C.
Haskell, George	Talbot, Thomas
Hillard, George S.	Taylor, Ralph
Hobbs, Edwin	Tower, Ephraim
Hubbard, William J.	Tyler, John S.
Ide, Abijah M., Jr.	Warner, Marshal
Jackson, Samuel	Wilkins, John H.
Jenks, Samuel H.	Wood, William H.

Absent and not voting, 76.

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HOUSE OF REPRESENTATIVES, &c. — WILSON.

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So the resolves were passed.

The whole series is as follows :—

1. *Resolved*, That it is expedient to provide in the Constitution that a majority of all the votes given shall be necessary to the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth, until otherwise provided by law; but no such law providing that the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, Attorney-General, and Representatives to the General Court, or either of them, shall be elected by plurality, instead of a majority of votes given, shall take effect until one year after its passage; and if at any time after the enactment of any such law, and the same shall have taken effect, such law shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in default of any such law, if at any election of either of the above named officers, except the Representatives to the General Court, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from whom the Senate shall, by *viva voce* vote, elect one who shall be Governor, or other officer thus to be elected.

2. *Resolved*, That in all the elections of Senators and Councillors, the person having the highest number of votes shall be elected.

3. *Resolved*, That it is expedient so to amend the Constitution as to provide that a majority of votes shall be necessary for the election of Representatives to the General Court, until otherwise provided by law.

4. *Resolved*, That in the election of all city or town officers, such rule of election shall govern as the legislature may by law prescribe.

5. *Resolved*, That in the election of all county and district officers, the person having the highest number of votes shall be elected.

6. *Resolved*, That in all elections where the person having the highest number of votes may be elected, and there is a failure of election because two persons have an equal number of votes, subsequent trials may be had at such times as may be prescribed by the legislature.

Representation.

On motion by Mr. MORTON, of Taunton, the Convention resumed the consideration of the resolves submitted by him, respecting the mode of submitting the question of representation to the people.

Mr. WILSON, of Natick. Mr. President: It seems to me that the proposition of the distinguished gentleman from Taunton, (Mr. Morton,) to submit to the people an alternate plan for the basis of the House of Representatives, will have a tendency to distract, divide, and embarrass the friends of the amended Constitution. I may be mistaken, my apprehensions may be groundless. I admit that the plan may be clearly comprehended, fully understood by the people, so that the friends of reform, upon whom we are to rely to carry through the amendments which the Convention has adopted, may not be at cross purposes during the canvass; but it does appear to me, that it will, if adopted, lead to a diversity of sentiments, opinions, and actions among the friends of constitutional reform. Looking at the proposition—as I cannot but look at it in this light—I cannot give my humble support to it. On the contrary, I feel it to be my duty to do all I can do honorably to prevent its adoption by this Convention.

After days—weeks of debate—after listening to

a discussion distinguished for its profound ability, the Convention has expressed its deliberate judgment upon the question. The Convention, by a majority of about one hundred, has decided in favor of a mixed system, based upon corporate rights and population. That system, as it now stands in the amended Constitution, is the deliberate judgment of the Convention. It will go out to the people of Massachusetts as the sense of the Convention. Unequal as it is—unequal as any system that preserves town representation must be—it is the product of the deliberations of the Convention, and it will go out to the people with the sanction of men presumed to embody and express the popular will. Yes, Sir, unequal as it is, it will be sustained by the ideas, habits, associations, and prejudices of the people. For more than six generations the people of this old Commonwealth have maintained the system of town representation, under some modifications. Gentlemen who expect the people to relinquish a system endeared to them by the associations of two centuries, undervalue the force of old habits, associations and ideas. There are, it cannot be denied, members of the Convention, representing large constituencies, who do not prefer the plan adopted, who have not supported that plan, and who are in favor of a district system, based upon population or legal voters.

It is well known, Sir, that there are very many members of the Convention who are in favor of a district system, but who hesitate to vote for it, believing that the people are not yet prepared to abandon town representation, and to adopt a district system. These members have voted for town representation, thus swelling the majority for the plan adopted.

There are several members who doubt whether the Convention has decided in accordance with the wishes of the people or not. These members are divided in their action. Some of them have given reluctant votes for the plan adopted; others of them have voted for a district system throughout. These members are united in the wish to take the sense of the people, if it is practicable to do so, without endangering the whole of the constitutional amendments.

Now, Sir, I am willing to incorporate into the Constitution a provision that shall give the people an opportunity to pass upon the question hereafter, whether they will have the State divided into districts for the choice of representatives or not. The friends of town representation—of the system which is now determined upon—have carried here, that system, by an immense majority. If this Convention reflects the popular will—and gentlemen think it does—I am sure the friends of that system cannot object to giving the people an opportunity to vote upon the district system when that system is perfected and presented to them in detail.

I cannot give my vote for the proposition now pending, introduced by the member from Taunton, (Mr. Morton,) because in my judgment it will tend to complicate affairs, to embarrass and distract the people, and possibly to defeat the chief object of the Convention. I am willing to go for a plan like the one I hold in my hand. I will read the proposition for the information of the Convention—which I shall move when the proper time for doing so shall have arrived—as an amendment to the proposition offered by the delegate from Taunton. It is as follows:—

Resolved, That it is expedient so to amend the Constitution as to provide, that the legislature which shall be chosen at the general election in November, 1855, shall be required to divide the State into forty single districts for the choice of Senators, such districts to be of contiguous territory, and as equal in the number of qualified voters contained in each district as may be; and also to divide the State into single or double districts for the choice of not less than two hundred and forty nor more than three hundred and twenty representatives, such districts to be of contiguous territory, and as equal in the number of qualified voters contained in each district as may be, with proper provisions for redistricting the State as aforesaid, in the year 1866, and every tenth year thereafter, and with all other provisions necessary for carrying such system of districts into operation; and to submit the same to the people at a general election to be held in the year 1856 for their ratification; and, if the same shall be ratified by the people, it shall become part of this Constitution, in place of the provision herein contained for the apportioning of Senators and Representatives.

Now, Sir, this is not an alternative proposition. It is simply a provision for the future amendment of the Constitution. It is plain, clear, simple—easily comprehended by all. It provides that the legislature, which will be the second legislature chosen under this amended Constitution, in the year 1855, shall, in the session of 1856, district the State into forty single senatorial districts, and into single or double representative districts, making a House of Representatives of not less than two hundred and forty, nor more than three hundred and twenty; and to submit the question to the people, at the November election of 1856. The people will then have tested the system agreed upon by this Convention. It will have been in full operation; they will have had it for two years; its benefits, if benefits it have, they will have enjoyed; and its evils, if evils it have, they will have suffered; and they will be able to say whether they are in favor of the continuation of that system or not. They will, at the same time, have presented to them a district system, based upon legal voters for the Senate and House of Representatives, carried into full detail, so that every one will know into what senatorial or representative district he goes. Then the whole question will be fairly presented to the people; and the issue will be between the system then existing and the district system presented to them in detail, full and complete, with provisions for re-districting the State in 1866, and every tenth year thereafter.

Now, Mr. President, this proposition is simple, plain, and clear—easily comprehended by all men. There is nothing in it calculated to complicate the question at issue, or to embarrass the friends of constitutional reform, in or out of the Convention. The Convention, by a decisive majority, has adopted the system of town representation, modified by population. That system, if sanctioned by the people, will go into operation in 1854. The legislature chosen under that system will, in 1856, district the Commonwealth for senators and representatives, based on legal voters. The friends of town representation can vote for the Constitution with this provision in it. By so doing, they secure the adoption of this system—they secure its benefits to the people. The friends of the district system can vote for the Constitution with this provision in it. By so doing, they secure, three years hence, the privilege, the right,

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to vote for a district system, which they desire, and which they believe the people of Massachusetts also desire.

Yes, Sir, the friends of both systems, if they have confidence in their systems, and confidence in the people, can vote for the Constitution with both systems embodied in it. If the people want town representation, they will take and keep it. If they want the district system, they will, in 1856, accept it. Adopt the amendment I propose—adopt the Constitution, as amended, next autumn, and then trust the two systems of representation to the people, and abide the popular verdict. This is all any one can desire, who is willing to trust the people to settle the question for themselves.

I may be told, Mr. President, that the adoption of the amendment I propose, expresses distrust of the system agreed upon. I do not think so. It is a fair and liberal proposition. The Convention has expressed its views in language not equivocal. The majority simply say to the minority: "We are for town representation, you are for a district system. We are confident that the people are for town representation; you say they are for the district system. We have secured town representation, but we have confidence in our system and in the people; we will be fair and liberal. We will vote to submit, three years hence, a detailed district system to the people, and we will cheerfully abide the result."

Sir, there is no distrust, no weakness in this. There is confidence in the plan adopted, confidence in the judgment of the people, and a spirit of liberality and magnanimity in it. The friends of constitutional reform cannot but appreciate the spirit of liberality which this act of the friends of town representation manifests. I appeal to the advocates of town representation to support the amendment I have proposed; and I call upon the friends of the district system to respond to the action of their associates, and to unite in placing this provision into the Constitution. By so doing, they will secure the adoption of the Constitution by the people, and thus incorporate into the fundamental law, the reforms which have received the sanction of the Convention.

But I may be told, Mr. President, that nothing will be gained by the adoption of the plan I propose. Gentlemen who entertain this idea are mistaken, altogether mistaken. We have provided for future amendments of the Constitution, in the following ways: A majority of the Senate, and two-thirds of the House of Representatives, of two successive legislatures, may propose specific amendments to the Constitution, for the ratification of the people. The legislature may submit, at any session, to the people, the question of calling a Convention. The people, in 1873, and every twentieth year thereafter, shall vote upon the question of calling a Convention; the legislature shall submit the question to the people, if one-third of the legal voters voting at the annual election shall require it. These are the modes provided in the amended Constitution for future amendments. No one can reasonably expect that the people will at present vote for another Convention, even should the amended Constitution fail to meet the just expectations of the people. No one can reasonably expect that the legislature, constituted as the House is, will frame a district system, to be submitted to the people. He must be a sanguine man who sup-

poses that two successive legislatures will, by a majority of the Senate and two-thirds of the House of Representatives, frame a district system. The friends of the district system cannot reasonably hope to obtain such a system within a few years, either by a Constitutional Convention or by the action of the legislature, by either of the provisions for future amendments. Now the amendment I propose, makes it the duty of the legislature chosen in 1855, to divide the Commonwealth into senatorial and representative districts, and to submit the plan to the people at the general election in 1856, for their ratification. This duty, the legislature of 1856 must perform, or it must fail to perform its constitutional duties. This, Sir, is what is secured by the proposition I intend to submit. It secures all that the friends of the district system can reasonably demand; more than they have had reason to anticipate at the hands of this Convention, after the adoption of the plan agreed upon by a majority of more than one hundred.

Gentlemen will say that the legislature of 1856 will not district the State fairly—that the district system will not have a fair chance before the people. The amendment I propose, provides that the districts shall be based upon legal voters—as equal in number in each district as may be—and each of the districts to be of contiguous territory. The system must necessarily be fair and equitable. The Senate is based upon population—it represents the popular sentiments in the fullest manner. That body will not consent to an unjust and unequal district system, even if the House of Representatives should be disposed to adopt such an one. I have the fullest confidence that the legislature of 1856 will fairly and faithfully discharge and perform its constitutional obligations—that it will frame a just and equitable district system for the ratification of the people.

But, I may be told, Sir, that a detailed district system, even if fairly made, will not receive the support of the people; that such a system goes to the people under peculiar disadvantages; that men in favor of a district system may not like the districts adopted. To this objection, I reply, that the friends of the district system have no right to ask and no reason to expect, that the simple proposition—"Shall the State be divided into districts for the election of members of the House of Representatives?"—shall ever be submitted to the people. The town representation plan goes to the people in detail—the people know where they are to go. If a district system is to be submitted to the people, it is fair and just that it should go to them in detail, so that they may know into what districts they are to be classed. The people ought not to be required to abandon town representation for an ideal district system. And, I venture to say, that no legislature will consent to submit the district system to the people, unless that system is perfected—so framed as to give the people a fair view of its workings.

If the advocates of the district system are not willing to allow the question to go to the people in a detailed form, they show a want of confidence in the system, and a distrust of the sentiments of the people. I am for the district system, and I am willing to submit the question to the people, completed, and to abide the popular verdict.

It cannot be denied, Mr. President, that there is great hostility to the plan adopted by the Con-

vention. Some of the ablest friends of the Convention—in and out of it—are opposed to it. Some of these gentlemen will acquiesce in the plan agreed upon, and will do all in their power to secure the ratification of the amended Constitution, for the sake of other reforms which have been adopted. A few other gentlemen tell us that they shall not vote for the Constitution—that they shall do all in their power to defeat it before the people. Now, Sir, I have the fullest confidence in the people. I believe that they will ratify the doings of the Convention by a decisive majority. Upon this point I feel the confident assurance of victory. But, I see and feel that we are to carry it by great efforts and labors—efforts and labors we know how to make, and which we shall make.

If the Constitution goes out to the people in its present form, I tell its friends that it is to encounter the fiercest opposition. Powerful interests are combining to defeat its ratification. Money will be poured out like autumnal rains to defeat it. They must be prepared to carry it by main strength before the people. It will demand immense efforts to repel the onslaughts that will be made upon it, and to carry it safely through the storms of denunciation which its opponents will hurl upon it. The presses of the opposition to the Convention have opened their batteries upon the plan adopted. They are preparing to pour upon the friends of that plan, and upon the friends of constitutional reform, an unrelenting fire to be continued from this time to November next.

Sir, I have watched, with some little care and interest, the course of the presses opposed to this Convention, and I am constrained to say, that from the hour of the meeting of the Convention to this day, these presses have done all in their power to misrepresent the acts of the Convention, and the members of the majority of the Convention; they have done all in their power to prepare the minds of the people to reject the doings of the Convention. These presses, the exponents of the party whose organs they are, have seized upon the inequalities of the plan adopted as the basis of the House of Representatives, with the hope that they may defeat the amended Constitution, and bury its friends beneath its ruins.

Sir, the adoption of the proposition I intend to submit as an amendment to the plan proposed by the gentleman from Taunton, (Mr. Morton,) will spike these batteries—silence them, and break the power and force of the opposition now forming to assail the amended Constitution. Sir, I have reflected upon this proposition; I have slept upon it; and I am sure its adoption will crush all opposition, and carry the amended Constitution triumphantly before the people. Leaving to the friends of the district system a fair opportunity to obtain it three years hence—an opportunity which they cannot have unless such a provision be incorporated into the Constitution—it will bring—it must bring to the support of the amended Constitution, friends and supporters from all parties. Yes, Sir; its adoption will unite all the friends of Constitutional Reform, and it will draw thousands from the ranks of that party whose opposition to this Constitutional Convention its best and most sagacious men feel to have been a political blunder.

To the advocates of the district system I appeal to support this amendment, because it secures to you the right and the privilege of taking the sense

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of the people upon that system three years hence. To the friends of town representation I appeal to support this amendment, because it secures to you the adoption and fair trial for two years of your favorite system of representation. To the friends of the amended Constitution I appeal, to vote for this amendment, because its adoption will draw the fire of the batteries of the opposition—break the force of the opposition to the ratification by the people of the work of the Convention, and carry gloriously through the reforms which we have adopted at so much cost of toil, time and expense.

Mr. President: I give notice that I shall, at the proper time, submit the plan I have read to the Convention. I have read it, so that gentlemen of the Convention may understand what are its principal provisions.

Mr. HOOPER, of Fall River. I am glad that the gentleman from Natick, (Mr. Wilson,) has come forward with a proposition of this character, and which I hope his friends will support. Although I much prefer the proposition of the gentleman from Taunton, (Mr. Morton,) and shall do what I can to support it, yet I am willing, if I cannot get that, to accept even this, because it gives me some ground on which I can stand. I believe, that if the Constitution goes out to the people without some provision of this character, it is destined to be defeated. I am confident of it, Sir, for I hear it said, over and over again, every day, by those who have the means of knowing something of the views and feelings of the people, that the friends of this Convention cannot be brought to support this Constitution, without the adoption of a plan of this kind. I apprehend, Sir, that the plan which has been adopted, is more defective than it is generally supposed to be; and, Sir, every provision for its future amendment, only goes to perpetuate these defects, and make the plan even worse for the future than it is for the present. If its operation were to remain precisely as applied to the existing condition of things, it is quite possible that the people might accept it and let it stand. But, Sir, what is to be the future effect of it? Let us suppose that the whole increase of the population of this State, is to be confined to the large towns and cities sending more than one representative. Let us suppose, also, that within the next twenty years we should increase in population to three millions—what would be the result? Simply that the number of inhabitants required to elect more than one representative in a town or city, will be enormously increased, while those towns, no matter how large their population, that are now entitled to send more than one member to the House of Representatives, will still only have the power of sending their present number, unless their individual rate of increase shall exceed that of the whole State. Under the present provision, should such an increase take place in large towns only, it might result that less than one-fifth, or even one-eighth of the people of the Commonwealth might elect the majority of the House of Representatives, and you propose that all future Conventions shall be called and constituted on the same unequal basis. What, then, is the chance of ever peaceably getting an equal system, unless some provision of this kind shall be incorporated into the Constitution?

Sir, I am surprised to see gentlemen undertake

to support such a system here; and I was not less surprised to hear the gentleman from Boylston, (Mr. Whitney,) who professes to have a conscience, and who appears to be very conscientious and honest on all other subjects, supporting the unequal system which has been adopted. Let me put this matter in its right point of view. Suppose that the political franchise, as bequeathed to us by our fathers, was a legacy involving a money consideration in the shape of an annuity to each voter, each to share equally. How would you divide it? By giving to one man six or eight times as much as you give to another? I ask if that would be regarded as right or honest, by the gentleman from Boylston, or if any man, under such circumstances, could be found, who would claim a larger portion for himself, than he would concede to every other man, as his just right? I do not believe that any just or honest man would do it.

Now, so far from the proposition of the gentleman from Taunton tending to complicate this matter, I think its tendency is quite the reverse. What is the proposition? In the first place, every man is called upon to say whether the old system shall be abrogated or not. If the majority vote for abrogating the old system, why of course it will be done away with. Then every man who is called upon to say whether he is in favor of sustaining or abrogating the old system, is called upon, at the same time, to vote in favor of one of the two propositions here offered—either the town system we have already adopted, or the proposition of the gentleman from Taunton. And, Sir, I must say that that seems to me to be a very plain proposition, one very easily understood, and one with which I could cheerfully and confidently go before my constituents, with an expectation of success; and, with such a provision, I could advocate the Constitution in every other respect, because I could then take my stand in the affirmative, on a question involving a matter of fundamental equality. I should, therefore, much prefer the proposition of the gentleman from Taunton, to the old system, and should consequently vote for the abrogation of that system, as would every other man who should prefer either of these new propositions to it, and the result would necessarily be the abrogation of the old system, and the adoption of one or the other of these new propositions, as the people should prefer. In that way you will let the people vote upon the matter as they please. And why should they not?

But the gentleman from Natick says, that the system we have adopted has been adopted by an overwhelming majority of the Convention, and that the Convention reflects the sentiments of the people of the Commonwealth. Is that so? Has that gentleman examined the yeas and nays as they have been taken on this question, and ascertained how many of the people are represented by that majority? Sir, you will find that the majority of the people of the Commonwealth, who are represented by the minority on this question, on this floor, have voted against it; and if these representatives have represented the views of their constituents correctly, it must follow, as inevitably as night follows day, that this plan cannot be accepted by the people of the State. Sir, the representatives of nearly three-fifths of the people have voted against it, while the delegates of only about two-fifths have voted for it.

Sir, that fact is ominous of its fate, unless it shall be accompanied with an alternative proposition, or some scheme by which its monstrous inequality can be remedied.

Now, Sir, let us have a system upon which we can unite. I prefer the plan of the gentleman from Taunton, (Mr. Morton,) but if we cannot have that, let us have the plan of the gentleman from Natick, (Mr. Wilson,) as a ground upon which we can stand; and we can say to the people, if you do not like this, you have the power to change it two years hence, and the power of obtaining something like an equal plan. It is true that bases it upon legal voters, but I am willing to put both House and Senate upon the basis of legal voters, if we cannot have them upon the principle of equality. For these reasons, I hope this Convention will have the good sense to secure the adoption of this Constitution, as I think they will, if they adopt either of these plans, but without which, I do not believe the people will accept of it.

Mr. ALVORD, for Montague. I think there are two fatal objections to the plan proposed by the gentleman from Taunton, (Mr. Morton). In the first place, by putting forth these three questions to be acted upon by the people at the same time, and in the manner proposed by him, his plan will practically defeat his object. Every man who prefers the existing system to either of those proposed, will, of course, vote upon the first question in the negative. Two other classes also will be likely to vote in the negative upon that question. Gentlemen who prefer the system proposed by this Convention, to the present existing system, but who yet fear the adoption of the district system, and would rather continue as we are than adopt that system, will vote "no" upon the first question, so as to make no change, because they fear that the effect of any change will be the adoption of the district system.

On the other hand, gentlemen who desire the district system, but who fear the adoption of the system proposed by this Convention, will, from the fear of that, vote "no" upon the first question. These three classes together will be likely to make a majority of "noes" on the first question, thus causing the defeat of both plans.

There is another fatal objection to the plan proposed by the gentleman from Taunton. Your system of representation in the Senate, as adopted by this Convention, is unfair, unjust, and unequal. That system of representation in the Senate gives to one voter in the county of Suffolk nearly three times the weight of a voter in the western part of the State. Well, Sir, if that system in relation to the Senate stands, there should be somewhere some counterbalancing advantage to the interior sections of the State. The interior finds its compensation, now, in the House of Representatives. But by the plan proposed by the gentleman from Taunton, if adopted, the cities will still have the advantage in the Senate, and the interior of the State will have no compensating advantage in the House of Representatives.

These are fatal objections, in my mind, to the plan proposed by the gentleman from Taunton. The proposition of the gentleman from Natick, obviates both of those objections. I stand here, Mr. President, as a friend of the system of representation which has been adopted by this Convention. I have voted for it on every division, and in each of its details; and I believe it will

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prove in its practical workings a fair, just, and equal system, reflecting the public sentiment of this State, as fairly, as justly, as any district system which the wit of man can devise. But, Mr. President, I acknowledge the binding force of that cardinal, republican, democratic doctrine, that the people have the right, at all times, to amend, alter, and totally change their organic law and frame of government. If the majority of the people of this State desire the district system; if it be true, as has been said here, that that majority wish that system incorporated into the organic law, they have the right to demand it at the hands of this Convention. We have no right to refuse it to them. And if their will is to have a system of districts, we cannot long withstand that will, even if we desire to do so. In a government like ours, and among a people like ours, the popular will soon breaks through any contrivance, however ingenious, to restrain it. If on the other hand a majority of the people do not desire the adoption of the district system, and I, in common with the other supporters of town representation believe that they do not, we, the friends of the representation of municipalities, have nothing to fear, and can lose nothing, by adopting the proposition of the gentleman from Natick. I regard that proposition as simply a contrivance for ascertaining what is the popular will upon this point. If that will is to have a system of representation by districts, then it neither can nor ought to be resisted. If that will is to have a system of representation by municipalities, then we lose nothing, we risk nothing by putting forth this proposition to the people. In either view it is wise to adopt it. I trust that the resolutions of the gentleman from Taunton will be rejected, and that the plan of the gentleman from Natick will be adopted.

Mr. ABBOTT, of Lowell. To the proposition of the gentleman from Taunton, there is one objection, which in my mind, is conclusive. The proposition put forth by a majority of this Convention, and adopted now into the proposed Constitution, not only expresses a principle, but gives the details; it gives the manner of carrying it into operation, so that every voter in this Commonwealth, when he comes to vote upon that question, can see precisely how it is going to operate upon himself. Now, the objection I have, and have had throughout, to the district system, is that it is unfair for this reason: that those in favor of the district system merely enunciate a principle; simply say, that the Commonwealth shall be divided into districts, upon the principle of equality. That is easy enough to say, and every man can understand the principle. But, after you have enunciated the principle, it is quite a different thing; and not so easy a matter to carry that principle out into operation, so that the people shall be satisfied with the scheme carried into operation. In the one case, in the case of the basis adopted by the majority, you have the details, the body, the blood and the bones, and in the other case, you have merely the spirit without even a skeleton. Every man will see that the principle is right, that every person should have a political equality of rights; but, Sir, the difficulty is, in this Commonwealth, divided into towns as we are, to carry that into practical operation. I believe, that if any district system based upon equality, were absolutely reduced by this Convention to a system, and your districts were

made, and, as made, put before the people, it would be the strongest argument used in favor of the system which we have adopted.

Now, Sir, I go for the proposition of the gentleman from Natick, for this reason: if the people of this Commonwealth do, in fact, desire the district system, I am quite content that they should try the other system, if they have the system reduced to a system. If they have the districts marked out and placed before them, I will be willing to go to the people of this Commonwealth, at any time within ten or fifteen years, with confidence, that they will reject any district system, whenever that system shall be reduced to practice, so that every man can see in what position he is putting himself by voting for it. Every man could look to his district and see where he was. Carry that into practice, and there will be no trouble about the district system. Sir, I have great confidence in the system which we have adopted. I believe there is great fairness in giving to the people of this Commonwealth, a majority of them, not a plurality, not a body chosen on our system, after having tried our system for two years, to say whether they will retain it, or whether they will have a district system when it is worked out in practice. But I do object to the proposition of the gentleman from Taunton, which puts a mere principle to the people of this Commonwealth, and which does not put to them the practical workings of that principle, so that they can see for themselves for what they vote.

Mr. SARGENT, of Cambridge. The gentleman from Lowell, (Mr. Abbott,) objects to the proposition presented by the gentleman from Taunton, from the fact that it does not present the details of the system, and because, as he says, there is neither blood, nor bones, in the system—aye, not even a skeleton. Now he has voted for the district system for senators; he has put that before the people; and I ask him where the blood and the bones, or the skeleton of that system is? He there puts forth a principle, just as we propose to put it forth by the measure presented by the gentleman from Taunton, without the blood, the bones, or the skeleton. But he objects that we put the representative system forth upon the same basis. Now, I say to that gentleman in reply, if he is not afraid of his senatorial system, if he will give us the blood, the bones, or even the skeleton of those districts, we will give him the blood, and the bones, of our representative districts, and go with them before the people. That is what we wish to do.

Now, Sir, the gentleman says he puts this question into the hands of the majority of the people of the Commonwealth to decide. I take a different view of the subject; he puts it into the hands of the legislature, controlled by the friends of the very system you have adopted; a legislature elected under a system by which one-third part of the people, and they opposed to the system, have the power to say how these districts shall be formed, and they can, if they choose, form them in such a way that not ten thousand men in the Commonwealth will vote for them. You propose to put the question to the people in that way, and if they reject it, you will say they are not in favor of the district system. I say give us the alternative, and if the gentleman wants the districts drawn out, give us the senatorial districts upon which we can base it, and we will draw it out and put it to the people, with the

blood and the bones in it, so that they can clearly comprehend it, and we will cheerfully abide the result.

Mr. DURGIN, from Wilmington. I may say I am deadly opposed to the district system, and, as I have said before upon this subject, I do not believe that the people of this Commonwealth desire it. If I really thought they did desire it, I should go for it. But, Sir, I should go for it on the same principles and for the same reasons that God gave to his ancient people a king. He gave them Saul, the son of Cis, who ruled them as with a rod of iron, until they had a king to their heart's content. So I might go for giving them a district system. But it is my opinion, that though the people might want a district system, yet it would be detrimental to the highest and lasting interests of the Commonwealth. This is my serious, solemn conviction. Now I want it distinctly understood, that if I go for the proposition of the gentleman from Natick, it will not be because of any want of confidence in the system adopted by this Convention. I have perfect confidence that the people will adopt it, notwithstanding the warm argument of my friend from Fall River, (Mr. Hooper). He was the warm friend of the district system, and that accounts for his warmth of soul upon the subject. But he sees, not with my glasses, or with my eyes, but his own. The district system will be attended with insuperable objections. You bring many of these towns together with diverse interests, and the match and marriage of them is not made by themselves, but by a foreign power. You bring these towns up, and say you want to unite them in wedlock. But they say we cannot submit to that. We cannot submit to being united to such and such a town, and, unless we have the power and the voice to determine the matter, we will not submit to it.

But if the people really desire it, as a kind of quietus, I don't know, after all, that I shall say no to that proposition, although my confidence in the present system is strong, and not at all weakened by any fear that the people will not approve of it. For the last fifteen years the small towns might have had the district system if they would. But there is not a single instance in which they came together.

If the system of the majority be adopted, the small towns have the privilege of coming together and forming districts, and some of the towns may, perhaps, avail themselves of the privilege, but you will not find a majority, if any of them, that will unite. I think, therefore, it is safe; it will do no good, and it will do no harm. Gentlemen are afraid of the press. Why, Sir, what harm can a newspaper article do? Anybody can write a newspaper article, but it will not produce any disastrous effects at all. I will not for a moment entertain the least degree of fear, or want of confidence in the system that has already been adopted in this Convention. If I vote for the amendment of my friend from Natick, I wish it to be understood that I vote for it, not because I have the least want of confidence in the system adopted by the majority, but for the sake of a quietus, to gratify the peculiar feelings of some of the members of the Convention, and perhaps of some people out of the Convention. That is the only reason why I vote for the amendment. And, Sir, if I vote for the amendment, it will be for this additional reason: that the district system there pro-

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posed is clear and distinct, and the people voting on it will act understandingly—act upon something not imaginary, but something tangible—something comprehensible.

Mr. CHURCHILL, of Milton. When this subject was under discussion, sometime since, I was in favor of the district system. I am still in favor of that system. But, Sir, although I should prefer to have the plan we have adopted wholly changed, or materially modified, still, as it is decidedly preferable to the old system, because it districts the cities, I think I can conscientiously support it, before the people, with most of the other reforms adopted by this Convention. Whether the proposition of the gentleman from Natick, (Mr. Wilson,) is accepted or not, I may therefore support the system adopted by the Convention, by my vote at the polls. Still, I trust, and sincerely hope, the proposition of the gentleman from Natick will be adopted. While it does not, necessarily, imply any want of confidence in the system which the Convention has seen fit to adopt, I believe it will add incalculable strength to the cause of reform. It will enlist in favor of the reforms submitted by the Convention, the support of many members of the majority in this Convention who have opposed your representative system. Sir, I believe, as has been stated by the gentleman from Lowell, (Mr. Butler,) there may be some doubt whether the district system, if submitted to the people, would be adopted by them. But I believe there is no danger or difficulty whatever, in submitting the alternative, and I ask those who have firmly and successfully stood by town representation, to give their friends who differ from them, an opportunity to submit the district system to the people. Whether the people are in favor of the system which has been adopted, or prefer the other, can only be known by voting in favor of the proposition of the gentleman from Natick, which submits both plans.

Mr. DAVIS, of Plymouth. I have uniformly recorded my vote against the proposition which has received the sanction of the Convention. But I feel it incumbent to say a few words in regard to the proposition of the gentleman from Taunton, (Mr. Morton,) and that of the gentleman from Natick, (Mr. Wilson).

I consider myself, Mr. President, as fully and fairly beaten in the Convention, upon the question of representation. So far as my own views are concerned, I have not been convinced, as the gentleman states he has, of the fairness, the justice, and the equality of the system of representation which has been adopted here. But inasmuch as it has received the full, and apparently the hearty sanction of the majority of the Convention, I think it is not for us who are in the minority, to think we can exact terms upon which we are to get a more equal system of representation. We all agree that the system submitted by the gentleman from Natick is more equal than that adopted by the Convention; and if the proposition of the gentleman from Taunton is voted down, I shall vote for it. It is not for us to dictate the terms upon which the question is to be submitted to the people, and for one, I am willing to take what I can get. I think it my duty, at this time, to go for what the majority are willing to give us upon this question.

Now, Sir, for one, I should greatly prefer that a proposition should be submitted to the people,

at this time, like, or something like, that proposed by the gentleman from Taunton. I can see no real objection to offering it as an alternative proposition. I see no reason why it should be regarded as disastrous to the proposition presented by the majority; but I see sufficient reason for it, in the fact that it would present an answer to the argument which has been repeatedly presented here—which was conclusive in the mind of the gentleman from Marshfield, whose speech, permit me to say, it seemed to me, was stronger in the head than in the tail. His argument was founded—if I understood him rightly—upon the supposition that the people were not ready for the district system. Another gentleman took the same ground in his argument. They are in favor of the district system, but give their sanction to the system proposed by the majority, upon the ground that the people are not prepared to receive the district system. The same argument prevailed in a previous Convention. It is an argument that has thus far been fatal to the district system, and for this reason, if for no other, I am in favor of the proposition of the gentleman from Taunton, for the purpose—if I may be allowed the expression—of clinching the nail, and of giving the people one opportunity of saying for themselves, whether they are ready for the district system or not. How long are we to reform the Constitution, and call Constitutional Conventions in Massachusetts, and allow the argument—which, I must confess, savors rather too much of the politician, which looks a little too much like being designed to tickle the ears of the people—to prevail, that the people are not yet prepared to receive the district system? When are you going to find out whether the people are ready or not? Now I submit that here is an opportunity presented, in the proposition of the gentleman from Taunton, for solving that problem—of ascertaining whether the people are ready or not, without hazarding the other reforms which you propose—without hazarding the adoption of the Constitution as a whole. If you do not distrust the system you have recommended, why not give the people an opportunity of saying which they like best? Why allow the argument to be adduced, year after year, against the district system, that the people are not ready to receive it, without giving them an opportunity of verifying the assertion?

It is for that reason, that I prefer we should submit at this time alternative propositions. I do not believe the people are so weak, so ignorant, or so confused, that they cannot read and understand two propositions at the same time. I do not believe, either, that if we present a district system, the people ask to have the districts cut and dried beforehand. I believe there is sense and justice enough in Massachusetts, in the minds of the people, to say whether they are in favor of a district system, each district to be comprised of an equal number of voters or inhabitants, as the case may be, without waiting to see whether the line will cut through the corner of this town or the corner of that. I am opposed to a district system that shall divide the small towns; but I can see no good reason why the general proposition of a district system should not be submitted at this time to the people, as an alternative proposition.

But, Sir, I rose merely to state my views upon these propositions, and not to go into any argu-

ment upon them. I am willing to vote for the proposition of the gentleman from Natick, believing that I cannot get the other proposition. I will go for submitting a proposition to the people for a district system, founded upon voters, for the purpose of allowing the people the opportunity of once expressing their minds upon this subject; and I do not see how they are to have the opportunity, unless we accept the proposition of the gentleman from Natick. If it is true, as gentlemen agree, that the people are not prepared for such a system, I am in favor of giving them an opportunity of saying to their fellow-citizens and the world, that they believe a republican commonwealth cannot exist here in New England, founded upon an equal and just representation of the popular sovereignty. I want them to have the opportunity of saying they believe a House should be made into a Senate, and founded upon corporate sovereignty, and that the Senate should be made into a House, the strongest element in which shall be the city of Boston.

Since the debates in Committee of the Whole upon the system which the Convention has sanctioned, have been published—for I did not have the pleasure of hearing them—I have read them, and I am more and more convinced that we have adopted a system of representation, by which, in principle, we have turned the House of Representatives into a Senate, and made the county of Franklin and the western counties of the State, with their corporate town rights, the strongest element of power, while we have made the Senate the popular branch, and we have made the non-voters of the city of Boston the strongest element of power there. Sir, I am in favor of submitting some proposition to the people which shall provide for more equal representation.

Mr. SCHOULER, of Boston. The proposition of the gentleman from Taunton (Mr. Morton) is a clean, clear proposition. It is one that everybody understands. It brings the question, whether you will adopt a district system, before the people some two years sooner than under the proposition proposed by the gentleman from Natick. It brings it before them at a time when they are called upon to consider and decide other questions of fundamental law, and therefore there is a propriety about it. It is connected with the adoption of the Constitution as amended, and will come before the people at a time when their attention is called to the subject. I am surprised to hear the gentleman from Fall River (Mr. Hooper) give up this proposition without a trial, because he thinks it cannot be carried. Sir, we should never carry anything, in this or any other body, if the friends of the measure give way for fear they shall not. Why not stand up for the proposition of the gentleman from Taunton, until it is voted down, and then we can try something else—perhaps the proposition of the gentleman from Natick. But, Sir, I wish to call the attention of the Convention to the details of that proposition. If the proposition of the gentleman from Taunton is voted down—and I hope it will not be—then we must take the proposition of the gentleman from Natick, or nothing. Now, Sir, that amendment does not provide for submitting the question to the people, in 1856, fairly. It is to be submitted in a way that will be sure to kill the district system, if anything can, because there never was any measure so complicated as the details of a district system must necessarily

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be, that did not gain enemies. If you submit the details of the system along with the system itself, I care not with how much fairness the districts may be apportioned, some towns will want to be in another district, some towns will complain because they are divided, and others because they are not divided; and therefore, they will vote down the whole system. It will not be submitting the question, whether there shall be a district system, fairly to the people. If the proposition of the gentleman from Taunton is voted down, I shall then submit an amendment to the proposition of the gentleman from Natick, to strike out that portion of it which provides for submitting the details of the district system, so that the plain, clear proposition may be presented to the people in 1856, whether there shall be a district system for the election of representatives and for the election of senators, founded upon legal voters or upon population, as the case may be. I cannot understand why gentlemen should wish to legislate in the Constitution upon this subject; for it is legislation, and nothing but legislation. What we want in the Constitution is principle, and not the details of legislation. Sir, I tell gentlemen there is something behind all this. These details are put in to kill the proposition itself when it goes out to the people. It is only presented as a sort of decoy duck, to draw votes for the system the majority have adopted.

Sir, I can see no argument against such an amendment as I have indicated, to strike out the details of the system which it is proposed to submit. Let us have the plain proposition presented to the people in 1856, whether they will have a district system, or not. I am willing to take the proposition of the gentleman from Natick, with that amendment, if the proposition of the gentleman from Taunton is voted down.

But, what do we really gain by such a proposition to submit the question to the people in 1856? The legislature may, at its next session, if it chooses, submit the question to be voted on by the people in 1855. They have the power, under the Constitution, to submit the question to the people at any time. But, if the proposition of the gentleman from Natick, is put forth as a compromise, and if the gentlemen of this Convention will vote to strike out of that proposition its detail, so that the people may have the opportunity to vote yea or nay upon the principles of the district system, without being encumbered by the details—by the division of towns, for and by local questions as to the formation of districts—I will vote to incorporate it into the Constitution; but, unless such an amendment is adopted, I shall vote against it, because it is all a sham, and nothing but a sham, to get votes for the Constitution.

I would rather have the Constitution remain as it is. I hope those gentlemen who are in favor of a district system, will vote in favor of a district system, and in that category I hope to find the gentleman from Fall River, (Mr. Hooper); and if that proposition be voted down, I hope the proposition of the gentleman from Natick, will be either amended or rejected.

Mr. BUTLER, of Lowell. The Convention having adopted, as the basis of representation, the plan which I had simply the honor of selecting from the various plans proposed, not claiming for it any originality, I deem it not out of order, nor improper, that I should say a word

upon this plan which is now proposed. And I wish to say, first and foremost, that my judgment continues to approve of the plan of representation by towns. And, in any event, whatever may happen, until I am much better advised than at present, I shall vote for, and advocate to the extent of the poor ability God has given me, town representation. But, Sir, it is proposed on the other hand, that there should be a system of district representation left to the people, and we are sometimes taunted with being afraid of the people. Now, Sir, I am not afraid of submitting to the people any fair proposition. And if I considered the proposition of the gentleman from Taunton a fair one—not that he has meant anything wrong by it—but if I considered it a fair proposition, as opposed to town representation, I would vote to have it go to the people. But I do not so consider it; on the other hand, that the plan which was suggested by the gentleman from Natick, has the elements of fairness as opposed to town representation, and I am willing to try the sense of the people upon it, if the Convention are so willing.

I will give my reasons for the distinction. Every man knows the disadvantages of town representation; every man sees the boundary of the town he lives in; every man knows exactly where the town lines are; he has it all mapped out in his mind and laid down, fixed and determined. But, the system of the gentleman from Taunton, is an ideal system, a theoretical system which is made on paper without being mapped out, and is made, when voted for, in the mind of every voter, as his own interest dictates. Every man who favors it, says I am in favor of it; first, because it is just, and I am in favor of it secondly, because, whatever I find bad in town representation, I can have remedied in my district. That district will be made just so as to suit me, I shall be exactly satisfied and contented in that district. Each man makes in his own fancy, a *beau idéal* district, with all the pleasantest men he can think of around him, and he puts himself in the centre of that district and sees himself elected to the legislature from the district, and so hurras for the district system. This happens from a *beau idéal*; from every man making a system to suit his own mind. But, when a district system is sent out to the people, I want one as the towns are, mapped out, the lines running here, taking in this neighbor and leaving that one out; bringing in this valley and that mountain, so that it can be seen that it brings this set of men and that set of men together. Then we can see the difference, and see what there is of it, and see what you mean. And I can tell you it will look as different to men after they see its beauties, and its defects, as they are made apparent, as the angel girl some men court, looks different from the slut-like wife they find they have married. [Laughter.] One is all that is lovely, and good, and beautiful; the other is a very different affair. So let me tell gentlemen it will be with the district system. Leave every man to make a district to his own mind, and he will make a splendid district, having everything of beauty and equality in it. But, if he at first sees the lines are to be run here, and the lines run there, he will not accept it.

I was neither amazed nor surprised when our friends from Boston wanted to district their city for common councilmen; they did not put it on

population, for it might have brought Beacon Street near to Ann Street; they took a basis which has been taken in this proposition, founded upon legal voters. I do not desire that every man shall make the lines to suit himself. I want Beacon Street to see that she is in juxtaposition with Ann Street, and then see if Beacon Street would vote for the district. I want Fall River and Hull put in juxtaposition, and see if they will vote for such a district. When this is done, I am ready that such a district system shall go out to the Commonwealth. But when you get the ideal beauty and the theoretical constitution which the French theorists made, it is a cheat and a humbug, and men are voting for what they do not want.

Mr. SCHOULER. May I ask the gentleman one question?

Mr. BUTLER. Yes, if you will be quick, as my time is limited.

Mr. SCHOULER. I would like to know if the district system for senators which the gentleman voted for, is an ideal system?

Mr. BUTLER. O, yes, Sir; and this is just the difference; and I will give you a comparison. The senatorial district system will cut the Commonwealth into forty districts. It will make the same difference that there is between cutting up a pig into four quarters, and cutting him into sausage meat. [Laughter.] I understand the senatorial division to be the cutting into four quarters; but when you come to sausage meat, I wish to know whether I shall get the piece I prefer. That is the difference, and that is the trouble I have with the proposition of the gentleman from Taunton.

Mr. SCHOULER. As I understand the distinction which the gentleman makes, it is that he prefers the whole hog rather than the pieces.

Mr. BUTLER. Precisely. Then I would not have gentlemen build too much on my comparison; I made it for the gentleman from Boston. That is the difference I make. I wish to know which piece I am to have—whether I am to have the snout or the rib; I want to know where I am to come in for a share. Then I can know how to vote. Every man, when he goes for the proposition of the gentleman from Taunton, expects to get the middleings.

.. The reason why I support this form of district system is, because I am in favor of town representation, and I mean to fight for it and stand by it to the extent of my strength. But I do not think there is any more danger of the adoption of a district system, where we know the lines, than there is of Cape Cod moving up to Berkshire. It is an old maxim, "*egnotum pro magnifico*"—the unknown is taken for the magnificent; "distance lends enchantment to the view," and want of knowledge has much the same effect. I want to ask Berkshire when, by a district system, it is proposed to be put alongside of Cape Cod—now, are you ready for that, or do you want to stay by the old town? Now, as I have said, to prevent that result, we can give the power to the legislature to make the districts. Or we may make the system, and it will be so bad that the people will not accept it. I would be willing to take the system published by the able and intelligent editor of the *Advertiser*, in his paper, as the district system. I should be willing to go to the people to-day, to know whether they would accept that system or the town system, and abide the an-

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swer. I would be willing to have that put to the people now; only give me something practical, something tangible, something that we may see, that we can talk about and can point out. I grant that the gentleman from Boston (Mr. Schouler) is quite right, that if we make a district system so that you can see the corners, it will not be adopted. I know it. He says it will bring up objections to it. I know it. I wish to see those objections fairly tested. How does the gentleman from Natick propose to do it? He proposes to leave the legislature to do it. If we had time to make it, we could do it; but we have not, and we say we will leave it to the legislature. Let no man say you will have unequal districts. Your population basis for the senate will help to make the districts. Then make the districts, make them as well as God has given to human ingenuity to devise, and I do not care; they will fall to pieces as soon as flax, which "falls asunder at the touch of fire." You cannot make them so well but that they will crumble to pieces. But when you can allow every man to fancy a district as a *beau ideal* of his mind, or as an illusion of a dream, he will make utopian districts alone, and I fear to put that to the people as a delusion which tends to lead their minds away from the reality. Therefore, as at present advised, I must vote against the proposition of the gentleman from Taunton, as I always have voted against it.

But, on the other hand, to show that I am not afraid of the people; to show that I am ready to go to them with a district system which will be tangible, the lines of which we can know and see, as town lines are seen and known, I am ready to vote for the plan suggested by the gentleman from Natick, to wit: Let the people ask the legislature to make the districts; and, then, in God's name, if they want the system, let them have it; and, if they do not want it, I am sure I do not wish to have them adopt it. These are my reasons for voting against the proposition of the gentleman from Taunton, and in favor of that of the gentleman from Natick. If other gentlemen approve them, I trust they will go with me; if not, I shall at least have the privilege of putting myself right before the Convention.

Mr. GARDNER, of Boston. The cat is out of the bag. Let the phonographic reporters of this Convention put it down in black and white; let the people of this Commonwealth know the statements made by the gentleman from Lowell. What are they? He is afraid to trust the people. His own words. He is afraid to let the people say whether they will have single districts or not. His own words. He is afraid the Utopian scheme may be carried. His own words. He is afraid—

Mr. BUTLER. Mr. President—

Mr. GARDNER. I presume the gentleman will withdraw his words.

Mr. BUTLER. No, Sir; I will not withdraw anything. I wish only to have that stated which I did say. I deny that I said what he has stated. That is as wide a mistake as he made before.

Mr. GARDNER. The gentleman will deny it. But he is afraid to have this question go out to the people, for fear they may decide to have the district system; he is afraid the utopian delusion may beguile them; and he therefore fears a popular majority may decide in favor of a district system, if the amendment proposed by the gentleman from Taunton is carried.

Now, what is he afraid of? He has told us that too. He has, very fortunately, kindly told us, what he is not afraid of, as well as what he does fear. Now, what is it? He is willing to adopt the proposition of the gentleman from Natick; he is willing to send to the people a district system, provided it is cut and carved beforehand; because, says the gentleman from Lowell, I know that will not be adopted. Now, is not this plain to the Convention? Is not this perfectly absurd, and nonsense, and ridiculous, to endeavor to present a scheme for our adoption, which the gentleman rises in his place and says of it, I know that it will not be adopted. Now, I put it to him; if it does not convince him, I put it to other members of the Convention, if it is not the height of absurdity for us to pretend to adopt the scheme of the gentleman from Natick, which he has given notice of, when he rises and says, I know it will not be adopted. Sir, he has confessed, not in language but in fact, his intention to throw dust in the eyes of the people; to hold out to them a pretended proposition, with the pretence of fairness, which, he says, he knows they will never adopt? Now, for one, I despise any such proposition; I disdain and spurn the bribe; I will not vote for anything that I know the people will never sanction. The time of this Convention is too precious; the purpose for which we were sent here is too sacred to trifle in such a way with our constituents.

Now, we have here a tangible and distinct proposition, and I desire that the feelings and views of the Convention shall be fairly and freely expressed upon it. It is simply, in a few short sentences, the opportunity of presenting the alternative to the people of the Commonwealth, to allow the legislature to district the State into equal districts for the choice of representatives, in contradistinction to town representation. This, Sir, is fair, is honest; and I appeal to every member of this Convention, that were it a question between man and man, of simple every day honesty and morality, could he oppose it? But, when we come here under our sacred oaths of office; when we come here as representatives of the Commonwealth; when we are their exponents, and when their feelings, views, and wishes are doubted or denied here; can we then, as honest, and fair, and just men, refuse to submit an ultimate decision to that great tribunal? We shall soon know who, here, are willing to trust the people. Aye, more, we shall know who are willing that the people shall decide which system they prefer.

This is a question which is separated from party politics; it is a question which ought not and cannot, be justly mixed up with any party sentiment whatever. It is simply a question whether the people who sent us here shall prefer, and wish, and require, one of two plain propositions.

Now, Sir, what arguments can be brought, what reasons can be given, why this should not be sent to the people to decide? It is said here, by the gentleman from Natick, that he fears this question may cause confusion at the polls. I can tell him that the people of this Commonwealth value too highly equal representation; the people of this Commonwealth are too intelligent, and they know too well the value of equal representation, to allow a plain abstract question of this kind to cause confusion at the polls. There are too many churches and too many school-houses in this Commonwealth, if not in Natick,

to permit the people to become confused by a plain proposition of this kind. I would as soon suppose a gentleman would say they would be confused if a man should put the question to them whether two and two make four, as that they would be confused by a proposition of this kind. If you ask the people whether two men in Barnstable should equal one man in Franklin, or whether one man in Franklin should outweigh seven or eight men in Suffolk, the people would be confused, and cannot give an honest, mathematical answer! Is that the sentiment, is that the opinion the gentleman from Natick entertains of the people of Massachusetts? He is afraid they will be disturbed and confused by a question so papable as that. That is the idea at which he is alarmed. I ask this Convention if they go with him in the fear?

Now, I should like to have gentlemen rise and state what possible objection there can be to this proposition, except the alarming, wonderful objection which the gentleman from Lowell has already stated, the objection that he is afraid lest the people will adopt this proposition, if it is sent to them. If that is the argument, I hold that it is conclusive that every member of this House should send the proposition to the people. He begs the question, or rather he acknowledges the necessity of the question; he acknowledges that the people want it; he confesses they will adopt it. Therefore, I say we are bound, by his own showing, to send it to them, and let them have the opportunity of trial.

Mr. BATES, of Plymouth. I have but a very few words to say, and will detain the Convention but a few moments in this stage of the debate upon the question now before us. I have listened with attention, for weeks, to the discussions upon the question of representation, without having participated in that debate. When I have heard gentlemen, in derogation of the system of town representation which has been adopted by this Convention, so repeatedly make the assertion which has just been made by the gentleman from Boston, (Mr. Gardner), that one man in Franklin equals five or six in Suffolk, and when I have known at the same time, that this Convention, with but four or five dissenting votes, has formed a district system, which in the election of senators and councillors, gives to Suffolk County—a county which for the last twenty years has cast less than one-half as many votes in proportion to its population, as the county of Franklin—its full representation upon a population basis, I have been strongly tempted to rise in my place and say that I disdained any such comparison, but I have not done so. I came here, Sir, a friend to town representation, as a question of principle, nor have I yet heard any arguments which have shaken my convictions of its justice; and when I voted for a district system for senators and councillors, upon a basis of population, I did so with the expectation, if not with the understanding, that there was to be an equivalent in the establishment of a basis of town representation for the House of Representatives, and nothing but such an expectation would have induced me to cast such a vote. Now, if there is any one act of mine in this Convention which I believe my constituents will disapprove of more than any other, it is, that in some stages of the question—though not on the final passage—I supported a population basis of representation for the Senate.

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But, Sir, that act has passed, and I apprehend this Convention is not to reconsider or reconstruct it. Then we have adopted a system of town representation for the House of Representatives. I am not of that class of individuals who are frightened by the bugbear stories about this basis being unjust or unpopular, or that it is to transfer our whole government into the hands of a very small portion of the people; and least of all, am I alarmed at the newspaper paragraphs in regard to it, to which my friend from Wilmington, (Mr. Durgin,) has alluded.

Now, here is a proposition of the gentleman from Taunton, (Mr. Morton,) and what is it? Why, it is said that it submits to the people a district system. What is the fact with regard to it? The moment it is contemplated to complete the system before it is submitted to the people, the gentleman from Boston, (Mr. Schouler,) rises in apparent alarm, and says, that if you make these districts so that the people can look at them, they will reject the proposition. This, to my mind, is the strongest argument which can be adduced to prove that the people do not want a district system. Construct the districts just as they must be constructed, ultimately, and let the people see their boundaries, their advantages and their disadvantages, and the admission of the most ardent friends of the system is, that they will reject it. But, it is said, put it to the people, and let them "go it blind," as the saying is, and then if they do not like the districts, when they are subsequently constructed, they cannot help themselves. And yet, these are the men who claim to be the exclusive friends of the people. Now, if I have to put anything to the people of Massachusetts, I would put to them something which is tangible, something which can be seen and understood, and then if the people want it, I want them to have it. I am the last man to distrust the people. And, when this proposition comes up here, and it is admitted over and over again that if you put the system in detail to the people, they will reject it, I say that I am opposed to it, here, and elsewhere. I have said that I was a friend of town representation, and whatever influence I may have, if I have any, and whatever ability I possess, in the canvass which is before us, shall be exerted in support of that system; because, I believe it to be just, and that it will most effectually preserve the glorious institutions of our Commonwealth. And, I desire to tender my thanks to the gentleman from Boston, (Mr. Hale,) for having submitted to the public in detail, the proposition of the minority of the Committee, which has been rejected by this Convention; because, that course will materially aid the friends of town representation, in establishing the justice of their system before the people.

But, Sir, what is this proposition of a district system? It is that you put the question to the people, and let the legislature make the districts. Now, if the legislature must make the districts, why not let them make them first? What is there to fear? We have been repeatedly told here that we fear the people. Now, I would ask whether it is those who say let the legislature make the districts, and then let the people say whether they want the districts as made, or whether it is those who say if you want a district system, we will make the districts afterwards to suit themselves. Which is it? I apprehend that no man will rise and say that it is the class of

men who put to the people what they must ultimately have, that they may see for what they vote, who betray this distrust of the people.

Now, Sir, for these reasons, I am totally opposed to putting out this intangible system of the gentleman from Taunton. The people cannot see it, and cannot decide whether they want it or not. If districts are to be made, let them be constructed first, and then the people will have something which is tangible, and which they can understand, and if they want it they are competent to say so, and with their verdict, I shall be content. I had not intended to support any alternate proposition, but the gentleman from Natick has submitted a plan which I have not before seen, but which, as it appears at first blush, or upon the face of it, I am induced to support, because it appears to be fair, just and equal. It says to the legislature elected by the people with a knowledge of their duties, that they shall make these districts in the best manner they can, and in 1855 submit them to the people, and if those districts are just, and the people approve of them, they will say so by their votes. I shall vote for that proposition, if I have an opportunity to do so, because it carries justice upon the face of it.

But there is another strong reason why I shall vote for it. At the same time it presents to the people of Massachusetts the question of having forty senatorial districts upon the basis of legal voters. This is a question which I wish the people of the Commonwealth to have an opportunity to pass upon. They will first say if they will have a senatorial basis upon population, which gives to fourteen hundred immigrants who happen to land in Boston on the day previous to taking the decennial census, as much representation as five independent towns in the Commonwealth, by giving to those towns a partial equivalent in the House, and at the same time it gives them an opportunity to decide between this and a district system based upon the legal voters of the State. Under these circumstances, I shall support the proposition of the gentleman from Natick, if it comes before the Convention. I am opposed to the proposition of the gentleman from Taunton, and shall vote against it. For these reasons, and these only, am I induced to vote to submit an alternate proposition to the people, inasmuch as it says to them, you see what it is; if you want it, vote for it; if you do not want it, vote against it; and the question is settled, and that, too, by the only tribunal which has a right to make the decision, and whose judgment is final.

Mr. HALLETT, for Wilbraham. I am greatly obliged to the Chair for the privilege of the floor. I have been put wrong here for a day or two, and I find myself placed in a somewhat indefinite position. I think it is necessary for us who have advocated town representation, to look back and see what the basis upon which we stand is. I have been advocating, with other gentlemen, the right of towns, as several communities and municipal corporations, to representation. There were gentlemen who contended that this claim of the towns was not right or well founded, and that there should be a district system disregarding all town rights. Now, a proposition is submitted by the gentleman from Natick, which gives them the opportunity to propose to the people just what they want, if they honestly expressed what they wanted. Why do the advocates of a district system now oppose this fair offer? It seems to me

there is the same inconsistency in some gentlemen in regard to this question, which I noticed when we sought to compromise on the plurality question. I and others wished to retain the majority system, and voted for the majority principle. But the moment a sufficient number to make a majority for plurality, of those gentlemen who had acted with us voted for the plurality system, those who had before most vehemently insisted on a plurality, came right round and voted against the plurality system. So that the question seemed not to be acted upon from principle, but as to who made the proposition, and how it would affect parties. Shall we take such a view of subjects here? It is neither wise nor expedient to do so. How do we know what will be the effect upon parties of any rule we lay down, that will last for any long period?

Having explained this position, in which I am content to stand on the record, I wish to answer the inquiry of the gentleman from Boston, (Mr. Crowninshield,) who desires to know what reasons there are why the proposition of the gentleman from Taunton should not be submitted, as a part of the Constitution, to the people. I can give him the best reason in the world, and I think a perfectly conclusive reason why I cannot go for that proposition, and why it seems to me no gentleman should go for it. And that is, because it leaves to the legislature an unrestricted power to make the Constitution in that particular, instead of having the people make it, or pass upon it after the legislature propose it; and I deny the right or the power of the legislature to make any part of a Constitution. What is the proposition? Why, that you shall give to the legislature the power to determine, without appeal to the people, whether the whole principle of representation in Massachusetts, which has stood for two hundred years, shall be entirely changed or not. I would just as soon give to the legislature the power to determine, without asking the people, whether this government shall be a republican government or a monarchy. That is the objection to the proposition of the gentleman from Taunton; because he proposes that we shall put the question to the people in the abstract: "Will you have a district system, or not, for representatives?" And if the people should say, "Why, yes, we will have a district system," what do they answer? and what is the effect, if this proposition prevails? It is carrying out the theory of certain gentlemen who propose to submit to the people the question whether they will have a Convention, and then, after the people answer "yes," leaving the whole power with the legislature to make that Convention what they please, or repeal it when they please. This was just the doctrine on which the attorney-general told us that our present Convention was called; but we repudiated it as wholly unsound doctrine.

Mr. HATHAWAY, of Freetown. I would inquire if we are not in the same position with regard to the Senate?

Mr. HALLETT. I think the gentleman was answered, with reference to that, by the gentleman from Lowell, (Mr. Butler). That is not my point. It does not affect town rights or representation. The proposition now before us, of the gentleman from Taunton, (Mr. Morton,) gives to the legislature the whole power, at its mere pleasure, of dividing, and cutting, and carving this whole Commonwealth into representative districts,

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without the control, or consent, or subject to the veto of the people! That is the proposition. Therefore, I say it is giving to the legislature the power of prescribing what the limit and what the basis of your representation shall be in this Commonwealth, and what party shall be in the ascendency. We go quite far enough in doing that to which the gentleman from Freetown has alluded, in districting for Senators. Yes, Sir, we go quite far enough in leaving the legislature to make forty senatorial districts. But that is senatorial representation, and does not affect town rights. Senatorial representation does not exist as a locality, or as a corporate right of a municipal community. But the right of representation in towns exists as a corporate right which you have no right to destroy, unless by the representative consent of those who now enjoy it. That is a fundamental principle, and you must either adhere to town representation on that principle, or abandon it. If those who adhere to town representation as a right, cannot stand there, they cannot stand anywhere. Now, as this is an inherent right of the original organization of Massachusetts representation, and as towns are constituted upon corporate or community representation, I say you have no right to give to the legislature the exclusive power over a question which may, in their disposition of it, destroy that right without the consent of the people.

That is a fatal and inherent objection to the proposition of the gentleman from Taunton, and it is inadmissible, as it seems to me, upon any principle on which we stand here as a representative body.

On the other hand, the provisional proposition submitted as a compromise by the gentleman from Natick, is in conformity with the rights of the towns, and the rights of the people to pass upon a distinct question of district representation.

First, it provides that all the towns, by their representatives in the House, shall have the right to be heard in preparing the details of the system of districting the State, which the legislature are required to submit to the people. Secondly, it provides that the whole people may have a district system of representation according to the plan submitted to them, whenever the aggregate majority shall consent to adopt it. That will present the question of districting to the people in a tangible form, and they will decide upon it by a majority of the whole people, including all the towns. Now, Sir, it is conclusive, that if gentlemen who advocate a district system are desirous of having the question fairly put to the people, not in the abstract, but in well-considered detail, here is the best, surest, and fairest plan that can be devised for testing the question, by a direct, distinct vote upon it of the whole people of the Commonwealth, in which vote the cities and large towns will have all the benefit of their numbers in determining the majority.

The plan is throughout the result of representative and popular action. In the first place, the system of exact details and limits must be prepared and submitted to the Senate and House, who have got to put it forth to the people.

Who are to consent to it? Why, the legislature, who will be the representatives of all the towns in one branch of it, and without whose action this cannot be done; and if it is done by their action it is done by their consent. They, as

the representatives of these communities, must agree to submit a district proposition to the people, which is to divide the State off into two hundred and forty or three hundred and twenty representative districts. Then you have the consent of the representatives of the towns to the form of proposition, and, consequently, the consent of the whole constituency that such a proposition should be submitted to the people. If the people adopt it, they adopt the proposition distinctly and definitely, and with their eyes open. And thus this plan, passed upon by the people in all its details, and not in the abstract merely, will save the State from that gerrymandering system which would be the result of the proposition of the gentleman from Taunton. Sir, the moment you put it into the power of the legislature to frame and adopt a system of districts for representatives without going to the people, from that moment you determine the political character of the Commonwealth by the political character of the one particular legislature which districts the State. That is perfectly clear. Contiguity can easily be evaded in order to give a party majority. You may have your districts formed of contiguous territory, and yet you can take a narrow strip of land in this or that town or city as the nucleus of a district, and add to it such other portions, according to the political complexion of these portions to be added, and make a district of any politics you please. Everybody knows what gerrymandering can do to secure the control to a minority by ingenious districting of sections; and this, it would seem, is one of the most corrupt and corrupting powers the legislature can have. But if the legislature know that the people have the power, by a vote of the whole Commonwealth, to repudiate the project which they may put out, the people have a reasonable guarantee that the system will be based and arranged according to just rules. I see no inconsistency, therefore, in meeting those who are in favor of the district system, by saying, we will put into the Constitution, not an alternative proposition of town or district system, which looks as if we did not know what we were about, but an alternative power. We have put into the Constitution the town system of representation, and recommended to the people to take that if they desire it; and then we may say by this amendment, if you desire, through the power of your legislature, to make a change to a district system, here is the form to give the legislature the power to propose it. If we are to submit the district system to the people, we ought to submit it in detail, that each town may know who is to be its neighbor. This is not the place to do it. It consists of lines and boundaries and cities and towns and villages and relative population, and various other matters requiring a most minute examination, before it can be fairly adjusted and adopted. I say, therefore, if there is an honest purpose to test the question before the people, whether they will have the district system or not, the proposition of the gentleman from Natick presents it; while, at the same time, it is consistent with the views of those who adhere to the principle that the towns shall have their inherent corporate rights in the representative hall, and that no change in the representative system should take place without their action and consent. I hope, therefore, that the proposition of the gentleman from Taunton will be disposed of by being

rejected, and then the question will be fairly open to this compromise proposition.

Mr. WHITNEY, of Conway. At this late hour of the session, it seems to me that it is but wasting time to enter again into the discussion of principles which lie at the foundation either of the town or district systems of representation. Much better would it be, both for ourselves and our constituents, to look and see where we stand in reference to this great question. A great conflict in the Convention, from the commencement of its session to the present time, has been had upon this question of representation; and, however it may appear to other gentlemen, it is obvious to me, that if there is anything established by our past action, if we have arrived at any positive and determinate result in this Convention, we have arrived at the result embracing town representation as a principle, which is to go from this Convention to the people, and that the district system cannot be adopted here.

Now, Sir, I admire the perseverance of the gentleman from Taunton, (Mr. Morton,) and of other gentlemen who have advocated the district system here; but I do not believe that the gentleman from Taunton, nor any other gentleman from anywhere else, favoring the district system, supposes that this Convention, after our past action, and after the long discussions we have had, and the repeated calls for the yeas and nays—I say I do not believe that any one seriously supposes that this Convention, after all this, is to adopt the district system, and submit it to the people, instead of the system of town representation which we have adopted.

Well, Sir, that being an established fact—and I appeal to gentlemen on this floor if it is not an established fact—it seems to me to be an endless waste of time for gentlemen to get up here and argue in favor of the district system, and say that we are afraid to trust the people. Why, Sir, we have prepared a system which we propose to submit to the people, and we believe that the people will sustain it. Is there any fear manifested there? Why, Sir, it is our unbounded confidence in the people that induces us to offer this proposition to them.

But, Sir, there are other gentlemen who stand up here and say that we are deceived in our judgment in regard to the wishes of the people—that the people do not desire town representation; that in this particular we labor under a mistake. However that may be, I regard the proposition of the gentleman from Taunton as involving a question which has been settled here again and again as a question to be rejected, because if it is adopted, it certainly works the death of the proposition in favor of town representation; because, as the gentleman from Montague has said, the friends of the existing system, who are opposed to the town system, and the friends of the district system, will combine against the town system; and, on the other hand, the friends of the present system who are opposed to the district system, will join with the friends of the town system; and thus you will kill both propositions. It does not seem to be wise to adopt any proposition which may have such a tendency. What, then, is it proposed to do? The gentleman from Natick offers a proposition—a proposition which I must confess I have never seen nor heard of until this morning; it is entirely new to me—which strikes me as having the elements of fairness in it,

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and which ought to command the support of the friends of the district system. Here it is, a complete district system in itself, which we propose to submit to the people, as soon as we have had time sufficiently to mature it. It proposes that the legislature, in 1855, or 1856, shall submit a system of districts to the people, based upon legal voters; and if the people adopt it, that is to be your system, and it is to supplant your system of town representation. And now, I ask gentlemen, what can be more fair, or more just? The legislature of 1854 must prepare a district system in relation to the Senate. That system will go to the people, and they will have acted upon it one year, and will have become informed in regard to its operations; and then the next legislature—that is, the legislature of 1856, elected in 1855—is to prepare a district system of representation for the House of Representatives. They are to perfect it here; and it is not to be supposed that they are to gerrymander in making this district system. We know not, Sir, what is in the future in reference to political action or political power; no man knows who is to be in authority in the Commonwealth of Massachusetts in 1856; but the legislature, coming fresh from the people, and representing the wishes of the people, will prepare a district system of representation for the House of Representatives, and submit it to the people; and the whole people are to pass upon it; and if they adopt that system it supplants your system of town representation throughout Massachusetts.

Now, Sir, all this talk among gentlemen, of our "fearing to trust the people," sounds well enough, but, let me ask, is there any foundation for it? Is there, anywhere, any evidence that the men who support the proposition of the gentleman from Natick, do, in the least, fear to trust the people in this matter? So far from that being the case, we make it imperative for the legislature to submit a district system to the people, so that they may have a fair opportunity, after reasonable deliberation, of saying whether they will adopt it, or adhere to their old system of town representation. It is not left, like some other matters, either to the will or the discretion of the legislature, but is imperative upon them, if this Constitution is adopted by the people. They must submit it to their determination; there is no alternative. If a majority of the voters of the State adopt the system, then it is, unequivocally, your system for the future. Is there any distrust here? I must confess that I favor the town system; and I favor it honestly, because I honestly believe that the people of Massachusetts prefer that system to any other. Other gentlemen, however, imagine that I am mistaken, and contend that the people prefer the district system. To those gentlemen I now reply: "Prepare your district system, and send it out to the people, and let them vote upon it, man for man, and head for head, as one gentleman said in an early stage of the consideration of this subject; and, if the voice of the majority is in favor of such system, why, in all conscience, let them have it." Is that not fair? Why, then, do we hear all this talk about "doubting the people" and "fearing to trust the people?" The proposition made here is perfectly fair. As I have already stated, it is unquestionably a settled point by the Convention, that the town system is to go before the people first. No one can expect anything else from the various

expressions of opinion we have had here, as well as the votes we have taken. We have had the yeas and nays upon it half a dozen times, and it is now too late, in almost the last hour of the session, to expect that any other course of action will be pursued by this body.

Sir, I shall support the amendment of the gentleman from Natick. It is due to him, and it is also due to myself, to say, that I had no hand in maturing it; I only know it as I have heard it read; but it strikes me, as an honest man, that if we wish to get the opinion of the people, fairly, and honestly, and legally, on the matter of town or district representation, it will be upon this proposition. If there be any evil in a large House of Representatives, the people will have seen the evil, and can then set themselves to work to remedy it. They will have witnessed the action of the new Constitution with a numerous House of Representatives, and whatever of evil there is in the system, will by that time, have been discovered; and, if it is thought best, your district system can then be tried. I trust, however, that at this late hour, after the repeated decisions of the Convention which have been had upon this matter, that gentlemen will not change their votes, to vote in favor of the proposition of the gentleman from Taunton, but that they will adopt the system proposed by the gentleman from Natick. I do not know whether the people will accept it or not; but I earnestly hope, if any such plan is to be tried, that that may be the plan. At all events, that is the plan which shall have my support.

Mr. GARDNER, of Seekonk. On an early day of the session, I submitted a proposition in regard to the basis of representation, identical, in some respects, to the one which has been adopted; and I flatter myself, Mr. President, that had the Convention adopted my proposition, it would have been more acceptable to the people of the Commonwealth than that which we have now embodied in the Constitution. Nevertheless, I very cordially yielded my support to the proposition of the gentleman from Lowell, (Mr. Butler,) in the Convention, and I shall support it elsewhere. I am not of opinion, Sir, that the people of the Commonwealth are yet prepared for the district system; notwithstanding, I think the day will soon come when that system will be adopted. And, farther, although I regard the plan we have adopted, as being undoubtedly imperfect, and believe that it would be impossible for the Convention to adopt a system which would not involve imperfections in it, still I shall support the plan we have now decided upon; at the same time, I must say that I think it nothing more than right and fair, that the people of the Commonwealth should have an alternate system presented to them.

There are many difficulties which surround this question. It will be attended with difficulties, if presented to the people. I can see no valid reason why the proposition of the gentleman from Taunton should not be submitted to the people, and their action had thereon. Therefore, I shall cordially give my support to the proposition presented by the learned gentleman from Taunton, which town, I have the honor, in part, to represent. But should that proposition fail to command a majority of the votes of this Convention, I shall then as cordially give my support to the proposition offered by the gentleman from

Natick, although I do not see that question precisely in the same light as some others do. Nevertheless, I hope the Convention will not continue the debate upon this subject any longer, but that the question will be taken, in order that the Convention may be brought to a close the present week. I hope, also, that the proposition of the gentleman from Taunton will be adopted.

Mr. BANKS, of Waltham. I desire to say but a word or two upon this question. I have favored, as well as I was able, the system of representation adopted by this Convention, and have but little doubt that the proposition will be adopted by the people. I stand upon this ground—that, upon the theory of our government, the towns have an absolute right of representation, and that that right is, in some degree, coextensive with their existence, as part of the government, and necessary to the maintenance of their full powers. Therefore, I have no hesitation whatever, in regard to the plan accepted by the Convention, nor do I suppose that, by pursuing the course indicated by the gentleman from Taunton, (Mr. Morton,) or that of the gentleman from Natick, (Mr. Wilson,) we depart from it. But the principle of town representation may be abandoned, by the people of the Commonwealth. I think, in time, it will be abandoned, for we are constantly departing from our old customs, and adopting new. What we want to ascertain at the present time is, what is the will of the people in regard to this question of representation; not only what is politic and just, and right, but what is the will of the people; for, after all, that is the power which controls us. There is no rampart in any Constitution which we can form, that will stand against that power. We cannot protect ourselves by any provision in this instrument. Therefore, at the same time that I stand upon the proposition of the Convention, I am willing to submit a proposition to the people, in alternate terms, that they may judge which of the two plans they prefer. But I confess I have a preference in regard to the manner of this submission. I would gladly assent to the proposition the gentleman from Taunton introduced, and which is now before the Convention, but that I see in the resolve, what seems to me, two defects; first, as to the manner of submission; and second, as to the time of submission; either of which, I judge, would preclude a fair consideration and determination of the question.

Let me call the attention of the gentleman from Taunton to this fact, that the plan of representation which he proposes is indefinite in its character, is ideal, and not in a distinct form; therefore, when the question of district representation is placed before the people, every man prefigures for himself such a representation as he would prefer, and every town gives its vote for just such an ideal system as that town might prefer. So far, it is very well. But we do not present the question of town representation in the same way. If the gentleman from Taunton would present the question of the district system in this form, "will you agree to a district system for a House of Representatives of not less than two hundred and sixty, and not more than three hundred and twenty members, or will you agree to a system of town representation," that would be an equal presentation of the two systems, and it would be understood. But that is not the question. The question of the district system is in-

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definite, and it may assume any form of beauty in which interest or imagination may clothe it. But the question as to town representation, presented at the same time, if the proposition of the gentleman from Taunton be adopted, is not thus indefinite. In every part, its proportions and character are rigidly and unalterably defined. The question is, shall the system of representation by towns stand, "*in the form accepted by this Convention?*" It seems to me that it does not present the two questions upon the same ground. Nor can they be determined by the people at the same time, with any degree of consideration and justice. I object, therefore, to the manner of presentation. Either the questions should be distinct and definite, and the towns should know with what other towns they are to act and vote, or else the system of town representation should stand separate and independent of its embarrassing details. So far I object to the manner of presentation.

Then, in regard to the question of time. The time appointed for the submission of this proposition is unfortunate. It goes out to the people with a system of representation to which we have agreed—whether well or ill, gentlemen have different opinions. The question of the district system goes out at the same time, upon which there is the same division of opinion. There are three questions to be presented. First, shall the existing system stand? second, will you agree to the system of representation by towns, as adopted by this Convention? or shall the district system be established?

Now, as has been said, the friends of the district system will vote against the representation of towns, as accepted by this Convention, and the friends of representation of towns, as accepted by this Convention, will vote against the district system. So far, it is well, but both of those interests will be likely to form a rampart to secure themselves against the success of the objectionable plan, by voting against any change whatever. Such will be a probable result, at least. It seems to me if these two difficulties could be obviated by the gentleman from Taunton, his proposition should receive a general concurrence on the part of the Convention.

As to the proposition of the gentleman from Natick, I have not a clear conception, but my idea is this: it postpones the presentation of the question to the people until the year 1856. So far, then, as my objection to the time of presentation is concerned, that is removed. In the second place, it instructs the legislature of that year, peremptorily, to divide the Commonwealth into representative districts, and then to submit these defined and allotted districts to the people. This, I think, is right. If the people of the town I represent are called upon to vote upon the district system, the first question they will ask, is, where they are to be placed, and in what district? No answer can be given, under the proposition of the gentleman from Taunton. But under the other proposition, which proposes that the districts shall be defined by the legislature, every voter will have a perfect knowledge, so that he can determine whether he prefers the proposed system, or that which will exist, if the Constitution shall be ratified by the people. These are my grounds of objection to the plan of the gentleman from Taunton. I may have erred, somewhat, in my judgment of the proposition, but it seems to me the reasons I have given are applicable.

Mr. WILSON, of Natick. I desire to say but a single word in relation to this matter, and I will detain the Convention but a few minutes. I wish to say a word in relation to the motive which prompted me to bring this question before the Convention. I wished to do it for the purpose of giving the friends of the district system a fair opportunity, in this State, to present that question to the people. We have assented to a different system. It is in the power of the legislature, if this Constitution shall be adopted, any time between the adoption of the Constitution and the year 1873, by a two-thirds vote in the House and a majority in the Senate, approved by two successive legislatures, to submit the question to the people, whether they will have the district system or not. But, Sir, does any man believe that a House of Representatives, constituted as it will be by this Constitution, will ever submit a single proposition of that kind to the people by a two-thirds vote? Does my friend from Boston, (Mr. Schouler,) dream that the time will ever come, when a two-thirds vote of two successive legislatures, can be obtained to submit that proposition? I do not. Now, the proposition is this; it compels the legislature of 1855, to submit that question to the people, and it compels them to make the details plain. Now, my friend from Boston objects to it on the ground that they will not make fair districts. Does not he know that the Senate is based upon population, and expresses the popular will, and that no vote can be got through that branch of the legislature unless it is fair?

Mr. SCHOULER. The gentlemen who undertake to answer the views which I presented, do not seem to understand them. I say this, that the legislature presents a confused question to the people. For instance, you may take and put together a number of towns, and perhaps the Whig party will say that this will be a Democratic district if I vote for it; the Free Soil party will say it will be a Whig district; and with all those questions coming in, you never can get the people to say fairly what they want, whether they want a district system or not.

Mr. WILSON. I say to my friend from Boston, that this is a difficulty inherent in the district system, and it is a fair and legitimate question for the people to consider. I say, there is not a man on the floor of this Convention who dreams that any two successive legislatures, upon the basis which we propose to place it, will, by a two-thirds vote, ever put out a simple proposition for a district system. What do I propose in this amendment? It is that the legislature of 1855 shall be compelled, by a simple majority of the House of Representatives—nothing more—and a majority of the Senate, based as it is upon the population of the State, to make up a district system—and they will be compelled to make it a fair system—and submit it to the people.

The gentleman from Boston, (Mr. Gardner,) upon my left, referred to some remarks made by me, and wished to know if I had not confidence in the people? I say I have; and one reason why I have confidence in the people of Massachusetts is, because the people of Massachusetts do not agree with him, nor with his opinion. The gentleman from Boston refers to the intelligence of the people of the Commonwealth, out of Natick. Sir, I tell him that no man in this Commonwealth is verdant enough, unless it be the chairman of the

Whig Ward and County Committee in the city of Boston, to suppose that the legislature of Massachusetts will ever agree to put out a proposition for an amendment of the Constitution, without going into details. Now, I submit that there is nothing in this proposition which is not fair, liberal, and honest; and which, if adopted, will give the friends of the district system all they ever expect to gain, or all they can ever ask, and that is a fair opportunity to obtain the public sentiment of the State. With that view I have made it.

I think I shall not present it to have a vote taken upon it, until a vote has been taken upon the proposition of the gentleman from Taunton; and if that be voted down, I shall move a reconsideration, for the purpose of putting this amendment into it.

Mr. HASKELL, of Ipswich. I shall trouble the Convention but for a moment, upon the remarks of the gentleman from Natick, that this proposition is a very fair one to the friends of the district system. I do not view it in any such light; and I ask the attention of the Convention while I go on to consider it upon the very ground upon which the gentleman from Natick has stated it. He proposes that the Convention shall adopt, as a part of the Constitution, a provision which requires that the legislature in 1855, and every tenth year thereafter, shall submit to the people a proposition whether they will have a district system, they having first adopted the system proposed by this Convention. He says, it is a fair proposition to require of the legislature a division of the Commonwealth into districts; a legislature, two-thirds of which, the gentleman himself says, two or three times over, we could never get to agree. Is it fair to the friends of the district system, to put them into the hands of a legislature prejudged against the system? Are they to frame a system against their will and choice? Yet this is what the gentleman from Natick claims to be a fair opportunity for the friends of the district system to get the system based upon equal population.

But that is not the only objection to it. There is a great deal that underlies all this, more than I can have time to express to the Convention in the short time allotted to me. He says the time is fair. Is it so? When the whole matter is considered by the people of the Commonwealth, and they are called upon to vote upon the Constitution, is not that the proper time, the fair time, to submit both propositions? I claim that it is, and that it is the fairest time. But, gentlemen, why does he put it off until 1855? Because that is valuation year, and then every small town will be represented here. This apportionment of the State into representative districts is to be done valuation year, when every small town, however small, has a voice equal to a town of four thousand inhabitants. Then is the time when the legislature, by a constitutional enactment, and against their will, are to prepare a district system, and submit it to the people. Will the Convention for one moment believe that the legislature will not be actuated by the same considerations which actuate men in other conditions of life? Will they not seek to avoid a fair expression of opinion upon the part of the people in framing that system? They may frame it very honestly upon its face, but whether one party or the other is in power at the time, they will be very likely to frame it with some reference to the interest of party.

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Sir, there are gentlemen here who, very differently from what I expected, have come forward as the peculiar friends of the district system. We have not asked it of them. We do not thank them for their favors. It is very cool indeed for gentlemen who have opposed the district system during the whole session, now to come over and pretend to be its friends, and offer to give the people an opportunity to adopt it in two or three years. Yet they put it in such a shape that they think the people will be sure to vote against it. The gentleman from Natick knows the people would reject such a system, and yet he asks the friends of a district system to come forward and vote to require the legislature to submit a district system which they know will be rejected. The gentleman asks us to father the bastard—if I may be allowed the expression—of his own begetting. But, Sir, I do not believe that a single person in the Commonwealth will be gulled into the belief that in voting for such a proposition as the gentleman from Natick proposes, they are voting for a district system.

If a district system is to be submitted to the people, I want it to be submitted next November, or whenever the Constitution is to be submitted to the people. Then is the proper time for the submission of an alternative proposition, and I am willing and anxious to support a proposition for submitting a fair alternative to the people at that time.

Now, Sir, why is it that gentlemen propose to submit such a proposition in the course of two or three years? We have not asked it of them. I do not believe there is a man in favor of a district system who would vote for such a proposition. The gentleman from Natick stated a significant fact in connection with this matter. He fears that with all the beneficial reforms, some of which I should like to see carried into effect, the people will not adopt the Constitution, and this is thrown in for the purpose of obtaining votes in its favor. Sir, I do not believe the votes of the people are to be obtained by any such manoeuvring.

Mr. WILSON, of Natick, (interrupting). I hope the gentleman from Ipswich, (Mr. Haskell,) does not mean to say that I expressed the idea or the sentiment that there was any danger of defeating the whole doings of this Convention. I intimated no such thing. I never entertained a doubt that the labors of the Convention would be accepted by the people.

Mr. HASKELL. The gentleman said that with this proposition incorporated into the Constitution, they could carry the State. And suppose his proposition is not incorporated into the Constitution; what is the inference? Why, that he apprehended they could not carry the State. That is the only fair inference.

Now, Sir, I ask, what advantage can there be in the proposition proposed by the gentleman from Natick? I submit that it is granting no more than we have already provided for. We have already provided a means by which the proposition of the gentleman from Taunton may be submitted to the people, perhaps in less time than the gentleman from Natick proposes to have his plan submitted. We have given the legislature the power to submit amendments to the Constitution at any time to the people, and they may submit the proposition of the gentleman from Taunton—which is a general district system. They may submit that proposition at the very

next session, if they choose, and thus we should get the sense of the people upon that system quicker than we should upon the proposition the gentleman from Natick proposes. The gentleman from Natick knows very well that his proposition would not get the votes of the friends of the district system, and if it is submitted to and rejected by the people, he knows that it will be easier to defeat a clean proposition, like that offered by the gentleman from Taunton, afterwards.

But there is another thing to which the gentleman for Wilbraham, (Mr. Hallett,) alluded. He talked of the departure from the principle of town and corporate rights. Why, Sir, if there ever was such a principle, you have given it up long ago. If there ever was such a principle, you departed from it when you provided that those sixty-four towns, containing less than one thousand inhabitants, should be deprived of an annual representative. How can the principle of corporate rights be maintained while those sixty-four towns are deprived of their rights according to that principle? Sir, I hope the friends of the district system will not accept the boon presented at the hands of their enemies, and presented for the purpose of obtaining their support to this Constitution. As far as I am concerned, I have not committed myself at all in relation to that subject. For the last ten days I have stood non-committal as to the matter of my final support to this Constitution. I have determined that I would keep myself aloof from all compromises, and wait the progress of events. I should be glad to see the Constitution perfected in a manner that would commend it to my judgment, and which would command my support. But I must confess that the proposition proffered by the gentleman from Natick, does not, by any manner of means, make up for the unjust system of representation which the Convention have adopted.

Mr. HATHAWAY, of Freetown. I have endeavored a number of times to get the floor, for the purpose of saying something upon this subject. I did not intend, however, when this proposition was introduced, to have said a single word in relation to it, and I should not have felt called on to do so now, but for the strangeness of the course which it seems to me has been pursued. But, I cannot allow to pass unnoticed some of the arguments which have been presented here, and I regret that I shall not have time in the fifteen minutes allowed me, to answer half the objections which have been raised against the proposition of the gentleman from Taunton, as they should be answered. The honorable President of this Convention, (Mr. Banks,) objects to the time and manner of its being presented, and speaks of the corporate rights of towns. Let me ask that gentleman whether that whole matter has not been given up by those who claim not only to be the friends, but the exclusive friends of the towns? Is not the whole proposition, the whole principle in the matter given up? Have not they yielded it? What has become of the vested rights of the towns of which the gentleman for Wilbraham has talked so much? Where are the vested rights of your cities? You have provided that one-third the population of the whole Commonwealth shall be placed in districts. I repeat it, Sir, where are the vested rights of your large towns and cities? If these rights the gentleman speaks of are vested rights, what is to become of the city of Boston and her rights? But is this doctrine of vested

rights true? Sir, just analyze this proposition for a moment. See how your towns are formed. Where do they get their charters from, but from a mere act of the legislature? The legislature time and again has cut and carved the towns of the Commonwealth ever since those towns have had an existence. Aye, Sir, and the gentleman from Taunton told us the other day how the legislature at one time took it into their heads, in their wisdom, to abolish a town altogether. Where were the vested rights of that town then? Sir, there is nothing in this doctrine, as it seems to me.

The honorable President of the Convention speaks of the beautiful form and consistency of the proposition adopted by the Convention in reference to this matter. Now I want to know wherein it consists? Is it because it provides for districting one-third the population of the Commonwealth? Surely, the gentleman would not say, take the proposition and go it in the dark so far as that one-third of the population is concerned, for the sake of accommodating the small towns. Will he contend that the small towns have vested rights and that the large ones have not?

But, Sir, this argument of vested rights was well answered by my friend over the way from Cambridge, (Mr. Sargent). Where are the vested rights of the counties? Your counties have had a corporate existence ever since 1780, and long before that, they elected their magistrates, yet how are their vested rights regarded? They are not respected in the election of senators. You can trace these vested rights of the counties—if there are such vested rights of corporations—back almost to the settlement of the country. Where are your beautiful forms which you are to present to your constituency and to the country in this respect? Where is that beauty of form which the honorable President argued you were going to present to the people of the Commonwealth for them to pass upon? I cannot find it. Let me say to the honorable President that long, long before one-half the towns of the Commonwealth were in existence, the counties of the Commonwealth were known and were incorporated, and hence, when you come to talk about vested rights, you must look to the vested rights of the counties as well as to those of the towns.

Sir, this whole matter is founded upon a false theory. The premises are not sound, and hence the reasoning in relation to the whole matter, however ingenious it may be, falls to the ground.

But I must hasten on with my argument. The majority of the Convention not only give up the principle of corporate rights as far as the cities are concerned, but they even provide that the small towns may be districted. Let me say, as I said before, the principle of corporate representation is gone, and that of districting is plainly acknowledged. Now, Sir, I desire to give the gentleman from Plymouth, (Mr. Davis,) and the gentleman from Montague, (Mr. Alvord,) a little attention as I pass along. I confess it comes a little ungraciously from that quarter to throw back upon us the responsibility of adopting the system you have adopted in reference to senatorial districts. Sir, I thought there was something strange about that matter when it was before us. I recollect very well the position I assumed, and the position occupied by the gentleman from Plymouth, and I will venture to say the same

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position was occupied by the gentleman for Montague, though I cannot speak with certainty. But now they turn round and throw upon us the responsibility of what they themselves have done.

The gentlemen who went in favor of districting your Commonwealth and having your representation based upon population, now turn around and throw it in our faces, and say: "You have based your Senate upon population, and now comes the town system." Sir, I was opposed to that. The gentleman from Salem, the other day, said to them: "Go back to your basis of legal voters—you are welcome to it, and we will go with you." I was opposed to having the Senate based upon population, and now they turn around and throw it in my face, and say: "You have got a great deal more than you deserved; the county of Suffolk has got a deal more when based upon population, than she would have if the basis was fixed upon legal voters." This is the very ground that they put it on. The gentleman from Plymouth went with them, and I thought then that there was something singular and strange about it, for I laid my eye upon Plymouth, although I do not live in that county, for she was part and parcel of the Old Colony. I confess I had some sympathy for her; and the gentleman said that he had been rebuked by his constituents. Sir, I think he deserved rebuke; for, after all, sift it and turn it as you please, what does it amount to but a bargain? The gentleman says that it was expressly understood—I take his own language—it was expressly understood that he should go in favor of municipal corporations, and that representation in the House should be by towns, and that is the reason why he went for it. That explains the reason why we who were governed by principle rather than by expediency, were deserted. Now, I say, it is unjust, after gentlemen have told us what controlled their minds in the matter, to turn around and say to us, now: "Although you were opposed to this system of representation, based upon population, you must take it, because those persons who were friends of town representation made an express understanding with us that if the representation in the Senate should be based upon population, we should go for representation based upon municipalities in the House of Representatives." I say it is unjust.

Mr. DAVIS, of Plymouth. I rise, Mr. President, to correct a misapprehension upon the part of the gentleman with regard to the motives by which many persons were governed in giving their votes upon this matter. They voted for the basis of the Senate, founded upon population, because they were led to suppose that the basis of the House would be founded upon legal voters.

Mr. HATHAWAY. I understood the gentleman expressly to say, that he voted for the basis of representation founded upon population—I am speaking only of what he said, for I do not know what other gentlemen said—that he voted for this basis of representation in the Senate, with the express understanding that town representation was to be preserved. That was his language, for I took it down at the time. Has the gentleman fulfilled his agreement with the people? Where are your cities and great towns? Are they not districted? Has his agreement been carried out? It seems to me that he has "kept the word of promise to the ear, but broke it to the hope."

[Here the hammer fell.]

On motion by Mr. FAY, of Southborough, the Special Assignment was then laid on the table.

Leave of Absence.

Mr. FAY, of Southborough, from the Committee on Leave of Absence, submitted a report, recommending that leave of absence be granted to the following members, for the remainder of the session:—

Messrs. Marble, of Charlton; Hoyt, of Deerfield; Knowlton, of Holden; Warner, of Stockbridge; Marcy, of Greenwich; Atwood, of Eastham; Cady, of Monson; Tilton, of Chilmark; Allen, of Brimfield; Swain, of Nantucket; Easton, of Nantucket; Turner, of South Hadley; and Haggood, of Athol.

The Report having been read, the question was stated on its acceptance.

Mr. GRISWOLD, for Erving. Mr. President: There are a great many names there. I do not know but that there may be a sufficient reason for adopting the Report; but really, unless it is on account of sickness, it seems to me that this leave ought not to be granted at this late period of the session.

Mr. FAY. I will state that five on the list are either sick themselves or have sickness in their families, which renders it necessary that they should be absent; and with regard to some of the others, their business is very pressing, so that it would be a great hardship to refuse them. The Committee have examined the cases thoroughly; and, although they were desirous not to excuse any one, they have thought it proper to submit this Report, and recommend its adoption.

The question being taken, the Report was accepted.

On motion by Mr. HATHAWAY, the Convention then adjourned.

AFTERNOON SESSION.

The Convention reassembled at three o'clock, P. M.

Termination of Debate.

On motion by Mr. BROWN, of Medway, it was ordered, that debate on the resolve on the mode of submitting the question of representation to the people, cease at four o'clock this afternoon, and that the question be then taken.

Representation.

On motion by Mr. BUTLER, of Lowell, the Convention proceeded to consider the Orders of the Day, the special assignment being the resolve on the mode of submitting the question of representation to the people; and the question was stated upon ordering the resolve to a second reading.

Mr. BRIGGS, of Pittsfield. I suppose, Mr. President, that both propositions are virtually before the Convention. That of the gentleman from Taunton, (Mr. Morton.) and that of the gentleman from Natick, (Mr. Wilson). I shall vote in favor of the proposition of the gentleman Taunton; and I shall vote for it for the reasons which he gave, and which need not be repeated in detail. Although there have been many speeches in opposition to it, with all respect to gentlemen who have debated the question, I must be permitted to say that I do not think they

have met and answered his arguments. His proposition is to submit to the people in the first place, the question whether they will retain or abolish the twelfth article of amendments to the present Constitution. If they abolish that, will they have a system of representation on the plan which has been adopted by this Convention, called the town system, or will they have a district system to be apportioned and marked out by a future Senate, basing the representation of the supposed districts upon the legal voters of the Commonwealth? Now, to my mind, nothing is more clear, nothing is more plain, nothing is more equal and just, than that proposition. Gentlemen who have spoken upon this subject, admit that it is so, upon the face of it; but they say that you cannot carry out a system of district representation that the people will accept. Sir, if the people say that they will have a district system of representation, and direct their Senate to mark out the districts upon the map of the State, it must be done, and it will be done by that Senate, in the most perfect and fair manner that it can be done, because there will be no other motive than a just one to govern them. I know that the gentleman for Wilbraham held up the terrors of gerrymandering; but I think that gentleman had better not talk about gerrymandering, for he formerly belonged to that party who more than forty years ago sealed their political death warrant for years, by that strange and monstrous measure by which the old republican party divided the State for the choice of Senators. Sir, in all future time the sword of Damocles will hang over their heads, glittering with alarm and terror to any political legislature that shall dare to imitate that bad example. This is the question then for the people of Massachusetts to decide: Will you have a system of district representation, based upon legal voters, and that system to be marked out by your representatives? That is the question, nothing more nor less; and why shall we not submit this question? The gentleman from Lowell says—and he always speaks what he means, and I respect him for it—he says that you must not submit this question to the people, because it is so delusive; it has an exterior of fairness and justice which he says cannot be carried out, and having such an appearance of fairness and justice, he is afraid that the people will be deluded into its adoption. Sir, mark that. I hope the people will hear that. It is not then to be submitted to the people, because they may be deluded by it. Sir, if there is, anything fair, honest, and reasonable, in any proposition, it seems to me that this proposition bears those marks. How is it with the proposition of my friend from Natick? He showed it to me yesterday; and I cast my eyes over it hastily, and said that I did not see any objection in it, except as to the time when it should go into operation. But, during the debate this morning, while several of those with whom I generally act, expressed their opposition to it, my mind was balancing. Indeed, I had about made up my mind, if the question was put, to vote for it, until I heard the gentleman from Lowell, and I thank him for his speech. I always listen to that gentleman with pleasure, for if I do not agree with him, he speaks in a bold and fearless manner that commands my attention. He calls things by their proper names—he plants himself upon his proposition, and defies his enemies; and that is the way I like to hear a question

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argued. He is an adversary who does not lie in ambush, though he is sometimes rather rough. He acts openly. He uses the Damascus blade, the cleaver, or the war-club, as best suits his purpose. He told us, in the first place, that all the strength which God had given him should be devoted to the preservation of town representation. He told us, also, that he should vote for the proposition of my friend from Natick; and why? Because he knew that any proposition which might be marked out on the map by a future legislature, would not be accepted by the people. And how does he know that? I will tell you how he knows it. Before the legislature are required to make a law to carry out this provision, the system of representation which the majority of this Convention—chosen by a minority of the people—have adopted, is to go into operation; that system of town representation which chooses a majority of the House of Representatives by a minority of the people, is to prevail in this House in 1855, when the district system is to be marked out upon the map of the State. Now, Sir, look at the small towns upon this floor, and look at the votes upon this floor for the respective systems of town and district representation. Sir, I respect the gentlemen from these small towns; they have stood up here like brave men, and they have defended their little citadels to the death. Now, if you have a House thus constituted—four hundred and thirty-five strong—to lay out districts upon the map of Massachusetts, to see whether a majority of the people would accept it, do you believe that after standing up here and defending themselves so manfully, they would then lay their heads upon the political block, and suffer their cherished town representation to be blotted out forever? No, Sir! Men do not gather grapes of thorns, or figs of thistles; and a House of Representatives based upon town representation, will never agree to a proposition and submit it to the people, that they believe the people will accept, to disfranchise themselves. Can you expect it of them as men?

But, is said that the Senate is based upon population. So it is. But can the Senate district the State? Suppose the Senate send a district system into the House of Representatives—such a one as would be acceptable to the people—do you think that in a body composed of representatives of the town corporations, a majority would be found who would accept of a plan that would take their seats from under them, and deprive them of their representation? No, Sir! Let me say a word here to my friends from the small towns, who appear from indications now quite manifest, to be willing to vote for the proposition of the gentleman from Natick. Where is my friend from Wilmington, who so valiantly stood up here and defended the small towns? I would like to ask him, and I wish to ask the other gentlemen from the small towns, have you not heard it said in some quarters—has it not been whispered in your ears, that you may vote for this proposition, because you will have the staff in your own hands when the State comes to be districted? And that whilst you vote for it you are perfectly safe.

But, what reason is there why you will not vote for the proposition of the gentleman from Taunton? Is it not because you believe, with the gentleman from Lowell, that it is so plausible and delusive that the people may be deluded into ac-

cepting it? But, I put it to your candor, when you change your votes and go for the district proposition, is it not upon the ground that you are perfectly safe in your towns? And, why are you safe? Because, upon the declaration of the gentleman from Lowell, no system of district representation will be submitted to the people but what they will reject. But, is that dealing fairly with the people? "Is this thy kindness to thy friend?" Do you propose to compromise matters with town representation in that way, by sending out to the people a proposition which you believe, from the bottom of your hearts, never will be accepted by them, and you vote for it only because you believe that they will not acceptit—or in the language of the gentleman from Lowell, a proposition which you *know* they will not accept—while you keep back a proposition which you fear they would accept, but which, if they did, would deprive your town of its representation? The gentleman from Erving, (Mr. Griswold,) says he shall vote for this proposition, because he has such confidence in the people, that he does not believe they will accept it. I believe, Mr. President, that I have not mistated or misrepresented anything or anybody; I certainly would not do it; and therefore having stated my views upon this question, as they have presented themselves to my mind, and having neither voice nor strength to go into the subject more elaborately, I leave this question to the fair and candid consideration of the Convention.

Mr. UPTON, of Boston. I do not propose to go into an extended discussion upon this question; but there are one or two views in relation to it, which I think have not been submitted. The question before this body is, will this Convention send out an alternative proposition to the people of this Commonwealth? I do not propose to go into a discussion as to who constitutes the people; but I stand upon the ground that I am ready to vote for any proposition in this Convention, which shall put two questions to the people of this Commonwealth, in order to ascertain precisely what their views are upon the question of representation. I am in favor of one of two propositions. I am in favor, if the proposition is to go to the people, of having both propositions go together. If this Convention see fit to send them to the people at this time, very well; or if they see fit to delay sending any proposition until 1855, I say very well—let the representation stand upon its present basis until 1855, and then send out to the people of this Commonwealth two alternative propositions: "Gentlemen, people of the Commonwealth, do you prefer a district system of not less than two hundred and forty members for your House of Representatives, and not to exceed three hundred and fifty members, or do you prefer a system of town representation upon that same basis of numbers?" I am ready to submit these questions to the people, because I believe that the proposition which you are about to submit, will take away from the people, and prevent their rightful expression of opinion upon the subject.

Now, Sir, there is another form in which I should like to have it sent out. It would suit me a little better, if the gentleman from Taunton would amend his motion, by striking out the word "Senate" in the last paragraph, and substituting the word "Legislature," so that it would read as follows:—

The Legislature, at its first session after the ratification of this amendment, and at its first session after each decennial census, shall divide each County into such Representative Districts, composed of contiguous territory, as they may deem expedient, so that the basis of each Representative shall be the same number of legal voters, as nearly as possible, without the division of towns or the wards of cities: *provided*, that no District shall be so large as to entitle it to more than three Representatives; and provided that Nantucket and Dukes County, shall each form one District, and be entitled to at least one Representative.

If the amendment of the gentleman from Taunton, is adopted by the people, the small towns in the Commonwealth will have the power, in 1854, to present the district question to the people, and they may present it in any form they please. I repeat, take the proposition of the gentleman from Taunton, with the modification which I have suggested, and, as all the towns will be represented in the legislature, let the people take the question upon the two propositions; first, the present basis, as proposed by your Convention; and, second, the district basis, to be framed by the legislature, upon the proposition of the gentleman from Taunton. I am ready to meet the question upon this principle. I say that either of these two propositions would be a fair proposition to send to the people. I do not propose to argue this subject. I merely desire to make a statement, in order that it may go upon record, as the view of one of the minority in this Convention, of an individual who desires the prosperity of the good old Commonwealth of Massachusetts, and that it shall not be, hereafter, racked by internal dissensions upon this question of the basis of representation. I can tell those gentlemen who represent the small towns upon this floor, that however they may talk about it, if, as has been foreshadowed by certain members of this House, the great Democratic party is to be in the ascendant, then I tell them, that their only security is, to have the party to which I belong, and which is now in the minority in this Convention, represented in the various cities and towns in this Commonwealth, by a majority in the legislature. Let me tell gentlemen who represent the small towns upon this floor, that once let rampant democracy be triumphant in Boston and the great cities, and the basis of representation would not stand one hour, which you now submit to the people.

There is another question which has been alluded to, in the course of this discussion, and that is, the question of vested rights. In relation to that matter, I have done what lies in my power, to preserve town representation, as far as, under existing circumstances, it could be preserved in this Commonwealth. The gentleman from Wilbraham proposes the question of "*vested rights*," and how stands that question in this Convention? We have tried, over and over again, to put it into your Constitution, that this question of vested rights, so far as the towns were concerned, should remain intact—that is, that these towns should not be cut up. How has this question been met by the majority of this Convention? You have denied that right. You have said that it shall not go into your fundamental law. Is this the way you respect vested rights, to divide eighty-five towns in this Commonwealth, so as to increase their representation by eighty-five, upon this

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floor? And then you talk about vested rights! Sir, it is but a mockery and a dream. There is one question in relation to vested rights, that I should like to ask the gentleman for Wilbraham: If all the people of the Commonwealth should gather, *en masse*, and they should say how their representation should be based, what principle would there be in the vested right of town corporations? If I understood the proposition which the gentleman for Wilbraham made, to amend the Constitution in regard to future Conventions, the whole theory of vested rights, so far as the towns are concerned, was completely brushed away. There is no such thing as vested rights now, except in theory. The gentleman put forth, in that proposition, that the people of this Commonwealth—not the town corporations, but the people—had the right not only to change their Constitution, but to change the whole basis of representation. Now I desire, and should be most happy to give my vote for any proposition which would submit to the people the questions which I have named, which I hold to be the only true questions: Will the people of this Commonwealth sustain the present basis of representation—or any basis, I care not what it is—any basis of representation which the legislature may submit to them, fixing the limit of the House of Representatives? Be it borne in mind, this is a pretty important question. When the honorable President addressed the Convention this morning, he said that it was not a fair question to submit to the people, and I agree with him, to submit to the people the question, whether they will have a House of Representatives of four hundred and forty members, as it now is, or a House of Representatives to be districted by the legislature in 1856—of two hundred and sixty-one members. I want the people to pass upon the proposition in a different form, and I am ready to submit the question to them, stating the maximum as well as the minimum of the number of members: “How shall those representatives be chosen? Shall they be chosen by districts, or shall they be chosen by towns, as they are now chosen?” I say that is the fair question to submit to the people, and it presents the whole question. I should say, in this connection, in regard to the district system, as I have once before remarked, that the minority here represent the majority of the people of the Commonwealth upon this subject. I hope the gentleman from Taunton will modify his motion as I have suggested. I am perfectly ready, and prefer, if the people adopt the alternative proposition of the gentleman from Taunton, to let this question go to the legislature instead of the Senate. I stand here upon this floor as a friend, so far as I can be, to the towns, and I am ready, so far as the basis is concerned, that the present town corporations, represented in the House, should have a full voice in saying precisely how the question of districting should be carried out.

Mr. GRISWOLD, for Erving. I believe that my position upon the subject of representation is pretty well understood by this body; but a new proposition has now been laid before them, and I am not a little surprised at the manner in which this proposition has been assailed from certain quarters. It is proposed, by my friend from Natick, as I understand it, after the present Constitution which we propose to submit to the people has gone into effect, and its practical operations

have been observed and experienced; it is proposed by the advocates of the system of the gentleman from Natick, then to submit to the people of the Commonwealth the question, whether they prefer, to the system which we propose to put forth, and which they will have had an opportunity to examine, a district system; not, Sir, in the abstract; not in every imaginary shape in which it may be conjured up by this man, and by that man; but in detail, precisely as it is to go into operation, so that every voter in this Commonwealth may know where it will cut, and what the districts will be.

Now, Sir, I think I should not have started this proposition myself; in fact, at first, I had some doubt about it; but as the discussion has progressed, I am free to say, that my doubts one after another have vanished; and why? I apprehend that, if the two propositions could be properly put to the people of this Commonwealth, and be properly understood in their practical operations in detail, a large majority would be in favor of town representation. Well, Sir, we go forth to them with a system of town representation somewhat decimated, but as perfect as we could get it, which we think is substantially correct, and with it we put forth another proposition; and the people of the Commonwealth will have an opportunity, if they adopt this system, to see its operation. It is said that the House will be too large—they can try it. It is said to be unequal in its representation of different portions of the Commonwealth—they will have an opportunity to test that matter. In short, they will have an opportunity, if this system which we put forth is adopted, to see how they like it, and how it operates. Now, I say, as a friend of town representation, that after that system has been put into operation, and has been tested by the people of the Commonwealth, if gentlemen will then come forward with a district system carried out into detail so that we can see precisely how it is to operate in every town and city in the Commonwealth, I cannot stand up here and say that I object to putting such a proposition before the people in such a manner as that, and at such a time.

And, if the majority of the people of the Commonwealth—the question thus fairly and properly put—after the first system has been tested by practice, should say that, after all, your system of town representation in unequal, unjust, and wrong; all things considered, it is not in my mouth to find fault with that verdict; yet such is my confidence that no such system as this district system will be adopted by the people of the Commonwealth, that I have no fears whatever in regard to giving it a trial. Why, Sir, take the system proposed by the gentleman from North Brookfield, (Mr. Walker,)—and that was a pretty fair system—or the system proposed by the gentleman from Boston, (Mr. Hale,) who made the Minority Report, and I apprehend that, outside of the cities, you cannot stand for a moment upon either of these plans, because I believe that the towns generally dislike to be united in the mode, and for the purposes which these systems proposed.

But, it is farther said here, that it would be unfair for a legislature elected upon the basis we now provide, to perfect this system of representation, before it is sent out to the people. I cannot see how it can be unfair. In the first place,

if it is not perfected before it goes out to the people, and the people should adopt a system which has no definite details, and which details only can be provided by the legislature, it must be obvious to every-body, that the legislature will afterwards have to perfect the system in regard to these details. And, if this must necessarily be done by the legislature, why may it not as well be done before the system is sent out, as after it is sent out? In the one case, the people would know exactly for what they were voting; in the other they would be voting blindfold.

But it is farther contended, that the House of Representatives will be unequally elected, and that they will, on that account, be very likely to send out an unequal system. Without going into that question, admitting even for a moment that it were so—this system must be passed upon by the Senate, elected in equal districts, and may be rejected by that body; or, even if concurred in by them, it may be vetoed by the governor; and you could not get a system through unless it was equal and fair—and therefore I see no objection to it so far as that matter is concerned. There is, therefore, no force in that objection. Again, in the popular branch of the legislature, if the people are not represented according to population, this proposition provides that the system shall be based upon voters equally, so that it is not in the power of the legislature to form unequal districts; so that I see no force whatever in the objection upon that ground. Sir, I will go farther. The Convention will bear me witness that I have not taken up much time upon this question, and although I might now claim the privilege of answering some of the objections which have been raised to the system we have adopted, I will not do so; for I feel that this matter has been agitated to such an extent as to become almost a nausea in the nostrils of the Convention. I look upon this agitation about the inequality of the proposed town system, in the main, as humbug. I believe that the proposition before the Convention is substantially equal in its provisions; and that one part of the Commonwealth is as well represented, all things considered, as another. I do not believe that there has been a disposition on the part of any members of the Convention to give an undue proportion of representation to one part of the Commonwealth at the expense of another.

Entertaining these views, I am willing to vote for the proposition of the gentleman from Natick. I shall be unwilling to vote for that of the gentleman from Taunton, for several reasons, and among the first and foremost of them is the reason that I would not mix up and confuse this question of representation at this time. The question on this head has been elaborately discussed by others. I would not at this time put forth a mere abstract proposition, like this district system, without any details. It would be unfair, and would operate as a kind of drag-net, by which you would confuse and draw together the voters of the State, without being exactly able to discriminate themselves for what they were voting. On the other hand, if the proposition of the gentleman from Natick is given out, such is my confidence in the town system, that I have no fears of the result; and after the town system has gone into effect, and its operations have been seen, then, although a friend of town representation, I am willing that the question of a district system

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should be submitted to the people. If the people want it, it is not for me to say they shall not have it, although I am an advocate of the town system; and I do not see how gentlemen here who have been advocates of the district system, and who have advocated the Minority Report, the details of which have been perfected, can feel that they are acting with consistency in opposing the amendment suggested by the gentleman from Natick; as all they can now do is to submit the question of a district system to the people, and that we do by incorporating the amendment of the gentleman from Natick (Mr. Wilson) into the Constitution.

Mr. HUBBARD, of Boston. I did not intend to trouble the Convention again with any remarks in regard to any matter that might come before us for consideration, nor do I expect to influence the action of any member of this body by any argument which I may address to it. But, Sir, when I hear gentlemen advocate a measure which, in my humble judgment, is neither more nor less in its character and results than a deception—I impute no improper motives either to its author or to those who favor it—I say, when in its operation it has a tendency to mislead and deceive the people, and when those who attempt to oppose this measure are stigmatized as factious and inconsistent, I cannot sit still, without at least defending my own action in regard to this proposition. Sir, it has been said that those members of the Convention who have heretofore been found advocating the district system, are grossly inconsistent in refusing to support the proposition of the gentleman from Natick. Sir, when we see with what a death grasp the members of this body representing small towns have clung to their prerogative rights which they now enjoy, and when it is proposed to us to ask these same towns some two or three years hence, when they are more firmly seated in power than they now are, to lessen that grasp, and to give the people an opportunity of acting upon the district system—what can any reasonable man, who is friendly to the district system, hope for or expect?

We are told that it will be imperative upon the legislature, at a given time, to submit such a system to the people. The proposition, Sir, is an absurdity. To say that a legislature consisting of two bodies so dissimilarly organized and elected, when called upon to exercise their discretion in regard to any particular measure—and to say what is fair and what is unfair, what equal and what unequal—are to be compelled to agree in regard to it, involves an absurdity which never was heard of in all parliamentary history. Suppose that the Senate, of Massachusetts, in 1856, should devise and send down to the House of Representatives a fair system of district representation, what power on earth can compel that House to adopt it, unless they see fit? Or, on the other hand, let a system be originated in the House, and appear just and fair—with gerrymandering, perhaps, in all its features—and be sent to the Senate, where it is deemed unjust and outrageous, what power is there to compel the Senate to agree with the House? Sir, if you put this into your Constitution, you put that into it which it is morally impossible to carry out, with a legislature such as you will have upon the basis now proposed in your amended Constitution.

Sir, there is nothing about this proposition in the nature of a compromise. It does not give

the friends of the district system the remotest chance of putting such a system before the people as will enable them to give a fair expression of opinion in favor of the district system. I shall, therefore, oppose this proposition; and, in doing so, I shall regard myself as acting with entire consistency in the vote I now give, when viewed in relation to the votes I have heretofore given when the district system was under consideration.

Mr. WILSON, of Natick. I now offer my amendment.

The amendment was read, as reported in the early part of the day.

Mr. DAVIS, of Worcester. I do not propose to trouble the Convention longer than for a few moments. I am very glad that this proposition has been offered by the gentleman from Natick, because I can vote for it with all my heart, and because I believe it to be a fair proposition to put out before the people in regard to a district system; and, in that way the people will have a fair opportunity of deciding whether they will have a district system or a town system of representation. I shall go for the amendment, and shall oppose the proposition of the gentleman from Taunton, because it does not put the question fairly to the people. I have watched this discussion closely, to see if any gentleman could make out its fairness upon this matter. I cannot conceive it to be a fair proposition; and I have not yet learned from the remarks of any gentleman here that the amendment offered by the gentleman from Natick is not entirely fair.

Another objection that has been alluded to, is that we have no authority to send out such a proposition to the people. If you turn to the third section of the charter by which we are to be governed here, you will find that authority amply and fully laid down:—

"SECT. 3. The persons so elected delegates shall meet in Convention in the State House, in Boston, on the first Wednesday in May, in the year one thousand eight hundred and fifty-three; and they shall be the judges of the returns and elections of their own members, and may adjourn from time to time; and one hundred of the persons elected shall constitute a quorum for the transaction of business; and they shall proceed, as soon as may be, to organize themselves in Convention, by choosing a president and such other officers as they may deem expedient, and by establishing proper rules of proceeding; and when organized, they may take into consideration the propriety and expediency of revising the present Constitution of government of this Commonwealth, or the propriety and expediency of making any, and if any, what alterations or amendments, in the present Constitution of government of this Commonwealth. And such alterations or amendments, when made and adopted by the said Convention, shall be submitted to the people for their ratification and adoption, in such manner as the Convention shall direct; and if ratified by the people in the manner directed by the said Convention, the Constitution shall be deemed and taken to be altered or amended accordingly; and if not so ratified, the present Constitution shall be and remain the Constitution of government of this Commonwealth."

But that section gives us no authority to put to the people any proposition in the manner proposed by the gentleman from Taunton. As presented by the gentleman from Natick, it is perfectly proper, and, therefore, I shall vote for that amendment.

Mr. FRENCH, of New Bedford. I simply rise to occupy but a single moment in expressing my approbation of the proposition of the gentleman from Natick. I agree, in the main, with what gentlemen have said in its favor. I believe that it is fair, honorable, and equal; and although I went for the system that has been adopted by the Convention, so far, I am perfectly willing that this system should be tried, and if it can be put to the people in the manner pointed out in that amendment, I am perfectly satisfied with it, and hope that the people will adopt it. I only wished to say that I think it is right and just, and that I trust it will be adopted by the Convention.

Mr. MORTON, of Taunton. I have been repeatedly appealed to in regard to this proposition, and am sorry to say that there is no time left me to explain this matter. We have before us two propositions in regard to this matter of representation—one providing that towns shall send members to the House of Representatives in a certain manner, and the other that they shall be sent by districts in a certain other manner. There was, I believe, a majority of eighty in favor of the town system. Those who represent the town system represent 386,000 people, while those who voted for the district system represented 421,000; and although—looking to the unequal representation here—the town system got a majority of votes in the Convention, the real majority of the people, by nearly forty thousand, were in favor of the other system.

Under these circumstances, I was anxious that the people themselves might pass upon the question.

It has been said that this proposition has been presented unfairly, and upon that point I should be glad to be heard for a few moments, because, when I drew it up, I certainly drew it up as fairly as I knew how to do so. I found it necessary to draw it up in general terms, because this Convention have adopted that identical mode for the Senate, and precisely in the same mode in relation to the elections to be made for members of the House of Representatives, by at least one-third of the people of the Commonwealth. The proposition in relation to the Senate and the cities, which you have already adopted, is just as general in its terms, and as much without details as mine; and I would ask, whether that is not the only way in which a matter of this sort can be put into the Constitution? I defy gentlemen to say, reasonably, that my proposition is unfair, or to find a Constitution anywhere in the United States, in which a matter of this sort is otherwise provided for, unless it be temporarily, because your population changes from time to time. I ask, therefore, under these circumstances, whether there is anything unfair in this? If I had drawn out a chapter of a dozen pages, there would have been an attack upon every chapter and every section. If I had my way, I would do just exactly as the President of the Convention, (Mr. Banks,) said he would do—put it to the people directly, to say whether they would have a town or a district system of representation. That was just exactly what I wanted to do, but I was obliged to pay some respect to the system the Convention had adopted. I give them all the advantage which belongs to their position. I took their system, and I may say now, I am willing to ex-

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change, and put it all together. I felt bound to take the system as they adopted it, and then present my system as I thought it ought to be adopted into the Constitution, exactly in conformity with the precedent set me by the gentlemen on the opposite side. And, Mr. President, is this a fair mode of putting the question to the people? It has been said that it is unfair. I do not believe that gentlemen intended to impute any wrongful intention upon my part, but in its tendency, they say it is unfair. I appeal to the whole Convention, if it could be drawn up in a form more fair. Now, we are told—I will not say by a majority of this Convention, but by a voice which is as near the voice of a majority as any one voice in this House—that if this goes out in this form, the people will accept it with a "hurrah." And are we going to say that we will not submit it to the people, because we know they will adopt it with a hurrah? If the people want it, let them have it. Are they to make a Constitution, or are we to make it? I say, we are to submit it to them. And why will they give that "hurrah?" I am sorry that, in so many of our acts, in so large a number of them, we stamp upon their face distrust of the people. Why, Sir, will the people go in favor of this proposition? Gentlemen say, simply because they cannot understand it. Mr. President, the gentleman mightily misunderstands the people, if he thinks they cannot comprehend the whole of it. The gentleman thinks they yield to the control of their imagination and fancy, and build therein some beautiful district system, and when they vote, they vote for that. Sir, the people are a practical people, and they can and will understand it, and know all its operation, so that the supposition that they go for it because they do not understand it, is an impeachment of their capacity.

I wish to say a word in relation to this amendment, and I will say only a word. How does it come up? From the friends of the district system? No; it is a foundling, and an illegitimate, to the friends of the district system; and not only that, they also put it out to nurse to its enemies. I never knew before of a case where the friends of the offspring did not have the care of it. And this is to be put out by the legislature constituted by a minority. One-third of the people elect the legislature which is to have charge of this system. I beg gentlemen to look at it. Sir, those people who are adverse to sustaining town representation, would have the power to cut up every town, and city, and ward, in the whole Commonwealth. In my system, they are restrained from dividing towns and wards. But if you have a minority body that wishes to put out a system to be rejected, they have nothing to do but to cut up one town and another, all over the Commonwealth, and put that to the people as their system. We have heard of gerrymandering, and the gentleman for Wilbraham, (Mr. Hallett,) says we have it in this system, if adopted at all. I say you cannot get along without suffering the legislature to make the districts, and all that you can do is, to guard against abuse as well as you can.

I have now only time to ask for the yeas and nays upon the amendment of the gentleman from Natick.

The yeas and nays were ordered.

The hour of four o'clock having arrived, at

which time the Convention had determined to take the vote, the first question recurred upon the adoption of the resolution of Mr. Wilson, as a substitute for the resolution of Mr. Morton, and the roll being called thereon, there were—yeas, 209; nays, 138—as follows:—

YEAS.

Adams, Shubael P.
Allen, James B.
Allen, Joel C.
Allen, Parsons
Alley, John B.
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Ball, George S.
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beal, John
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Bliss, Gad O.
Boutwell, George S.
Boutwell, Sewell
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Buck, Asahel
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Caruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Chester W.
Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Churchill, J. McKean
Clark, Henry
Clark, Ransom
Clark, Salah
Clarke, Alpheus B.
Cleverly, William
Cole, Sumner
Crane, George B.
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, Robert T.
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
DeWitt, Alexander
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Easton, James, 2d
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fiske, Emery
Foster, Aaron

Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Frothingham, R., Jr.
Gale, Luther
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Gooding, Leonard
Goulding, Dalton
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Harmon, Phineas
Haskins, William
Hayden, Isaac
Hazewell, C. C.
Heath, Ezra, 2d
Hewes, James
Hewes, William H.
Hobart, Henry
Hobbs, Edwin
Holder, Nathaniel
Hood, George
Howard, Martin
Howland, Abraham H.
Hoyt, Henry K.
Hunt, Charles E.
Huntington, Charles P.
Huntington, George H.
Hurlbut, Moses C.
Johnson, John
Kendall, Isaac
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Knowlton, Charles L.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Leland, Alden
Little, Otis
Loomis, E. Justin
Marble, William P.
Marcy, Laban
Mason, Charles
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nichols, William
Nute, Andrew T.
Ober, Joseph E.
Orne, Benjamin S.
Osgood, Charles
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.

Penniman, John
Perkins, Jesse
Phinney, Silvanus B.
Pool, James M.
Powers, Peter
Putnam, John A.
Rawson, Silas
Richards, Luther
Richardson, Samuel H.
Rockwood, Joseph M.
Rogers, John
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sikes, Chester
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stevens, Granville
Stevens, William
Strong, Alfred L.
Sumner, Increase
Sumner, Charles
Swain, Alanson
Taft, Arnold

Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Abraham
Tilton, Horatio W.
Turner, David
Turner, David P.
Tyler, William
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallace, Frederick, T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
Whitney, Daniel S.
Whitney, James S.
Williams, J. B.
Wilson, Henry
Winn, Jonathan B.
Winslow, Levi M.
Wood, Nathaniel
Wood, Otis
Wright, Ezekiel

NAYS.

Adams, Benjamin P.
Aldrich, P. Emory
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Bancroft, Alpheus
Barrows, Joseph
Bartlett, Sidney
Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Jacob
Booth, William S.
Bradbury, Ebenezer
Bradford, William J. A.
Brewster, Osymn
Brinley, Francis
Briggs, George N.
Bryant, Patrick
Bullock, Rufus
Choate, Rufus
Coggin, Jacob
Cogswell, Nathaniel
Cole, Lansing J.
Conkey, Ithamar
Cook, Charles E.
Coolidge, Henry F.
Crittenden, Simeon
Crockett, George W.
Crosby, Leander
Davis, John
Davis, Solomon
Dawes, Henry L.
Denison, Hiram S.
Doane, James C.
Dorman, Moses
Eaton, Lilley
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Gardner, Henry J.
Gilbert, Wanton C.
Giles, Joel
Gould, Robert
Goulding, Jason
Gray, John C.
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Hathaway, Elnathan P.
Hawkes, Stephen E.
Hayward, George
Heard, Charles
Hersey, Henry
Heywood, Levi
Hillard, George S.
Hinsdale, William
Hobart, Aaron
Hooper, Foster
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Hunt, William
Hurlburt, Samuel A.
Hyde, Benjamin D.
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kuhn, George H.
Ladd, John S.
Lawton, Job G., Jr.
Lincoln, Frederic W., Jr.
Littlefield, Tristram
Livermore, Isaac
Lothrop, Samuel K.
Lod, Samuel P.
Lowell, John A.
Miller, Seth, Jr.
Mixer, Samuel
Morey, George
Morton, Marcus
Noyes, Daniel
Orcutt, Nathan
Paige, James W.
Parker, Adolphus G.
Parker, Joel
Peabody, George
Perkins, Daniel A.
Perkins, Jonathan C.
Phelps, Charles
Plunkett, William C.
Pomroy, Jeremiah
Prince, F. O.
Putnam, George
Rantoul, Robert
Read, James
Reed, Sampson
Rice, David
Richardson, Daniel
Ring, Elkanah, Jr.
Ross, David S.
Sargent, John
Schouler, William
Sherrill, John
Sleeper, John S.
Southern, John
Stetson, Caleb

Friday,] HOUSE OF REPRESENTATIVES, &c. — EARLE — GARDNER — WILSON — BUTLER — WHITE — PARKER. [July 29th.

Stevens, Charles G.
Stevens, Joseph L., Jr.
Stevenson, J. Thomas
Stiles, Gideon
Talbot, Thomas
Thayer, Joseph
Tilston, Edmund P.
Train, C. R.
Tyler, John S.
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wales, Bradford L.

Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
Wilbur, Daniel
Wilbur, Joseph
Wilder, Joel
Wilkinson, Ezra
Williams, Henry
Wilson, Milo
Wood, Charles C.
Woods, Josiah B.

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Allen, Charles
Appleton, William
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Russel
Beach, Erasmus D.
Blagden, George W.
Bliss, William C.
Braman, Milton P.
Bullen, Amos H.
Bumpus, Cephas C.
Carter, Timothy W.
Clarke, Stillman
Copeland, Benjamin F.
Cressy, Oliver S.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Dana, Richard H., Jr.
Dehon, William
Eaton, Calvin D.
Fitch, Ezekiel W.
Foster, Abram
Gooch, Daniel W.
Greenleaf, Simon
Hall, Charles B.
Haskell, George
Henry, Samuel
Huntington, Asahel
Ide, Abijah M., Jr.
Jacobs, John
Kellogg, Martin R.
Kinsman, Henry W.

Knowlton, J. S. C.
Lawrence, Luther
Lincoln, Abishai
Lord, Otis P.
Marvin, Abijah P.
Marvin, Theophilus R.
Meader, Reuben
Morris, Joseph B.
Nayson, Jonathan
Newman, Charles
Norton, Alfred
Oliver, Henry K.
Packer, E. Wing
Park, John G.
Parker, Samuel D.
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Perkins, Noah C.
Pierce, Henry
Preston, Jonathan
Richardson, Nathan
Rockwell, Julius
Sampson, George R.
Sheldon, Luther
Sherman, Charles
Storror, Charles S.
Stutson, William
Taber, Isaac C.
Taylor, Ralph
Tower, Ephraim
Warner, Marshal
White, George
Wilkins, John H.
Wilson, Willard
Wood, William H.

Absent, and not voting, 72.

So the substitute was adopted.

The question next recurred upon ordering the resolve, as amended, to its second reading.

Mr. EARLE, of Worcester, called for the yeas and nays upon that question, but they were refused, by a vote of 35 in the affirmative, and 230 in the negative.

The question was then taken upon ordering the resolve, as amended, to a second reading, and it was decided in the affirmative—ayes, 183; noes, 90.

Mr. GRISWOLD, for Erving. I move that rule requiring the resolve to take its second reading to-morrow, be suspended, and that the resolve take its second reading at this time.

The question was taken, and the motion was agreed to.

The resolve was then read a second time.

The question next recurring upon the final passage of the resolve,

Mr. GARDNER, of Boston. I move to amend the resolve, by striking out "1855," and inserting "1853."

Members of this Convention will see at once the effect of that amendment, if adopted. It will obviate the objection which the gentleman from Natick makes, to having the matter put to

the people in such a way that there will be confusion existing. The question will not go to the people this fall, but the legislature to be chosen this fall, under the present system of representation, will divide the State into representative and senatorial districts, and a year from this fall, the people will be called upon to vote upon the question. Now, Sir, I presume that the debates of this Convention will be spread abroad in the community, and will be discussed generally throughout the State, and before they grow stale in the public mind, I should like to have the people vote upon these two propositions, and not have it put off until after the next decennial census of the State. And why not have it now? Why not have it a year from this time? I can see no objection to it, unless this is an objection, that if the division is made next year, it will be made by a legislature elected on the present basis of representation. If it is deferred, as proposed by the resolution, it will be made by the legislature, which every-body here confesses, is elected by a miserable minority of one-third of the community. That, Sir, is the only difference—a division made by a legislature elected by one-third of the people, or a division made by a legislature constituted as it will be hereafter.

The question does not require argument, or elaboration, to make it apparent to every mind. Every individual here grasps the idea, and I am willing to leave it with the Convention to decide, whether they will accept the amendment or not.

Mr. WILSON, of Natick. Not wishing to consume the time of the Convention, I simply say, in reply to the remarks of the gentleman from Boston, (Mr. Gardner,) that the Convention have already decided to have the decennial census taken in 1855, 1865, 1875, and so on, instead of the years 1850, 1860, &c., and thus my plan comes in, in exact accordance with that.

Mr. GARDNER. If this comes in in 1855, under the decennial census, why does he make it hereafter in 1866, 1876, &c.? And if they come in in 1866, how will they get at the decennial census taken the same year?

Mr. WILSON. The census is to be taken in 1855, 1865, 1875, &c. The legislature chosen in the autumn of 1855 will put this question out to the people, and the legislature chosen in 1856, will arrange the districts, which the people will decide upon in 1856. It comes in precisely with that arrangement, and for that reason it was so arranged.

Mr. PLUNKETT, of Adams. I ask for the yeas and nays upon the amendment of the gentleman from Boston, (Mr. Gardner).

The yeas and nays were not ordered, one-fifth not voting therefor.

Mr. EARLE, of Worcester. I shall detain the Convention but for a moment, and that will be to state two reasons, and two only, why I should not be in favor of the proposed amendment. The first is, that if the districting is made according to the amendment, which will be a work of great labor, and occupy the attention of the legislature for some time, it can stand but for one year, because the census is to be taken in 1855, and the legislature elected in that year would be required to make a new apportionment under the new census. That alone, it appears to me, is a sufficient reason why the amendment should not be made.

Another reason is, that in the legislature to be

elected in 1855, the whole State will be represented. While the one next elected, will not represent the whole State, because some towns have already exhausted their right to representation.

The question was then taken upon the amendment offered by Mr. Gardner, and the amendment was not agreed to.

The question again recurring upon the final passage of the resolve, as amended, was put, and decided in the affirmative—ayes, 189; noes, 82.

So the resolve was passed.

Sectarian Schools.

Mr. WILSON. I move that the Convention now proceed to the consideration of the Orders of the Day.

The motion was agreed to, and the Convention proceeded to the consideration of the next matter upon the Orders of the Day, which was the motion of the gentleman from Quincy, (Mr. White,) to reconsider the vote by which the resolves upon the subject of sectarian schools were passed.

Mr. BUTLER, of Lowell. I wish to say one word upon this subject, and that is, that after an examination of this matter, I can see no cause for an alteration of the Constitution in this respect. We have met no trouble, seen no difficulty, and there has been nothing sectarian heretofore in the division of the public moneys. I hope we shall not undertake to make an amendment to the Constitution, which has not been called for from any quarter. I trust the vote will be reconsidered.

Mr. WHITE, of Quincy. The reason why I made the motion to reconsider, was, that the resolve was taken up in rather a thin House, and passed without much consideration, and without any debate. As it contains a principle unlike anything in the present Constitution, I think it should have a full consideration. I ask the yeas and nays upon the motion to reconsider.

The yeas and nays were not ordered, one-fifth of those voting, not voting in the affirmative.

The question being upon a reconsideration of the vote by which the resolve was passed, the Secretary, upon the request of Mr. Plunkett, read the resolve, as follows:—

Resolved, That all moneys raised by taxation in the towns and cities for the support of Public Schools, and all moneys which may be appropriated by the State for the support of Common Schools, shall be applied to and expended in no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance, exclusively, of its own schools.

Mr. PARKER, of Cambridge. I will detain the Convention but a moment at this time, when members appear to be so anxious to take the question. This resolve was introduced by me some days since, and it was printed for the information of the Convention. It was proposed as a substitute for the resolution reported by a committee, on account of some objection to the phraseology of that resolution, and with the view of placing this matter in such a shape that no objection could be taken to the form in which the measure was proposed. I moved on Wednesday of this week to take the documents from the table,

Friday,]

SECTARIAN SCHOOLS.—KEYES—BIRD—HALLETT.

[July 29th.

and the adoption of this resolution as an amendment. There was, to be sure, at that time a thin House, but it was at the ordinary hour of business and after other business had been transacted. There was no springing of any surprise upon anybody, because I had previously, in the course of the forenoon, moved to lay the Orders of the Day upon the table, with the declared purpose of taking up this subject. It was known, therefore, that it was a matter before the Convention, and it might reasonably have been inferred that an attempt would be made to take it up at the earliest convenient time. It was adopted without any division, because there was hardly any opposition to it. It met with the approbation of nearly all the members of the Convention present at the time.

Now, Sir, I have heard no reason why this vote should be reconsidered, except it be the opinion of the gentleman from Lowell, (Mr. Butler,) that it is not necessary to take any action upon the subject. If that stands as a good reason for the action of the majority of this Convention, this vote will be reconsidered, of course. But unless it does, I trust that a measure so important to the welfare of this Commonwealth, as I regard this to be, will be suffered to stand as a part of the constitutional amendments to be proposed to the people.

Sir, this resolution has nothing sectarian in its character. It proposes simply to retain and secure your common schools in the condition in which they are at the present time, beyond all peradventure, come from what quarter an attempt for change may come—and I care not from what quarter it comes—and to secure them as the pride and glory of the State, the pride and glory of New England, and the foundation and support of our popular institutions. If the members of the Convention are prepared to say that they will not sustain a proposition to that effect, they will support this motion to reconsider, and strike out the resolution which has been adopted.

Mr. KEYES, for Abington. This resolution has been already adopted by the Convention. On reading it over, I find it contains a proposition that will always be held sound in Massachusetts. I trust no man, here or elsewhere, will say it is not just and proper. The inference to be drawn from it is, that we are opposed to having the public money which is raised for school purposes, applied to the support of sectarian schools. I will venture to say that every man in Massachusetts is in favor of it. If there is a man in Massachusetts who is opposed to it, he is an enemy to Massachusetts, an enemy to the school system of Massachusetts, and I presume there is no such man.

Now, Sir, there has not been a single reason given in favor of reconsideration. If there is any reason that can be given, it is some secret reason that men dare not avow. We may all have some idea what it may be. I do not believe, however, there is any foundation for the apprehension that seems to be entertained that the school money will be devoted to sectarian purposes. The people of Massachusetts are opposed to granting public money for sectarian schools; that we all know.

Mr. BIRD, of Walpole. I submit, Sir, with all respect for the gentleman for Abington, that the burden of proof does not rest upon us to show that this ought to be reconsidered, but upon those who oppose the reconsideration to show why the provision should stand as it is, and for

this reason: Gentlemen know very well that this matter has never been discussed in this House, and the reasons have never been assigned why this provision should go into the Constitution. It came before us, was laid upon the table, several attempts were made to take it from the table, and the Convention uniformly refused. It came up finally at a time when very little attention was given to it, and very little consideration. An amendment was proposed by the gentleman from Cambridge, and it was adopted, with very few words from him, nothing like an argument, by a very small vote. And the resolve was passed to a second reading, and I believe the rule was suspended, and it was passed instant, or it may have gone over to the next day. At all events, it was passed *sub silentio*, just as it now stands, and I submit, that reasons have not yet been given why a change of this kind should be made in the Constitution.

I hope the motion will prevail, and that it will be reconsidered, even if, in the end, we do not adopt it. I want the reasons shown, that I may give the people in the narrow circle in which I move, the reasons why we should adopt this provision. I confess that, as at present advised, I cannot defend it.

I do not like the resolve. It does not say one word about giving any portion of the money of the State to colleges and higher seminaries of learning. Money may be appropriated to sectarian colleges, notwithstanding its adoption; and I submit that from our action here it may be inferred that we are willing that the public money should be given to sectarian academies and colleges. I am not willing that any such inference should be drawn from our action in regard to this matter.

And there is another objection. Everybody knows this resolution appears to be aimed at one class of our citizens, one denomination of religion. Nobody has intimated any apprehension that money would be used for the benefit of Protestant sectarianism. I have never heard that question raised in the State; but the question has been raised in the State, and discussed, in relation to the support of Catholic schools; and I am not willing, as one of the friends of the Constitution, that it should be embarrassed by any such provision. It is too important a question to be passed over in this manner, without any reasons given for and against it, and impatient as we all are to finish our labors here, I hope the Convention will look seriously at this matter before they assent to its being made a part of the organic law.

Mr. HALLETT, for Wilbraham. I will only advert to one consideration, why I am opposed to touching this matter of conscience in the Constitution. I believe no man desires to establish an ecclesiastical tribunal; yet, in my judgment, this provision, in effect, does establish such a tribunal; and why? Because it declares that money raised for the support of common schools, "shall never be appropriated to any religious sect for the exclusive maintenance of its own schools." Now, what does that mean? What is a religious sect? What is a maintenance *exclusively* of the schools of a religious sect? Who is to determine whether the town's money has been appropriated to any religious sect, or not? Who is to say how far you may go in maintaining a sectarian school, and still not do it exclusively? Anything less than the whole is not exclusive. Therefore, you may

apply your money to a sectarian school all but. Any exception will save it. Who shall settle this? It must be determined by some court. Therefore, your supreme court is to become, under this clause, an ecclesiastical court, to determine what is a religious sect, and what is the *exclusive* maintenance of a sectarian school. Then, how far are you to go in this matter of ecclesiastical definitions? What is the platform? It seems to me that here are difficulties of construction that you cannot avoid or surmount otherwise than by giving a new jurisdiction to the supreme court as an ecclesiastical tribunal. They are difficulties which the able gentleman who introduced this proposition, will find at the very outset, and increasing at every step.

Now, I am unwilling to incur the risk of raising a question here which is of extreme difficulty concerning religious opinions, and one which touches the conscience. What is there wrong about our public schools at present? Are they devoted to sectarian purposes? Is your money going to establish sectarian schools? Nobody asserts that such is the case; but somebody imagines that such a state of things may arise in the future; that sectarian schools are going to be established; that some new sect may outvote the Protestants, and claim the school fund. I have no fears on that score. I want free opinions, and I would no sooner give Protestants than Catholics the power to control religious opinions and sentiments. But I do not want, if I can avoid it, to put a firebrand into our town meetings, by raising this imaginary issue, which will never come if we let it alone. You are treading upon delicate ground, when you undertake to interfere with men's consciences. What is the meaning of that proposition? We propose to declare, that no part of the money that is raised for school purposes shall be appropriated to any other purpose, except to its legitimate uses, for fear we may do something that will favor sectarianism. We contend that it is all right now, but we are afraid of something ahead. Where will it end? Your town meetings will be thrown into confusion, by contentions about the religious opinions of school teachers. Men will get together, and undertake, as in the times of Gov. Winthrop, to regulate men's consciences. It will be as difficult to settle a schoolmaster as a minister.

Have we not got past this meddling with conscience? It appears we have not entirely, for this Convention has, by refusing to amend the Bill of Rights, relating to religious opinions, solemnly declared, that a man "shall be molested for his opinions and sentiments concerning religion." That is bad enough. And that is far enough to go. I thought it too far: to say that in this good Commonwealth we shall undertake to interfere with any man's religious belief, and that no man shall be unmolested who is so unfortunate as conscientiously to be without any religious belief. Nevertheless, I submit to that decision here, and will patiently wait for liberal progress, in the hope that another generation will be more enlightened. But, pray, let us have no more of sectarianism in our Constitution. And let us have no interdiction, or intermeddling in opinions of this sort. I do not believe the learned gentleman who introduced this proposition, intends any such thing, as to exclude a particular religious sect from our public schools. I know him to be of a very different spirit; but I say,

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SECTARIAN SCHOOLS. — WOOD — LOTHROP — CADY.

[July 29th.]

that is the construction I put upon it. And many others understand it in the same way, and the very doubt it raises, is reason enough to reject it. I hope, therefore, that we shall agree to the reconsideration, and then strike the provision out altogether, as one of doubtful meaning and expediency.

Mr. WOOD, of Fitchburg. My attention has just been called to this resolution, and that brings to my recollection some little question regarding this subject, which arose in my own town. We have, growing up, between three and four hundred Irish children. About one in twenty of these go to our common schools. Many of the intelligent Irish do not and will not send their children to our schools. I had a conversation with one of these, a man who desires the advancement of learning as much as I or any man in the State. I asked him why he would not send to our schools. His answer was: "I will not send my children to a sectarian school." "A sectarian school?" said I. "Heavens! I did not know that our schools were sectarian." "Well," said he, "that is just the way with you here in America, and with religionists all over the world. Our sect is no sect; every-body else is sectarian. Now," said he, "what constitutes a sectarian school? It is where you will have all the Protestant forms of worship introduced. You will insist on having prayers according to the Protestant forms. You introduce your Protestant Bibles and other Protestant books, and you will have none other. Now, I put it to you, would you be willing to send your children to be instructed by Roman Catholic priests; to be compelled to read their Bible, and have comments upon it?" I said "No." "Very well, then, you ought not to expect us to do it." Now, I put it to this Convention, how it is possible to raise any money by taxes to be expended for common schools, if it cannot be expended for either Protestant or Roman Catholic schools?

Now, let me say another thing. It is all important that our Irish children should be educated. It is as important to us as it is to the Irish themselves. We do not want them to grow up amongst us, ignorant and vicious, first to rob our hen-roosts, and afterwards to commit more serious offences. It is all important that they should be educated. If we cannot educate them in such schools as we have, let us give them such schools as they can accept. And I would appropriate money for that purpose. Their own forms are dear to them, and they will not send their children where there is danger that their minds will be perverted, if not converted. Therefore, although I want no money to be appropriated to sectarianism, I would devote a portion of the money that is designed for common school purposes, to furnish schools for them. As for compelling them to attend our schools, I would do no such thing. I would let the matter, as regards that, take its natural course; there should be no compulsion on that score. We have a sufficient sense of liberty—the Irish have themselves—to know that there should be no constraint about the matter. Formerly, it was said that they would do nothing contrary to the wishes and orders of their priests, that they believed them to be God's vicegerents on earth; but they are getting over that. So I think there need be no alarm in regard to the Roman Catholics; for I cannot help thinking that this has a strong squinting against them. We may pro-

scribe them, put a clog upon them, attempt in every way to render them a degraded race; but be assured they will not continue to be a degraded race in Massachusetts, or in the other States of the Union; not that I fear them; but let us treat them liberally—give them a fair chance to come and be identified with us, that their sympathies may be as ours. Pass no law, especially no fundamental law, against any sect in religion. I hope the vote will be reconsidered.

Mr. LOTHROP, of Boston. The resolution which it is proposed shall be reconsidered, was introduced by the gentleman from Cambridge, as an amendment to the Report of the Committee on the Encouragement of Literature, of which I had the honor to be a member. The attention of the Committee was called to the subject, by an order passed in Convention and referred to it. I agree, Sir, with the remark that has been made by two gentlemen, that if the subject had not been brought up at all it would have been better. Gentlemen have said we are introducing a new thought, principle, or suggestion, into the Constitution; that there is nothing in the old Constitution about it, and should not be in the new; that the matter would be left safe and well, without this resolution. Very true. There is nothing in the old Constitution relating in direct and express terms to the subject; and if the order which was the basis of this resolution had not been introduced, I should not have been in favor of making any more special provisions in regard to sectarianism in our public schools, than exist in the present Constitution. But, inasmuch as the subject has been brought before the Convention, and reported upon, and that report adopted, I believe, now, it would be impolitic and injurious, to reconsider, and strike out the resolution which has been passed. It would be equivalent to saying that we do approve of sectarian schools.

As has been stated by the gentleman from Walpole, the matter passed without much consideration, was carried rapidly through its several stages. The resolution was quietly adopted by a large vote, with scarcely a show of opposition. And, for this very reason, it seems to me that the task rests not with those who oppose, but with those who favor the reconsideration, to show reasons why it should be reconsidered. The subject having been thus brought before us, and acted upon, I believe and maintain that, in the present condition and prospects of the community, it is highly desirable that we should incorporate into the Constitution the fundamental principle laid down in the resolution, and instead of promoting sectarianism, or making it necessary to establish a board to ascertain and determine what sectarianism is, it will have the effect to suppress it. I maintain that the establishment of common schools, in which the great mass of the children of the community, of all religious denominations, are educated together, is the only way in which we can prevent and keep down the spirit of sectarianism. I ask the gentleman from Fitchburg, if he believes that his policy or plan will tend to prevent sectarianism? Sir, it is the plan which will tend, of all others, to spread sectarianism through all our families, down to the youngest children, and educate them in intense religious hatred of each other. Sir, I want all our children, the children of our Catholic and Protestant population, to be educated together in our public schools. And if gentlemen say that the resolution has a strong leaning

towards the Catholics, and is intended to have special reference to them, I am not disposed to deny that it admits of such interpretation. I am ready and disposed to say to our Catholic fellow-citizens: "You may come here and meet us on the broad principles of civil and religious liberty, but if you cannot meet us upon this common ground, we do not ask you to come. It is your own choice, and if you cannot be content with the general privileges, which you share here in common with all, you have no right to complain. Here are our public schools, they are free to all the various denominations, Baptist, Methodist, Episcopalian, Congregationalist, Trinitarian, Unitarian. They are free to all, Catholic and Protestant. We all send our children to these schools, we all meet together in town meeting, and determine how much money we shall raise for this great purpose of education, thus common to all, and that money is expended in schools in which the peculiarities of no one sect are insisted upon or interfered with." I wish all children to be educated, not as members of religious sects, not as belonging to one religious party or another, but to come together on one common ground, as children of the State, to be educated together in mutual respect, forbearance, and good will, so far as differences of religious opinion are concerned. Sir, our common school system has been, and is now, conducted upon these liberal principles; and, I say, it is this school system that has done as much as any other one cause, to determine the character and condition of the people of Massachusetts.

Mr. WOOD. Will the gentleman allow me to ask him what he would propose to do, suppose any religious denomination refuse to send their children to your schools?

Mr. LOTHROP. I will answer the gentleman by saying that if we establish our system of common schools upon broad, liberal principles; if we open the door wide, and give all a fair and equal chance to come, we may rest assured that the great mass of the community will avail themselves of the privilege; and if any do not, the fault will not be in the system, but in the narrowness and bigotry of those who prefer that their children should grow up in ignorance, unless they can send them to a sectarian school. The community will have done all that it can be asked to do.

Mr. CADY, of Monson. If I am rightly informed, the children of our Irish population are obliged to attend our common schools. It is a penal offence for them not to attend.

Mr. LOTHROP. I shall detain the Convention but a few moments more. I cannot but think this is a question of great importance; and our action upon it will have much influence upon the future character of Massachusetts. Sir, the subject of common schools has been a subject of much difficulty in all countries in the world. Where the attempt has been made to introduce a system of public education, in all countries where the attempt has failed, sectarianism, in one form or another, has been the cause. Is not sectarianism the very thing we are here trying to prevent, so far as our common schools are concerned? There is none of it now in these schools; and the only way in which you can prevent its introduction and influence, is to adopt the principle of the resolution it is proposed to reconsider. It is only upon this principle that we shall be able to conduct our common schools successfully, keep them free from sectarianism,

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and make them one of the great fountains of life and strength, prosperity and power, to the people of this Commonwealth. It is very well known that there are broad general religious truths, great fundamental religious ideas and principles, upon which all can unite, and where these alone—as is the case in our common schools—are recognized, and impressed upon the minds of the young, there will be, there can be, no sectarianism; nothing of such a character as that a Protestant or a Catholic, or a person of any religion whatever, would be unwilling to have his children attend the school. If he regards the best interests of his child he will send him to such a school. I maintain that no Catholic, no Protestant, no person of any denomination, can go into any of our public schools and say that there is anything taught there that he should be unwilling that his child should learn; or that anything is done to change or interfere with his religious opinions.

I hope the motion for reconsideration will not prevail; and that, as the matter has come up and has been acted upon once, we shall abide by that action, and adhere to the principle which is contained in the resolution.

Mr. FROTHINGHAM, of Charlestown. I have but one word to say in reference to this matter. It seems to me, that when the gentleman from Boston remarked that it had been better that the subject had not been introduced into this Convention, he yielded the whole point. Now, Sir, as that gentleman has stated, the subject was before the Committee of which I have the honor to be a member, and there, Sir, I took the ground against incorporating anything of this sort into the Constitution, simply because it was better to leave well enough alone; simply because it was unnecessary; simply because our common schools, as they are now, are open to all to be enjoyed in common, as free as the air we breathe; and I say, so let them remain, because the matter is governed by the unwritten law of public opinion of Massachusetts, and as well governed thus as it could be by any statute law or constitutional law that could be enacted.

Now, it seems to me, that our Constitution, when it provides that all denominations shall be placed upon a footing of equality, provides for each and every case of this kind that can arise; and I am in favor of the reconsideration and rejection of this resolution, simply and solely on the ground that it is putting unnecessary matter into the Constitution.

Mr. CHAPIN, of Webster. I wish to say a few words before recording my vote upon this question, in order that I may stand right before the community, and especially before posterity, for I regard this as not particularly affecting the present generation, but as prospective in its operation. I believe the policy of this Commonwealth, from the beginning of our government up to the present time, has been, to have but one class of schools, and they have been called common schools. They admit, and even require the attendance of all children between certain ages, in the Commonwealth. They are common schools, because the system of instruction is common to them all, and they are not allowed to introduce sectarianism, even under the present law; and I think the gentleman from Fitchburg will find it difficult to establish, from the law as it now stands, the proposition that sectarianism is permitted. Sir, a man is not allowed to go into our

common schools, and teach the doctrine of the Congregationalists, the Baptists, or any other, as a creed; we are, therefore, adopting what is in exact conformity with the past usage of the Commonwealth. And I think it is perfectly right to do so. It establishes permanently, for the time to come, that which is approved by the universal sentiment of Massachusetts.

It has been said, there is no occasion or necessity for the introduction of a provision of this kind; that no efforts have been made to establish sectarian schools. But it is well known, that efforts have been made in other parts of the Union. New York and other States have been afflicted with excitement on the subject. And I think it would be well to consider whether, in this State, we are not approaching the same condition, and whether it is not our best policy, to guard against it in time. I can see a reason for incorporating such a provision, in the very excitement that prevails in this Convention to-day. There is great sensitiveness manifested here, at the very mention of the subject. But it is contended, that the introduction of this provision will endanger the adoption by the people, of all the other amendments that we propose to make to the Constitution. I do not believe there is a man in Massachusetts, save one, who has the power to establish sectarianism; I do not believe there is a gentleman here, who thinks it right to do so, but there are gentlemen here who believe that the introduction of this provision will embarrass the amended Constitution, if not defeat it. Well, Sir, if we are embarrassed by the mere offering of the proposition, I think we had better understand it now, before it is too late; and, for this reason above all others, I shall go for the proposition embraced in the resolution, and against reconsideration.

Mr. COGSWELL, of Yarmouth. As one of the Committee from whom the Report on this subject was made, I desire to state one or two considerations that induced the Committee to report the resolution, the subject having been referred to them by an order of the Convention. It is well known, Sir, though it may not be known to all the members of this Convention, that the different religious denominations in this State, and in other States, have had this subject under consideration. The Presbyterian Church, especially, which comprises a great portion of Massachusetts, and of the Western and Middle States, have agitated the question. The Committee thought, that by putting an article of this kind into the Constitution, it would put an end to all controversy on the subject. It was not aimed at any particular sect, but was intended to cut off all sectional and denominational disputes on the subject of the distribution of the money raised for the support of schools, whether derived from taxation or from the common school fund, with the view of devoting it to the support of denominational schools. This was the object of the resolution reported by the Committee. The great object was, to preserve our common schools just as they are now managed, for all coming time. Massachusetts claims the honor of having been the first to introduce the common school system, and it has always been the practice to instruct all alike, without regard to differences in religious belief. The object is, to leave the system where it now is, for all coming time; to provide, that money to be raised for schools, shall never be

devoted to the support of denominational schools. We have now, in this State, a fund of more than a million of dollars for common school purposes—it will soon be a million and a half. Well, now, I think nothing would be more disastrous than the application of this money to sectarian uses. It would be striking a blow at our civil institutions, to have this money divided among different denominations of religion. These were the reasons, and they were recognized by the Convention, for when the proposition was reported, no objection was made to it. It was thought to be highly necessary and proper, that such a constitutional provision should be enacted. And now, all on a sudden, gentlemen turn round and oppose it. I hope that it will not be reconsidered, but that it will be made a part of the amended Constitution. We may then reasonably expect that our schools will, in all coming time, continue to be conducted precisely as they have been heretofore.

Mr. CHANDLER, of Greenfield. When this motion to reconsider was made, I felt a great degree of indifference about it, because I considered that all the provision that was necessary to be made in relation to this subject had been made in a previous resolution. It has, however, assumed an importance in my mind since, more particularly, from the great misunderstanding which appears to prevail respecting the object designed to be accomplished by it. I had the honor to be upon the Committee to whom was referred an order to provide for the raising of a fund for a particular use,—to be appropriated to the support and maintenance of our common schools, as they now exist, in accordance with the system which has prevailed from the beginning. The Committee agreed upon a resolution to be presented to the Convention, providing for the raising of such fund. Well, if we consider the fund raised, what is to be done with it? The order under which the Committee was formed, made it imperative on the Committee to raise a fund for common schools, the great object being to secure the application of such fund to the purpose contemplated, viz.: the support and maintenance of our common schools, as they are, and prevent its being frittered away, or misapplied. Well, the question came up, is there any danger to be apprehended from sectarianism? Is there danger that any efforts will be made to divert any part of this fund to sectarian uses? That appeared to be the idea. That appeared to be the thing to be guarded against. It seemed to be supposed that various denominations in different parts of the country were endeavoring to get possession of the school funds, for the use of their own peculiar schools, not only the Catholics, but others. We wished, therefore, to secure the fund for the object for which it was provided, that is, for common schools, generally, without designating any particular system. Now, if we take the position that a part of this fund may be given to one denomination, another may come in and claim the same privilege, and another, and another, until the fund is completely exhausted, and perverted from its original design. We wish to avoid this. We do not require the Constitution to forbid the bestowal of money upon any college in the State, sectarian, or otherwise, but the money thus appropriated is not to come out of this fund. This is to be regarded as sacred, and kept exclusively for the particular use for which it was designed. This

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is all, so far as I understand it, that was contemplated by the Committee. If the Convention do not approve of this principle, if they wish to leave the door open, for the distribution of this fund in the manner I have indicated, they ought to go back and reconsider the vote by which they accepted of the proposition which provides that that fund shall be devoted to a particular and specific use.

Mr. WARD, of Newton. Is an amendment now in order?

The PRESIDENT. An amendment is not now in order. The question is on the motion to reconsider.

Mr. WARD. I should like to have an opportunity to move to strike out the two last lines of the resolution, which it is moved to reconsider. The money would then be appropriated according to law, and in no other way.

Mr. BUTLER, of Lowell. I have no wish, Sir, to take up time, at this late hour, in debate, and it was this reluctance to consume the time unnecessarily, which induced me, when I addressed you before, to confine myself to a very few words, simply saying that I hoped this matter would be reconsidered, not supposing that I should thereby expose myself to the censure of the gentleman from Cambridge, (Mr. Parker,) that I had presumed to dictate to the Convention a course of action, without assigning any reasons why that course should be adopted. I have, thank God, a reason for the "faith that is in me," and I wish to say, first, that I look upon this resolution as the most sectarian resolution that can be brought before a deliberative assembly. And if I cannot convince gentlemen that it is so, I will give up all pretension to a knowledge of the principles of men's action from what they do.

Now for the history of this matter. An order was introduced on the thirteenth of June and referred to the Committee on the Encouragement of Literature, of which my friend from Pittsfield, (Mr. Briggs,) is chairman, and I am sorry he is not here to help me against this sectarian attack upon the resolve which that Committee reported. The order instructed the Committee to inquire into the expediency of so amending the Constitution, that the school fund belonging to the Commonwealth shall never be appropriated or applied to the support of any sectarian schools, or schools founded upon sectarian principles.

The Committee reported a resolve, which is as follows:—

Resolved, That it is expedient so to amend the Constitution as to provide that no public money, in this Commonwealth, whether accruing from funds, or raised by taxation, shall ever be appropriated for the support of sectarian or denominational schools.

That covered all schools, Sir, from the humble village school up to Harvard University. It precluded the appropriation of money to the support of sectarian or denominational schools, of whatever grade, or class, or description. It precluded the appropriation of money to be expended for the benefit of Harvard University, because that is a sectarian school. And so of all other colleges. That is what was reported by the Committee. Then, without a word of explanation, comes this amendment from the representative of Harvard College—the guardian of the interests of that institution in this Convention; drawn with all the skill of a lawyer, and a very good lawyer too:—

That all moneys raised by taxation, in the towns and cities, for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to and expended in no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance, exclusively, of its own schools.

Leaving it open for money to be appropriated and distributed broadcast, if you please, hither and yon—to Harvard, to Williams, and to Amherst College, or any other institution of learning, whether sectarian or otherwise. A carefully and technically worded resolution. What do we want with such a provision? In the first place, the school shall be kept according to law. That is the first item. In the name of all that is good, why not put into the Constitution that when it rains it shall rain? That is all we have got here until we come to the sting in the tail, which is this: "shall never be appropriated to any religious sect for the maintenance, exclusively, of its own schools."

Now, one word in reference to the remarks of the gentleman from Boston, (Mr. Lothrop,) whom I commend for his morality. He says he wants every Catholic child to go to our common schools; and the gentleman from Fitchburg, (Mr. Wood,) says they may be compelled to go.

Mr. LOTHROP. I am quite confident, Sir, that I could not have used those words—that I wanted every Catholic child to go to our common schools. I said I wanted all our Irish population to send their children to our common schools.

Mr. BUTLER. I am bound to take the gentleman's recantation; but, Sir, I am not mistaken. The gentleman said—and the expression was accompanied with a very emphatic waive of the hand—I want all Catholic children to go to our schools.

Mr. LOTHROP. I could not have said that.

Mr. BUTLER. My recollection is perfect, Sir, as was the elocution of the gentleman. "I want all Catholic children," says the gentleman, "to go to our Protestant schools." Those are the words. I called the attention of several gentlemen to them at the time they were uttered. And I appeal to the reporter's notes whether I am not correct. Sir, I was educated in our common schools—

Mr. LOTHROP. I rise to a question of order.

I understood the gentleman to accede to my recantation, as he chooses to call it. If he accedes to that, I maintain he has no right to continue to argue as if I had used the language which he attributed to me. I maintain that I did not use the expression, that I wished Catholics to go to Protestants schools. I know myself too well to believe that I could have said any such thing. And, if the gentleman insists on fastening it upon me, I must appeal to the House. If the gentleman accepts my explanation, he must not go on arguing as if I had used that language.

Mr. BUTLER. Again, I say, I yield to the gentleman's repudiation of his language, if he says he did not mean it; but if he says he did not say it, I repeat, that he did say it. I thought it was said in heat, and without due consideration.

Mr. JENKS, of Boston. I sat much nearer to the gentleman from Boston (Mr. Lothrop) than

the gentleman from Lowell did, and I know that he did not make use of the word Protestant.

The PRESIDENT. This is not strictly a question of order. It is a mere difference of opinion as to the language used by the gentleman from Boston.

Mr. BUTLER. I will not dwell upon it, Sir. I have stated the language that was used by the gentleman; I now pass from that. I was proceeding to say, that I was reared in Protestant schools where some gentlemen say there is no sectarianism. The first Class Book that was put into my hands was one prepared by an eminent Unitarian clergyman; and in that I read sentiments calculated to instill into the mind a detestation of Catholics. I imbibed such detestation, and when I first saw a Catholic, I thought I was looking upon a monster, and almost expected to see the cloven foot. Yet, gentlemen will say such teaching is not sectarian.

My friend on the left, (Mr. Chandler,)—and what he says commends itself to me on account of his mature years and ripened judgment,—says he does not want any sectarianism introduced into our schools, on one side, or the other. He says the system works admirably; that it is an admirable common school system. Why tinker with it then? Why meddle with it at all, if it works so well, and is so admirable? Why, my friend says, because in other States there is trouble. Let those States take care of themselves. Why should we foresee trouble, and create it by an attempted resistance to it. The moment you send out this declaration, it will enter into all your elections everywhere, as an element of agitation. If you strike the first blow, the fight is begun. Let him that is without sin among you cast the first stone. We teach Protestantism, and believe it to be right, and we glory in that belief. But is that any reason why we should force it upon our neighbors? Why we should say we will tax you for the teaching of our Protestantism? Is it any less proper for the Universalists, or Baptists to say, there is no sectarian issue in their teaching. Those who have religious creeds differing from our own, worship the same God, bow before the same altar, read from the same Bible; but differ in its interpretation. Now, I ask gentlemen, if they are ready to introduce such a controversy into the politics of this State? For one, I wash my hands of it. I want our school system to remain as it is.

It is said that a difficulty has arisen in other States. Grant it as much as you please. Why should we precipitate it here? Why should we be thus tormented, before our time? If it must come, the legislature will meet it. I want the reconsideration for the reason given by my friend from Newton, (Mr. Ward,) in order to strike out the last two lines of the resolution. I will then vote for it, although it will be something like the boy's brandy and water with the brandy left out. [A laugh.] It will then be:—

Resolved, That all moneys, &c., for the support of common schools shall be applied to and expended in no other schools than those which are conducted according to law."

Well, how are you to apply it in any other way? All I have to say of it is, *Parturient montes et nascitur ridiculus mus.*

Mr. BALL, of Upton. If I wanted a text upon which to preach, I should have it in the

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proposition before you. The resolution passed without a word being said about it. Gentlemen were all perfectly well satisfied that it contained the principle which they were all in favor of; and then all at once, just at the close of the session, they start up and say that the great mass of the citizens of Massachusetts are arrayed against it, and that they will vote down the new Constitution if this proposition is retained in it. And in the name of all that is good and sacred, let us—say they—O! let us withdraw it, that our amended Constitution may not be lost. The gentleman from Lowell, (Mr. Butler,) has made a strong argument against withdrawing the provision. He says that when he went to the public schools he was taught from sectarian books—that the books used were clearly and decidedly sectarian. If this be so, it is highly necessary that measures should be taken to free those schools from sectarianism. I am ready, on his own showing, to vote against the reconsideration. Is not this new movement like something we have had before in this State, one of the compromises made for the purpose of damning to eternal infamy a party that is dreaded? Will gentlemen withdraw from the position they took, because they fear the Catholics? Sir, I am known to all the Catholics of my town, and I will venture to say, that in voting to retain this provision, I shall not be regarded by them as being sectarian. If our schools have any thing that is sectarian, let us remove it, let us correct the evil as speedily as possible. If we have done wrong in the past, is it any reason why we should continue to do wrong? If we have sectarian books in our schools now, is that a reason why we should continue to use such? No, Sir; if we would all meet upon common ground, let us incorporate this provision in the Constitution, and keep it there. A compromise to be made at this last moment! A compromise, for what? For fear the people of Massachusetts should become sectarian? For fear of the Catholics? Great God! We have nothing to fear from the Catholics. They are more our friends than our enemies. Open your doors wide to all, and banish sectarianism from your schools, and Catholics will become Protestants through the influence of these schools. For these reasons, I trust the provision will be retained. I trust the Convention is not ready to withdraw from the position it has taken, a position that was fair, and honest, and proper at the time it was taken, and so regarded by every one.

Mr. WHITNEY, of Conway. It seems to me, Sir, that this debate must satisfy every gentleman, that in placing such an amendment as this in the Constitution, we are treading upon delicate ground. It appears to me that when we look around over the good old Commonwealth of Massachusetts, and see how harmoniously and successfully our common school system is operating, and when we consider that no attempt has ever been made to introduce sectarianism, we cannot fail to be convinced that the introduction of such a provision as this into the Constitution, must be productive of injurious consequences, and that it would be far better to leave the article in relation to our common schools as it now stands, and leave all religious sects to stand upon the same footing, without any subordination of one to another, and without any preference of one over another in the matter of education in the schools of the State. It seems to me it would be

far better, as has been well said by the gentleman from Charlestown, to let well enough alone. The introduction of this provision into the Constitution, I submit, may give rise to agitations which will seriously disturb your common schools throughout Massachusetts. How is it in your little towns now? Your school committees are, to a great extent, composed of the clergymen of various religious sects, Baptists, Presbyterians, and even Catholics, and no complaint that I am aware of is made. Well, now, insert such a provision; and may it not be said by persons disposed to seek objections, you are making an unequal appropriation or supervision so far as sects are concerned, of your school fund? You are endeavoring to prevent the appropriation of the fund to a school that is sectarian, and yet you have upon your school committees men who are sectarian. How are you going to make answer under these constitutional provisions? In my opinion, you will produce much trouble and confusion in your common schools throughout the Commonwealth. And I can see no reason to apprehend that the money to be appropriated for common school purposes from any quarter, is to be applied for sectarian purposes. The public sentiment is more and more doing away with sectarian bias, as connected with public schools. Why agitate this question? It will only be bringing about the very result which we wish to avoid. I think, as I have said, that we are well enough at present, and that we had better let well enough alone. It will be impossible to find men who are outside or beyond the power of sectarian bias, to some extent, for your school committees; but public sentiment is such, that you will find no improper application of sectarian influences in your common schools.

It has been remarked that the Committee would not have introduced this question, but inasmuch as it had been introduced, it was a reason why we should go farther on. Why, Sir, if it was unwise to introduce it here, it certainly would be still more unwise to incorporate it into your Constitution. As the gentleman from Lowell, (Mr. Butler,) remarked, why declare in your Constitution a universally acknowledged principle. I see no reason except for the purpose of exciting agitation upon this question; why not then reconsider this motion? Agitation will be most likely to result from a proposition of this character, and the effect of such agitation, would, in the end, be most disastrous. I hope the motion to reconsider will prevail.

Mr. CROWNINSHIELD, of Boston. I shall not detain the Convention many minutes. I have only this to say, that I can assure gentlemen, their Catholic friends are not so weak as to be caught by such chaff as this. Sir, as I understand this question, the provision has gone through the usual stages, and has been finally passed, and now gentlemen wake up and move a reconsideration, because they are afraid of the effect it may have upon the Catholic population of the Commonwealth. Sir, gentlemen have sat in their seats while this provision passed through all its stages to its final passage, and no voice was raised against it. And now, on the very last day, or last but one of the session, lo! a violent indignation is gotten up against the resolution, and it is insisted that it must be expunged. Now, Sir, I happen to know something about the feeling of the Catholics in regard to this Convention, and I

tell gentlemen the Catholics are not to be led away by any such proceeding as this. The Catholics understand it. They know the object of it, and they know the purpose for which the resolution was originally passed. They know, too, that the great question of representation has been passed so as to disfranchise them. And if gentlemen suppose that such a movement as this is to conciliate them, let me tell them they are mistaken.

Mr. THOMAS, of Weymouth, moved the previous question.

Mr. PARKER, of Cambridge. I hope the gentleman from Weymouth will withdraw the motion for the previous question, to enable me to make some reply, not only to the arguments which have been offered, but to the personal attack which has been made upon me by the gentleman—I mean by the member from Lowell.

Mr. THOMAS, of Weymouth. If the gentleman will renew it, at the close of his remarks, I will consent.

Mr. PARKER. I will do so.

Mr. BATES, of Plymouth. I believe the gentleman from Cambridge has already spoken upon this question.

Mr. PARKER. I have, Sir, and have the floor again, by the recognition of the President.

Mr. BATES. I believe the gentleman has spoken his fifteen minutes.

Mr. PARKER. The gentleman is mistaken. I did not occupy over half that time.

The PRESIDENT. The gentleman from Cambridge has spoken once, but he has not occupied his full time.

Mr. PARKER. Mr. President: I have known something of the gentleman—of the member from Lowell—for some time, and I have heard considerable of him, first and last, and perhaps I ought not to be surprised at anything coming from him, and yet I am. I am truly surprised at the personal attack which he has allowed himself to make upon me, upon the floor of the Convention to-day, as I had said nothing to provoke such an attack from that gentleman, or rather, from that member. It is true, I had some agency in introducing this resolution—a resolution which has passed without a division—so unanimous was the feeling in favor of it. A motion for reconsideration was made, and the gentleman—the member from Lowell—Sir, I have been in the habit of calling him the gentleman from Lowell, and will continue so to do—took the floor, and expressed his personal wish, without reason or argument to support it, that this matter should be reconsidered, as if his personal wish was sufficient to determine the action of the Convention, and induce them to undo all that they had done; and upon this it seemed as if the question was about to be taken. It was in reference to that; because I had no argument to answer, and because it was for those who favored the reconsideration, to offer some reasons why the action of the Convention should be changed, that I said, in substance, that if that gentleman's mere wishes were to determine the action of the Convention, it was well that it should be understood. I supposed there was some reason that might be offered. We have now been favored with a reason. And I desire to make a few remarks in reply; but I must be permitted again to say, I am astonished that the gentleman from Lowell should have forgotten all courtesy, and have been guilty of the indecorum

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of speaking of me as the representative of Harvard University. Sir, it was an indecorum that I should hardly have expected, even from him. Sir, I am not the representative of Harvard College. I have no such relations with that institution as will justify any one in speaking of me as its representative. Nor have I used an argument that would authorize anybody to speak of me in that way. It is true, that I am connected with one of the professional schools in that institution; but so far as that is concerned, the gentleman might as well be characterized as a representative of a law office in the city of Lowell.

The PRESIDENT. The Chair desires to say that he did not understand the gentleman from Lowell as speaking of the gentleman from Cambridge as the representative of Harvard College.

Mr. PARKER. Sir, he spoke of me as representing Harvard College, and he imputed motives with reference to that institution as the governing motives with me in offering this resolution, and as the inducement for its introduction. That was the burden of his speech—that it was clearly to be seen what were the influences which induced the gentleman from Cambridge to act in this matter. Now, I trust I need not disclaim, before the members of this Convention, any such motives. I trust my conduct on this floor has commended me so far to gentlemen here, that they do not need my disclaimer of being actuated by any other motives than those of a member desirous of doing his duty. But enough of that. The gentleman from Walpole (Mr. Bird) suggested that there had been no reason offered why this measure should be adopted by the Convention. Sir, as I said before, I supposed it was for the friends of the reconsideration to show why the action of the Convention should be changed. But I was ready with reasons, and have been attempting to gain the floor for the purpose of stating them; but the rules of the Convention gave it to others, because I had spoken once.

Sir, we have heard reasons assigned from various quarters, but an additional fact or two may be stated. One gentleman, a member, has informed me, since the commencement of the session, that his parish clergyman, an Episcopalian, a very worthy man, declared to him that they must have parish schools. Another gentleman in the Convention has stated that he heard a very worthy Congregationalist clergyman declare it was necessary for his denomination to have such schools. Sir, it is not the Catholics alone who are looking to the school fund as a means of sustaining their peculiar tenets. Nor does this resolution, in its terms, have any reference to them at all; but they have been introduced, and the statements which have been made only add another to the evidences to show that it is necessary that something should be done here. Sir, nothing more is necessary to show the necessity for a constitutional provision, than to refer to the arguments of the gentleman from Fitchburg, and the gentleman from Conway, and others. The gentleman from Wilbraham says he does not want to put a firebrand into the town meetings. Sir, the object of this resolution is to extinguish the firebrand. The gentleman from Fitchburg admits that there is no law for it, but he proposes to appropriate a part of this money to sectarian purposes. He avows it here.

Mr. WOOD. No, Sir. The gentleman is mistaken.

Mr. PARKER. Not sectarian; but he proposes to give the Catholics their share.

Mr. WOOD. For the purposes of education.

Mr. PARKER. Yes; for the purposes of education, according to their peculiar notions. Now, that very circumstance, the very excitement which is found to exist upon this subject in this Convention, shows conclusively why we should take action upon it, and extinguish the firebrand, so that it shall not be possible to rekindle it and make it the means of a conflagration which may destroy your common schools. They are in danger, undoubtedly.

The gentleman from Wilbraham finds it difficult to understand the resolution. He cannot understand the meaning of the word "sect." Sir, that gentleman does not ordinarily find any difficulty in ascertaining the meaning of anything which he wishes to understand. But he can ask for definitions when a proposition does not suit him. It was but the other day that he wanted a definition of the word "blasphemy," and when he had got that, he wanted a definition of "contumeliously;" and now he wants a definition of the word "sect." Sir, if the gentleman cannot understand it, let him put it to a jury as a part of law and the fact, and it will readily be settled for him. [A laugh.]

Sir, the reasons that are given for the reconsideration, are altogether contradictory.

One gentleman is for doing nothing, because, he says, it is altogether unnecessary; because there is no agitation, and will be none. Another is opposed to the resolution because it will cause a serious agitation; because the very mention of it here produces excitement. Well, Sir, if this subject is to be a source of agitation in case we act upon it, will it be less a source of agitation if you omit this provision from the Constitution? I appeal to gentlemen to judge for themselves. It requires no spirit of prophecy to say, that from one quarter or another—I make no invidious distinction—the objection will come, that your common schools have not sufficient of the religious element in them, or that other sects are endeavoring to infuse into the minds of the scholars the doctrines and tenets of their particular faith; and the consequence may be a division of the school moneys, and the subversion of our glorious system for the education of all through the agency of free and common schools, because you have not a constitutional provision to prevent agitation on the subject.

Sir, a word more respecting the origin of this resolution. The subject came up in the ordinary action of the Convention, through a motion to refer it, and the Report of a Committee. Prior to that Report, and before I was aware that any motion had been made, I had drawn a resolution with a view of offering it. When objection was made to the resolution reported by the Committee, I showed the one I had drawn to the gentleman from Natick, (Mr. Wilson,) who, it will be recollected, expressed his approbation of it to the Convention, and his desire that I would offer it, which, however, I could not do at that time, because an amendment was then pending; but it was read for the information of the Convention. Before there was any opportunity to move it, the Report and resolution of the Committee was laid upon the table. An attempt, by the chairman of the Committee, (Mr. Briggs,) to have it taken up, failed; after which, having slightly altered the phraseology, and at the suggestion of the gentle-

man from Boston, (Mr. Blagden,) added the last clause—all which, in my view, in no way changes its effect—I introduced it, and it was printed. I have not time to state the farther history of it, nor is it necessary. It has already been stated.

The gentleman from Lowell says the proposition is sectarian in its purposes. Let him read it, and see if it is or not.

[Here the President's hammer announced the expiration of the time allotted for a speech.]

Mr. PARKER. I renew the motion for the previous question.

Mr. BUTLER, of Lowell. Will the gentleman allow me to say a word by way of personal explanation.

Mr. PARKER. I cannot withdraw the motion, because I promised the gentleman from Weymouth that I would renew it at the close of my remarks.

Mr. BUTLER. I shall be obliged, then, to ask permission of the Convention to say a few words.

Mr. THOMAS, of Weymouth. I consent that the motion for the previous question shall be withdrawn.

Mr. PARKER. Then I withdraw it.

Mr. BUTLER. I shall not trespass long upon the time of the Convention. Though I may have felt it to be a duty to speak frequently, yet it cannot be said that I have troubled the Convention with long speeches.

The gentleman from Cambridge, Sir, seems to have worked himself into a considerable degree of indignation upon this question, because he seemed to think that I had commented too freely upon his personal action in this matter. I referred to it so far as to say that the resolution had been drawn with all the skill of an astute lawyer, in a manner to do no discredit to the legal adviser of the institution with which he is connected at Cambridge. And I now call the attention of the Convention to the fact, that, although he stood upon the floor for fifteen minutes, he has not disclaimed the fact, and has not disproved a word that I have said. He has not attempted to show that his resolution is intended to prevent sectarianism. How, then, does it appear that I have imputed wrong motives to the gentleman? I say, again, that, in my judgment, this is a Harvard College resolution.

The PRESIDENT. The Chair is of the opinion that it is not in order for the gentleman to characterize the resolution in that manner.

Mr. PARKER. I rise for the purpose of making a disclaimer.

The PRESIDENT. Does the gentleman from Lowell yield the floor?

Mr. BUTLER. The gentleman refused to withdraw the previous question to permit me to speak, and I do not feel at liberty now to yield my right.

Mr. PARKER. If a disclaimer is necessary, I desire to say, that so far as I recollect, I never exchanged a word with any one connected with Harvard College, on the subject of the resolution which I introduced, except a student in the Law School, for a moment, who spoke of the importance of the subject, and my associate professor in that department, to whom I believe I mentioned that I intended to introduce one. No suggestion was made to me respecting my introducing, or supporting anything of the kind. I acted solely upon my own personal view of the matter, and

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Harvard College, or the interests of Harvard College, were not in my thoughts in connection with it.

The PRESIDENT. The Chair desires to say in regard to the interpretation to be given to the resolution, gentlemen may put such construction upon it as they please, but they are not at liberty to arraign the motives of the mover.

Mr. BUTLER. I never arraign the motives of any man without cause.

Now, Sir, a word in reference to the gentleman from Boston, (Mr. Crowninshield,) who has let the cat out of the bag completely. He says if gentlemen expect to get Catholic votes by such a movement as this, they are mistaken. Out of the abundance of the heart the mouth speaketh. He says, if you think to save the Constitution in this way you will be disappointed, that the Catholics will be against you nevertheless. The resolution was characterized by the gentleman as an intended attack on the Catholic population, and, says he, they are not to be deceived by such a bait as this. Now it is very evident what is at the bottom of all this, when we hear gentlemen threatening to procure votes against the Constitution. Let gentlemen not misunderstand its significance.

Mr. PERKINS, of Malden, moved the previous question.

Mr. WHITE, of Quincy. I hope the previous question will not be sustained. The gentleman from Boston has made remarks concerning the reconsideration, which, it seems to me, ought to be replied to and corrected. I made the motion to reconsider, and should like to have an opportunity to explain the circumstances which led me to make that motion.

The previous question was seconded, and the main question ordered to be now put.

The question being on the motion to reconsider, a division was called for.

Mr. HALLETT, for Wilbraham, demanded the yeas and nays.

The PRESIDENT. The yeas and nays have been refused.

Mr. HALLETT. Are we not entitled to have the yeas and nays as a verification of the vote?

The PRESIDENT. The motion for the yeas and nays having been rejected, it is not competent to renew the same motion.

Mr. HALLETT. I rise to a point of order. I understand the Chair to say that the yeas and nays have, at some stage of this question, been called, and have been refused.

The PRESIDENT. Such is the case.

Mr. HALLETT. According to a former ruling of the Chair, as I understand, there are two purposes to which the yeas and nays apply. One is, to ascertain the sentiment of the House upon a given question, and the other is, as a verification of the vote upon a question. The question has now been put upon the motion to reconsider. While the House was dividing, and before the President declared what the vote was, I rose and asked for the yeas and nays as a verification of the vote. The Convention certainly have this right. It is an entirely distinct purpose from that for which they were originally called. I ask if such has not been the decision of the Chair?

The PRESIDENT. The Chair has made no such decision. There is but one purpose, that is, to determine the result. The difficulty is, the yeas and nays have been moved and refused.

Mr. HALLETT. If the Chair holds it is not

in order to call for the yeas and nays at this time, it is a very different ruling from that which the Chair has made on a former occasion.

The PRESIDENT. The Chair has never ruled as the gentleman states.

Mr. BUTLER. I move a reconsideration of the vote by which the yeas and nays were refused.

The PRESIDENT. It is too late for such a motion.

The question was then taken on the motion to reconsider the vote by which the resolve on the subject of sectarian schools was passed, and upon a division, there were—yeas, 87; noes, 183.

So the motion to reconsider did not prevail.

Imprisonment for Debt.

The PRESIDENT. The next matter on the Orders of the Day is the motion to reconsider the vote by which the resolve on the subject of imprisonment for debt was passed.

Mr. BUTLER, of Lowell. I wish to make an inquiry. I believe this resolve was never before the Committee of the Whole.

Mr. WILSON, of Natick. I understand there is a Report made by the Judiciary Committee, on a very important matter, which the Committee on Revision need to-night. I therefore move that the Orders of the Day be laid upon the table.

The motion was agreed to.

Tenure of Office.

On motion of Mr. DANA, for Manchester, the Convention took up for consideration the Report from the Committee on the Judiciary, respecting the tenure of office.

The Report was read, as follows:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 28, 1853.

The Committee on the Judiciary, to whom was referred the order of July 26th, 1853, have considered the same, and report the accompanying resolves.

MARCUS MORTON, *Chairman.*

1. *Resolved*, That persons holding office by election or appointment under the present Constitution, shall continue to discharge the duties thereof until their term of office shall expire, or officers authorized to perform their duties, or any part thereof, shall be elected and qualified, pursuant to the provisions of this amended Constitution; when all powers not reserved to them by the provisions of this amended Constitution shall cease: *provided, however*, that Justices of the Peace, Justices of the Peace and of the Quorum, and Commissioners of Insolvency, shall be authorized to finish and complete all proceedings pending before them at the time when their powers and duties shall cease, or be altered as aforesaid.

2. *Resolved*, That the legislature shall provide, from time to time, the mode in which commissions or certificates of election shall be issued to all officers elected pursuant to the Constitution, except in case where provision shall be made therein.

3. *Resolved*, That the Governor, by and with the consent of the Council, may at any time for cause shown, remove from office, Clerks of Courts, Commissioners of Insolvency, Judges and Registers of Probate, District-Attorneys, Registers of Deeds, County Treasurers, County Commissioners, Sheriffs, Trial Justices, and Justices of Police Courts: *provided, however*, a copy of the charges upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence.

4. *Resolved*, That whenever a vacancy shall occur in any elective office, provided for in this Constitution, except that of Governor, Lieuten-

ant-Governor, Councillor, Senator, member of the House of Representatives, and Town and City officers, the Governor for the time being, by and with the advice and consent of the Council, may appoint some suitable person to fill such vacancy, until the next annual election, when the same shall be filled by a new election, in the manner to be provided by law: *provided, however*, Trial Justices shall not be deemed to be town officers for this purpose.

5. *Resolved*, That all elections provided to be had under this amended Constitution, shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, A. D. 1854.

Mr. DANA moved to amend the third resolution, by striking out the proviso.

Mr. DANA. I wish to say, Sir, that I have submitted this amendment to two gentlemen of the Judiciary Committee, and they approved of it. I have not been able to find the other members of the Committee, or I would have consulted them also. I will simply state to the house the purport of the proposition. It provides that clerks of courts, sheriffs, &c., shall be elected for three years, the governor having the power of removal, *"provided"*, that a copy of the charges upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence."

Now, it may happen that a sheriff may fall into habits of intemperance; or in times of civil commotion he may have gone over to the enemy; he may be guilty of treason; yet nobody can touch him. The clerk of a court may become involved in some fraudulent transaction, or may commit a misdemeanor; he may become treacherous, and refuse to deliver up papers. Now, I want to provide that the governor shall have power to remove these officers for causes such as these. The difficulty, as the matter now stands, would be, that they could not be removed without a hearing, an examination of the charges against them, and such formalities as might not be consistent with the public exigencies. It is simply provided in this amendment that the governor shall have the power, if the exigencies of the case require it, to suspend these officers, and make a temporary appointment to hold only until an examination can be had, and the charges verified or disproved. That is the whole of it. The governor must, in all cases, enter the cause of removal upon the record, and the party must be heard, and he cannot be removed without the consent of the council. And it must be remembered they are all elective officers. There is no danger of the governor and council abusing the power. But it is certain that such a power should exist somewhere, especially in the case of sheriffs.

Mr. CHAPIN, of Worcester. I rise to say that I am entirely satisfied with the amendment which the gentleman has proposed, so far as the matter of removal is concerned. I suppose no governor would undertake to remove an elective officer unless for sufficient cause. Therefore, it seems to me that the article is sufficiently guarded in the amendment, and the interests of the Commonwealth will be thereby the better protected.

Mr. TRAIN, of Framingham. My attention has been directed to this matter only since the gentleman has called it up; but it seems to me we ought to define the causes for which the governor and council may remove an officer. As it

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is, the governor, with the advice of the council, may remove an officer for any cause. If the governor chooses to find fault with me for being only five feet and a half in height, he may remove me from an office to which I have been elected by the people. Now, I do not believe the Convention desire to intrust such power in the hands of the governor and council. And for the purpose of reaching such cases, there is a provision in the Constitution of the State of New York, which covers the whole ground. But not to detain the Convention, I will move to strike out the words "cause shown," and insert the words "disability, incapacity, or malfeasance in office."

The PRESIDENT. The gentleman's amendment will be in order after this is disposed of. The present proposition is to strike from the third resolve the proviso which is in these words: "provided, however, a copy of the charges upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence."

Mr. HALLETT, for Wilbraham. I hope the amendment will not be adopted. I think the provision goes far enough as it is. The amendment would give a most extraordinary power to the governor and council. Give them the power of removal, if you please, but this gives the governor the power, whenever he chooses to charge a man with disability, to immediately suspend him from office; and when an examination is had, if it be had at all, it may turn out that the charge is utterly groundless and malicious. I question very much the propriety of placing this power in the hands of the executive. I am willing that the governor should have the power of appointment to fill a vacancy, but I am not quite prepared to go so far as to give him the power of removal, in the case of an elective officer, at his mere will and pleasure. I should greatly prefer the amendment of the gentleman from Framingham. The moment an officer is elected, if the governor does not like him, he has only to make out a specification of charges against him, and from that moment the officer is suspended from the discharge of the duties of the office to which he has been elected; and the governor then fills the office with a man of his own choosing.

Mr. BATES, of Plymouth. I rise for the purpose of inquiring whether this is the final stage of these resolves?

The PRESIDENT. It is not. The question will be on ordering the resolves to a second reading, after the proposed amendments shall have been disposed of.

Mr. HOPKINSON, of Boston. The matter presents itself to my mind very much as it is viewed by the gentleman for Wilbraham. At present, such officers could not be removed, except by act of the legislature, to be adopted by a vote of two-thirds. It appears to me we should not give to the governor and council a power so much greater than the legislature has. I think there ought to be not only a specification of charges, but a substantiation of them, before the power of removal should be exercised. The man elected to an office, might be obnoxious to the governor for the time being; and, to get rid of him, nothing more would be requisite than the mere will of the governor and council. There should be some such restriction as is contained in the Constitution of the State of New York. It should not be a mere matter of discretion with

the governor, whether a man who has been elected, shall retain his office or not. A mere accusation, it seems to me, is not a sufficient reason for removing a man from office.

Mr. BUTLER, of Lowell. I merely wish to say, that if gentlemen will look at this matter for a moment in the light in which I view it, I think they will not find so much difficulty as they seem to apprehend. I think they will see that there can be no great danger of this power being abused. All these officers, viz.: clerks of courts, commissioners of insolvency, judges and registers of probate, district-attorneys, registers of deeds, county treasurers, county commissioners, sheriffs, trial justices, and justices of police courts, are to be elected triennially, and when a vacancy occurs, an election to fill such vacancy will take place at the next annual election; so that the power of the governor to make a temporary appointment, would only extend to the time of the next annual election, perhaps six or nine months at the farthest. There would be but little gained by a temporary appointment for a period so limited; and the governor would scarcely attempt to make use of the power, therefore, for political purposes. It would hardly pay. Now, take the case of—

The PRESIDENT. The attention of the Chair is called to the fact, that the resolves have never been committed to the Committee of the Whole. It will be necessary that they be so committed, or else that the rule be suspended.

Mr. BIRD, of Walpole. I move that the rule be suspended.

Mr. HALLETT, for Wilbraham. Are you going to suspend the rule to pass these resolves?

Mr. BIRD. No; only to order them to a second reading.

The question upon the motion to suspend the rule being put, a division was asked for, and upon a count, it appeared there was not a quorum voting.

Mr. CROWNINSHIELD, of Boston, moved that the Convention adjourn. A division was called for, and a count being had, there were—ayes, 23; noes, 76. The President voted in the negative, making a quorum; and the Convention refused to adjourn.

The question was then taken on the motion to suspend the rule, and—by ayes, 95; noes, 6—it was decided in the affirmative.

The question recurred on the amendment moved by the gentleman for Manchester, (Mr. Dana).

Mr. HOPKINSON, of Boston. I rise only for the purpose of making a suggestion which may serve to facilitate our proceeding. It is this: As this matter now stands, not having been considered in Committee of the Whole, we are not prepared to act upon it, and this is not its final stage. I therefore suggest that the amendment be withdrawn at this time, and that the resolves be passed to their second reading, and to-morrow, when they come up, we shall be ready to consider the amendment, and act upon it as well as upon the final passage of the resolves.

Mr. DANA, in accordance with the suggestion made, by the gentleman from Boston, withdrew his amendment, and

The resolves were ordered to a second reading.

Orders of the Day.

On motion of Mr. TRAIN, of Framingham, the Convention resumed the consideration of the Orders of the Day. The next item on the

Orders being the motion to reconsider the vote by which the resolve was passed in relation to

Imprisonment for Debt.

Mr. SCHOULER, of Boston, moved that the motion to reconsider be laid upon the table.

The motion was agreed to.

Debates and Proceedings.

The following Reports from the Committee on Reporting and Printing were taken up, and, under a suspension of the rules, read twice and concurred in.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 28, 1853.

The Committee on Reporting and Printing, to whom was referred the business of superintending the Reporting and Publication of the Debates and Proceedings of the Convention, ask leave to report the following resolutions.

For the Committee,

M. BATES, JR., Chairman.

Resolved, That the chairman of the Committee on Reporting and Printing be authorized, under the direction and sanction of said Committee, to superintend the Reporting, Indexing, Printing and Publication of the Debates and Proceedings of the Convention, until the same are completed, and that he be paid therefor the sum of four dollars per day, and travel.

Resolved, That said Committee be authorized to pay to the Secretary of the Commonwealth such expenses, not exceeding six hundred dollars, as may have been incurred for extra services performed by order of this Convention, and that the Order of May 18th, be so far altered as that said Committee shall have the direction of all matters relative to the sale or distribution of the Reports and Proceedings of this Convention.

Resolved, That a copy of the Debates and Proceedings of this Convention, when completed, be furnished by the Committee to each of the Reporters to the Convention.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, July 28, 1853.

The Committee on Reporting and Printing, to whom was referred the order of July 21st relative to appending to the published Debates, "Poole's Statistical View of the Members," and the "pay for the travel and attendance of members," have considered the same, and report, that it is inexpedient for the Convention to take any action thereon.

For the Committee,

M. BATES, JR., Chairman.

Journal of Committee of the Whole.

Mr. BIRD, of Walpole, from the Committee on the Preservation of the Records, submitted a Report, authorizing James T. Robinson, Esq., one of the Secretaries of the Convention, to make up the Journal of the Proceedings in Committee of the Whole, and to prepare an Index for the same, at the same rate of compensation as that allowed for the Journal of the Convention and Index to the same.

The Report was adopted.

Suspension of a Rule.

Some conversation ensued, respecting an informality in the proceedings relating to the resolve on the subject of imprisonment for debt, which informality was subsequently remedied by the suspension of the rule which requires all proposi-

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tions for amending the Constitution, to be considered in Committee of the Whole, before they are debated and finally acted upon in Convention, so far as relates to that particular subject.

On motion by Mr. WOOD, of Fitchburg, the Convention then, at half past seven o'clock, adjourned until to-morrow at nine o'clock, A. M.

SATURDAY, July 30, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President, at nine o'clock.

Prayer by the Chaplain.

The journal of yesterday was read.

Superintendence of Printing the Debates.

The resolution reported from the Committee on Reporting and Printing, in relation to the superintendence of the printing of the Debates, was read and adopted.

The Amended Constitution.

On motion by Mr. WALKER, of North Brookfield, it was ordered, that one hundred thousand copies of the Amended Constitution be printed for distribution, and that a copy of the same be sent to every family in the Commonwealth.

On motion by Mr. DANA, for Manchester, the Convention proceeded to the consideration of the Orders of the Day, the first item being the resolves reported from the Committee on the Judiciary, in relation to the

Tenure of Office.

The question being upon their final passage.

They were read, as follows:—

1. *Resolved*, That persons holding office by election or appointment under the present Constitution, shall continue to discharge the duties thereof until their term of office shall expire, or officers authorized to perform their duties, or any part thereof, shall be elected and qualified, pursuant to the provisions of this amended Constitution; when all powers not reserved to them by the provisions of this amended Constitution shall cease: *provided, however*, that Justices of the Peace, Justices of the Peace and of the Quorum, and Commissioners of Insolvency, shall be authorized to finish and complete all proceedings pending before them at the time, when their powers and duties shall cease, or be altered as aforesaid.

2. *Resolved*, That the Legislature shall provide, from time to time, the mode in which commissions or certificates of election shall be issued to all officers elected pursuant to the Constitution, except in case where provision shall be made therein.

3. *Resolved*, That the Governor, by and with the consent of the Council, may at any time for cause shown, remove from office, Clerks of Courts, Commissioners of Insolvency, Judges and Registers of Probate, District-Attorneys, Registers of Deeds, County Treasurers, County Commissioners, Sheriffs, Trial Justices, and Justices of Police Courts: *provided, however*, a copy of the charges upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence.

4. *Resolved*, That whenever a vacancy shall occur in any elective office provided for in this Constitution, except that of Governor, Lieutenant-Governor, Councillor, Senator, member of the House of Representatives, and Town and

City officers, the Governor for the time being, by and with the advice and consent of the Council, may appoint some suitable person to fill such vacancy until the next annual election, when the same shall be filled by a new election, in the manner to be provided by law: *provided, however*, Trial Justices shall not be deemed to be town officers for this purpose.

5. *Resolved*, That all elections provided to be had under this amended Constitution shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, A. D. 1854.

Mr. DANA, for Manchester, moved to amend the third resolve, by striking out all after the word "provided," and inserting the following:—

That the cause be entered upon the records of the Council, and a copy thereof be furnished to the party to be removed, and a reasonable opportunity be given him for defence. And the Governor may at any time, if the public exigency demand it, either before or after such entry and notice, suspend any of said officers, and appoint substitutes who shall hold office until the final action upon the question of removal.

Mr. DANA. The object of this third resolve is, to enable the governor to remove and appoint a substitute in the place of an officer who shall become insane, or otherwise incompetent to discharge the duties of the office, or who shall become unfaithful to the government in a time of emergency. Formerly, the governor had the power of removal in all cases, and of making appointments, but you have incorporated into the new Constitution a provision by which all these officers mentioned in the third section, are to be elected by the people for three years, and the governor has no power of removal or suspension in regard to them, whatever. Accordingly, if a sheriff should become insane, or incompetent, or unfaithful, he could still hold his office for three years, in defiance of the Commonwealth, and to the great injury of the public interest. Every one must agree that the governor should have the power of removal in such cases; the only question is, how it should be exercised. The Committee originally proposed that the governor should remove the officer, but that he should first specify the charges against him, and enter them upon the records, and give him notice thereof, that he might have an opportunity for defence. The amendment proposes, in addition to that, that the governor shall have power, during the hearing of the charges, to suspend the officer, and make a temporary appointment to fill his place. The case may easily be conceived, of a sheriff, or a clerk of a court, or other incumbent of an important office, becoming insane or otherwise incapacitated, or they may prove unfaithful, traitorous in time of insurrection, or invasion; they may have gone over to the enemy, and yet, if the governor has not this power of removal and appointment *ad interim*, the business of the office must be suspended while the case is being investigated, and all that time there would be no sheriff, or no clerk, as the case might be. It is absolutely necessary to the carrying on of the government, that this power should exist. I have consulted with the members of the Committee on the Judiciary, and they are in favor of the amendment, as are also the Committee on Revision. I hope it will be adopted without any objection.

Mr. DAVIS, of Worcester. 'As I understand

the matter, the governor will have the power, if this amendment be adopted, to supersede an election by the people, by an appointment of his own, whenever he thinks proper to do so.

Mr. DANA. If the gentleman will permit me, I ought to have said also, that there is a provision which directs that, in case of a vacancy occurring in an office which is elective for the term of three years, it shall be filled by an election at the next annual election, so that if the governor remove an officer, and appoint another in his place, such appointment can only hold good, under any circumstances, until the next annual election. Gentlemen will perceive, then, that the governor could have very little inducement for making a removal and appointment unless the cause contemplated by the Constitution actually existed. And the whole matter must become a matter of record. The governor, then, would not be very likely to make a removal without sufficient cause, when all the circumstances must become a matter of public notoriety.

Mr. TRAIN, of Framingham. If I rightly understood the effect of the amendment offered by my friend over the way, I suppose the object sought to be attained is one which every one will acknowledge is a proper one to be accomplished. But if I understand the effect of it, as offered by the gentleman for Manchester, (Mr. Dana,) it will be to place it in the power of the executive, the day after a sheriff, or clerk of a court was elected by the people, to suspend one of these officers, to hold him suspended, and to keep the office filled by his own appointment during the entire three years. For it is left at the option of the governor and council to try him or not, as they please. Now, suppose the clerk of a court refuses to enter up a judgment to suit me, and I go to the governor and file a charge against that clerk, that he did not enter up a judgment as I wanted him to. Thereupon he is suspended by the governor until the council try him, and they will try him just when they get ready; but in the mean time, the office is filled by the governor. I would not give the governor any such power. I think if there is a vacancy in the office of clerk of a court, it should be filled by the court itself, but it is too late to discuss that now.

Mr. DANA. I will remark that I wish the Convention had provided that vacancies occurring in the offices of the clerks of the courts, should be filled by the courts themselves. But they have otherwise provided.

Mr. LORD, of Salem. I desire to ask, as a matter of order, whether this precise resolution has not been once acted upon and rejected, by the Convention?

The PRESIDENT. The Chair thinks not. It is, however, too late to raise the question of order now. The resolves have been received, read a second time, and the question is on their final passage.

Mr. LORD. I do know how that may be, for I was not present a portion of the time yesterday afternoon, but just such a proposition was reported by the gentleman from Lenox, (Mr. Bishop,) from the Committee of which he is chairman. It provided that the governor should have power to remove all those officers which are mentioned in the resolve now before us. That resolution was rejected, by an almost unanimous vote of the Convention, and I submit that this resolution could not regularly have been introduced. If,

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however, it has passed to a stage where the point of order cannot be made upon it, I have nothing to say.

Mr. DANA, for Manchester. I will remark to the gentleman from Salem, that this is quite a different provision from that reported by the gentleman from Lenox, (Mr. Bishop). That gave to the governor the unqualified power of removal. This gives the governor, by and with the advice of the council, the power to remove them upon certain conditions.

Mr. LORD. The resolution before the Convention, to which I have reference, is the following:—

3. *Resolved*, That the Governor, by and with the consent of the Council, may at any time, for cause shown, remove from office, Clerks of Courts, Commissioners of Insolvency, Judges and Registers of Probate, District-Attorneys, Registers of Deeds, County Treasurers, County Commissioners, Sheriffs, Trial Justices, and Justices of Police Courts: *provided, however*, a copy of the charges upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence.

In document No. 104, you will find reported from the Committee on the Secretary, Treasurer, &c., the following:—

2. *Resolved*, That it is expedient so to amend the Constitution, that the Governor may remove any officer in the former resolves of this Committee mentioned, within the term for which he shall have been elected, giving such officer a copy of the charges against him, and an opportunity of being heard in his defence.

The PRESIDENT. The resolves are not the same. The gentleman will find certain officers mentioned in one resolution that are not mentioned in the other.

Mr. LORD. Certain officers are named in one of the resolves, and the other refers to former resolves, where the same officers are named.

The PRESIDENT. The Chair is of the opinion that they are not the same resolves, and that they are in order.

Mr. CHAPIN, of Worcester. The resolve to which the gentleman from Salem refers, contained in document No. 104, was committed, along with others, to the Select Committee, of which the gentleman from Boston, (Mr. Stevenson,) was chairman. That Committee struck it out in their Report. I submit, therefore, that the Convention has not taken any action upon it, which, by the rules of order, would prevent it from being introduced again.

Mr. LORD. If it is too late to raise the point of order, of course I have nothing to say. I however desire to say a word upon the amendment of the gentleman for Manchester, (Mr. Dana). If I understand the effect of that amendment, it is this: Whenever anybody sees fit to make a charge against an officer they do not like, and who is of different politics from the governor then in office, they thereupon present their charge to the governor, and the governor, thereupon, enters the charge upon record, suspends that officer, and appoints somebody else in his place. I want to know if that is not the meaning of this resolve? Has not the governor the power—as soon as one of these officers, elected by the people, comes into office, if anybody sees fit to object to him—to place that objection upon the record, and then suspend that officer just as long as he pleases?

A MEMBER. Only in cases of insanity.

Mr. LORD. If it is only in cases of insanity, I will go for it. Still, there is a class of unhealthy politicians who are considered insane, and that may be considered good reason, perhaps, for suspending them.

Now, I submit, Mr. President, that if the Convention understand this resolve, or this amendment, they will not pass them. It is not necessary to make an argument against them. It is only necessary for the Convention to understand their effect, to reject them. But, Sir, I will not take up the time of the Convention upon the subject.

Mr. DANA. I wish the Convention to understand this matter. The governor has always had the power to remove these officers for cause shown. We only make the same provision with regard to sheriffs, clerks of courts, &c., which has been made before. Indeed, we place restrictions upon the power of removal, which are not contained in the present Constitution.

Mr. LORD. My objection is not that there is a power of removal. The governor has heretofore had an unlimited power to remove the officers of his own appointment, and, I think it is perfectly proper that he should have that power; but now it is proposed to give him the power to remove officers appointed by the people. It is that to which I object.

Mr. DANA. Does the gentleman say the governor ought not to have the power to suspend these officers?

Mr. LORD. I think the governor ought not to have power to remove or suspend an officer the people have elected.

Mr. DANA. But suppose he is insane?

Mr. LORD. I would provide a remedy.

Mr. DANA. What is it?

Mr. LORD. I would not leave it to the governor to remove him.

Mr. DANA. I do not think the objection holds good at all. The governor has always held that power. But this limits it. The governor and council are not to remove except for cause shown, and that cause must be noted upon the records of the council. Notice must be given to the party himself, and he has the right to be heard in his own defence. Now, I put it to the good sense of gentlemen, whether it is at all probable that the governor would remove, without good cause, an officer whom the people had chosen, on written charges, with published proceedings? The people have the right to fill the vacancy every year. The appointee of the governor can hold only until the next general election. Now, Sir, while the governor must give notice to the officer himself, of the charges against him, and place the same upon record, I ask if he would dare to remove an officer the people have chosen, except for good cause? But if gentlemen are much afraid to trust the governor, I am perfectly willing the causes for which he shall be removed shall be specified in the resolve.

I move, therefore, to strike out in the second line the words "cause shown," and to insert the words, "incapacity, misconduct, or maladministration in office," so that the clause will read:—

Resolved, That the Governor, by and with the consent of the Council, may at any time, for incapacity, misconduct, or maladministration in office, remove from office, &c.

Mr. MORTON, of Taunton. The Committee on the Judiciary gave some considerable attention to this subject, and they came to the result which is stated in this resolve. It may be open to objections—perhaps sound ones, certainly it is open to plausible ones. But, I think it must be obvious to every one, that some provision is necessary to provide for the removal of these officers. Here are a large number of officers chosen by the people. Some of them may become incompetent to perform their duties. There may be cause from insanity. There may be cause from absence from the Commonwealth. There may be cause from unfaithfulness and intentional violation of duty; and the public good seems to require that you should have somebody to act in this matter. It seems almost a matter of necessity that some of these officers should be on duty all the time. For instance, if the clerk of your courts, your sheriff, your register of deeds, or your register of probate, from any cause become unable to perform their duties, it seems almost indispensable that somebody should be authorized to displace him, and to appoint some one else to perform his duties. And, although I approve highly of the vigilance which seems to be shown in guarding the power you confer upon individuals, and especially in cases of removal, yet I do not believe that in cases of this kind there is any great danger of abuse. So long as the governor himself is elected by the people, and is required to place upon record the causes for which he removes an officer, I do not believe there is any great danger of his removing, without sufficient cause, officers who are chosen by the people.

I do not believe it is wise to define precisely the cause or the act for which an officer shall be removed. If we do, we shall be almost sure to omit certain causes for which they ought to be removed, and thereby exclude them. I think we ought to have the matter discretionary as much as possible. I do not know how we can limit or classify the causes for which an officer shall be removed, without involving ourselves in difficulty. The learned and astute gentleman for Manchester, (Mr. Dana,) is as competent as any one to make such a classification; and he has provided, among other things, incapacity, as a cause of removal. Now, we shall perhaps never have an election where one party will not charge the candidate of the other party with incapacity. They will charge that he is incompetent to perform his duty, and upon this ground the governor would have the power to turn him out of office. I repeat, I like vigilance in guarding the power which you confer upon individuals; but, it seems to me, if you undertake to limit the causes for which these officers may be turned out of office, you will not make the power any more safe from abuse, but, on the contrary, if there is danger, you make it more dangerous.

Mr. PARSONS, of Lawrence. There is a portion of the amendment to which I am entirely opposed, since we have made a portion of the officers elective, to whom this resolution is to apply. I have no great objection to the officers being elected; but since this Convention has thought proper, by a large majority, to make certain officers elective who have formerly been appointed by the governor, and have left that matter entirely to the people, I think it would ill become us to put in that amendment, especially that part of the amendment which says that when an

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officer becomes incompetent, and is not capacitated to discharge the duties for which he was elected, he may be suspended. I say, it will give an opportunity throughout this State, for various political parties to get up petitions in towns, counties, or districts, signed by hundreds, to be brought before the governor and create a disturbance, and interfere with the rights of the people. Now, what will that word "incapacity" mean. It means nothing more than this: that when it becomes necessary to send a petition to the governor, it will be argued by those persons who represent the petitioners, that that person is incapable; that he is incapable in a thousand different ways, not from being insane, or from malfeasance in office, but in an intellectual view, to perform the duties for which he was elected. I say the governor has nothing to do with it; and, to my mind, it is highly improper that such an amendment should be passed, for we have intrusted their election to the people, who are to judge whether a man is capable to perform the duties for which he is elected. Will not the people know the man for whom they vote? I want to know if they are not the best judges. Most assuredly they are the best judges. They have the sole right to judge, and as has been argued for weeks past, with regard to vested rights of the people, I will say, that so far as the vested rights of the people are concerned, I am not one of the sticklers for their rights in Massachusetts. I have no fear with regard to their rights. I have always, since I have been a voter, especially in the State of Massachusetts, thought that the people are capable of taking care of themselves, and of their own rights, and that they will do it. But, I say, we are not the judges whether a man is capable of performing the duties of an office to which the people have chosen to elect him. I hope we shall not make a farce of this matter, since we have said that it is not proper to give to the people the right to elect judicial officers. This proviso, if adopted, will only make dissension which will array hostile parties against each other, by filing petitions on different sides, and they can bring an array against almost any man.

I want to ask the reformers in this Convention if they intend to oppose our taking these officers from the farmers, when we come to elect them by the people, or from any other class of people from whom we may choose to take them. I say that petitions may be sent in with regard to district and county officers which may require weeks in order to decide whether the man who has been elected by the people is competent, intellectually or morally, for holding the office to which he has been elected. I hope the resolution will not pass.

Mr. WALKER, of North Brookfield. I am sure that the resolution, as it has been amended, must commend itself to the good sense of the Convention. It is very evident to my mind that this power should be deposited somewhere; and in placing it in the hands of the governor, with these restrictions, there is no danger. I hope it will be sustained. It is very evident that nothing would be more unpopular or unwise, than for a governor to remove a man who had been elected by the people by a large majority. The very fact that he had been removed would insure his reelection. I cannot see the least danger to be apprehended in intrusting the governor with this duty.

Mr. KEYES, for Abington. It may appear a little immodest that I should imagine that I could do anything to extricate ourselves from this state of confusion; but if the gentleman for Manchester will listen to me, I will try. I will start in the first place, by saying, that I think that the amendment with regard to cause being shown, &c., is very proper, but that the latter part of the amendment is unnecessary. I am in favor of having a power of removal somewhere. But the reason for appointing some one in the place of the person removed, I think unnecessary. If the crime charged against an officer is of an extraordinary character, so that it unfits him at once for the discharge of the duties of his office, the governor and council can discharge him at once. Therefore there is no danger in having this stand as it does now, that a copy of the charges shall be furnished to the party, so as to give a reasonable opportunity for a defence.

Now if a man dies, and a vacancy occurs in that way, it is provided for in the fourth resolution. The time to be occupied in deciding a case need not be longer than in the case of filling a vacancy when a man dies, even if you give a copy of the charges and allow the accused to appear. And if the case is so extraordinary, and the person is so very guilty that he should not hold his office one hour, the governor and council can settle it in an hour; and therefore a vacancy will then occur. The officer being removed, there is a provision in the fourth resolution for filling that vacancy.

Now let us look at the character of these offices and see how important it is that in every minute of time there should be some one in office. Take the office of sheriff for example. Suppose he dies, or is taken insane suddenly; he has his deputies to perform his duties. I take it the deputy is simply a substitute for the sheriff.

Mr. BUTLER, of Lowell. I wish to suggest to the gentleman for Abington to consider that the moment the sheriff dies, the deputies all die with him. It is just as soon as that.

Mr. KEYES. That does not affect this case at all. If there is a charge of maladministration, he is alive then and his deputies are living with him, and the duties may be performed, as they are in many cases, by the deputies themselves. The idea which I wish to convey to the Convention is, that the time required to appoint a new officer is just the same as to try him, provided the case is so desperate that there would be danger to the community to have him remain. For instance, the council can be summoned, and he must appear immediately to show whether it is a desperate case or not, and if it is an extraordinary case he can be removed at once, and then as a vacancy will have occurred, that vacancy can be filled in the manner provided for in the fourth resolution.

So in the case of a register of deeds; he always has his assistants, and it is not necessary that his own hand should make the record of the hour when it comes to his office, in order to make it legal. Therefore the difficulty is no greater than if a man were dead. It seems to me, therefore, that all the power may be given to the governor and council that need to be given for the removal, with the provision which is now here, that a copy of the charges shall be sent to the officer and he may be allowed to appear before that council. Because he may hold on still, and the prosecution

can go on; and in the mean time, it is not probable he would do any more mischief; and if the case was a desperate one he could be removed at once, and the vacancy filled according to the provision of the fourth resolution.

It seems to me, the third resolution may be left to stand precisely as it is, except with regard to the amendment proposed, that for cause shown, &c. Then you have all the safety you can desire. There should be some place of power somewhere, to remove an officer, and there is no place for it better than with the governor and council themselves. But they are elected annually, and they would not discharge a man elected by the people without sufficient cause. Now, to do away with that objection of putting the whole power into the hands of the governor to suspend him and appoint a new one, these charges against an officer can be preferred against him and a copy given, and the question settled as soon as the council can be called together. If it is such a doubtful case that the man is not so great a rascal, then the order may rest there for a while. It strikes me that this will avoid all difficulties, and that the first amendment of the gentleman for Manchester settles the whole thing.

The question was then taken on each clause of the amendment separately, and they were both adopted.

The question was then taken on the final passage of the resolves, as amended, and they were passed.

Question of Order.

Mr. DAVIS, of Plymouth. I wish to inquire whether it will be in order to offer a resolution now.

The PRESIDENT. The gentleman can submit a resolution by leave of the Convention.

Mr. DAVIS. There was an order, in the early part of the session, offered by the gentleman from Natick, which was referred to the Committee on appointing the governor by the legislature. By some mishap, the Committee have not acted upon it, or if they have acted it has not been put into the Orders of the Day. I wish to offer a resolution as a substitute for the order sent the Committee by the gentleman from Natick.

Resolved, That the Constitution be so amended as to provide that no member of the Senate or the House of Representatives, who shall have taken his seat therein, shall, during the year for which he was elected, be appointed by the Governor to any office, commission, or trust, which shall have been created, or the emoluments of which shall have been increased by the Legislature, during said year.

I ask leave to offer this resolution, because I suppose it will not create any debate, and so far as I can learn, it is unanimously the opinion of the members of the Committee that such a resolution should be inserted in the Constitution. We have a provision of this kind in the Constitution of the United States, and a similar provision has been adopted by the Convention with regard to the Council.

Mr. HALE, of Bridgewater. Before this resolution is received, I wish to state that that order to which the gentleman has referred, was considered by the Committee, and, I believe, it was almost the unanimous opinion of the Committee, that no action was necessary on the part of the Convention. I believe the gentleman from Plymouth was present at one meeting when it was

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considered expedient to have such a resolution; but at a subsequent meeting, when he was not present, it was decided inexpedient.

The PRESIDENT. If the Chair understands the gentleman from Plymouth correctly, this subject has been referred to a Select Committee of the Convention. It is not, therefore, in order. The proper order will be for the gentleman from Plymouth to make a motion that the Committee be instructed to report at a given time.

Mr. MORTON, of Northampton. It seems to me it is altogether too late to introduce a proposition of that character. It seems that the subject has been referred to a Committee, and that there is a division of opinion in that Committee. Owing, therefore, to the lateness of the session, and the probability that the subject must create a debate, I move that the subject be laid on the table.

Mr. WHITNEY, of Boylston. I hope that motion will prevail. I want to leave a little something for the next Constitutional Convention to do. I hope that we shall not do everything at this time.

The question being then put on the motion to lay upon the table, it was agreed to.

* Terms of Office.

Mr. MORTON, of Taunton. I wish to inquire whether the resolves from the Judiciary Committee have been finally passed. I have been obliged to be absent for a few moments.

The PRESIDENT. They have been passed.

Mr. MORTON. Then, Mr. President, I feel it to be my duty to move a reconsideration of that vote, for a special purpose, which I will state; and if the purpose which I am about to state, meets the approbation of the Convention, they will doubtless reconsider the vote by which the resolves were passed, in order that I may introduce a certain amendment, which I will read before I ask action on the motion to reconsider. It is not for the purpose of rejecting anything that has been adopted, or modifying anything, but for the purpose of introducing an additional resolve, which the Committee on the Judiciary did not feel itself authorized to do, under the special commission under which they last acted. Gentlemen of the Convention will recollect, that we have provided for the election of a great number of officers, but we have not fixed the term of those offices. We have fixed the tenure, but we have never fixed the term at which their duties shall commence. At present, some of them commence at one season of the year, and some at another. Now if they are elected in November, it seems to me that it would be better to have them commence at a uniform period to enter upon their duties. As it is now, the county commissioners enter upon the duties of their office at one period, the registers of deeds at another, and county treasurers at still another. The Committee have deemed it expedient to have the terms of all the offices commence at the same time. If this meets the approbation of the Convention, I hope they will reconsider the vote by which they passed the resolves, so that I may have an opportunity to offer an additional resolve, as an amendment, which I will now read:—

Resolved, That the terms of all elective officers provided for in this Constitution, shall commence on the first Wednesday in January next after their election.

The PRESIDENT. If there be no objection, the Chair will consider the question on the final passage of the resolves as not having been put to the Convention. The Chair understands that no objection is made. The question will therefore now be on the final passage of the resolves.

Mr. MORTON. I now offer the amendment which I read to the Convention.

Mr. HALE, of Bridgewater. I want to inquire of the gentleman from Taunton how that would operate in the case of a vacancy filled by an election in the interim—whether in that case the term would have to commence on the first Wednesday in January following. Suppose the vacancy is filled in May, is the office to remain vacant until the next January before the term will commence?

Mr. MORTON. The amendment was written in some haste; but that was not the intention, at any rate. If there is any oversight in the form of the resolution, the Revising Committee will put that right.

Mr. BUTLER, of Lowell. If I understand this matter, we have already passed a resolution that all these vacancies shall be filled at the annual election in November. If there is a vacancy occurring in the mean time, *ad interim*, the governor appoints some one; and of course the *ad interim* appointee would hold the office until the first Wednesday in the January succeeding, when the newly elected officer would assume the duties. There is no filling vacancies in May by elections, for all vacancies are to be filled at the annual election in November, in order to prevent the people from being called out too often.

Mr. STEVENSON, of Boston. I desire to make a suggestion, that it would be well to except representatives to the general court, for the reason that they may be chosen during the session of the legislature, upon precepts.

Mr. MORTON. This does not apply to vacancies. This resolve fixes the time when the terms of office shall commence. It says that the terms of all elective officers shall commence on the first Wednesday in January next after their election, and of course they hold their offices until the first Wednesday in the January following. If a vacancy occurs in the meantime, there is a provision made in another resolve how that temporary vacancy shall be supplied until the next election.

Mr. STEVENSON. I should like to have the resolve read again.

The resolve was accordingly read.

Mr. STEVENSON. The language of the resolve is, that the terms of all elective officers provided for in this Constitution, shall commence on the first Wednesday in January next after their election. Now, suppose a member of the general court is chosen by precept in April, 1854, the first Wednesday in the January next after his election will be the first Wednesday in January, 1855, and another election will then have intervened.

Mr. MORTON. My construction of the language there used, which I admit was not very carefully considered, was, that the regular term of office shall commence on the first Wednesday in January, and shall continue until the first Wednesday in the next January. If there is a vacancy, it does not affect the term of office; in that case, the term of office would be occupied by two individuals, or it may be, by three or four. In order to meet the difficulty suggested by the

gentleman from Boston, I will modify the resolve, by adding after the word "Constitution," the words "except members of the legislature," so that it will then stand as follows:—

Resolved, That the terms of all elective officers, provided for in this Constitution, except members of the legislature, shall commence on the first Wednesday in January next after their election.

Mr. MOREY, of Boston. I will inquire whether this applies to the election of governor and lieutenant-governor, and officers which are in some cases to be chosen by the legislature.

Mr. MORTON. It is already provided that their terms shall commence on the first Wednesday in January.

Mr. MOREY. Oftentimes it is the case that they are not chosen until sometime in the latter part of January.

Mr. OLIVER, of Lawrence. I wish to make an inquiry with regard to that amendment. I understand that the terms of all officers who are to be elected under this Constitution are to commence on the first Wednesday in January. Suppose I should be elected a military hero about the first of September, I want to know if I am to go without my commission until the next January? That would spoil all the beauties of our militia system.

Mr. HOOPER, of Fall River. I would suggest that in order to accommodate the gentleman from Lawrence, the word "civil" be inserted, so as to leave out all uncivil officers. [Laughter.]

Mr. OLIVER. That would be "doing the civil thing," I grant; but I hope it will not be considered that the military are uncivil.

Mr. HOOPER. Not at all.

Mr. MORTON. Mr. President: We have labored so long here in trying to improve our Constitution and to make it perfectly correct in every respect, that we have grown amazingly critical, and I shall expect that everything that passes the ordeal here will bear the test of criticism as well as of legal and constitutional propriety. Endeavoring to profit by the suggestions which have been made to me from various quarters, I have made a little modification of my amendment, which I will state now, and I hope that gentlemen will be so kind as to suggest any improvements that it may require before I offer it formally, and after they have exercised their critical acumen upon it, I will substitute it for my other proposition, and hope that no objection can then be made to it. I propose to strike out the words, "except members of the legislature," and insert, "not otherwise" before the words "provided for," so that it will read:—

Resolved, That the terms of all elective officers not otherwise provided for in this Constitution, shall commence on the first Wednesday in January next after their election.

If that does not cover the whole ground, I should be very happy to learn what the exceptions are.

Mr. HALE, of Bridgewater. I hope the gentleman from Taunton will not suppose that I objected to his amendment for the purpose of criticism; it was only because I thought there was a defect in it that ought to be remedied. I have no desire to criticise the reports which are presented here by any member of this body.

The amendment, as modified, was agreed to, and the resolves, as amended, were finally passed.

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DISTRIBUTION OF DOCUMENTS. — WALKER — TRAIN — BIRD — HOOPER — MARVIN — EARLE.

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Distributing the New Constitution—Reports of Debates, &c.

Mr. WALKER, of North Brookfield. An order was passed this morning that one hundred thousand copies of the present Constitution of this State, together with the new Constitution to be submitted to the people, should be published in the same manner with the general laws and resolves, and distributed to every family in the Commonwealth. I find that the present Constitution has already been published and is now in process of being distributed. I hope, therefore, that the vote by which this order was passed will be reconsidered, for it will be entirely unnecessary and involve a waste of the public money to have the present Constitution printed again, as is proposed. —I move a reconsideration of that vote.

The motion was agreed to, and the question recurred on the adoption of the order.

Mr. WALKER. I move to strike out the words, "the present Constitution of the State, together with."

Mr. HALE, of Bridgewater, thought that it would be well to have both Constitutions sent out together, so that the people could have a better opportunity to compare them.

Mr. TRAIN. I wish to inquire of my friend from North Brookfield if he proposes that one hundred thousand copies shall be given to each family in the Commonwealth.

Mr. WALKER. That is not the language of the order.

Mr. TRAIN. I should like to hear it read, as he proposes to amend it.

The order was read, as follows:—

Resolved, That one hundred thousand copies of the new Constitution to be submitted to the people, be published in the same manner as the general laws and resolves, and distributed to every family in the Commonwealth.

Mr. BIRD. I should like to know whether the gentleman has ascertained that there are exactly a hundred thousand families in the Commonwealth, among whom these are to be distributed.

Mr. WALKER. Year before last, we published ninety thousand copies of the laws, and last year we published one hundred and sixty thousand copies, because there was a larger demand than usual, as they filed them away in all the lawyer's offices, where there was a great call for them. I supposed one hundred thousand copies would be sufficient.

Mr. BIRD, of Walpole. I beg to inform the gentleman from North Brookfield, that there are two more families in my neighborhood this year, than there were last. [A laugh.]

Mr. WALKER. Of course, the number of copies can be increased without much expense.

Mr. HALE, of Bridgewater. If the gentleman from North Brookfield has no objection, I will offer an amendment to his proposition—to add the following words: "And one copy shall be furnished to each family of the Commonwealth." I think that will put the matter beyond all question.

Mr. WALKER. I will accept the amendment of the gentleman from North Brookfield, though I insist that it is not necessary, to make good grammar. How you can make the order mean that one hundred thousand copies are to be sup-

plied to each family in the Commonwealth, I do not know, but I accept the amendment.

The order, as amended, was agreed to.

Mr. WALKER. I will venture to offer another order. It is as follows:—

Ordered, That the Committee on Reporting and Printing be instructed to employ some suitable person to receive and distribute all the documents ordered by the Convention, in the manner and form heretofore directed.

It is evident that this must be done by somebody, and it is equally evident that it cannot be done by the Secretary of State. It will be a great labor to forward all these documents, and somebody must be employed to do it, or authorized to employ somebody else.

Mr. BIRD, of Walpole. I do not see any necessity for this order. If I understand it, it directs the Secretary of State, or somebody else, no matter who, to attend to the distributing of documents from the office of the Secretary of State. I suppose that it provides also for the copies of the Reports of our Debates here in the hands of the printers. I suppose that the printers are paid to do that. You might as well employ somebody to forward all our newspapers. The gentleman says that somebody must do it. Let the members do it themselves.

Mr. WALKER. Direct their own copies of Reports, and newspapers, themselves, from the office of the printers to themselves at home!

Mr. BIRD. We were each allowed twenty-one newspapers per week—a pretty liberal allowance, as it seemed to me. Afterwards an order was passed that whoever chose, might substitute for their newspapers so many copies of the Reports of Debates. These newspapers we were entitled to during the session—but I take it that we shall take these Reports till the whole are printed.

Now, the State pays White & Potter to furnish these documents to us; and it is no more trouble to them to put them in the mail or hold them in their office, subject to our order, or till we call for them, than it has been heretofore; and I see no propriety therefore, in taxing the State to pay for the distribution of these documents. I do not know that it would be more trouble to go to White & Potter and acquaint them with the manner in which we wished these Reports sent to us, than it would be to go to a Committee. The point is this: It is the duty of White & Potter to furnish us these documents. They are paid for it, and I hope that there will be no additional expense on that account.

Mr. HOOPER, of Fall River. So far as I know there are two classes of these Reports to be distributed—those which are to be bound in octavo size, and those which are unbound. The Convention ought to provide some mode for the distribution of these as well as the journal. Those which have been taken in lieu of newspapers, the members will take care of, themselves. I do not agree with the remark of the gentleman from Walpole that the order would only entitle us to receive these Reports during the continuance of the session, for the reason that a Prospectus was sent out offering the whole Reports for a certain price—the price about which a daily newspaper would cost—and a resolution was offered allowing each member to take a copy of these Reports in preference to a copy of a newspaper. There is, therefore, no additional expense to the State

in the number of copies of these Reports that have been taken. I think that each member should arrange with White & Potter in the manner they have contracted for; and it seems to me to be proper that those copies of the Reports which are to be bound should be distributed among the members according to an order of the Convention. I therefore think, that the order of the gentleman from North Brookfield is a proper one, and should be adopted.

Mr. UNDERWOOD, of Milford, thought that some method should be provided by which every town should have its full proportion of these Debates, in order that the inhabitants of the State might see what the Convention had been doing.

Mr. MARVIN, of Boston, said he understood that the contract with White & Potter was for three thousand copies of these Debates, of which, fifteen hundred copies thus far had been delivered to the Convention, and fifteen hundred would remain to be distributed. The contract did not involve the distribution of the remaining fifteen hundred copies.

Mr. WALKER, of North Brookfield, was clearly of opinion that somebody should have charge of this business. In the first place, there was the ordinary Journal of Debates which was to be sent to each member; then there was the octavo edition of the Reports to be distributed. Then there were a hundred thousand copies of the Constitution to be sent out, and it would certainly be necessary to employ somebody to do all this. He considered that the resolution was indispensably necessary.

Mr. EARLE, of Worcester, was of opinion that before the Convention provided for the distribution of these documents, some measure should be taken by which a degree of justice should be done to members in relation to the copies of the Reports of Debates. He understood, that according to a certain order passed by the Convention, every member was entitled to subscribe for certain copies of these Reports—instead of so many newspapers to which he would otherwise be entitled. That privilege had been taken advantage of to such an extent—some members not taking any newspapers, and consequently taking twenty-one copies of the Reports—that there were not now copies sufficient to supply the members. After the first edition was exhausted, there were about one hundred members who were left without any copies whatever. So that, as the matter now stood, certain members who had taken advantage of this order, were entitled to twenty-one entire copies of this work, while one hundred other members who were entitled to the same number of copies, would not be allowed a single copy, because the edition was exhausted.

He had, however, prepared an order which would, to some extent, obviate that difficulty, and would entitle such members as had not been supplied with the quarto edition, to receive three copies of the octavo edition. Until that matter was placed right, he did not think that the Convention ought to take any order in regard to the farther distribution of these Reports. At any rate, he did not think that the State ought to be put to the expense of distributing these Reports, when a part of them belonged to other members. He understood that the messenger had taken the names of those gentlemen who had ordered each twenty-one copies, so that he might distribute

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DISTRIBUTION OF DOCUMENTS. — SCHOULER — BIRD — EARLE — BATES — UPTON — WHITNEY.

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them according to their several orders. But it seemed to him, (Mr. Earle,) that if the Convention had not already given the messenger authority to do this work, the Convention should take the matter in hand, so that justice might be done, and that each member might receive at least, two or three copies of the octavo edition.

Mr. SCHOULER, of Boston, said he did not know how this difficulty was to be overcome. He had subscribed for ten copies, and intended to have them, having promised them all to friends, except one copy for himself.

Mr. BIRD, of Walpole, said he had subscribed for five copies, and could not get them.

Mr. MORTON, of Taunton, had subscribed for three copies, and could not get one.

Mr. SCHOULER. Perhaps that may be my case. I supposed that I was going to get ten copies. I confess I do not see how we can arrange it, very well.

Mr. BIRD, of Walpole. It seems to me that we are getting along pretty fast in voting money in this way, and I want to suggest that the better way to settle all these questions would be to refer them to a Special Committee. I move that the order now pending be referred to a Special Committee. I think it not improbable that such a Committee, could, in twenty minutes, report some plan which would satisfy the whole Convention.

The motion to refer the matter to a Special Committee was agreed to.

Mr. EARLE, of Worcester. I will now offer the order which I had prepared, and move that it be referred to the same Committee. This is the order:—

Ordered, That such members of the Convention as elected to take one or more copies of the official Reports of Debates, &c., instead of newspapers, to which they were entitled under the orders of this body, but who are unable to procure the same in consequence of the deficiency of the number provided, be entitled to receive the same number of copies of the octavo edition, not to exceed three copies in the whole, to any one member; and the Messenger is hereby directed to furnish said copies in addition to those already ordered to be furnished to the Convention.

Mr. EARLE. I would say that the Convention have already ordered fifteen hundred copies of the octavo edition to be printed. The expense of printing that, is no more than that of the quarto edition. It will not, in any contingency, add anything to the expenses of this Convention, because they are already ordered, and are to be paid for at any rate. But there will be more copies than will be required under the order for that edition, and those copies which are not taken by members under that order, will be left to be distributed years hereafter by the members of the Council, to themselves, their friends and others. By this resolve, we shall do some measure of justice, though not a full measure of justice, to those who were not the first to enter their names for copies, and at the same time we do no injustice to the State or to any one else. I move that the order be referred to the Special Committee already ordered.

Mr. LELAND, of Holliston. I wish to inquire of the gentleman, if the intention of his resolve is that those who have not received three copies heretofore, shall hereafter have them?

Mr. EARLE. It is simply to supply those members with copies who cannot obtain them

under the order for the octavo edition. The whole of that edition, in consequence of some members taking so large a number—from ten to twenty-one copies—has been exhausted, and there are one hundred members of this Convention left without any. The question is, whether we will supply the twenty-one copies to the three hundred members, and leave the others without any?

Mr. LELAND. The difficulty is, that this order for copies of the Reports was passed after the order was passed respecting papers. I signed for all newspapers. Am I to have my papers continued, and have the Reports too? I think the members should all be allowed three copies of the Reports, alike. I should like the three copies, if possible.

Mr. EARLE. I understand the gentleman who has just taken his seat to say, then, that those members who subscribed for the twenty-one papers, and have got them, shall be entitled also to just as many copies as those who did not subscribe for any papers at all. My order only goes to the extent of supplying three copies of the Debates to those entitled to twenty-one papers, but who have not got them.

Mr. BATES, of Plymouth. The simple fact that the Convention have provided for the disposition of the whole fifteen hundred copies of the octavo edition, sets the matter at rest; and no order like that proposed by the gentleman from Worcester can be of any effect, unless you rescind the action of the Convention. In the first place, fifteen hundred copies were ordered to be printed and bound. Each member was to be supplied with one, and each town with one copy, and the remaining number of that fifteen hundred were to be distributed by the Secretary of State, in the same manner as the publications of the State are gratuitously distributed. Then, the Convention have voted that another fifteen hundred shall be printed and put up for sale, the proceeds of which shall be applied to defray the expenses, in part, of the reporting and printing. That disposes of that three thousand. Now, let me say, that the octavo edition is to cost some five or six dollars, and the order contemplates that each member may have three copies of those Debates, in lieu of so many weekly newspapers. I hope the proposition will be sent to the Special Committee, and it can be there discussed.

Mr. UPTON, of Boston. I have no objection to sending the matter to the Special Committee, but it seems to me that a statement ought to be made to the Convention of the facts connected with these Reports. The Convention have passed a vote to retain fifteen hundred copies for distribution. But how is it to be made? In the first place, the members of this Convention will take four hundred and twenty copies; the town clerks will take three hundred and thirty, making in all seven hundred and fifty, and there are less than one hundred copies more, to be distributed under ordinary distribution. So there will be left some six or seven hundred copies, for which no provision is made.

Now, Sir, this Convention passed an order, giving to members of the Convention liberty to hand their orders for papers, and also giving them the liberty to take one copy of the Debates, instead of a paper. Well, Sir, I should like to have some copies of the Debates. At the proper time, I made out the order, and handed it to the Secretary, and I was informed by him that my order

could not be filled, that the Committee on Printing, or somebody else, had interfered. I did not see fit to bring the matter before the Convention, but I saw no reason or right why I should not have a copy or two of the Proceedings of this Convention. Here are members of the Convention who receive twenty-one copies, while I, pursuing the same course, under the same order, have not one copy. These are the facts. I say the members of the Convention who have not received their copies, ought to be entitled to one or more. I shall be perfectly satisfied to have the resolution provide for only one copy. There are a sufficient number of copies of the octavo edition to comply with such a resolution, and I think it would be better to distribute them now, to those members who have not secured a copy, than to leave them in the Secretary's office.

Mr. EARLE. I will state one fact to the Convention, which I should like to have well understood before this resolution is voted upon. There are members who are taking from ten to twenty-one copies of these Reports. If they choose to say that they will give them up, or a portion of them, then there would be copies enough to supply each member with his proportion, while the other members would not tax the State a cent for their papers. Now, if any arrangement can be made by which the proper officer can be authorized to distribute to each member not more than three copies of this Report, I shall be satisfied to leave it so; and if such an order should pass, I am willing to run my chance.

Mr. BATES. I desire, as chairman of the Committee on Printing, to say a single word in regard to the remarks of the gentleman from Boston, (Mr. Upton). I submit it to this Convention, whose fault it was, that these members were not supplied. The Committee reported, that in their opinion, fifteen hundred copies would be sufficient. Members had the whole matter before them, and if they wished to order more numbers, that was the time to have done it. Some have already ordered them, and others have left the matter open, intending to order them at the close of the Convention. The result is, that the numbers have been taken up. The Committee, finding that there was not a sufficient supply, and ascertaining, as well as they might, early in the session, what number would be wanted, ordered a reprint of the first edition, making it up to two thousand copies. That, apparently, would meet the demand. The matter was submitted to the Convention, and now it is said that certain members cannot get copies. Well, the Committee's attention has never been called to the subject, and nobody knows it until the end of the session. And now it is proposed to go back and reprint the whole matter, at an expense of four or five thousand dollars, or what is worse, take this octavo edition, and turn it over to the members who have neglected to supply themselves with newspapers.

Mr. WHITNEY, of Boylston. I think at the early part of the session there was a great deal of ignorance among the members as to the value of these Reports, and members did not, for a considerable time, find out the value of them. Many did not subscribe at all for them, who would have done so had they known the worth of them. I subscribed for four copies, and have obtained them. But I am willing to yield up one of the four, in order to make up the deficiency; and I

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hope the Committee will be commissioned to receive voluntary contributions of copies from those who have subscribed for them, and see how many they can raise in that way. I subscribe one out of my four.

The PRESIDENT. The Chair is requested to state a fact in reply to the gentleman from Boston. From information received by the officers of the Convention, he is informed that the edition is exhausted, and that they cannot be supplied unless by ordering a reprint.

Mr. UPTON, of Boston. I did not intend to make any reflection upon the Secretary of this body. Very far from that. I was satisfied with the explanation he gave me; but I do not see what the statement of the chairman of the Committee, as to what they have done, has to do with the rights of us individually. But as this matter is to go to the Committee, I should like to have those gentlemen who have subscribed for from ten to twenty copies, stand up and vote, that those who have the same rights as themselves, and have no copies, should not be entitled to them.

Mr. HOOPER, of Fall River. It strikes me that gentlemen have nobody to complain of but themselves. Turn to the proceedings of the second day of the Convention, when the subject in relation to newspapers was first brought up. I offered the following resolve, for the purpose of notifying members that they could obtain these Reports if they chose:—

Ordered, That members be authorized to select copies of the Reports of the transactions of this Convention, in lieu of an equal number of papers authorized by the order of yesterday, at the option of the members.

The next day, or a few days after, another order was introduced, making a copy of the Reports equivalent to a weekly newspaper. Here was an opportunity, and a notice to each member to choose which they pleased, and had they put down their names for the copies of the Debates, a sufficient number would have been ordered, and they would have received them. If they have neglected it, it is their own fault, and they ought not to complain. I think it is unjust to make up the deficiency by the distribution of the octavo bound volume, in lieu of the quarter volume unbound. I understand that to be the proposition. I should like to have justice done in this matter. Every member is sure of having one copy, by the standing order. I should like to know how many members have given orders, during the early part of the session, which have not been supplied. I hope the Committee will look at that subject and report how many orders have been given which have not been supplied. But I do not think it is right, that men who have neglected the matter until this time, should now come in and complain, when the whole trouble is attributable to their own negligence.

Mr. CHAPIN, of Webster. I think it will put an end to this whole discussion, if we will add, as an amendment to the resolution of the gentleman from Worcester, (Mr. Earle,) the words: "And that every member receiving copies of these Debates shall be required to read them." [Laughter.]

The question was then taken, and the resolution was referred to the Committee already ordered to be appointed.

The PRESIDENT appointed the Committee, consisting of the following gentlemen:—

Messrs. Walker, of Brookfield,
Williams, " Taunton,
Schouler, " Boston,
White, " Quincy,
Phinney, for Chatham,
Parsons, of Lawrence,
Bird, " Walpole.

Lanc Martial.

Mr. STETSON, of Braintree, moved to take from the table the resolve of the Committee on the Bill of Rights, on the subject of the Law Martial.

The motion was not agreed to.

Reconsideration.

Mr. STETSON then moved to take from the table the motion of Mr. White, of Quincy, to reconsider the vote by which the resolve upon the subject of the House of Representatives was passed.

The PRESIDENT said the papers were in the hands of the Committee on Revision.

After an interval of half an hour, there being no business before the Convention,

Mr. DAVIS, of Plymouth, asked if it would be in order for the minority of a Committee to make a Report.

The PRESIDENT replied in the negative, but said the minority of a Committee might make a statement of facts.

Mr. DAVIS. Then I desire, upon the part of the minority of the Committee of which I am a member, to make a statement of facts.

The PRESIDENT. There is no question before the Convention. A Report of a Committee must be in writing; but the minority cannot report, unless their Report accompanies, or is preceded, by that of the majority. The gentleman can move to instruct the Committee to report, if he chooses.

Mr. DAVIS. I ask the leave of the Convention, to make a Report upon the part of the minority of a Committee. A subject has been presented to them, upon which the majority of the Committee have not seen fit to report at all, and the Convention have, therefore, had no opportunity to act upon it.

The PRESIDENT. The gentleman must see that the minority of a Committee cannot report, unless that Report accompanies that of the majority. The gentleman, as a member of that Committee, or as a member of the Convention, may move to instruct the Committee to report, or he may submit a proposition; but he cannot present a Report as representing the minority of the Committee.

Mr. DAVIS. I am aware that it is not strictly in order; but I thought I might ask the leave of the Convention to present that Report. In the early part of the session, a resolve was passed on the motion of the gentleman from Natick, (Mr. Wilson,) to instruct the Committee on the Frame of Government, to inquire into the expediency of providing in the Constitution, that no member of either branch of the legislature, during the term for which he was elected, should be appointed by the governor to any office in the Commonwealth. It is a matter about which I presume there can be no difference of opinion in the Convention. I desire now, upon the part of the minority of the Committee, to make a Report upon that resolution.

The PRESIDENT. The Chair has already ruled that the minority of the Committee cannot make a Report. The gentleman had the right to move to instruct that Committee to report, and he did make that motion upon a former occasion, but the motion was not agreed to by the Convention. He therefore thinks it is now not in order to make any motion in relation to the subject.

Mr. DAVIS. I rise to a question of order. The order introduced by the gentleman from Natick covers more ground than the Report of the minority of the Committee, which I propose to present. I therefore submit that it is not the same matter which the Convention refused to instruct the Committee to report upon.

The PRESIDENT. If the order covered more ground than the Report, it covered the same ground, and the Chair therefore overrules the point of order.

[The President here vacated the chair, temporarily, and it was occupied by Mr. Hillard, of Boston.]

Resolution of Thanks to the President.

Mr. BRIGGS, of Pittsfield. I rise, Sir, to perform an act of courtesy usual upon such occasions, to the presiding officer of this Convention. I am informed that the parliamentary usages of the body which for more than half a century has assembled in this venerable hall, makes it proper for me to do it, and I do it with pleasure. I do it at this time, Sir, because it will be necessary for me to leave town this afternoon. The other part of the ceremony will be done upon the proper occasion.

Mr. President: before sending this resolution to the Chair, allow me to say, that the work which the people sent us here to do, is almost completed. We are soon to return to that honored constituency whose servants we are, to render an account of our stewardship. As an organized body, constituted for a specific and important purpose, we shall soon be dissolved into our original element.

"Like bubbles on the sea of matter borne,
We rise, we break, and to that sea return."

But, Sir, that great sea of humanity, what we call the people, will continue to heave and roll its deep waves forever. The muse of history, through the medium of these truthful reporters, has written down our words. These faithful secretaries have recorded our acts, and the recording angel has carried to the court of Heaven, and placed upon its records, the motives by which we have been actuated. These are all sealed up to us, for the judgment of the great day. Whether right or wrong, they now belong to our past history, and we must stand by them in future judgment. To those who have been associated together as we have been, in common labors and responsibilities, the moment of separation is one of intense interest. After weeks and months of daily official and personal intercourse, we look into each others faces, many of us, for the last time. For the last time we have felt the grasp of friendly hands, and for the last time heard the tones of pleasant and cheering voices.

Now it is that the excitements and agitations of political differences, clashing opinions, and stirring debates, are subdued and hushed, and the kindlier and better feelings of our nature gently swell up and take possession of the heart. It should be so.—I am glad it is so. The partizan is lost in the

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man—the antagonist disappears and we look upon a brother.

I am sure these generous feelings at this moment animate the breasts of the four hundred delegates now before me listening to my poor words. I hope no one of us will carry from this place any unfriendly feelings towards any other one. It gives me great pleasure to say that I have never seen a session of a large deliberative assembly pass away with such general and uniform courtesy, decorum, and propriety of conduct, as has been observed in this body. Without extending these remarks, permit me to add that I look upon these intelligent and manly faces, and I fear upon many for the last time, with no emotions but those of regret, respect, and good will. I shall carry away with me no ruffled or irritated feelings towards any member of this honored assembly. The interest of this moment of separation, to my own mind, is deepened, by the fact that I neither wish or expect, ever again to be a member of any deliberative body, whilst I live.

The general health which has prevailed amongst us, is a subject of profoundest gratitude to God. Of the four hundred and twenty delegates elected to this Convention on the seventh of March last, there has been but one death. It is sad, indeed, to reflect, that "we are not *all* here." We shall soon return to our homes, and greet and be greeted by the voice and hand of affection and love. But there is one lonely mansion made desolate by the death of one of our honored associates, where no such greeting will be had. I know the sympathy of all these hearts will gather round that mournful home, and that earnest prayers will go up to the God of the widow and the orphan, that his choicest blessings may now and ever be poured out upon its stricken inmates.

I offer, Mr. President, the following resolution, which I doubt not will receive the hearty and unanimous concurrence of this Convention:—

Resolved, That the thanks of this Convention be given to N. P. BANKS, JR., for the dignified, fair, and able manner in which he has presided over its deliberations.

The resolution was unanimously adopted.

Mr. UNDERWOOD, of Milford. I desire to know what is now before the Convention?

The PRESIDENT. [Mr. Hillard, of Boston, being in the Chair.] The Chair is unable to answer the gentleman at this moment. The Orders of the Day have all been disposed of.

Mr. UNDERWOOD. I understand it is not expected that the Committee on Revision will be able to make their Report before three o'clock this afternoon. Under these circumstances, I would suggest that we take a recess until that time.

Mr. WILSON, of Natick. I think the Convention had better not take a recess for the present. I understand the Committee on Revision may possibly report in the course of fifteen or twenty minutes. I would suggest that it would be better to wait for a half an hour, and if they do not report by that time, we can then judge better to what time it will be best to adjourn.

Mr. UNDERWOOD. I understand that Committee will not be ready to report until three o'clock, but if there is any business which can be brought before the Convention, I have no wish to adjourn.

Mr. WILSON. If the Committee are not to

report until that time, I would move that the Convention take a recess until three o'clock.

Report from a Committee.

Mr. BOUTWELL, for Berlin, from the Committee on Revision, submitted a Report, asking that the Committee be discharged from the farther consideration of a resolve referred to them, adopted by the Convention on the 30th of May, on the mode in which the governor shall be chosen by the legislature, in case of the non-election of that officer by the people.

The PRESIDENT. The question is on discharging the Committee.

Mr. BOUTWELL. I have only to say that the Committee, in the examination of the resolutions passed by the Convention, found a resolution like that just read, which was passed on the 30th of May. Resolutions were passed, subsequently, that in case of the failure of the people to elect, the House should select three out of the number of persons voted for having the highest number of votes, if so many persons were voted for, whose names should be sent to the Senate, and from these names the Senate should select one. There being an apparent conflict between the two resolutions, the Committee ask to be discharged.

The question was taken on the acceptance of the Report, and it was accepted.

Mr. LORD. I desire to know whether it is not necessary to suspend the rules, to reconsider a vote by which that resolve was adopted? whether having adopted a resolution, it is competent for a mere majority to reject it? I think that it is necessary, in order to prevent that resolution from going into the Constitution, to reconsider.

The PRESIDENT. The Chair is of opinion that it is not necessary, but that the action of the Convention in the acceptance of the Report at this time, is of such a kind, as may be had without a motion to reconsider.

Mr. LORD. The Committee on Revision are discharged from the consideration of that resolution, but has not that resolution been passed by this Convention? Have we not voted that it is expedient to amend the Constitution in that mode, just as much without that vote to discharge the Committee as with it? Suppose the Committee on Revision had come in, and, instead of asking to be discharged from the farther consideration of the resolution, had asked to be discharged from the farther consideration of the entire subject, and they are discharged? Then where are the amendments? They are still adopted. This resolution was adopted. That resolution stands adopted as the resolution of the Convention. Now it seems to me entirely clear, that it is our duty to reconsider the vote by which that resolution was adopted; and, it seems to me, also, that a suspension of the rules is required to dispose of it. Because, otherwise, a bare majority of this Convention can undo all that has been done, notwithstanding the rule shall not be reconsidered. I do not understand that the fact that the Committee asks to be discharged, changes the case at all, because it is just as competent for a majority of this Convention to discharge, upon a motion of any individual, as for the Committee to Report and ask to be discharged.

Mr. PARKER, of Cambridge. It appears to me, that the conclusion of the gentleman from Salem must be regarded as correct: that the action

of the Convention at this time, has merely taken the subject from the hands of the Committee, so that it is again in Convention. But the question which arises in my mind, is, whether the subsequent action of the Convention, passing a resolution different and entirely inconsistent with this, does not operate as an abrogation of the previous action, in such a manner that it is not necessary to take farther action upon the subject. It would seem as though that would operate as a repeal, as annulling the resolution which the Committee are now discharged from, so that it cannot stand; and, therefore, we need not take any farther action.

Mr. LORD. When this resolution was under consideration, the question of order was raised; that it was not in order, because the Convention had acted upon the subject-matter of it. The President of the Convention then decided, that it was not a point of order; that it was not in conflict with that rule; that it was a question of consistency to be determined by the Convention. We have, therefore, determined that it was not inconsistent; because, otherwise, they would not have adopted it. They must be presumed to have decided that it was not inconsistent. If this can stand in that mode, then a bare majority, on a motion to discharge the Revising Committee from the consideration of any amendment, can defeat an amendment.

The PRESIDENT. The Chair would suggest to the gentleman from Salem, that there is no motion before the Convention.

Mr. LORD. I move that the rules be suspended, so that the resolution may be taken up for reconsideration, with a view to its rejection.

Mr. BOUTWELL. I think it that is too late to reconsider a vote taken on the thirtieth of May last.

Mr. LORD. What I desire, is, to move a suspension of that part of the rule which limits a motion to reconsider to the next day after the resolution was passed.

Mr. BOUTWELL. I suppose that, practically, whatever course we take, we shall come to the same result: that a majority of this Convention will decide whether the resolution shall stand or shall not stand. I see no other result, whether the rule be suspended or not. If the rule be suspended, and a motion is made to reconsider, that question, of course, can be decided by a majority. I think there is no principle involved in this. Here is an apparent conflict between the action of the Convention at one time, and its action at another. I think that, in fairness, we should let the action on this first resolution, subside.

Mr. LORD. I think that in all fairness we should stand by this which we understood to be the well defined view of the Convention. But at the same time, I think we should do it regularly. I do not make this motion to have it defeat the resolution, but because I wish to have the matter conducted with order, regularity, and propriety. I think that is the only course, and I made the motion myself, because I wanted to show, that, so far as I was concerned, having raised the question myself, I had a disposition to have the matter settled just exactly as it ought to be settled with propriety. I think that, in order to have it stand right, the Convention must reject the resolution. And to reject it, we must reconsider, and to reconsider, it is necessary to suspend

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that part of the rule which limits a motion to reconsider to the next day. If gentlemen sustain the motion to suspend, then it is in the power of the Convention to make a reconsideration, and then it is in the power of a majority to do as they please with the resolution.

Mr. MORTON, of Taunton. I see no occasion for passing this vote of reconsideration, looking back for so great a length of time as this; because I think on every principle of law and constitution, the thing stands perfectly well. Early in the session, I do not remember the date, a resolve passed this body respecting amendments to the Constitution, so that if there was a failure to elect a governor, he should be chosen by a joint ballot of the two Houses. Afterwards there was a resolution passed, that in filling a vacancy, when there was no choice by the people, the House should select three from the number of persons having the highest number of votes, and out of them the Senate should select one. This was the deliberate action of the Convention. It seems to me the whole matter is perfectly settled, because it is entirely apparent that the second resolution is utterly inconsistent with the first; they cannot both stand. One or the other is annihilated. Which is it? I believe that the rule is well settled that the last action of the Convention shall prevail, and that any subsequent action, whether of law or constitution, repeals all laws inconsistent with it. The adoption of the second resolution being entirely inconsistent with the first, was just as much a repeal of the first, or a rescinding of it, as if done in so many words. Therefore, I think the first, having been repealed, there is nothing to reconsider, that all stands perfectly well; and therefore we have no need to pass a rule allowing to move a reconsideration.

Mr. HILLARD, of Boston. It will be observed that the adoption of the resolutions referred to is simply an expression of opinion on the part of the Convention. On one occasion, the Convention voted that it was expedient to amend the Constitution in one manner, and on a subsequent occasion they voted that it was inexpedient to amend the Constitution in that manner. The Committee to whom the resolutions were referred, seeing their inconsistency with each other, ask to be discharged from the consideration of that resolution which it is understood it is wished should not prevail. Now, what is the action of the Convention to be, in case any retrograde steps are to be taken? We must first reconsider the vote by which it was referred to the Committee. Both resolutions are in their hands, unless we accept the Report. Therefore, I do not see how it is now in the power of the Convention, because, as we have accepted the Report, the Convention has no power over it until we reconsider the vote by which it was put into the hands of the Committee.

Mr. LORD. The Convention has discharged that Committee, as I understand.

The PRESIDENT. The papers are not in the possession of the Convention at present. The motion to reconsider is not necessary.

Mr. LORD. I would ask if it would be competent for a bare majority to discharge a Committee from any other branch of this subject, and thereby defeat the amendment which has been already passed?

The PRESIDENT. The Chair is not to give

opinions in advance, but will rule upon cases as they occur.

Mr. WILSON, of Natick, moved that the Convention adjourn, to meet at three o'clock this afternoon.

Mr. BRIGGS. I hope my friend will withdraw that motion for a few moments.

Mr. WILSON withdrew it.

Mr. BRIGGS. I wish to state to members of the Convention, that our friend the Chaplain has been desirous, during the session, to have half an hour at some time, to speak to us upon the subject of education, in its various forms. There is now more than half an hour before the earliest time when we have been in the habit of adjourning; and I would respectfully request those gentlemen who have not duties elsewhere that call them away, to remain after the adjournment, and listen to what he has to say. It will be but a short address.

Mr. BUTLER. There is now no other business before the Convention; and knowing that it is nearly impossible to get the Report of the Revising Committee here at an hour sufficiently early to enable us to deal with it this afternoon, and that therefore it will be necessary for us to have a session on another day, I move that when the Convention adjourns to-day, it adjourn to meet on Monday morning next, at ten o'clock.

The motion was agreed to.

Pay Roll.

Mr. LIVERMORE, of Cambridge. I wish to make a statement in relation to the pay roll. The pay roll is now made up, with the exception of one name, and the governor and council will be in session at one o'clock to-day. The governor, and some members of the council, have engagements on Monday, and will not be able to be here on that day to draw warrants, if the Convention should adjourn until Monday without having a session this afternoon. The pay roll is made up, and ready to be passed upon, and the warrants can be drawn this afternoon if we have a session; and it seems to me that it will be hardly worth while to have the governor and council come together again, which they could not do before Tuesday or Wednesday.

Mr. LORD, of Salem, moved that the Committee on the Pay Roll be instructed to make up and pay the account of Hon. HENRY WILSON, at the rate of three dollars per pay in addition to the ordinary compensation, during the time that he acted as President *pro tempore*.

Mr. WILSON. I thank my friend from Salem for his kindness in making that proposition, but I must beg leave to say to him and to the members of the Convention, that under the circumstances, I do not think it would be right or proper for the Convention either to pass this, or for me to take it. I should be sorry to have such a vote passed, and I hope that my friend will withdraw the motion. It was only for a day or two that I was in the chair performing those duties; if it had been a month or six weeks, it would have altered the case.

The question being put, the motion was agreed to.

Mr. BUTLER then moved that the Convention adjourn.

Mr. WILSON. As the governor will not be here on Monday, I think we had better meet this afternoon, and see about the pay roll.

The question being put, on the motion to adjourn, it was not agreed to.

Reconsideration.

Mr. LIVERMORE. I move to reconsider the vote by which the Convention agreed to adjourn until ten o'clock on Monday.

The motion was agreed to.

The question then recurred on the motion that when the Convention adjourns, it be to meet on Monday at ten o'clock; and it was not agreed to.

On motion, the Convention then adjourned.

AFTERNOON SESSION.

The Convention reassembled, and was called to order by the President at three o'clock, P. M.

Mr. WILSON, of Natick. I am informed, Mr. President, that it will be impossible for the Committee on Revision to report this afternoon, and it will be useless for us to remain here. They will be able to report on Monday, and I therefore hope that we shall adjourn now, and meet at ten o'clock on Monday.

Mr. LIVERMORE, of Cambridge. I beg leave to state to the Convention, that in the course of a few minutes the pay roll will be made up, and the Committee on the Pay Roll will be ready to make their Report. The pay roll has been made up, in pursuance of the order of the Convention, including Monday next, and the governor has summoned the council, so that they will be ready this afternoon to draw the warrants for the pay of members. The governor and some members of the council have engagements on Monday, so that they will not be able to draw warrants at that time. They have come here from a distance, some of them, for the purpose of advising the governor in relation to this matter; and it appears to me that the warrants can be drawn to-day as well as to have the matter deferred until next week. The Convention have voted that no member shall receive any pay after Monday next, and it seems to me to be wholly useless to postpone action upon the pay roll to a future time, because it is not certain that the governor and council will be in session again for a number of days; and until the warrants are drawn, the members of the Convention cannot receive their pay. I do not suppose that if the warrants should be drawn this afternoon, the members would be able to get their pay before Monday, for the office of the Treasurer usually closes at an early hour in the afternoon. I presume members could not receive their pay and leave this afternoon, nor would they wish to leave the Convention without a quorum, or without the proper number of members present to finish up the business of the session; but it seems to me that if members understand this, they will not vote to adjourn until after action is had upon the pay roll. It will be but a very short time before the Committee will be ready to make their Report to the Convention.

Mr. WILSON. I move that when the Convention adjourns, it adjourn to meet on Monday next at ten o'clock.

The question being taken, the motion was agreed to.

After a few moments, no business being presented, Mr. WILSON moved that the Convention adjourn.

The question being taken, on a division, there were—ayes, 91; noes, 67—so the motion was

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agreed to, and the PRESIDENT declared the Convention adjourned until Monday morning at ten o'clock.

Mr. LIVERMORE. Is it not in order to call for the yeas and nays on that motion?

The PRESIDENT. The Convention has adjourned.

MONDAY, August 1, 1853.

The Convention assembled at ten o'clock, A. M. Prayer by the Chaplain.

The journal of Saturday was read.

Pay Roll.

Mr. LIVERMORE, of Cambridge, from the Committee on the Pay Roll, submitted the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, August 1, 1853.

The Committee on the Pay Roll, in compliance with an order of the Convention, directing them to make up the pay roll, have attended to that duty, in accordance with a resolve passed on the 28th day of June last, and report the sum herewith, amounting to \$114,092, and also report the accompanying order.

For the Committee,
ISAAC LIVERMORE, *Chairman*.

Ordered, That the Pay Roll of the Convention, as reported by the Committee, in accordance with the resolve of the 28th of June last, and the order of July 29th, be transmitted by the Secretary, to the Auditor of Accounts, and that he be requested to obtain from the Governor a warrant upon the treasury of the Commonwealth, to authorize the payment thereof, and notify the Convention when the warrant has been drawn.

Mr. GRISWOLD, for Erving, moved that the Report be laid on the table.

The motion was agreed to.

Personal Explanation.

Mr. OLIVER, of Lawrence. I ask permission of the Convention to make a personal explanation. In the early part of the session, I was under the impression that each proposition submitted to the consideration of the House, would have three separate readings prior to the final action thereon, and that there would be, of course, as many opportunities for discussion and amendment. In this, I was in error, and laboring under this misapprehension, I gave a negative vote in a case in which it was not my intention so to do, on the final passage. I allude to the resolve on the secret ballot. I was very desirous of pressing the same amendments which I offered when it was under consideration, had another opportunity been offered. Voting as I did, I stand upon the record in direct opposition to my real sentiments and intentions, upon the general question. I therefore make this explanation of my affirmative intention, that I may, thereby, appear in the proper light.

Protest in relation to Rights of Colored Citizens.

Mr. KEYES, for Abington. Mr. President: A paper has been placed in my hands, purporting to be a protest against the action of this Convention, with the request that I would present it

here, and move that it be placed upon the records of this body, if it is in order to make that motion. I will state, in a few words, what it is. It is a protest from a number of colored persons, in the name and behalf of the colored population of Massachusetts, who, claiming to be citizens of Massachusetts, under our laws, have been permanently disqualified from holding any position in the militia; which is, in fact, declaring that they are not citizens. They have stated this in very respectful language; and I will read the reason why they want this petition placed upon the records of the Convention. They say: "We respectfully ask that this protest may be placed upon the records of the Convention, and published with the proceedings of the Convention, that the stigma may not rest upon our memory, of having tamely acquiesced in a proscription equally at war with the American Constitution, with the Massachusetts Bill of Rights, and the claims of human nature." I therefore ask, in compliance with their request, that the protest may be read, and then that it be placed upon the records.

The protest was read.

The question being put on ordering the protest to be placed upon the records of the Convention, on a division, there were—ayes, 97; noes, 66—so the motion was agreed to.

Distribution of Documents.

Mr. WALKER, of North Brookfield, from the Special Committee, to whom were referred two orders of the Convention of July 30th, in relation to the distribution of the documents of the Convention, reported the following resolves:—

1. *Resolved*, that White & Potter be instructed to deliver, without additional charge, the remaining numbers of the quarto edition of the Journal of Debates, at such places in Boston, as the members shall respectively order.

2. *Resolved*, That each member of this Convention be furnished with one copy of the Journal of the Debates, of the octavo edition, additionally to the one heretofore ordered.

3. *Resolved*, That the Messenger be directed to deliver, without additional cost, the copies of the Debates aforesaid, together with the Journal of the Convention, heretofore ordered, with the completed file of the documents belonging to each member, at such place in Boston, as the members shall respectively order. And also to send, in the usual manner, the copies of the Journal and Debates to the towns, cities, and public bodies, as ordered by the Convention, and also to send to each town or city, its quota, in proportion to population, of copies of the New Constitution, heretofore ordered to be published.

Mr. EARLE, of Worcester. I move to amend the second resolve, by adding thereto the following words:—

Provided, That no member shall be entitled to more than three copies, including those received instead of newspapers.

Mr. EARLE. This Report, I presume, was made upon an order which was submitted by me, and referred to the Committee, on Saturday, the object of which, was simply an act of justice to that portion of the members of the Convention who had not been able to obtain the copies to which they were entitled under a former order; while some members have received, under a former order, as I stated on that occasion, various numbers, from ten to twenty-one copies. Now, this resolve, in-

stead of providing for those who have not been able to obtain the copies to which they were entitled, provides that those who have received twenty-one copies, shall have three copies more, while those who are entitled to twenty-one copies, and cannot get them, shall have but three copies in all; and this is the justice which the Committee propose in that resolve. If that is to stand just as it is reported, I shall vote against the whole. I was entitled to six copies, under the former order, and other members were entitled to different numbers, which they have not been able to get. It makes no difference to me, personally, whether I get these or not. I am entitled to one copy, as every other member is, under another order, and that will satisfy all my wants; still, I had concluded to take six copies, and distribute them among some of my friends; others have got theirs, and have distributed them. My object was simply to remedy the defect, and give some measure of justice to those who had not taken their copies. I cannot imagine any reason why this resolve should be brought in as it is, giving those who have already received ten, fifteen, or twenty copies, three copies more. The other day, when I offered that order, I was met at once by the exclamation, from various quarters, that it never would do to give three copies to members who were entitled to eight or ten, because it would exhaust the treasury of the State, and besides that, it would exhaust all the copies, so that future governors and councillors would have no copies to distribute among their friends. Then, they could do no such thing; but now, it is proposed not only to give two or three copies to those who are justly entitled to ten or twenty, but in addition to that, to give those who have had ten or twenty copies already, just as many as we have. We do not ask for justice—we do not ask for what we are entitled to, under a former vote, to put us on an equality with those who have already got theirs; but if we cannot have this for which we do ask, without voting an additional number to those who have already had fifteen or twenty, I, for one, will give up what I am entitled to, and be content with the single copy that I shall get under the other order.

Mr. BOUTWELL. I move to lay this Report upon the table, in order that we may have an opportunity to consider it a little, and in the meantime proceed to the more important and pressing business before us.

The motion was agreed to.

Revised Constitution.

Mr. BOUTWELL, from the Committee appointed to prepare the amendments to be submitted to the people, reported a series of resolves, accompanied by a form of a revised Constitution.

The resolves were read, as follows:—

In the Convention of the Delegates of the people assembled in Boston, on the first Wednesday of May, in the year 1853, for the purpose of revising and amending the Constitution of this Commonwealth.

Resolved, That the revised Constitution, proposed by said Convention, be submitted to the people of the Commonwealth for their ratification and adoption, in the manner following, viz:—

I. The Preamble; A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts; The Frame of Government, with its Preamble and Chapters numbered One,

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Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, and Fourteen, entitled, respectively—General Court,—Senate,—House of Representatives,—Governor,—Lieutenant-Governor,—Council,—Secretary,—Treasurer, Auditor, and Attorney-General,—Judiciary Power,—Qualifications of Voters and Elections,—Oaths and Subscriptions,—Militia,—The University at Cambridge, the School Fund and the Encouragement of Literature,—Miscellaneous Provisions,—Revisions and Amendments of the Constitution—as a distinct proposition, numbered “One.”

If this proposition, so submitted, shall be ratified and adopted by a majority of the legal voters of the Commonwealth, present and voting thereon, at meetings duly called, then the same shall be the Constitution of the Commonwealth of Massachusetts.

II. The provision respecting the granting of the writ of Habeas Corpus, as a proposition, numbered “Two.”

If this proposition shall be ratified and adopted, it shall be an addition to the provision respecting the Habeas Corpus.

III. The provision respecting the rights of juries in criminal trials, as a proposition, numbered “Three.”

If this proposition be ratified and adopted, it shall be an addition to the article in the Declaration of Rights, respecting the rights of persons charged with crimes.

IV. The provision respecting claims against the Commonwealth, as a proposition, numbered “Four.”

If this proposition be ratified and adopted, it shall be an addition to Article XI., of the Declaration of Rights.

V. The provision respecting imprisonment for debt, as a proposition, numbered “Five.”

If this proposition be adopted, it shall be an addition to the Article in the Declaration of Rights respecting excessive bail and fines.

VI. The provision respecting sectarian schools, as a proposition, numbered “Six.”

If this proposition be ratified and adopted, it shall be an addition to Article IV. of Chapter XII., entitled, “The University at Cambridge, The School Fund, and the Encouragement of Literature.” If proposition numbered “One” shall not be adopted, it shall be added as an amendment to the Constitution.

VII. The provision respecting Corporations, as a proposition, numbered “Seven.”

VIII. The provision respecting Banks and Banking, as a proposition, numbered “Eight.”

If the propositions numbered “Seven” and “Eight” be ratified and confirmed, they shall be added as separate articles, or if either of them be ratified and confirmed, as an article in Chapter XIII., entitled, “Miscellaneous Provisions.”

If proposition numbered “One” be not ratified and confirmed, they shall be added as amendments to the Constitution.

Resolved, That at the meetings for the election of Governor, Senators, and Representatives to the General Court, to be held on the second Monday of November, in the year one thousand eight hundred and fifty-three, the qualified voters of the several towns and cities shall vote by ballot upon each of the propositions aforesaid, for or against the same, which ballots shall be inclosed within a sealed envelope according to the provisions of an Act of this Commonwealth, passed on the twenty-second day of May, in the year eighteen hundred and fifty-one, and an Act passed the twentieth day of May, in the year eighteen hundred and fifty-two, and no ballots not so inclosed shall be received. And said votes shall be received, sorted, counted, declared, and recorded, in open meeting, in the same manner as is by law provided in reference to votes for governor, and a true copy of the record of said votes, attested by the selectmen and town clerk of each of the several towns, and the mayor and aldermen and city clerk of each of the several cities, shall be sealed up by said selectmen and mayor and aldermen,

and directed to the Secretary of the Commonwealth, with a superscription expressing the purport of the contents thereof, and delivered to the sheriff of the county within fifteen days after said meetings, to be by him transmitted to the Secretary's office, on or before the third Monday of December next; or, the said selectmen and mayor and aldermen shall themselves transmit the same to the Secretary's office, on or before the day last aforesaid.

Resolved, That the Secretary shall deliver said copies so transmitted to him, to a Committee of this Convention consisting of who shall assemble at the State House on the third Monday of December next, and open the same, and examine and count the votes, so returned; and if it shall appear that either of said propositions has been adopted by a majority of votes, then the proposition so adopted shall become and be either the whole or a portion of the Constitution of this Commonwealth, as hereinbefore provided, and the said Committee shall promulgate the results of said votes upon each of said propositions, by causing the same to be published in those newspapers in which the laws are now published; and shall also notify the Governor and Legislature, as soon as may be, of the said results; and the Governor shall forthwith make public proclamation of the fact of the adoption of either or all of said propositions, as the whole or as parts of the Constitution of this Commonwealth.

Resolved, That each of said propositions shall be considered as a whole by itself, to be adopted in the whole, or rejected in the whole. And every voter may vote on each proposition by its appropriate number, without specifying in his ballot any reference to the subject of the proposition, and by writing opposite to the number of each proposition the word Yes or No,—but the vote on all of the propositions shall be written or printed on one ballot, in substance as follows:—

Constitutional Propositions.

Proposition No. I.,	• • •	Yes or No.
Proposition No. II.,	• • •	Yes or No.
Proposition No. III.,	• • •	Yes or No.
And to Proposition No. VIII.,	• • •	Yes or No.

Resolved, That a printed copy of these Resolutions, with the several Constitutional Propositions annexed, shall be attested by the Secretaries of the Convention, and transmitted by them, as soon as may be, to the selectmen of each town, and the mayor and aldermen of each city, in the Commonwealth, whose duty it shall be to insert a proper article in reference to the voting upon said propositions, in the warrant calling the meetings aforesaid, on the second Monday of November next.

Mr. BOUTWELL, for Berlin. It will be of course apparent to the Convention, that two main matters are before us. One is, to perfect the action of the Committee, and to take the judgment of the Convention as to whether the Committee has faithfully and impartially incorporated the views of the Convention into the various propositions; and having done that, in the next place, to determine the mode of submitting the revised matter to the people. I suppose, from the intimations and assurances that have been given upon all sides, so far as I know, that it is the desire of all that the Constitution should be, so far as it can be made, a perfect instrument; we all agree upon that, whether we agree to the propositions contained in the Constitution, or not; therefore, I believe I may say, that it is the desire of the Committee that the Convention should first go to work to perfect what is here presented, and that the mode of submitting it to the people should be considered as a subsequent matter. With that view in my own mind, and trusting that it may

be acceptable to the Convention, I move that the first resolve be so divided that the subject matter of proposition number one be first considered, and then that the Convention proceed to consider the subsequent propositions in their order respectively.

The PRESIDENT. The Chair desires to submit a preliminary question to the Convention. The first resolve covers in its terms several propositions with regard to the form of the Constitution presented by the Committee. It may be desirable that the Constitution should be read to the Convention; but the Chair will take the judgment of the Convention. If no member desires to have it read, the reading will be dispensed with.

Mr. BOUTWELL. It would seem to be proper that the Secretary of the Convention should read the first proposition from beginning to end, and that opportunity should be given for the Convention to pass upon each article of each chapter. I hope one chapter will be read at a time, and each article considered.

The PRESIDENT. A single preliminary question presents itself to the Chair. Although the Convention have provided that a resolve involving the merits of the Constitution, should have two separate readings, the Chair supposes that on this occasion that rule may be dispensed with. As in other cases where no objection is made, the Chair will consider that the rule is suspended by general consent, and will put the question on the final passage of the resolves.

Mr. LORD, of Salem. If we examine this new Constitution, I think we shall find cases where the Revising Committee, as a matter of necessity, doubtless, have altered the Constitution in relation to matters that the Convention has never passed upon. I will give, as an illustration, the removal of justices of the peace upon the address of the two Houses of the legislature. This Convention have passed upon that subject, and they have provided a different mode for the removal than by means of address. By the old Constitution there was not that power over justices of the peace, and yet the Revising Committee have given that power; and I submit that that is an amendment to the Constitution. I think it will turn out in quite a variety of instances, that the Constitution has been amended by the Revising Committee in parts which have not been acted on by the Convention.

The PRESIDENT. When the question is raised upon any point of that kind in its order, the Chair will rule upon it.

Mr. LORD. If they are real alterations of the Constitution, they certainly require two readings under the rule; and the question should not now be upon the final passage.

The PRESIDENT. The Chair will take the direction of the Convention upon this question.

Mr. SCHOULER, of Boston. I desire to state, for the information of members, that those parts of the old Constitution which are unchanged, are printed in our copies “*lead*ed;” those parts which are entirely new are set “*solid*;” while those parts of old sections which have been changed are in *italics*.

Mr. SARGENT, of Cambridge. It would seem to me to be proper that the Secretary should read the resolves that have been passed by the Convention in connection with the provisions reported by the Revising Committee, in order

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that we may ascertain whether they have been correctly incorporated.

The first resolve was then read, and the question stated upon its adoption.

Mr. BOUTWELL requested that the Preamble and Declaration of Rights, in the first chapter, might be read.

The PRESIDENT. The details of each chapter will be read and considered separately, before the Convention proceed to take the question upon them.

Mr. LORD. I think, before that is done, it will be most convenient to know upon what principle the Committee have separated several articles and placed them by themselves to be acted upon separately, while the bulk is to be acted upon together. If there is any principle upon which the Committee have acted, I desire to have the chairman state what that principle is, so that if, by the adoption of that principle, more propositions can be submitted separately than the Committee have reported, I think they should be so submitted. If, however, they have adopted a principle which includes some of these propositions which they have submitted separately, then such propositions should be included.

What I desire to know is, upon what principle it is that these seven particular and specific propositions are taken away from the body of the Constitution, and placed each by itself, and why the Constitution, otherwise, is put to the people in bulk? Of course, Sir, there must have been a reason for this, and that I want to get at.

The PRESIDENT. The gentleman will allow the Chair to suggest that it would first be better to determine whether the Constitution, as reported by the Committee, should be read or not, and after that, the whole question opened by him will be before the Convention.

Mr. LORD. I was about to wait, but it was suggested by the gentleman for Berlin to take up the different parts separately.

The PRESIDENT. The Chair would suggest that the question being submitted, upon the request of the gentleman for Berlin, upon the first proposition, that will be considered first. But the question immediately before us is, whether the Constitution shall be read. The Secretary will read that portion of the revised Constitution reported by the Committee, which is embraced in so much of their Report as is numbered "One."

Mr. BOUTWELL. I desire that it shall be read.

The Secretary accordingly proceeded to read, and read so much of the revised Constitution as is contained under the heads "Preamble," and "A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts," as follows:—

PREAMBLE.

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquillity, their natural rights and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals; it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people,

that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a Constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them, that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of his providence, an opportunity, deliberately and peaceably, without fraud, violence, or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new Constitution of civil government for ourselves and posterity; and devoutly imploring his direction in so interesting a design, do agree upon, ordain, and establish, the following *Declaration of Rights and Frame of Government*, as the CONSTITUTION of the COMMONWEALTH of MASSACHUSETTS.

A DECLARATION

Of the Rights of the Inhabitants of the Commonwealth of Massachusetts.

ARTICLE 1. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

ART. 2. It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

ART. 3. As the public worship of God, and instructions in piety, religion, and morality, promote the happiness and prosperity of a people, and the security of a republican government; therefore, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: And all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society a written notice declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made or entered into by such society: And all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

ART. 4. The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in Congress assembled.

ART. 5. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

ART. 6. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what

arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man being born a magistrate, lawgiver, or judge, is absurd and unnatural.

ART. 7. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

ART. 8. In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods, and in such manner, as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

ART. 9. All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

ART. 10. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this Commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

ART. 11. Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

ART. 12. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed, in this Commonwealth, in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months.

ART. 13. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself: and every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election; and no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. And the legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

ART. 14. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

ART. 15. Every subject has a right to be se-

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cure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

ART. 16. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherwise used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the Legislature shall hereafter find it necessary to alter it.

ART. 17. The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth.

ART. 18. The people have a right to keep and to bear arms for the common defence; and, as in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the Legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

ART. 19. A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives; and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

ART. 20. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

ART. 21. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the Legislature, or by authority derived from it, to be exercised in such particular cases only as the Legislature shall expressly provide for.

ART. 22. The freedom of deliberation, speech and debate, in either House of the Legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

ART. 23. The Legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

ART. 24. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the Legislature.

ART. 25. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

ART. 26. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the Legislature.

ART. 27. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

ART. 28. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the Legislature.

ART. 29. No person can in any case be subjected to law martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the Legislature.

ART. 30. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges, as free, impartial and independent, as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices by *tenures established by the Constitution*, and should have honorable salaries which shall not be diminished during their continuance in office.

ART. 31. In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

Mr. BOUTWELL, for Berlin. The idea which I had in my mind when I introduced the Report, was this: that by general consent, we might go through with the Report of the Committee, chapter by chapter, and perfect it. If there are errors anywhere in the Report submitted by the Committee, they should be corrected as we go along from chapter to chapter, waiting, after the reading of each chapter, for such suggestions as gentlemen shall be pleased to make, the main question, all the while being upon the adoption of the proposition numbered "one." I am not desirous that the main question should be put until a fair chance shall have been given to every gentleman to express his opinion upon each and every individual thing in the revised Constitution.

Now, in regard to that portion which the Secretary has read, I may say that there are two changes only, in the Declaration of Rights. Article twelve of the Bill of Rights, by a vote of the Convention, found in Document No. 28, has been transferred from the sixth chapter of the present Constitution, being the chapter upon oaths and subscriptions, and made to constitute article twelve of the Bill of Rights, in precisely the same form.

In regard to the thirtieth article of the Declaration of Rights, some few changes have been made. Those are expressed in italics, and result from the change in the tenure of the judicial office, that being now during good behavior, but hereafter, by the tenure established by this Constitution, if adopted by the people, it will be ten years. Another change relates to the salaries of the judicial officers, and this provides, in accordance with the vote of the Convention, that they should have honorable salaries, which shall not be diminished during their continuance in office. That change is placed here in direct conformity to the language of the resolve of the Convention, which the Committee took for their guide.

So far as I know, that is all that need to be said at present.

Mr. SCHOULER, of Boston. I move an amendment to the fifteenth article of the Bill of Rights.

The PRESIDENT. The Chair desires to know whether there is a general consent that the Preamble and Bill of Rights, which have been read, shall be considered by themselves?

Mr. HUBBARD, of Boston. I rise, Mr. President, to object to that course. It seems to me that there is a preliminary question which should first be disposed of. If the Convention determine or shall determine to put each proposition to the people separate and distinct from each other, and by itself, then this work of revising these amendments of the Constitution, becomes wholly superfluous. I suppose the question of the gentleman from Salem, (Mr. Lord,) a short time since, tended to the presentation of that preliminary question, that we might know upon what principle this Report has been made. I supposed that after the Preamble and Declaration of Rights should have been read, we should have had some explanation of that principle from some member of the Committee who had in charge this work of revising and putting the amendments and the Constitution in form.

The PRESIDENT. The Chair desires to state that there is no rule of the Convention which justifies the Chair in stating the question as has been proposed by the gentleman representing Berlin, (Mr. Boutwell). The question is upon so much of the Report as is numbered "one," and upon so much of the Constitution as is covered by that part of the Report.

Mr. HUBBARD. I object to the subject being considered in the way which has been suggested by the gentleman who represents Berlin, until after the Convention shall have decided and determined in what form they intend to send the Constitution out to the people.

The PRESIDENT. The gentleman from Boston will see that, after entering upon the debate of this first, if the previous question should be moved, and the main question should be ordered to be put, there will be no opportunity of perfecting the different propositions, covered by the other resolves, in the way of amendments. It is to avoid that difficulty that the Chair suggests the unanimous consent of the Convention to the consideration of the Report in the manner indicated by the gentleman representing Berlin.

Mr. LORD, of Salem. The resolve numbered "one" covers the entire Constitution, unamended, as well as amended.

The PRESIDENT. The Chair understands that the first resolve covers so much of the Constitution reported by the Committee, as extends to and includes the article upon the revision and amendments of the Constitution, and which covers the first thirty-eight pages of the printed Report.

Mr. BOUTWELL, for Berlin. I believe it is a rule of this Convention, that any member may call for a division of the question. I did call for that division, in such a manner that the question can be taken upon that part of the Report which is numbered "one." But the gentleman from Salem is debating a question not now before us.

The PRESIDENT. The first question is upon agreeing to the first proposition in the first resolve.

Mr. LORD. I understand the Chair to have ruled that the first question is upon the first resolve, and that if the previous question should now be moved, the question would have

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to be taken upon the first resolve as a whole, which, as I said before, embraces nearly the whole Constitution which we intend to put forth to the people; all except some seven short, distinct propositions, which this Committee recommend to be submitted as separate questions, but which occupy only two pages out of the forty of this printed Report.

The PRESIDENT. The Chair stated, or intended to state, that the question is upon the first proposition of the first resolve.

Mr. LORD. That being so, Sir, I like the form of proceeding suggested by the gentleman representing Berlin, (Mr. Boutwell,) very well, but at the same time it seems to me that as a preliminary question, we ought to find out in the first place the principle upon which the Report of the Committee is based, to see whether we are willing to adopt that proposition, and whether the Report is in accordance with that principle which they have adopted in making it. We ought to be informed why they have separated from the body of the Constitution these seven specific subjects, which form the end of their Report, to be submitted separately to the people, in preference to other subjects? Why they chose to report that seven particular subjects, rather than any seven other, should be separately considered by the people? Of course that has been done upon some principle, as we are not to suppose that the Committee acted without some general principle to guide them. There must have been a reason for selecting these seven, rather than seven other, and I desire to know what that reason is. If the gentleman will tell us what that principle of action is, it may be one which will commend itself to the judgment of the entire Convention. It may be also that in laying down the principle, the Convention will discover that certain of the propositions which are placed in the body of the Constitution by the Committee, and which are not in the present Constitution, ought to be placed in separate articles, and submitted separately to the people.

The PRESIDENT. The Chair desires to know whether there is any objection to the consideration of the Bill of Rights by way of amendments?

There was no objection.

Mr. SCHOULER, of Boston. I ask whether it is in order to move to insert the words which are contained under head "four" of the Report of the Committee, and which are placed there to be submitted to the people separately, in the article of the Bill of Rights to which it refers, viz.: that concerning excessive bail and fines? Whether it is not competent for, and in the power of the Convention to make that article of the Bill of Rights complete, and send it out to the people complete? If such an amendment is in order, I move it.

The PRESIDENT. The Chair thinks the motion is not in order, as that question is not before the Convention. The question is upon the Declaration of Rights.

Mr. SCHOULER. My wish is, to amend the Declaration of Rights, by making the subject to which I have referred a part of the twenty-seventh article of the Bill of Rights. The words which I propose to transfer to the Bill of Rights are these, which are found under head "four" of the Report of the Committee:—

No person shall be imprisoned for any debt hereafter contracted, unless in cases of fraud.

The PRESIDENT. The Chair misapprehended the motion of the gentleman. The motion is in order.

Mr. SCHOULER. Then I make that motion.

Mr. BOUTWELL, for Berlin. I have but a very few words to say in reference to the motion of the gentleman from Boston (Mr. Schouler). It is, of course, well known to the Convention, that our Constitution, bearing date in 1780, has been subjected to many important amendments—some thirteen in all—from that period down to this time. The consequence of the adoption of these amendments is, that many parts which stand in the Constitution, and are printed with it, have been annulled. Now, then, the chief object of the Committee was to present to this Convention, and to the people of the Commonwealth of Massachusetts, a systematic form of government; that it should contain the principle contained in the system established in 1780; and that, moreover, it should be, so far as it was to be considered as a machine, a perfect machine. Having, therefore, proceeded with that view, we took what remained of the original Constitution of 1780, what remained of the amendments adopted since 1780, and such of the resolutions which have been adopted by this Convention as were essential to the harmonious operation of the system of government which we proposed to establish. We considered that one great object to be obtained by this Convention, was to give to the people of this Commonwealth an intelligible and systematic organic law; and therefore, to carry out that purpose, we have been obliged to depart from that principle which we desired in the outset to recognize and act upon, and that was, that this Convention should allow the people of the Commonwealth to express a distinct opinion upon every separate proposition. But we found that this was absolutely impossible. We stand to-day very much in the condition of a people establishing anew a system of government. Therefore, then, we have placed in proposition number "one," all that portion of the Constitution of 1780 which remains, the subsequent amendments, and so much and many of the resolutions adopted by this Convention as were necessary to perfect and make harmonious and systematic the government which we propose to establish.

Now, then, upon the principle that it is practicable to allow the people to express an opinion separately, upon matters not essential to the harmony of the system of government, we have submitted to this Convention, and upon their judgment they are to submit to the people, certain separate propositions upon which the public sentiment is divided. Those propositions may be either rejected or adopted, without disturbing, in any degree, the harmony of the system of government which we have here contained in proposition "one."

Now, in regard to this proposition, it is not necessary to the working of the government. We have passed such a resolution. It may be that a majority of the people of the Commonwealth are in favor of it; but they have a right to express an independent opinion upon it, because it is not one which is essential to the system of government which we have here. That, I think, could not be said with equal justice of any provision which the Committee have incorporated into proposition number "one."

Therefore, acting upon that rule, we decided to present to the Convention, and through them to the people, the different propositions which are contained under the heads marked from "one" to "eight," inclusive. Number "one" containing the general system of government, and numbers from "two" to "eight," inclusive, containing independent propositions which may be separately submitted to the people. If rejected, the system of government is not disturbed; if adopted, they become incorporated into the Constitution. The government goes on either way.

Therefore, it was the judgment of the Committee that, under the circumstances, it was a part of their duty to submit a systematic form of government to the people, perfect in itself, and then, independent questions, which, if the judgment of the people shall be found to be in favor of them, will become a part of the Constitution; and which, if lost, will cause no disturbance of the system. It is upon such grounds that we have made the Report.

Mr. SCHOULER, of Boston. I understand the argument of the gentleman for Berlin to be, that these seven different propositions are to be left out of the Constitution, and are to be given to the people separately to vote upon them; and if the majority of the people agree to them, or to either one of them, then those which are agreed to, become a part of the Constitution; and his ground seems to be, that they can be left out of the Constitution, and still the Constitution will be a perfect and full declaration of rights, and the proper fundamental law of the Commonwealth. Now, Sir, I will ask that gentleman, and the members of this Convention, why some of these articles—and particularly the fifth one, concerning imprisonment for debt—should be left out in this way, when at the same time we find in the next chapter, upon the general court, it is stated in article third, that the "compensation of members of the general court shall be established by standing laws; but no act increasing the compensation shall apply to the general court which passes such act; and no compensation shall be allowed for attendance of members at any one session for a longer time than one hundred days."

Suppose that was struck out of the Constitution, and the Constitution should remain just as it is, leaving the legislature to sit as long as they have a mind to, and to fix their own pay as they have done ever since 1780. Is that not as distinct and separate a proposition to be submitted to the people, as the article in relation to imprisonment for debt, or the article in relation to *habeas corpus*, which are both left out? Here is another provision in article six, declaring that the "general court shall have power to make laws regulating marriage, divorce and alimony, but shall in no case decree a divorce, or hear and determine any causes touching the validity of the marriage contract." Suppose that was left out, what harm would be done? Sir, that is a new feature in the Constitution which is reported here; and I will ask gentlemen of the Convention why these should be considered as of so much consequence as to go into the Constitution, while that in regard to imprisonment for debt is left out? It seems to me, that the Constitution, in relation to that part of our legislative power, would be just as perfect if these were left out, and it should remain in the same way that it

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has remained ever since 1780. A little farther on we find article thirteen, in the same chapter, which says: "In all elections by the general court, or either branch thereof, a majority of votes shall be required, and the members shall vote *viva voce* ." This is considered of so much importance that it is put into the Constitution, while the provisions in regard to the right of *habeas corpus*, and imprisonment for debt, and other matters, are left out. I can see no principle in this thing; and I think, if we want to strengthen the Constitution, we had better put this provision about imprisonment for debt into it. I do not desire to occupy the time of the Convention, and so I will close by saying that I hope the amendment will be adopted.

Mr. BOUTWELL, for Berlin. I have not a word to say about the amendment; but we should consider, that if this Constitution is adopted, it ought to be as perfect an instrument as possible. Suppose it should be adopted as it stands, excepting that the third article of the chapter on the general court should be left out; we should then have no provision in the Constitution, of any sort, in reference to the compensation of members, unless we put the Constitution in such a form as we shall have to do, if we follow the suggestions of the gentleman from Boston, that only those parts of the existing form of government shall be annulled, which are inconsistent with what we propose. The consequence will be, that this will lead us to a position upon which no government can stand. That provision of the existing Constitution will be found on page 80, and is as follows: "The expenses of travelling to the general assembly, and returning home once in every session, and no more, shall be paid by the government out of the public treasury," &c. If you annul only those things in the existing Constitution, which are not in the new one, what does it bring with it? It brings with it the necessity of going to the Constitution of 1780, and examining all the subsequent provisions of constitutional law; and then it all depends upon the construction. In regard to the provision respecting legislative power over alimony and divorce, if you pass your Constitution in such a way as to annul all the existing provisions, and this should be put separately and rejected, you would have no power to pass laws regulating the proceedings in relation to divorce and alimony. Are you prepared to do that? If you pursued the other course, and allowed all to remain that is not inconsistent with the new action, then comes up the third article of the Constitution in reference to the judiciary power, that they may regulate proceedings with regard to divorce and alimony, unless the legislature shall otherwise order. The consequence of this mode of proceeding will be, that you will have two Constitutions in existence at the same time, and every man will have to go to the Constitution of 1780, and to all the subsequent amendments, and analyze them, to see whether they are consistent with the new one. Therefore, I say that we must put into the new Constitution what is necessary to make the system perfect, and stand upon that. The rest is of little consequence.

Mr. LORD, of Salem. If the gentleman stands upon that ground, and puts into the Constitution as a whole, just exactly what is necessary, in order to make a perfectly complete system of government, and just enough to make his machine work well, I want to know why he has not sep-

arated all these new propositions which are not necessary, in order to enable the instrument to be a perfect instrument. Why has he not allowed the voters of this Commonwealth to pass distinctly upon such questions as do not go to make up a perfect system of government? I will give him an example. I will take the proposition which is incorporated into the Constitution, of the secret ballot, and I will ask, why did he not put the secret ballot as a separate proposition? Cannot the government work, and is not the machine a perfect instrument, without the secret ballot in it? If they were to be chosen by ballot, as the old Constitution provides, does it not stand well enough, without having the secret ballot put in? Cannot that stand as an independent proposition, just as well as imprisonment for debt? I want to have gentlemen show me how it happens, while we have been living here seventy years under this government, and have got along pretty well, and all that time have not had this provision—how does it happen that there is now such an essential necessity for the introduction of this principle into the Constitution? What I want to find out, is, whether there is any distinct principle within which this Report of the Committee falls. It seems to me that it does not fall within any principle at all. Suppose it is submitted to the people, whether the judicial tenure should be changed, I want to know whether that cannot be put as a distinct proposition to the people? I do not see anything to prevent that from being done; and so, Sir, I do not know why any one of these seven articles is any less necessary than the several articles of the Bill of Rights. If I understand the ground upon which the gentleman's argument is put, it is exactly this: that there is nothing in this first proposition, occupying thirty-eight pages, which is not essential to the operation of government. Does not the gentleman for Berlin say, that there is nothing in these thirty-eight pages, that is not essential in order to make the machine operate?

Mr. BOUTWELL. It is undoubtedly true, that there are some things in these propositions which might be submitted separately. For instance, we have decided that a quorum in the Senate shall be twenty-one, and of the House one hundred. There is a distinct proposition, no doubt, which can be submitted to the people. We have also provided, that the judicial tenure shall be ten years, and to stand during good behavior; that is a distinct proposition; but, suppose you leave out of the Constitution which you intend to submit to the people, all reference to a quorum of the Senate, and all reference to a quorum of the House of Representatives, and you do not establish the judicial tenure one way or the other—you submit them to the people as independent propositions, and what is the result? If the people vote that the quorum of the Senate shall not be twenty-one, the quorum of the Senate under the old Constitution is sixteen. If they vote that the quorum of the House shall not be one hundred, then you have no quorum unless you revive the old Constitution, and have it sixty. But in case you revive the old Constitution, the difficulty to which I have referred, presents itself. It is undoubtedly true, that many propositions could be submitted separately, but yet, in order to make the different parts harmonious, it is better to submit them together.

Mr. LORD. Let me call the gentleman's atten-

tion to chapter fourteen articles first and second, in relation to future revision and amendments of the Constitution; why could not that be put separately?

Mr. BOUTWELL. We have already, in the existing Constitution, an article in reference to amendments to the Constitution, and we have deemed it one subject, as we have that of elections. We have three separate provisions in regard to elections, but we have thought it expedient and proper, in order to make it harmonious, to have one chapter, where all in our fundamental law upon that subject, might be found, and we have framed a chapter accordingly. So with regard to amendments of the Constitution. If you proceed to analyze the Constitution in that way, the result will be that we shall have so many propositions to submit to the people, that, after all, the system will be exceedingly unintelligible. There are some propositions which are entirely disconnected with the Constitution, and which may be submitted independently, without essentially affecting the Constitution one way or the other. That, I think, will be the case with every one of these seven articles; if they are rejected, the people are not confused—if they are adopted, the people are not confused.

Mr. LORD. I understand the explanation of the gentleman for Berlin, to be this: Although the proposition in reference to the secret ballot, which I have pointed out, is one of those amendments which are of a nature that they can be submitted separately, and yet, inasmuch as the same subject matter is in the Constitution, it is desirable to have all upon the same subject incorporated together. In order that the people may more readily understand it, all on one subject should be put in one chapter, and submitted together. Now, the thought accidentally occurred to my mind, that it was a little singular why he did not apply the principle to the twelfth article of the Bill of Rights, where the subject treated of is the right of *habeas corpus*; why is not his proposition, numbered two, which relates to that very subject, put into the twelfth article, instead of being placed at the end, as a proposition by itself? I want to find out, if I can, whether there is any principle that will cover the whole Report.

The question being upon the motion of Mr. Schouler which was, to annex to the twenty-seventh article of the Bill of Rights, the following words, contained under head "five" of the Report of the Committee, viz.: "No person shall be imprisoned for any debt hereafter contracted, unless in cases of fraud," it was put, and decided in the negative.

So the amendment was not agreed to.

Mr. KELLOGG, of Hadley. I move to amend the fourth article of the Bill of Rights, which is as follows:—

The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in Congress assembled,

by striking out the three last words, "in Congress assembled."

The PRESIDENT. The Chair is of opinion that the proposition is not in order.

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Mr. HALLETT, for Wilbraham. It seems to me to be important to settle here, the rules of order upon which we are to proceed, before we advance any farther, in order that we may know how and by what we are to be governed. For instance, the subject upon which the gentleman from Hadley proposes an amendment, was a subject considered in the Committee, and reported against by the Committee on the Bill of Rights. Therefore, the subject has been considered in Committee, has been reported upon, or rather not reported upon, which is equivalent to recommending no change in it, and has so passed through its various stages in the Convention. Now, the question arises upon the Report of a Committee, which is merely a Committee to draft the form of a Constitution—to reduce the resolves of the Convention to the best form and language which would express the meaning and intent of the resolves. The question arises here, at this stage, whether the Constitution is open to amendment upon those topics which have been submitted to a Committee and acted upon; and then, secondly, whether it is open to amendment upon topics which had not been submitted to a Committee. In my judgment, in neither case can it be done. If it should be considered in order, there are a number of amendments which I should propose; for instance, as to giving the legislature the power to establish martial law. With the view of having this matter determined, I submit these remarks; that we may understand our position, and settle, *in limine*, the question, and thereby we shall be released from great difficulty and delay.

The PRESIDENT. The Chair rules that the amendment of the gentleman from Hadley is not in order, inasmuch as it reverses the action of the Convention.

Mr. HATHAWAY, of Freetown. I do not rise for the purpose of taking an appeal from the decision of the Chair, by no means; but merely to ask for information through the Chair. I suppose, Sir, that it was the duty of the Committee, which have made this Report, under the order for their appointment, to revise and report to the Convention, for their consideration, the amendments which had been proposed and adopted by the Convention to the Constitution. The Committee have made the Report which we have before us, and what is it? They have embraced not only the amendments, I am free to say, but the whole provisions of the Constitution, as it has heretofore existed, together with the amendments which have been made since 1780, and are now in force. If all this is proposed here as an amendment, I submit whether the proposition of the gentleman from Hadley is not a correct one; that is, to make an amendment to this amendment? If it be not an amendment, then I submit the question as to the power of the Committee to report as they have. The resolution by which that Committee was directed to be appointed, as I have it from the Secretary, is in these words:—

Ordered, That a Committee of ——— members be appointed to reduce such amendments as have been, or may be agreed upon, to the form in which it is proper to submit the same to the people for ratification.

It evidently only applies it to such amendments as we have made to the Constitution, and not to a substituted Constitution.

The PRESIDENT. The gentleman from

Freetown raises a different question from that raised by the amendment offered by the gentleman from Hadley. If the gentleman proposes his question as a question of order, the Chair will rule upon it.

Mr. HATHAWAY. My question is, whether this Report of the Committee is embraced within the meaning of the word "amendments," as used in the order by virtue of which the Committee was appointed, under date of June twenty-first? If it be embraced in the meaning of that word, then I submit that the proposition of the gentleman from Hadley is a correct one, and in order. If it be not embraced, then I submit whether the Committee have not superseded their authority?

The PRESIDENT. The question raised by the gentleman it is not competent for the Convention to settle at this time, as the question now under consideration is the Declaration of Rights—that is, under the unanimous consent of the Convention. If the gentleman presents any case in reference to the Bill of Rights, where the Committee have transcended their authority, the Chair will decide it.

Mr. JENKS, of Boston. Is it in order to offer an amendment to the Bill of Rights?

The PRESIDENT. It is.

Mr. JENKS. I move, then, to add to the twenty-fifth article of the Bill of Rights, which is as follows:—

Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

The following words:—

No person shall be imprisoned for any cause, not declared by law to be criminal, or dangerous to the public safety.

If this amendment is adopted, it will supersede the provision under head "five," upon the same subject, though in different language.

The PRESIDENT. The Chair thinks the amendment not in order at this time, as it is only competent to amend in matters before the Convention, and that in form, and not in substance.

Mr. PLUNKETT, of Adams. I move to amend article thirteenth of the Bill of Rights, by adding thereto what the Committee have placed under head "three," with a view of a separate submission thereof to the people, and which is in the following words:—

In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict, of guilty, or not guilty, to determine the law and the facts of the case, but it shall be the duty of the court to superintend the course of the trials, to decide upon the admission and rejection of evidence, and upon all questions of law raised during the trials, and upon all collateral and incidental proceedings; and also to allow bills of exceptions. And the court may grant a new trial in case of conviction.

The question was taken, and the amendment was rejected.

No farther amendments being offered to the Bill of Rights, the Secretary then read the first chapter of the Frame of Government, as follows:

ARTICLE 1. The department of legislation shall be styled the General Court of Massachusetts.

It shall consist of two branches, a Senate and a House of Representatives, each of which shall have a negative upon the other.

ART. 2. The political year shall begin on the first Wednesday in January; and the General Court shall assemble every year, on the said first Wednesday in January, and shall be dissolved on the day next preceding the first Wednesday in January following, without any proclamation or other act of the Governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the Governor.

ART. 3. The compensation of members of the General Court shall be established by standing laws; but no act increasing the compensation shall apply to the General Court which passes such act; and no compensation shall be allowed for attendance of members at any one session, for a longer time than one hundred days.

ART. 4. No bill or resolve of the Senate or House of Representatives shall become a law, and have force as such, until it shall have been laid before the Governor for his revision; and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the Senate or House of Representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the Governor, at large, on their records, and proceed to reconsider the said bill or resolve; but if, after such reconsideration, two-thirds of the said Senate or House of Representatives, *present*, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the Legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of a law; but, in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the Commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the Governor, within five days after it shall have been presented to him, the same shall have the force of a law.

But if any bill or resolve shall be objected to and not approved by the Governor, and if the General Court shall adjourn within five days after the same shall have been laid before the Governor for his approbation, and thereby prevent his returning it, with his objections, as provided by the Constitution, such bill or resolve shall not become a law, nor have force as such.

ART. 5. The General Court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the Commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes, and things, whatsoever, arising or happening within the Commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixed; and for the awarding and making out of execution thereupon: to which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

ART. 6. The General Court shall have power to make laws regulating marriage, divorce, and alimony, but shall in no case decree a divorce, or hear and determine any causes touching the validity of the marriage contract.

ART. 7. And farther, full power and authority are hereby given and granted to the said

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General Court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions, and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide, by fixed laws, for the naming and settling all civil officers within the said Commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying within the said Commonwealth; and also to impose, and levy, reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the Governor of this Commonwealth, for the time being, with the advice and consent of the Council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

ART. 8. The General Court shall have full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof such powers, privileges, and immunities, not repugnant to the Constitution, as the General Court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants, in wards or otherwise, for the election of officers under the Constitution, and the manner of returning the votes given at such meetings: *provided*, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose: *and provided*, also, that all by-laws, made by such municipal or city government, shall be subject, at all times, to be annulled by the General Court.

ART. 9. Each branch of the General Court shall have authority to punish, by imprisonment, every person, not one of its members, who shall be guilty of disrespect thereto, by any disorderly or contemptuous behavior, in its presence; or who, in the town or city where the General Court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members, or assault any of them for anything said or done in its session; or shall assault, or arrest, any witness, or other person, ordered to attend it, in his way in going, or returning; or who shall rescue any person arrested by its order: *provided*, that no imprisonment, on its warrant or order, for either of the above described offences, shall be for a term exceeding thirty days; and the Governor and Council shall have the same authority to punish in like cases. And no member, during his going to, returning from, or attending, the General Court, shall be arrested, or held to bail, on *mesne process*.

ART. 10. Each branch of the General Court may try, and determine all cases where their rights, and privileges are concerned, and which,

by the Constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best.

ART. 11. Each branch shall be the final judge of the elections, returns, and qualifications, of its members, as pointed out in the Constitution; shall choose a presiding officer from among its members; appoint its other officers; settle its rules and orders of proceeding, and shall have power to adjourn: *provided*, such adjournment shall not exceed *three days* at a time.

ART. 12. And whereas the elections appointed to be made by this Constitution, on the first Wednesday in January annually, by the two Houses of the Legislature, may not be completed on that day, the said elections may be adjourned, from day to day, until the same shall be completed.

ART. 13. In all elections by the General Court, or either branch thereof, a majority of votes shall be required, and the members shall vote *visa voce*.

ART. 14. The enacting style, in making and passing all acts, statutes, and laws, shall be: **BE IT ENACTED BY THE GENERAL COURT OF MASSACHUSETTS.**

Mr. LORD, of Salem, asked the reading of the resolution of the Convention which authorized the change in article four.

Mr. BOUTWELL, for Berlin. I suppose the gentleman refers to the word "present" which has been inserted in that article. A part of the article, including the word "present," inserted in italics, reads as follows:—

But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the Senate or House of Representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the Governor, at large, on their records, and proceed to reconsider the said bill or resolve; but if, after such reconsideration, two-thirds of the said Senate or House of Representatives, *present*, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the Legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of a law.

Now, Sir, of course under the order of the Convention, the Committee thought that some little discretion was allowed them; and I have in my mind a fact within the knowledge of the gentleman from Salem himself, which assures me that I was not alone in that opinion. If the Convention will be kind enough to read from the word "present," in italics, to the close of the article, they will see that the word "present" is used in the present Constitution in reference to one branch of the legislature, and not in reference to the other. Therefore, it being declared in the original article that two-thirds of the "members present" in one case, and there being no declaration in regard to the other, the Committee thought it within the rule, for the purpose of consistency, in the administration of the government in that respect, to introduce the word "present." That is the idea the Committee had, and, of course, it is for the Convention to decide whether the Committee went beyond their authority in introducing this word.

Mr. LORD. Then I understand from the chairman of the Committee, that this alteration is made without any vote of the Convention. The old Constitution requires that when a bill shall receive the veto of the governor, it shall,

in the first place, be sent to the House in which it originated, and be passed by two-thirds of that body, not of those who happen to be present at the time, but by two-thirds of that body in which the bill originated. This amendment, which this Convention has not voted nor acted upon, provides that two-thirds of a bare quorum may pass a bill, notwithstanding there may not be even a majority present, and notwithstanding the number may be less than the number that ordinarily votes in favor of an amendment.

I merely call the attention of the Convention to this matter, because it is a palpable alteration of the Constitution, by the Committee, without the authority of any action of the Convention in its favor, for there has been no action of the Convention upon it.

Now, I suppose the Committee went the whole length of its powers, when they reported the old Constitution, where it remains unaltered, when under the authority to report amendments, it reported what were not amendments; but it seems to me to be transcending their powers, to report as an amendment what the Convention have not at all acted upon. The question now is, not whether it ought to be so, but whether we have made it so.

Mr. DANA, for Manchester. I would state, in addition to the reasons stated by the gentleman who represents Berlin, for the action of the Committee, that we understood, and understand now, that the practice has been, to consider this article four, as requiring only two-thirds of the members present, in either branch of the legislature. So that, by this amendment, we not only make the rule uniform, but make it conform to the uniform practice heretofore.

Mr. LORD. Will the gentlemen of the Committee inform us in what cases any resolve has passed either branch by two-thirds of those present, where that was not two-thirds of the whole?

Mr. DANA. I do not know, of my own knowledge, that there had been anything actually passed by such a two-third vote, but I have been told, on good authority, that such has been regarded to be the rule. It has always been so considered. I cannot mention any vetoed bill that has actually passed the House, in which it originated, by a two-thirds vote, when that vote was not two-thirds of the whole. On consulting with persons learned in the practice of the legislature, Presidents and Speakers, I learned that such had been the understanding, and such the action of the House of Representatives. Whether the question has ever come under the adjudication of the courts, I do not know.

Mr. LORD. Has there ever been any case, in which a bill has passed the branch of the legislature to which it was returned, and declared passed, with less than two-thirds of that branch voting in its favor? Because, if there has been, it is a precedent in favor of our adopting this as a rule. But if there has not been, I am entitled to my own construction of the Constitution, until the supreme court have ruled it, or until the people have changed it; and I submit, that this Committee cannot put their construction upon language, and base an amendment upon that construction, and say that it means two-thirds of those present, without deciding whether it means those present and voting, or not. I do not believe there is a precedent to that effect, because the only bill I ever knew pass through the House,

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against the governor's veto, was the proposition to increase the members' pay, and that passed by a good deal more than two-thirds of the whole number.

Some gentleman suggests to me that the bill establishing the Boston Wharf Company passed so. My impression is, that when it was vetoed, it failed, and was brought up again the next year.

Mr. BOUTWELL. It passed the same year.

Mr. LORD. But did it pass by less than two-thirds of the body to which it was returned? To which body was it returned?

Mr. BOUTWELL. To the Senate.

Mr. LORD. The gentleman says it was returned to the Senate, and being returned to the Senate I suppose that gentleman can tell me whether it obtained twenty-seven members of that body in its favor, because it must have obtained the votes of that number in order to have had two-thirds of that body? If it did, then it is a precedent.

Mr. BUTLER, of Lowell. I wish to call the attention of the gentleman from Salem, (Mr. Lord,) to a very palpable alteration in the same article, which I commend to his deliberate judgment, because that has never received the judicial interpretation of the supreme court. He will find it in the last line but one on the ninth page, in the following language:—

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the Governor, within five days after it shall have been presented to him, the same shall have the force of a law.

The words "to him" are very evidently inserted. Now, the supreme court have never decided judicially upon that point, as I am aware of; and I should like to know by what authority the Committee put in those words?

Mr. LORD. I do not believe that the Committee have any right to put in the words "to him," for I think if a governor, to avoid having a bill presented to him for his signature, should undertake to take himself out of the State for five days, and the bill should be presented at the council-chamber, that would be a sufficient presentation to him. I do not believe in the Revising Committee undertaking to amend the Constitution. If it is proper that the Constitution should be amended, it should be amended by the Convention.

Mr. BUTLER. The Convention are now about doing it, as I understand it. That is what we are after; if not, we had better go home. We are about adopting these suggestions.

Mr. LORD. If the gentleman from Lowell is right, I withdraw my request for the reading of the resolution. I understood the ruling of the Chair to be that no amendment of the Constitution which affected the substance of the Constitution, and which had not been passed upon by the Convention heretofore, would be in order. If these are amendments to the Constitution, and if they have not been passed upon, they are not in order now.

The PRESIDENT. The gentleman from Salem raises the question of order whether the Committee have transcended their authority. That question has not heretofore been raised.

Mr. BUTLER. I am of the opinion that there has been a uniform construction in regard to this matter. Let us take an illustration. The gentle-

man from Salem supposes that the governor might be sick or he would not be found within five days; or he might have broken his leg and be confined to his room at New Bedford, and then if a bill or resolve was presented for five days to his empty chair in the council-chamber when it was known that the governor would not be there, it would have the effect of law.

Mr. LORD. By our provisions the lieutenant-governor is acting governor under such circumstances.

Mr. BUTLER. I am talking about it as it was. The lieutenant-governor was not governor, and that is another provision that we have changed. But in these cases where a certain construction has been given to language by usage, the Committee have not changed the matter in substance; they have only made use of good language and good forms to express just exactly what it meant before. In this case, there is not a man here who supposes that an absolute majority of two-thirds was required. It is easy for the gentleman to ask how the vote stood, when neither he nor anybody else here knows how it stood. I will put the question to him, whether he knows himself.

Mr. LORD. I am going to see.

Mr. BUTLER. When the gentleman finds out, I shall be glad to hear the result. But when the gentleman asks questions that he cannot answer himself, it puts me in mind of an old proverb which says that a certain class of persons may ask questions which a philosopher cannot answer. [Laughter.] My rule is, if I do not know the truth of the case, to hold my peace. But I think we might as well meet this, once for all—Have the Committee transcended their power? If they have, we shall have to send their Report back to them, and in the course of some weeks or months we may perhaps get a new Report.

Mr. HILLARD, of Boston. I wish to ask for information, although I shall, perhaps, come in the category of those who ask questions that cannot be answered, whether the change of "three days" in the last line of article eleven has been adopted by the Convention.

Mr. LORD. I will state that I have been informed that the bill by which the Boston Wharf Company increased its capital, passed by twenty-four to seven—being two-thirds of those present, and not two-thirds of the Senate. No one raised any objection.

Mr. JENKS, of Boston. I will call attention to the proviso in article eight, which is as follows:—

Provided, That no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose.

It seems to me that there is a great inconsistency in requiring that any town in order to become a city should have twelve thousand inhabitants; and more than six thousand would be required to vote for it, if I understand it right.

Mr. BOUTWELL, for Berlin. The gentleman will perceive, if he notices the type in which that proviso is printed, that it is exactly the same as a provision of the present Constitution; and according to the ruling of the Chair, the Convention cannot now proceed to consider any matters of

that kind. I will say in regard to the observation of the gentleman from Salem, and in order that the impression may be removed which is raised upon the minds of other gentlemen upon this floor, that the first idea of the Committee was to make a systematic and harmonious frame of government, so that they had in some cases to take liberties with the language which was passed by this Convention. For instance, in the very chapter now under consideration, the Convention decided by a vote that the Senate might adjourn three days at a time, but they passed no such vote in regard to the House. The existing Constitution provides that the House may adjourn for two days at a time. The Committee did take so much liberty as this; it being desirable to comprise it all into one chapter, under the head of the general court, for the purpose of harmony, they say that each branch of the legislature may adjourn for three days. They supposed it might be proper to apply that provision to the House of Representatives, being guided by the resolve which was passed by this Convention in relation to the Senate. If the gentleman from Salem was in his seat, I would say to him, that if he would turn to the chapter on elections, he will see a provision for the election of governor by the House and Senate in case there is no election by the people. The words "then eligible" were proposed to be added by one of the Committee, and I assented to it because I thought it expedient; it was thought proper that a man who should cease to reside in the Commonwealth should cease to be eligible as governor, and I accepted the recommendation. There was no provision made with regard to elections from cities; while provision with regard to the election of governor from the towns was made, the cities were omitted; and what did the Committee do? They had to make a provision which stands in the chapter relating to elections, that the manner of calling and holding public meetings in cities for the election of officers under the Constitution, and the manner of returning the votes given, shall be as now prescribed, or as may be hereafter prescribed by the legislature. What I desire is, that the Convention will take up these different changes and examine them. The Committee have no desire to make issue on these points; they are perfectly willing that the opinion of the Convention should be taken, and they believe that a good reason can be given for all they have done.

Mr. LIVERMORE, of Cambridge. I should like to inquire of the chairman of the Committee, by what authority they put in the last sentence of article two, which is in these words:—

But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the Governor.

Mr. BOUTWELL. I do not find any resolve on that subject, among my official papers.

Mr. LIVERMORE. The Committee on the Frame of Government reported it in the following words:—

The Legislature shall assemble every year, on the first Wednesday in January; and shall be dissolved on the day next preceding the said first Wednesday in January, without any proclamation or other act of the Governor.

That was afterwards amended, by striking out

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the words "said first Wednesday in January," and inserting the words "first Wednesday in January following;" but there was no provision allowing them to assemble at such other times as they shall judge necessary.

Mr. UPTON, of Boston. It seems to me that numbers seven and eight of the proposed amendments ought to go into the Frame of Government, and I can hardly understand why they were omitted, when all the other duties of the general court are included. I move that they be inserted, to constitute article twelve of the Frame of Government, as follows:—

ART. 12. The Legislature shall not create corporations by special act, when the object of the incorporation is attainable by general laws.

The Legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any chartered bank; but corporations may be formed for such purposes, or the capital stock of chartered banks may be increased, under general laws.

The Legislature shall provide by law for the registry of all notes or bills authorized by general laws to be issued or put in circulation as money; and shall require ample security for the redemption of such notes in specie.

The question being taken, the amendment was not agreed to.

Mr. LORD, of Salem. I wish to inquire whether the word "present" is under the power of the Committee? I raise that question of order.

The PRESIDENT. The gentleman from Salem raises the question of order, whether the amendments reported by the Committee of Revision to the fourth article of the first chapter, be in order. It is the opinion of the Chair that the insertion of the word "present" does not change the substance of the article; the experience of the Chair has been invariably that a question has been considered settled on receiving the assent of two-thirds of the members present and voting thereon. The Chair does not, therefore, regard it as changing the substance of the article.

Mr. LORD. In my opinion, it does change it, and I do not think the Committee on Revision have any authority to give a construction to an article about which there may have been a difference of opinion, so as to have the Constitution settled according to their exposition in relation to the governor's veto. The Constitution provides that sixteen shall be a quorum of the Senate; and I do not believe that that same Constitution meant that eleven members of the Senate should pass a bill over the governor's veto. I think, if they had meant that eleven members could pass a bill in such circumstances, they would not have said that it should take two-thirds of the body to pass it.

Now, if it should so happen—a thing which I can hardly suppose—that the President was wrong in his construction of the Constitution before, then this Constitution gets changed against my wishes, and without any action of this Convention. I am willing that the law should require two-thirds of one House only to pass a bill over the governor's veto, but I think there should be a check of two-thirds of either one body or the other of the legislature. It seems to me to be a good and desirable provision, and one which ought not to be changed, and especially it should not be changed without some action of the Convention. But suppose—and I agree that the

charter of the Boston Wharf Company was so passed by a vote of 24 to 7—but suppose, upon a *quo warranto* against the corporation, the supreme court should hold that the charter never had an existence, if they should go behind that which appeared to be a legal enactment, and make that decision, the fact that the President of this Convention had a different view of the subject, would not seem to me to be a sufficient reason for sustaining this phraseology. If, Sir, it really does mean the same thing, then it seems to me to be right to put it into the Constitution; if it does not, then it ought not to be incorporated into that instrument. It is undertaking to give a construction to, and to reduce to a certainty, a provision of the Constitution, upon which, perhaps, gentlemen may entertain different opinions. I am myself so much opposed to allowing two-thirds of a bare majority to pass a bill over the veto of the governor, that if that had been the true construction heretofore, I should have been in favor of a change. And I now move that the word "present," where it appears in italics, be struck out.

The question was taken upon the motion of Mr. LORD, and there were, on a division—ayes, 63; noes, 162.

So the amendment was rejected.

Mr. OLIVER, of Lawrence. Since the amended Constitution, as presented by the Committee, contains some provisions for which, when it comes before the people, I can vote, and some for which I cannot vote, and as these to which I refer are all contained in division number one of their Report, thereby compelling me to vote either against some that I approve of, or for some that I disapprove of, I move, in order to relieve myself from this future false position, that article three of this chapter, which is as follows:—

ART. 3. The compensation of members of the General Court shall be established by standing laws; but no act increasing the compensation shall apply to the General Court which passes such act; and no compensation shall be allowed for attendance of members at any one session for a longer time than one hundred days.

Be separated from this chapter, and be placed among those provisions which are proposed to be submitted to the people as independent propositions, and form a new one numbered "nine."

The question was taken upon Mr. Oliver's motion, and it was decided in the negative.

So the amendment was rejected.

Mr. OLIVER. I make the same motion in regard to article thirteenth of the same chapter, and for the same reasons. That article reads as follows:—

ART. 13. In all elections by the General Court, or either branch thereof, a majority of votes shall be required, and the members shall vote *viva voce*.

The question was taken on the latter motion, and the amendment was not agreed to.

Mr. BOUTWELL, of Berlin. Some question has arisen in regard to the second article, relating to the general court. It reads as follows:—

ART. 2. The political year shall begin on the first Wednesday in January; and the General Court shall assemble every year on the said first Wednesday in January, and shall be dissolved on the day next preceding the first Wednesday in January following, without any proclamation or

other act of the Governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the Governor.

The question is upon the last clause. The Committee on the Bill of Rights, so far as I can learn, made an amendment to the first article of the existing chapter on the general court, which was adopted by the Convention. But it happens that in the tenth article of the Amendments to the present Constitution, are the words, "but nothing herein contained shall prevent the general court from assembling at such other times as they shall judge necessary, or when called together by the governor."

So far as I know, the Convention have never passed upon that portion of the tenth article or amendment to the present Constitution. The Committee have transferred that article, and made it here the closing paragraph of the second article upon the general court. So that, while I believe that the Convention have passed upon something nearly like this article, yet they have not passed upon that; if I am correct, the provision being part of the existing Constitution of the Commonwealth.

Mr. DANA, for Manchester. I can only say, that the preparation of this chapter was placed in my hands. I found this last clause in the old Constitution, and could not find any resolve by which it was repealed, and therefore I felt bound to put it into the Constitution, and it was adopted by the Committee.

Mr. LIVERMORE, of Cambridge. I move to strike out the very words contained in this last clause, that is, the clause relating to the assembling of the general court at such other times as they shall deem necessary. To be sure, it occurs in another part of the Constitution, but the Committee reported to strike out of the present Constitution the first article, and that was adopted by the Convention. I do not know what effect that clause would have, standing in another part of the Constitution. It was once struck out by the vote of the Convention. If in order, I now move to strike out those words.

The PRESIDENT. The Chair is of opinion that the motion is not in order, as it proposes a change in matter of substance. If it appears from the records that the Convention have stricken out from the Constitution those words, the Chair will rule upon it as a question of order.

Mr. LIVERMORE. I desire to reserve the right to examine the matter.

Mr. ALLEN, of Worcester. I think I can explain the matter. In a part of the Constitution committed to the Committee on the Frame of Government, there was a provision that the legislature should assemble on the first Wednesday of January, and when called by the governor, and also at such other times as they should judge necessary. The Committee on the Frame of Government, moved to strike out that part which authorized the legislature to assemble at its pleasure. The Convention adopted that amendment. But it seems that a similar provision, which authorized the general court to assemble at its pleasure, occurs in another part of the Constitution. The Committee on the Frame of Government had not that part of the Constitution submitted to them, and therefore, they could not make a Report concerning it. The consequence

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is, that while the Convention have signified the purpose to take away from the legislature the power of assembling at such times as they should deem necessary, there is still a provision left in the Constitution, authorizing them to do so, and that remains in the new Constitution.

If the Convention generally believe that it is not necessary for the legislature to assemble, and to hold extra sessions, except when called together by the governor—and, I believe, extra sessions never have been held except upon such call—perhaps by general consent, and without objection, this part of the Constitution might be made to conform to the vote which the Convention have already adopted, and these words be stricken out.

Mr. BUTLER, of Lowell. I wish merely to suggest, that the right of the general court to assemble without the consent of the governor, is a valuable right. It is one which made the fundamental quarrel between Governor Gage and the general court of that day. He refused to have them called together, and made proclamation that they should not assemble together, but when they thought that the exigencies of the times required it, they did so; and, when they came to make a Constitution, they took care not to put themselves into the power of any governor. Therefore, I object to having it struck out.

Mr. MORTON, of Taunton. Is there no way of getting at this matter without unanimous consent? I did not exactly hear the suggestions of the gentleman from Worcester. I think it very important to strike out the words "at such other times as they shall judge necessary or" and leave them to be called together by the governor. Before it is finally settled one way or another, I beg leave to make a suggestion or two. It seems to me that if we authorize the general court to meet as often as they please, we render entirely nugatory another provision which we have incorporated among the new provisions of the Constitution, and we had better strike that out, if we retain this. We have provided, in another clause, that no session of the general court shall last beyond one hundred days; but such a restriction is entirely useless, if they may have half a dozen sessions in the year. The motion which I made upon the subject, and which finally passed, only limited the sessions to one hundred days; but if the legislature have the right to adjourn over a week, and then hold another session, it seems to me that the first provision is entirely useless. I make this suggestion for the consideration of the gentlemen of the Convention as worthy of attention.

Mr. LORD, of Salem. I desire to call the mind of the President to a matter of construction. I take it that the old instrument is to be construed as entire. In the old Constitution, chapter first, under the Frame of Government, section first, provides, that the legislative body shall assemble every year, on the first Wednesday of May, and at such other time as they shall judge necessary. In the tenth article of the Amendments to the Constitution, the first Wednesday of May was changed to the first Wednesday of January; and the phrase "But nothing herein contained shall prevent the general court from assembling at such other times as they shall judge necessary, or when called together by the governor," was merely put into that article, to show that the entire first section was not to be abrogated; that they meant simply, to change the time of meeting. It was

introduced for that purpose, and to show that the framers of it did not mean to change the power of the general court to sit when they should deem it necessary. But this Convention, having changed that first article, it seems to me that the proviso that it shall not be altered, falls also, and that the change is perfect and complete. I make these suggestions as worthy of consideration, and not because I want to have those words stricken out, for I agree, somewhat, with the opinions of the gentleman from Lowell, that, after all, this legislature, which we treat so contumeliously, is a pretty important branch of this government, and ought to have some power, and that they should come together whenever the exigencies of the public require it. But certain, it does, as suggested by the gentleman from Taunton, (Mr. Morton,) render nugatory the provision limiting the session to one hundred days; because they may have a session the next day after the hundred days have expired, and take another hundred days, and get their pay for it. I merely call the attention of the presiding officer to this matter of construction, to know—when we consider the form of the matter which was original in the Constitution, and that the tenth amendment only changed the day, and provided that this other matter of the first article, should not be repealed by that—whether, when we come to repeal the first article, the other does not fall with it?

Mr. DANA, for Manchester. A single word upon this matter. As I recollect it, there was no debate or consideration of that point, when the Report was made from the Committee, of which the gentleman from Worcester, (Mr. Allen,) was chairman. There was no debate upon the point whether we should prevent the legislature from meeting without the consent of the governor. I found no amendment debated, striking out the grant of power, and I supposed the Convention had not intended to strike it out, and the Revising Committee did not feel authorized to do so.

In the next place, I should feel reluctant to say that the legislature never shall meet but by the consent of the governor. Suppose that, after the January session, in the autumn, or in the early part of the winter, there should be war, insurrection, or invasion, and the governor was not to be relied upon, should the people of the Commonwealth be put into such a situation that they cannot meet in legislature, to provide the necessary measures of defence and safety?

I have no idea that the legislature will be likely to meet unnecessarily, but would we like to say that they never should meet in extra session unless by the call of the governor?

As to pay, they may have extra pay now, if the governor calls them together, and they ought to be paid if they come together upon an exigency of the public affairs, without the consent of the governor.

Mr. HALE, of Bridgewater. I would inquire of the gentleman for Manchester, in what way the general court should hold a session in such case, unless by a call of the governor, or by having adjourned to meet again on a given day? We ought certainly to provide some mode by which they can be called together in case of great emergency.

Mr. DANA, for Manchester. I can say to the gentleman from Bridgewater, that if any exigency should arise, rendering it necessary for the legislature to meet, and the Constitution says that they

may meet, they will find out a way to meet. The independence and self-subsistence of the legislative power, and representative department, is an essential idea in the Anglo Saxon race. If the Constitution says they *may* meet, and the exigency says they *must* meet, I think they *will* meet.

Mr. GARDNER, of Seekonk. I hope this section will stand as it is. In 1746, a message was sent to the then governor of the Commonwealth, (Governor Shirley,) to call the legislature together, to settle a boundary question between this State and the State of Rhode Island. Notwithstanding that this was felt to be a question of great importance, the governor did not feel obliged to call an extra session, and the commissioners of Rhode Island ran an *ex parte* boundary line, from which all the difficulties that have ever arisen between the two States, has originated. I think that that is one essential reason why this provision should be retained. As the gentleman for Manchester says, the legislature will find a way to meet, if it be necessary that they should.

The first chapter on the "Frame of Government," as amended, was then finally passed.

The second chapter was then read by the Secretary, containing provisions in regard to the Senate districts in which senators are to be chosen; qualifications of candidates; manner of electing senators; examination of election returns; quorum of the Senate; impeachments, &c., and it was finally passed without farther amendment. It is as follows:—

[ARTICLE 1. There shall be annually elected by the inhabitants of this Commonwealth, qualified as in this Constitution is provided, forty persons to be senators, for the year ensuing their election; and the Senate shall be the first branch of the General Court. For this purpose, the General Court, holden next after the adoption of this Constitution, and next after each decennial census thereafter, shall divide the Commonwealth into forty districts, composed of contiguous territory, and as nearly equal in population as may be: *provided*, that no town or ward of a city be divided thereof. Each district shall be entitled to elect one senator, who shall have been an inhabitant of this Commonwealth for five years immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is chosen.]

ART. 2. There shall be a meeting on the *Tuesday next after the first Monday in November*, annually, forever, of the inhabitants of each town and city in this Commonwealth, to be called and warned in due course of law, at least seven days before the day of *such* meeting, for the purpose of electing senators; and at such meetings every qualified voter shall have a right to give in his vote for a senator for the district of which he is an inhabitant.

The selectmen of the several towns shall preside at the town meetings impartially; and shall receive the votes of all the inhabitants of such towns present and qualified to vote for a senator, and shall sort and count them in open town meeting, and in presence of the town clerk, who shall make a fair record, in presence of the selectmen, and, in open town meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the selectmen and the town clerk, and shall be sealed up, directed to the Secretary of the Commonwealth for the time being, with a superscription expressing the purport of the contents thereof, and delivered by the town clerk of said towns to the sheriff of the county in which such town lies, thirty days at least before the first Wednesday in January an-

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nually; or it shall be delivered into the Secretary's office seventeen days at least before the said first Wednesday in January; and the sheriff of each county shall deliver all such certificates, by him received, into the Secretary's office, seventeen days before the said first Wednesday in January.

And the inhabitants of plantations unincorporated, qualified as this Constitution provides, shall have the same privilege of voting for a senator, in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually on the same Tuesday next after the first Monday in November, at such place in the plantations respectively as the assessors thereof shall direct; which assessors shall have like authority for notifying the voters, collecting and returning the votes, as the selectmen and town clerks have in their several towns, by this Constitution. And all other persons living in places unincorporated, (qualified as aforesaid,) shall have the privilege of giving in their votes for a senator, in the town where the inhabitants of such unincorporated places shall be assessed, and be notified of the place of meeting by the selectmen of the said town for that purpose, accordingly.

[ART. 3. The Governor and Council shall, as soon as may be, examine the returned copies of the record provided for in article second of this chapter, and ascertain who shall have received the largest number of votes in each of the several senatorial districts, and the person who has so received the largest number of votes in each of said districts shall be a senator for the following political year; and the governor shall cause each of said persons, so appearing to be elected, to be notified at least fourteen days before the first Wednesday in January of each year, to attend on that day, and take his seat accordingly.]

ART. 4. Not less than twenty-one members shall constitute a quorum for doing business; but a less number may organize, adjourn from day to day, and compel the attendance of absent members.]

ART. 5. The Senate shall be a court with full authority to hear and determine all impeachments made by the House of Representatives against any officer or officers of the Commonwealth, for misconduct and maladministration in their offices; but, previous to the trial of every impeachment, the members of the Senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however, shall not extend farther than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this Commonwealth: but the party, so convicted, shall be, nevertheless, liable to indictment, trial, judgment and punishment, according to the laws of the land.

The Secretary was then directed to read the third chapter, containing provisions in relation to the House of Representatives—the mode of their election, and the qualifications of voters; mode of apportioning representatives among the several towns and cities by the Senate; division of cities into districts; time of electing representatives; fines on towns neglecting to elect; qualifications of representatives; power of the House in regard to impeachments; the origination of money bills; and the number of members constituting a quorum. It was read, as follows:—

ARTICLE 1. There shall be, in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

ART. 2. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town, containing less than one thousand inhabitants, may elect one representative in the year when the valuation of estates shall be

settled, and, in addition thereto, one representative five years in every ten years. Every town containing one thousand inhabitants and less than four thousand, may elect one representative. Every town containing four thousand inhabitants and less than eight thousand, may elect two representatives. Every town containing eight thousand inhabitants and less than twelve thousand, may elect three representatives. Every city or town containing twelve thousand inhabitants, may elect four representatives. Every city or town containing over twelve thousand inhabitants, may elect one additional representative for every four thousand inhabitants it shall contain, over twelve thousand. Any two towns, each containing less than one thousand inhabitants, may, by consent of a majority of the legal voters present at a legal meeting in each of said towns respectively, called for that purpose, form themselves into a representative district, to continue for the term of not less than two years; and such district shall have all the rights, in regard to representation, which belong to a town having one thousand inhabitants. And this apportionment shall be based upon the census of the year one thousand eight hundred and fifty, until a new census shall be taken.

ART. 3. The Senate at its first session after this Constitution shall have been adopted, and at its first session after the next State census shall have been taken, and at its first session next after each decennial State census thereafter, shall apportion the number of representatives to which each town and city shall be entitled, and shall cause the same to be seasonably published; and in all apportionments after the first, the numbers which shall entitle any town or city, to two, three, four, or more representatives, shall be increased or diminished in the same proportion as the population of the whole Commonwealth shall have increased or decreased since the last preceding apportionment.

ART. 4. No town hereafter incorporated, containing less than fifteen hundred inhabitants, shall be entitled to choose a representative.

ART. 5. Each city in this Commonwealth, shall be divided, by such means as the Legislature may provide, into districts of contiguous territory, as nearly equal in population as may be, for the election of representatives, which districts shall not be changed oftener than once in five years: *provided, however*, that no one district shall be entitled to elect more than three representatives.]

ART. 6. The members of the House of Representatives shall be chosen on the Tuesday next after the first Monday in November, annually; but meetings may be adjourned, if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no farther: but in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November.

ART. 7. The House of Representatives shall have power, from time to time, to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this Constitution.

ART. 8. Every member of the House of Representatives shall have been for one year, at least, next preceding his election, an inhabitant of the town he shall be chosen to represent.

ART. 9. The House of Representatives shall be the grand inquest of this Commonwealth; and all impeachments made by them shall be heard and tried by the Senate.

ART. 10. All money bills shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

ART. 11. Not less than one hundred members of the House of Representatives shall constitute a quorum for doing business.

Mr. EARLE, of Worcester. I move to amend this chapter, in the second article, by striking out these words:—

Every town containing eight thousand inhabitants, and less than twelve thousand, may elect three representatives. Every city or town containing twelve thousand inhabitants may elect four representatives.

Also to strike out the word "twelve" in the next line below, and insert in its place the word "four." The part which I propose to strike out is mere surplusage. The amendment will not change the meaning of the article, while it will divest it of unnecessary verbiage. The article, as it now stands, reads thus:—

ART. 2. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town, containing less than one thousand inhabitants, may elect one representative in the year when the valuation of estates shall be settled, and, in addition thereto, one representative five years in every ten years. Every town containing one thousand inhabitants and less than four thousand, may elect one representative. Every town containing four thousand inhabitants and less than eight thousand, may elect two representatives. Every town containing eight thousand inhabitants and less than twelve thousand, may elect three representatives. Every city or town containing twelve thousand inhabitants, may elect four representatives. Every city or town containing over twelve thousand inhabitants, may elect one additional representative for every four thousand inhabitants it shall contain over twelve thousand. Any two towns, each containing less than one thousand inhabitants, may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, form themselves into a representative district, to continue for the term of not less than two years; and such district shall have all the rights, in regard to representation, which belong to a town having one thousand inhabitants. And this apportionment shall be based upon the census of the year eighteen hundred and fifty, until a new census shall be taken.

If it be amended as I propose, it will then read as follows:—

ART. 2. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town containing less than one thousand inhabitants, may elect one representative in the year when the valuation of estates shall be settled, and, in addition thereto, one representative five years in every ten years. Every town containing one thousand inhabitants and less than four thousand, may elect one representative. Every town containing four thousand inhabitants and less than eight thousand, may elect two representatives. Every city or town containing over four thousand inhabitants, may elect one additional representative for every four thousand inhabitants it shall contain over four thousand. Any two towns, each containing less than one thousand inhabitants, may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, form themselves into a representative district, to continue for the term of not less than two years; and such district shall have all the rights, in regard to representation, which belong to a town having one thousand inhabitants. And this apportionment shall be based upon the census of the year eighteen hundred and fifty, until a new census shall be taken.

Mr. OLIVER, of Lawrence. I would ask whether the article, if thus amended, will be consistent?

Mr. EARLE. The amendment will not change the meaning of the article at all. It will rather make it more consistent, if anything.

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Mr. BUTLER, of Lowell. I think that this is an amendment of substance rather than of form, and therefore, I must object to it.

Mr. EARLE. I repeat, that it does not change the subject at all. When I proposed this amendment, at the time the article was under consideration by the Convention, it was objected, that the Committee on Revision would take out all surplusage, and this not having been done here by the Committee, I propose to strike it out now.

Mr. BUTLER. My reason for thinking this a substantive amendment, is this: You go on providing for the representation of towns progressively, till you get up to towns having a sufficient number of inhabitants to entitle them to be chartered as cities. Yet the gentleman from Worcester proposes to strike out these words: "Every city or town containing twelve hundred inhabitants, may elect four representatives." I really do not see any necessity at all for this amendment.

Mr. EARLE. I would like to read the article again, so that the Convention may see how the matter will stand. [Mr. Earle accordingly read the article as he proposed to amend it, as given above.] That is precisely the provision now; and if we allow these words to stand, we might as well go on repeating the same words, until we get up to fifty representatives. It is mere surplusage. If the Convention choose to have it, they can say so; and if not, they will strike them out.

Mr. SCHOULER, of Boston. I am not quite certain about the amendment of the gentleman from Worcester being surplusage; but I feel pretty sure, that there is some surplusage in the first part of the article. In the first place, it says: "In order to provide for a representation of the citizens of this Commonwealth upon a principle of equality, every corporate town," &c. And I find also in the first article these words: "There shall be, in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality." Now, all this rhodomontade about being "founded upon the principle of equality," I hold to be not mere surplusage, but something a great deal worse, [laughter]; and if we are to amend on the principle of striking out all the "surplusage," it strikes me there will be very little of your new Constitution left. [Renewed laughter.]

The question being taken on the amendment, it was agreed to.

Mr. MORTON, of Taunton. I would ask the attention of the Convention to the eighth article as it is prepared by the Committee. It is as follows:—

ART. 8. Every member of the House of Representatives shall have been for one year, at least, next preceding his election, an inhabitant of the town he shall be chosen to represent.

It seems to me that the Committee have omitted a very important provision of the old Constitution. I will, therefore, read it. It will be found on the eightieth page of the Constitution now in the hands of members, and is as follows:—

III. Every member of the House of Representatives shall be chosen by written votes; and, for one year at least next preceding his election, shall have been an inhabitant of, [and have been seized in his own right of a freehold of the value of one hundred pounds, within the town he shall be chosen to represent, or any rateable estate to the

value of two hundred pounds;] and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid.

This latter clause, "and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid," which I hold to be exceedingly important, is here entirely omitted. I think it should be supplied. I therefore move to amend the eighth article of this chapter by adding this clause to it, so as to make it read:—

ART. 8. Every member of the House of Representatives shall have been for one year, at least, next preceding his election, an inhabitant of the town he shall be chosen to represent; and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid.

Mr. BOUTWELL, for Berlin. If gentlemen will look at the Constitution as it at present stands, they will perceive that there are certain words in the article referred to by the gentleman from Taunton, enclosed within brackets, involving a property qualification for members, which words were stricken out by the Convention of 1820, leaving the article in a somewhat inelegant, if not unintelligible, condition. We have, of course, no authority to say, that no other words than those within the brackets were stricken out at that time. The qualification there alluded to, I take it, referred entirely to property; and there can be no doubt, that the design of the Convention of 1820 was to do away with that qualification only, because the qualification of having been a resident in a town one year preceding election, is a qualification that, by the terms of the present Constitution, cannot cease after it is obtained; but the property qualification may cease.

Mr. MORTON. It seems to me there need be no difficulty in understanding the provision of the present Constitution in regard to this, as it now stands. I am aware, that originally, two qualifications for a representative were required: A qualification of property, and also a qualification in regard to residence; but the amendment of 1820 struck out the qualification of property, leaving that of residence. I admit that the manner in which this provision was left, was very inelegantly expressed. But, if gentlemen will read the provision as we now receive it, I maintain, that it is capable of only one single construction. It may not, perhaps, be expressed in the best possible way, but it certainly does provide for a residence of one year in a town or city prior to election. That is an indispensable qualification, and the true meaning of it I hold to be, that it shall continue during the period of service: that when a representative changes his residence into another town, or county, or State, he ceases, by that act, to represent the town for which he was elected. Believing, therefore, that this is a valuable provision, I hope that we shall retain it in the revised Constitution.

Mr. BUTLER, of Lowell. I do not understand how the amendment of the gentleman from Taunton will reach what he wants to reach, and I should object to it, somewhat, if we could get at it. The regulation now is, that every member of the House of Representatives shall have been for one year at least, next preceding his election, an inhabitant of the town he shall be chosen to represent. He shall have lived there a year before he is elected. Now, if he has lived there a year before he is elected, there is his full qualifi-

cation; and after this is done, I do not see how a man can help having lived there. He may move away the next day, but yet, he has lived there a year.

Mr. MORTON. He ceases to represent the town immediately on his ceasing to be qualified, according to the present Constitution.

Mr. BUTLER. That is one of the reasons why the Constitution needs revising; it is one of the best arguments I could have, and I thank the gentleman for calling my attention to it. When the Constitution was originally made, there were two qualifications; one was, that he should have lived there a year, so as to have learned the wishes of the inhabitants; and the other was, that he should have so much money. When the amendment was made, taking out the money qualification; and Judge Cushing came to print his edition and put in the brackets—for which he has got a patent—having done that, what happened? That last line which used to refer to the money qualification, and which provided that when he ceased to be a freeholder, he ceased to represent the town—when he ceased to have property, he ceased to be qualified as aforesaid—stands now to refer to something that is wholly incongruous with it. I submit to my learned friend from Taunton, whether it is not just like a *seizin*, in a deed, it is either broken at once, or it is never broken. Now, we propose to say, that although it was never broken, still it may be broken afterwards. I appeal to him as a lawyer, if I am not correct in that position. I insist that this being qualified and "ceasing to be qualified as aforesaid," refers simply to the freehold qualification, and not to any other part of the Constitution. When the property qualification was stricken out, it did not make good grammar or good sense to leave it there; it made it say that a man should cease to live not before he was elected, but after he was elected; and that is one of the reasons first, against Mr. Cushing's copyright, and second, for the revision of the Constitution. I think this is a valuable privilege in a town. If a town chooses to elect a man who has lived there and has learned its habits, its manners, and the wants and wishes of the people, and he has had the qualification of living there a year before he is elected, and comes down here to represent them; but yet, he chooses to move away into another town,—now I take it that he is still elected from that town that sent him here. If they have chosen a man to represent them, they want to have him here, and what right have we to take away their privilege? He knows what their wants and wishes are, for he has lived there long enough to be qualified; and if qualified, he cannot be unqualified by simply crossing an imaginary line. For one, I am not willing that such an amendment should go in; for it is still an open question.

Mr. MORTON. I would not say another word, had it not been that I was appealed to as a lawyer, which is somewhat of a misnomer, on the part of the gentleman from Lowell. I know that I have grown somewhat rusty upon that subject, but still, I have kept in mind a few old rules of construction, which I think are now sound and bright, and as good as new; and in answer to the gentleman, I will refer to them. In the first place, it is one of the most ancient and well established rules of construction, that in construing a statute, or any other public instru-

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ment, you must so construe it as to give effect to all the language used in it; and if it is not exactly consistent, if some of it appears to have one definite meaning, yet, if taking it all together, you can give a construction to it to meet what is well settled, you are bound to give such a construction. Now, if you take it all together with a little latitude in construing the first part of it, you give a meaning to the whole of it. It provides that he shall have been an inhabitant for one year next preceding his election, and shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid. If you take a little liberal construction, this last clause will be applicable to the residence; residence is what they are aiming at, as this is necessary in order to give entire effect to the last clause. The qualification refers to residence, and there is nothing else that it could refer to; and therefore, when he ceases to be a resident of that town, he ceases to be qualified. I suppose there was some wisdom, and some good sense, and some knowledge of English, in the Convention which preceded us thirty-three years ago; and it seems to me that we are not at liberty to assume that they did not know what they were saying, and that the language they used was a perfect nullity, with no meaning whatever. I suppose that respectable and learned body had an idea that they were adopting such language as would convey their meaning; and I am not willing to adopt a construction, the effect of which, would be to stultify that Convention of great men. Now, I differ with the gentleman from Lowell in regard to the reasonableness of it. I hold that a man, in order to be a representative of a town, should live in that town, in order not only that he may know what are the views and intentions, and wishes of the inhabitants, but in order that his interest may be identified with their interests. If a man is chosen, who the next day moves away into South Carolina, or New Orleans, or perhaps to some part of Europe, according to this construction of the Constitution, he can even come across the Atlantic in a steamer and take his place here in the House of Representatives, when he has no more interest in the welfare of the town which he formerly lived in, than the Queen of England has. In that point of view, I think the construction which I have given is the sound one, and I hope it will be retained.

Mr. BOUTWELL, for Berlin. I beg leave to make a suggestion to the Convention upon another point. Some gentlemen have desired that we should propose specific amendments to the Constitution. I dare say, such a motion will be made before we adjourn to-night; but already several questions have arisen upon this floor as to what the Constitution is, because it is so difficult to analyze the existing provisions so as to determine just how far new amendments go in nullifying them. One word upon this particular point now under discussion. In 1780, the Convention provided that all persons should have two qualifications to entitle them to hold seats in the House of Representatives; one was, that they should have lived in the town they were chosen to represent, one year preceding their election; and the other was, that they should have a certain amount of property. In consequence of that, they said that a person not thus qualified should cease to represent the town from which he was chosen. I will give to the Convention of 1780 some credit for intelligence, although it so hap-

pens that the amendment alluded to, did not pass, by the by, until 1840; but they did not intend that a person should cease to be qualified, from any circumstance over which he had power of his own will, but on account of contingencies to which he was, or might be liable. There were two qualifications; he could rid himself of the one, but he could not rid himself of the other. If he had lived in the town for twelve months previous to his election, that qualification stood by him. But, if he possessed a hundred pounds, and should lose it in speculations, and become bankrupt, he then ceased to be qualified to represent the town. Therefore, the Committee did not follow the interpretation given by the gentleman who has had charge of this for twenty years. They came to the conclusion that when the people annulled the property qualification, they also annulled the result of it.

Mr. SCHOULER, of Boston. A case came up during the last session of the legislature, when a man was elected in the town of Blackstone, but previous to the adjournment of the House he had removed to the town of New Market, N. H. In consequence of this fact, the subject was referred to a committee, and the committee reported that the seat was vacant; but as it was only a day or two before the adjournment of the legislature, no action was taken upon it, and the report was laid upon the table without any decision being made. It was the decision of the majority of the committee, that the seat was vacant, under the eighth article of the Constitution. Now, Sir, I should like to understand this matter. I agree with the gentleman for Berlin, and I thought so last winter, that the article was ambiguous, and I want to make sense of it. I should like to know whether, under this article, a person could continue to represent a town even after he had moved out of the State; for if so, I think it should be amended.* There is no propriety whatever in allowing a person to represent a town after he ceased to be an inhabitant of the State, although it might not be so bad if he merely removed from one part of the State to another part; but an inhabitant of another State certainly cannot represent the people of this State. We had up last year—and that is what brought the matter before us—one of the most important bills, that with regard to the liquor law; and there are many gentlemen here who will recollect it was defeated by a tie-vote, the gentleman from Blackstone voting upon one side. There was another bill passed here, assessing taxes to the amount of \$300,000 upon the people of the Commonwealth; and now the question for this Convention to decide is, whether a man who has moved out of this Commonwealth and is an inhabitant of another State, has a right to come into our legislature and vote to tax our people. If the construction at present is, that a man shall continue to be a representative after he has removed his residence from the State, I think this article should be amended so that he shall cease to be a representative after he has left the county or town where he was chosen—and above all, when he leaves the State.

The question being taken on the amendment of Mr. Morton, it was not agreed to.

Mr. LORD, of Salem. I desire to know whether this is not a matter of right that this should go in, if anybody desires it? It is printed as a part of our present Constitution, and no action of the Convention has stricken it out. I

desire to have it put in as we always have had it in, and inasmuch as there is no authority that I can see for leaving it out.

The PRESIDENT. It seems from the Report of the Committee, that their judgment was that these words are not a part of the Constitution. They have so reported. The Chair cannot say that they are such a part of the Constitution as will go into the present draft upon the claim of a single member; and therefore the question has been submitted to the judgment of the Convention.

Mr. LORD. I desire to ask the Committee what draft of the Constitution they look upon as authentic. I am not sure that the Convention did not reject this on the ground that it should go in as a matter of right and not as amendment. If those words are a part of our present Constitution, they belong there as a matter of right, because this Convention has not stricken them out.

Mr. WILKINSON, of Dedham. I understand that the Chair rules that these words are not in the Constitution?

The PRESIDENT. The gentleman misunderstands the Chair. The Chair understands that the Committee have reported that they are not a part of the Constitution.

Mr. WILKINSON. It seems to me that there ought to be some way for the Convention to settle the question.

The PRESIDENT. The Chair has not ruled that they are not a part of the Constitution, for if that had been the ruling, the Chair would not have submitted the motion of the gentleman from Taunton, (Mr. Morton). The question has been submitted to the Convention, and the Convention have decided not to insert the words.

Mr. WILKINSON. It strikes me clearly that the words are in the present Constitution. I see that the article now reported by the Committee is entitled on the margin "qualification." I therefore supposed that a person in order to be elected must be an inhabitant; that is a qualification which he should possess at the time of the election. He must have been an inhabitant for the next twelve months preceding his election, and that necessarily implies that at the time of his election he shall be an inhabitant, for he cannot have been an inhabitant for the twelve months next preceding his election, unless at the time of his election he is an inhabitant. Well, then, inhabitancy is one of the qualifications necessary to constitute a representative, and when the Constitution provides that he should have all those qualifications, and that they should continue till the election, it seems to me clear that the limitation implies the qualification of inhabitancy. It seems to me that inhabitancy is a qualification, and that the qualification must continue. If, however, as seems to be the opinion of some gentlemen, it is best to alter the Constitution, then it may be proper to introduce such a resolution. At any rate, it is proper that we should have a perfect understanding of this matter. It ought to be settled one way or another, and therefore it seems proper, if the President rules this an amendment in substance, and therefore out of order, that the question should at sometime be raised.

The PRESIDENT. The Chair did not rule that. It stated the question to the Convention, and the Convention has voted upon it.

Mr. GARDNER, of Boston. Has the Chair decided the motion of the gentleman from Boston?

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The PRESIDENT. It has been decided by the Convention.

Mr. WILKINSON. I move to reconsider the vote by which the motion of the gentleman from Taunton, (Mr. Morton,) was rejected.

Mr. DANA, for Manchester. I think it possible that there is a little misapprehension in the minds of members of the Convention. By turning to page eightieth of the Rules and Orders of the Convention, you will find in the middle of article third, of section third, chapter first, a part put in brackets. It is assumed, in the debates, that the putting of that part in brackets is a legal act done by some authority, and that all not in brackets is not a part of the Constitution. That is not so. The people of Massachusetts have never adopted those brackets in any way.

The following is the third article:—

III. Every member of the House of Representatives shall be chosen by written votes; and, for one year at least next preceding his election, shall have been an inhabitant of, [and have been seized in his own right of, a freehold of the value of one hundred pounds, within the town he shall be chosen to represent, or any ratable estate to the value of two hundred pounds;] and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid.

Here you see the bracket is put after the word "pounds" instead of after the word "aforesaid," as it should have been. You may ask how the brackets came there. The answer is this: In 1780, the whole of the third article stood, requiring two qualifications, that of previous residence, and a freehold of the value of one hundred pounds, and the provision that a member should cease to represent a town immediately on his ceasing to be qualified as aforesaid.

If, then, gentlemen will turn to the 114th page of the same book, at the bottom of that page they will find this amendment:—

No possession of a freehold, or of any other estate, should be required as a qualification for holding a seat in either branch of the General Court, or in the Executive Council.

Then the question is—and it is an open question, and one never ruled upon by the people of the Commonwealth—did the passage of that amendment strike out all of the latter part, or only a portion of the latter part of the third section? Judge Cushing saw fit to put the brackets after the word "pounds" in his edition of the Constitution which he got up for sale, as a private matter. Another edition might have put it after the word "aforesaid." The legislature has printed the Constitution after Judge Cushing's edition, but only for convenience, and not enacting constitutional law by brackets.

The words "and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid," have no more virtue than the part in brackets. The fact that the words stand within or without the brackets, has no effect whatever. Then it is an open question as to what is the effect of the last clause on page 114 which I have read. The Committee were of opinion that it only affected the qualification of freehold, because the qualification that a man should have resided for one year, is a thing which either existed at the time or not, and if it did exist at the time, it never ceased to exist afterwards. Could a man ever cease to have been

twenty-one years of age, after he had once been so at a given time?

Mr. GRAY, of Boston. I agree that the gentleman for Manchester has stated the question fairly, and that is, that gentlemen, whichever side they take, are not to rest their position upon these brackets. I am very sorry that this digest was ever made and adopted. If this were the proper occasion, I could point out very important blunders in this respect.

If we take the text of the Constitution of 1780, and as it existed until 1840, we find the third clause as it stands, as it has been read by the gentleman for Manchester, beginning with the words, "every member," and ending with the word "aforesaid." No person raised a construction upon that. But, in 1840, the people adopted an amendment, in which there was a clause, very clear and distinct, that no possession of freehold or other estate should be required as a qualification for either branch of the legislature, or the council. Now, I am ready, with the gentleman for Manchester, to reconcile those two clauses.

Every member of the House of Representatives shall be chosen by written votes. But what qualification must he have? What incident, accident and possession, must he have to qualify him for a seat? He must, for one year preceding his election, have been an inhabitant of the town, and "he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid." I contend that upon every fair principle of construction, that the clause, "he shall cease," &c., refers to the first part of the qualification, as well as to the last; refers to the residence, as making a part of the qualification. It is a question of construction. I say it is a question upon which I never entertained a doubt; and, until the decision of the Committee, I did not suppose that any other one did. I have heard that in this Committee, or in some other committee, the question was raised upon striking out this qualification. I do maintain that this is an essential part of the qualification, and the words, "he shall cease," &c., refers to one as well as to the other. The last part being qualified by the act of 1840, we need say nothing about that. The question is this, and it is an important one: Shall the Convention now do what they have not yet done, shall they abolish the qualification of residence? I think that has not been done, and if it is to be done, I object to it.

This is a question of so much consequence, that I venture to ask the yeas and nays upon the motion to reconsider.

The yeas and nays were ordered—one-fifth of the members present voting therefor.

Mr. LORD, of Salem. I desire to call the attention of those gentlemen who think that this does not relate to anything but the freehold, to this point, whether this proposition of the Constitution requires that the person to be elected shall be an inhabitant of the town at the time of his election? And if they hold that he must be an inhabitant of the town at the time of his election, where do they get that proposition, except from the phraseology that he must have been an inhabitant for twelve months next preceding? Then, if he must have been an inhabitant for twelve months next preceding, and if that phraseology, by its own force imputes a present inhabitancy, the same qualification which requires a twelve months' residence requires a present inhabitancy.

If gentlemen will remark the next article as it stood in the original Constitution, they will perceive that the same phraseology is used, and there nobody doubts that present inhabitancy is required. The fourth article in the original Constitution, was this:—

IV. [Every male person, being twenty-one years of age, and resident in any particular town in this Commonwealth, for the space of one year next preceding, having a freehold estate within the same town, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a representative or representatives for the said town.]

Now, Sir, does that require present inhabitancy?

The hour of two o'clock having arrived, the President adjourned the Convention until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock, P. M., and resumed the consideration of the unfinished business of the morning session.

Mr. GRAY, of Boston. It will be recollected that I this morning moved the yeas and nays upon the question now before the Convention. I am unwilling, when not compelled to do so, to make a motion which merely takes up the time of the Convention, or even to appear to make such a motion. I find that the question of residence of members as a qualification, is disposed of, to a great degree, by another article, and though I still adhere to my argument, I do not think it important that the yeas and nays should be called, and perhaps other gentlemen who voted with me will think so also. I therefore move a reconsideration of the vote by which the yeas and nays were ordered. I trust gentlemen will observe that this in no way affects my argument as applied to the main question.

Mr. LORD, of Salem. I should like to have the gentleman from Boston tell us what other provision he refers to, as disposing of this question, to some degree?

Mr. GRAY. I refer to article eighth of chapter third of the new Constitution. I had the impression when I made the motion, that that disposed of the whole question of qualification, but it does not, and my justification is, I had but little time to go over the pamphlet containing the Report of the Committee. Though I think it an important question, still, finding the matter standing in a different position from what I had supposed, I do not wish to have the time of the Convention taken up by calling the yeas and nays.

The question was then taken upon the motion to reconsider the vote by which the yeas and nays were ordered, and it was decided in the affirmative.

Mr. GRAY. I now withdraw my motion for the yeas and nays.

The question then recurred upon the motion offered by Mr. Wilkinson, to reconsider the vote by which the Convention rejected the motion of the gentleman from Taunton, (Mr. Morton).

Mr. GRAY. I beg leave to make a remark or two. It has been conceded, I believe, that if there is anything in the old Constitution which has not been struck out, it goes into the new Constitution; as a matter of course, and as a

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matter of right. Now, Sir, it appears to me to be a clear case, as it did to my friend from Salem, that these words have not been rightfully struck out by the Committee; that they have never been struck out by the Convention. I make these suggestions to bring the matter once more to the consideration of the Chair, and of the House. It is not a question whether we had better do one thing or the other, but whether they are not left in by the action of the Convention.

I wish merely to make myself fully understood. Article eighth of chapter third, of the Report of this Committee, provides that every member of the House of Representatives shall have been, for one year next at least, preceding his election, an inhabitant of the town he shall be chosen to represent. That, Sir, as I have stated, provides, in a great degree, for the question of residence; but there is another branch which is not provided for, though, as I contend, it is provided for in the old Constitution, and that is, that he shall cease to be a representative when he ceases to be a resident. Now, the Committee have struck out those words; and what I contend for, is, that the Convention never did strike them out, and every-body agrees they are in the old Constitution, and the Committee in doing it committed a mistake; and they should go in here as a matter of course.

Mr. CHAPIN, of Worcester. The question, I believe, is on the motion of the gentleman from Dedham.

The PRESIDENT. The question is on the motion to reconsider the vote by which the amendment of the gentleman from Taunton, (Mr. Morton,) was rejected.

The question was then taken, and on a division, there were—ayes, 39; noes, 103.

So the motion to reconsider was not agreed to.

Mr. LORD, of Salem. I move that all that portion of chapter third which relates to the House of Representatives, involving articles two, three, and four, be stricken out of this chapter, and submitted to the people as a separate amendment. The articles are as follows:—

ART. 2. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town, containing less than one thousand inhabitants, may elect one representative in the year when the valuation of estates shall be settled, and, in addition thereto, one representative five years in every ten years. Every town containing one thousand inhabitants and less than four thousand, may elect one representative. Every town containing four thousand inhabitants and less than eight thousand, may elect two representatives. Every town containing eight thousand inhabitants and less than twelve thousand, may elect three representatives. Every city or town containing twelve thousand inhabitants, may elect four representatives. Every city or town containing over twelve thousand inhabitants, may elect one additional representative for every four thousand inhabitants it shall contain, over twelve thousand. Any two towns, each containing less than one thousand inhabitants, may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, form themselves into a representative district, to continue for the term of not less than two years; and such district shall have all the rights, in regard to representation, which belong to a town having one thousand inhabitants. And this apportionment shall be based

upon the census of the year eighteen hundred and fifty, until a new census shall be taken.

ART. 3. The Senate, at its first session after this Constitution shall have been adopted, and at its first session after the next State Census shall have been taken, and at its first session next after each decennial State Census thereafter, shall apportion the number of Representatives to which each town and city shall be entitled, and shall cause the same to be seasonably published; and in all apportionments after the first, the numbers which shall entitle any town or city, to two, three, four, or more Representatives, shall be increased or diminished in the same proportion as the population of the whole Commonwealth shall have increased or decreased since the last preceding apportionment.

ART. 4. No town hereafter incorporated, containing less than fifteen hundred inhabitants, shall be entitled to choose a representative.

Mr. LORD. I do not think that we shall do our duty to those who sent us here, and who certainly have a right to have a separate vote upon amendments so important as these, unless we provide that right. I think it is desired by the people that they should pass upon all very important changes, upon their merits separately. I do not believe that the people of this Commonwealth want to have things that they like, and things that they do not like, mixed together, and then to be told "you must take both, or get neither." I think the people of the Commonwealth are as capable of deciding on what they want, as this Convention is. When gentlemen profess to have so much respect for the people, I want them to understand that I think the people have quite as much discrimination as we have, and that they are quite as capable of judging of what they want, as we are to judge for them; and I have no hesitation in saying that they would prefer to pass upon this question of the basis of representation, without having it sweetened with something the Convention thinks they would like. The Convention in effect, says: "We want the people to take this basis of representation which we have prepared for them. We know that the natural sense of justice inherent in the people will never allow them to pass this system as it is; but we will sweeten it to make it palatable, and thus we will compel them to take this thing which they do not like, with something which they do like."

Sir, I desire to have somebody point out to me any difficulty that exists in the way of these three articles being put at the end of the eight propositions on which you propose to take the vote of the people separately, and to make them proposition number nine, for the same purpose, and say—as we propose to say in regard to the other eight propositions—"If these articles be adopted and ratified, then they shall be a part of the Constitution; and if they are not adopted and ratified, then the present basis shall stand as the basis of representation until it is changed by some competent authority?" I want to know the difficulty in the way of this? What is it? Where is it? Is it not as easy to submit separately a question of such vast moment and importance as this, as any one of the eight propositions on which you propose to take a separate vote? Quite as easy, Mr. President, and much more desirable; but the real fact is, that it is an unjust proposition, and gentlemen know it; and, knowing that, they sagaciously conclude that the people will not swallow it without some sweetening;

that the people will reject it unless something is put along with it to make it palatable.

My idea is—and the people will eventually acknowledge that it is the true one, whatever may be done by this Convention—that no one proposition which may be popular, ought to be compelled to drag after it an unpopular one, nor should an unpopular proposition be permitted to hang, for its success, upon the skirts of a popular one. Nobody in this Convention believes that there is the slightest difficulty or obstruction in the way of putting this matter as a separate question to the people—except that party in the Convention who fear to trust the people, and who are determined to dragoon them into the adoption of this measure, if they can do so by any possible means. Talk not to me about "trusting the people," when you dare not say to them "Will you have this, or will you have that?" Sir, I was surprised at the argument of the gentleman for Berlin, in regard to this question, when he professed to entertain great fear that if the question of the basis of representation were put alternately, as between two systems, there would be danger of losing both! Sir, in adopting the amendment which I suggest, we do not propose to do anything except to say that, in case the system you have now incorporated into your Constitution should not meet the approbation of the popular will, the system as we now have it shall remain as it is. There is, therefore, none of the danger of which the gentleman speaks; and the only objection to taking this question separately that I can see, is, a fixed determination to cram this system down the throats of the people, at the risk of losing all the other amendments, or of remaining upon the old Constitution. I have heard no reason that is at all satisfactory to my mind—nor have I heard any that I think will satisfy the people—why particular articles should be taken from the Constitution and put by themselves, while others are not so. I regard this question of representation as one of the most vital questions that has come before us; and, in reference to it, I deem it so important for the people to know who are willing that they should pass upon it by itself—a proposition which, in my judgment, the people would reject with scorn, as an injustice that they would be unwilling to perpetrate—and also because, as a member of this Convention, I feel desirous that my constituents should have an opportunity of voting simply "yes" or "no" upon this matter, I ask, that when the question is taken upon my amendment, it may be taken by the yeas and nays.

The yeas and nays were accordingly ordered, on a division, the vote being—ayes, 55; noes, 163.

Mr. HILLARD, of Boston. As it is so soon after dinner, I wish to be allowed to recite, for the benefit of the Convention, and in answer to the suggestion of my friend from Salem, (Mr. Lord,) an Eastern apologue.

Once upon a time an Arab was sick unto death, and he vowed a vow to the prophet that he would offer for sale his only camel, for five pieces of gold, if he were restored to health. When he got well he felt sorely perplexed as to how he should keep his vow—a perplexity, I fancy, something like that which is experienced by the majority of the Convention, in regard to the opinions expressed, and promises heretofore made, and the mode in which they will show to the

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people, next November, how they have been true to those opinions and promises.

But the way that the Arab got out of his difficulty, was this: He sent his camel to the market to be sold, but he sent it with a cat tied round its neck, and he ordered the crier to proclaim: "The camel for five pieces of gold, and the cat for one hundred, but both must be sold together." Thus there arose a saying which passed into a proverb: "How cheap the camel would be, if it were not for that cursed thing around its neck!"

So it is with the discordant provisions contained in the first proposition to be submitted to the people. The cat and the camel must be sold together. He who wants only one, must take both or none. [Laughter.]

Mr. LORD. I think the question should embrace the second, third, fourth, and fifth articles. When I moved the amendments, I only included the second, third, and fourth. I now move to add the fifth, as follows:—

ART. 5. Each city in this Commonwealth, shall be divided, by such means as the Legislature may provide, into districts of contiguous territory, as nearly equal in population as may be, for the election of representatives, which districts shall not be changed oftener than once in five years: *provided, however, that no one district shall be entitled to elect more than three representatives.*

As the order for the yeas and nays did not include the question on the fifth article, I hope it may, by general consent, be included without the necessity of calling for another division.

No objection was made, and the fifth article was included in the question to be taken by the yeas and nays, which were then taken, and resulted—yeas, 91; nays, 205—as follows:—

YEAS.

Abbott, Alfred A.
Adams, Benjamin P.
Aldrich, P. Emory
Aspinwall, William
Ayres, Samuel
Bartlett, Sidney
Beach, Erasmus D.
Bigelow, Jacob
Bradbury, Ebenezer
Bradford, William J. A.
Brannan, Milton P.
Bullock, Rufus
Choate, Rufus
Cogswell, Nathaniel
Cook, Charles E.
Coolidge, Henry F.
Copeland, Benjamin F.
Davis, John
Davis, Solomon
Denison, Hiram S.
Eaton, Lilley
Ely, Homer
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Gardner, Henry J.
Gould, Robert
Goulding, Dalton
Gray, John C.
Hale, Artemas
Hammond, A. B.
Haskell, George
Hathaway, Eluthan P.
Hawkes, Stephen E.
Hayward, George
Heard, Charles
Hersey, Henry
Hewes, James
Hillard, George S.
Hooper, Foster

Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Hunt, William
Hurlburt, Samuel A.
Jackson, Samuel
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kuhn, George, H.
Lincoln, Abishai
Littlefield, Tristram
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Miller, Seth, Jr.
Morey, George
Morse, Joseph B.
Morton, Marcus
Noyes, Daniel
Oliver, Henry K.
Paige, James W.
Park, John G.
Parker, Adolphus G.
Parker, Joel
Perkins, Daniel A.
Perkins, Jonathan C.
Plunkett, William C.
Pomroy, Jeremiah
Putnam, George
Rantoul, Robert
Read, James
Reed, Sampson
Sargent, John
Souther, John
Stetson, Caleb
Stevens, Charles G.
Stevenson, J. Thomas

Talbot, Thomas
Thompson, Charles
Tyler, John S.
Upton, George B.
Walcott, Samuel B.
Wheeler, William F.

Wilbur, Joseph
Wildor, Joel
Wilkinson, Ezra
Williams, Henry
Wilson, Milo

NAYS.

Adams, Shubael P.
Allen, Charles
Allen, James B.
Allen, Joel C.
Alley, John B.
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Ball, George S.
Bancroft, Alpheus
Bartlett, Russel
Barrett, Marcus
Bates, Eliakim A.
Beal, John
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Booth, William S.
Boutwell, Geo. S.
Boutwell, Sewell
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Bullen, Amos H.
Burlingame, Anson
Butler, Benjamin F.
Caruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Chester W.
Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Clark, Henry
Clark, Ransom
Clark, Salah
Clarke, Alpheus B.
Clarke, Stillman
Cole, Lansing J.
Cole, Sumner
Crane, George B.
Cressy, Oliver S.
Crittenden, Simon
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Ebenezer
Davis, Isaac
Davis, Robert T.
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fiske, Emory
Fowle, Samuel

Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Gardner, Johnson
Gates, Elbridge
Gilbert, Wanton C.
Gilbert, Washington
Giles, Charles G.
Gooch, Daniel W.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hagood, Seth
Harmon, Phineas
Hayden, Isaac
Hazelwell, Charles C.
Heath, Ezra, 2d.
Hewes, William H.
Heywood, Levi
Hobart, Henry
Hobbs, Edwin
Holder, Nathaniel
Hood, George
Howard, Martin
Howland, Abraham H.
Hoyt, Henry K.
Hurlburt, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Johnson, John
Kendall, Isaac
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Lawrence, Luther
Leland, Alden
Little, Otis
Marble, William P.
Marvin, Abijah P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Nichols, William
Nute, Andrew T.
Orne, Benjamin S.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Peabody, Nathaniel
Penniman, John
Perkins, Jesse
Perkins, Noah C.
Pinney, Silvanus B.
Pierce, Henry
Putnam, John A.

Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rogers, John
Ross, David S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sherril, John
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spoonor, Samuel W.
Stacy, Eben H.
Stevens, Granville
Stevens, William
Stiles, Gideon
Taber, Isaac C.
Taft, Arnold
Thayer, Willard, 2d

ABSENT.

Abbott, Josiah G.
Allen, Parsons
Andrews, Robert
Appleton, William
Atwood, David C.
Ballard, Alvah
Banks, Nathaniel P., Jr.
Barrows, Joseph
Bates, Moses, Jr.
Beebe, James M.
Bell, Luther V.
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Bumpus, Cephas C.
Cady, Henry
Carter, Timothy W.
Churchill, J. McKean
Cleverly, William
Coggin, Jacob
Conkey, Ithamar
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crownshield, T. B.
Cummings, Joseph
Curtis, Wilber
Davis, Charles G.
Daves, Henry L.
Day, Gilman
Dehon, William
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Easton, James, 2d
Ely, Joseph M.
Eustis, William T.
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
Frothingham, Rich'd, Jr.
Gale, Luther
Giles, Joel
Goulding, Jason
Greenleaf, Simon
Hale, Nathan
Hall, Charles B.
Hagood, Lyman W.
Haskins, William
Henry, Samuel
Hinsdale, William
Hobart, Aaron
Hunt, Charles E.
Huntington, Asahel
Huntington, Charles P.

Huntington, George H.
Hyde, Benjamin D.
James, William
Kellogg, Martin R.
Kinsman, Henry W.
Knowlton, Charles L.
Ladd, John S.
Lawton, Job G., Jr.
Lincoln, Frederic W., Jr.
Loomis, E. Justin
Marcy, Laban
Marvin, Theophilus R.
Meador, Reuben
Mixer, Samuel
Newman, Charles
Norton, Alfred
Ober, Joseph E.
Orcutt, Nathan
Parker, Samuel D.
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Pease, Jeremiah, Jr.
Phelps, Charles
Pool, James M.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Rockwell, Julius
Rockwood, Joseph M.
Sampson, George R.
Schouler, William
Sheldon, Luther
Sherman, Charles
Sikes, Chester
Sleeper, John S.
Stevens, Joseph L., Jr.
Storror, Charles S.
Strong, Alfred L.
Stutson, William
Sumner, Charles
Sumner, Increase
Swain, Alanson
Taylor, Ralph
Thayer, Joseph
Tilston, Edmund P.
Tilton, Horatio W.
Tower, Ephraim
Train, Charles R.
Turner, David
Turner, David P.
Upham, Charles W.
Wales, Bradford L.
Walker, Samuel
Warner, Marshall
Warner, Samuel, Jr.
Waters, Asa H.
Weeks, Cyrus

Monday,]

REVISED CONSTITUTION.—GARDNER—HATHAWAY—BOUTWELL—MILLER.

[August 1st.

Wetmore, Thomas Wood, William H.
Wilkins, John H. Woods, Josiah B.
Winn, Jonathan B.

Absent and not voting, 123.

Mr. GARDNER. I wish that this matter might, if possible, be sent out to the people without any contradiction of principle upon its face. The first article of this third chapter, is as follows :

ARTICLE 1. There shall be, in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

In order to make this article consistent with the one following it, I wish to amend it thus : strike out the word "people," in the second line, and insert the words "several towns ;" and also strike out the last word in the article, "equality," and insert the words "prerogative rights." It will then read :—

ARTICLE 1. There shall be, in the Legislature of this Commonwealth, a representation of the several towns, annually elected, and founded upon the principle of prerogative rights.

The PRESIDENT. The Chair is of opinion that the amendment is not in order, being one of substance, and not of form.

No other amendment being offered, the third chapter, as amended, was finally passed, and the Secretary proceeded to read chapter four, containing provisions in relation to the governor and his title—his qualifications and tenure of office—the mode of his election, and by whom—his powers, and the powers of the council—notaries public—coroners—mode of drawing money from the treasury—the duties of public boards in regard to their returns—and, lastly—the salary of the governor, the whole chapter containing twelve articles. It is as follows :—

ARTICLE 1. There shall be a supreme executive magistrate, who shall be styled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS.

ART. 2. The governor shall be a citizen of Massachusetts, and shall be chosen annually, by the inhabitants of the towns and cities of this Commonwealth, on the Tuesday next after the first Monday in November. He shall hold his office for one year next following the first Wednesday of January, and until another is chosen and qualified in his stead. And no person shall be eligible to this office, unless, at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding.

ART. 3. Those persons who shall be qualified to vote for senators and representatives, within the several towns of this Commonwealth, shall, at a meeting to be called for that purpose, on the Tuesday next after the first Monday in November, annually, give in their votes for a governor, to the selectmen, who shall preside at such meeting, and the town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name ; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting ; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the first Wednesday in January ; and the sheriff shall transmit the same to the secretary's office seven days at least before the said first Wednesday in January ; or the selectmen may cause returns of the same to be made to the office of the secretary of the Commonwealth seventeen days at

least before the said day ; and the secretary shall lay the same before the Senate and the House of Representatives, on the first Wednesday in January, to be by them examined ; and in case of an election, the choice shall be by them declared and published.

ART. 4. The governor shall have authority, from time to time, at his discretion, to assemble and call together the councillors of this Commonwealth for the time being ; and the governor, with the said councillors, or five of them at least, shall, and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, agreeably to the Constitution and the laws of the land.

ART. 5. The governor, with advice of Council, shall have full power and authority, during the session of the General Court, to adjourn or prorogue the same to any time the two Houses shall desire ; and in the recess of the said Court, to prorogue the same from time to time, not exceeding ninety days in any one recess ; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same ; and in case of any infectious distemper prevailing in the place where the said Court is next, at any time to convene, or any other cause happening, whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other, the most convenient place within the State.

ART. 6. In cases of disagreement between the two Houses, with regard to the necessity, expediency or time of adjournment, or prorogation, the governor, with advice of the Council, shall have a right to adjourn or prorogue the General Court, not exceeding ninety days, as he shall determine the public good shall require.

ART. 7. The power of pardoning offences, except such as persons may be convicted of before the Senate, by an impeachment of the House, shall be in the governor, by and with the advice of Council ; but no charter of pardon, granted by the governor, with advice of the Council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

ART. 8. Notaries public shall be appointed by the governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor, with the consent of the Council, upon the address of both Houses of the General Court.

ART. 9. Coroners shall be nominated and appointed by the governor, by and with the advice and consent of the Council ; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

ART. 10. No moneys shall be issued out of the treasury of this Commonwealth and disposed of, (except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon,) but by warrant under the hand of the governor for the time being, with the advice and consent of the Council, for the necessary defence and support of the Commonwealth ; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the General Court.

ART. 11. All public boards, the commissary-general, all superintending officers of public magazines and stores, belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially and without requisition, and at other times, when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care, respectively ; distinguishing the quantity, number, quality and kind of each, as particularly as may be ; together, with the condition of such forts and garrisons ; and the said

commanding officer shall exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbor or harbors, adjacent.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, despatches, and intelligences of a public nature, which shall be directed to them respectively.

ART. 12. As the public good requires that the governor should not be under the undue influence of any of the members of the General Court, by a dependence on them for his support—that he should, in all cases, act with freedom for the benefit of the public—that he should not have his attention necessarily diverted from that object to his private concerns—and that he should maintain the dignity of the Commonwealth in the character of its chief magistrate—it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws ; and it shall be among the first acts of the General Court, after the commencement of this Constitution, to establish such salary by law accordingly.

Mr. HATHAWAY, of Freetown. As there was a question raised, and some difficulty felt upon the subject, in regard to the qualifications of members of the House of Representatives, as they existed under the amended Constitution of 1820, I wish to call the attention of the Convention to another matter about which there seems to me to be no question—that is, the qualifications of a governor. If I read the Constitution correctly as it now stands, it requires that no person shall be eligible to the office of governor, unless, at the time of his election, he has been an inhabitant of the Commonwealth for seven years next preceding such election. Here is the provision as it stands in our present Constitution :—

"The governor shall be chosen annually ; and no person shall be eligible to this office, unless, at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding."

I would inquire whether there has been any action of the Convention by which that provision of our present Constitution was amended ? And if there was no such action why is it omitted here ? If I recollect rightly—and I think I am right, although I have not now the record of debates before me—when this question was asked on a former occasion, it was stated that the Committee had only reported in part. The gentleman from Worcester, (Mr. Davis,) and also my friend from Wareham, (Mr. Miller,) were on that Committee, and when I inquired in regard to this matter, it was said that everything—except those matters in which the Committee recommended a change—would be retained, and ought to be retained in the Constitution. That was my answer. Now, if there was any action of the Convention in regard to this matter changing the requirement of a seven years' residence in the election of governor, I should like to be informed what that action was, and when and under what circumstances it was had. I make no motion for any amendment, but I should certainly like to have this explained.

Mr. BOUTWELL, for Berlin. I am not able to answer the gentleman from Freetown, but I think we have a resolution that will meet the case.

Mr. MILLER, of Wareham. I recollect very well when the Report first came up, the gentleman

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from Freetown, (Mr. Hathaway,) inquired at the time in reference to this qualification of a seven years' residence for a governor; and that I then rose in my place and stated that we intended that provision to remain in the Constitution. I have no recollection of any action of this Convention altering the determination of the Committee to whom this portion of the Constitution was referred.

Mr. HATHAWAY. If the gentleman will pardon me, I will make an inquiry. I wish to know whether the Committee of which the gentleman was one, and who had this under consideration at the time, reported any action for this Convention to take in reference to the seven years' residence.

Mr. MILLER. The Committee did not report any action on that point, but they supposed—as it is stated in the present Constitution, that the governor shall, at the time of his election, have been an inhabitant of the Commonwealth for seven years next preceding—that this provision would remain in the Constitution. That was regarded as decided upon. In the new Constitution, there is a requirement of a five years' residence in the Commonwealth to enable a person to be qualified to be a senator; and, it appears to me, that if you require a residence of five years for a senator, you should, at least, require five, if not seven years' residence in order to make a person eligible for the higher office of governor. The term "citizen of Massachusetts," I remember, was discussed very much in the Convention at the time; but I know of no action, either in Convention or in Committee, that has altered, or that was intended to alter, the present requisition of seven years in order to make a person eligible to the gubernatorial chair.

Mr. BOUTWELL. My own impression is that the Committee have made an omission, although I am not able at this moment to verify that statement. If the Convention will go on with the amendments, the Committee will ascertain, and have the matter placed right.

Mr. DAVIS, of Worcester. I will remark, that in document No. 8, the Convention will find the Report of the Committee, and will perceive what alterations the Committee recommended to the Convention. It is precisely as the gentleman from Wareham has stated; they reported to the Convention that no person except a citizen of the United States should be eligible to the office of governor; but the Convention afterwards changed it to "citizen of Massachusetts."

Mr. DANA, for Manchester. I have examined the record, and I find that the resolves in document No. 8 were amended only in two particulars—in the first resolve by striking out the words "United States," and inserting "Massachusetts," and by striking out of the last line the words: "nor shall any person be eligible to that office who shall not have attained to the age of thirty years." There was no other amendment at all, and it must have been an omission by the Committee.

Mr. HOOPER, of Fall River. It was distinctly stated in the discussion, by the gentleman from Freetown, that the other qualification would remain.

Mr. BOUTWELL. I have no doubt, upon examination of the record, that the Committee were in error. I therefore move to insert, at the close of the article, the following:—

And no person shall be eligible to this office unless, at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding.

The question being taken, the amendment was agreed to.

The PRESIDENT stated that unless further amendment was proposed to the fourth chapter, the Secretary would read the fifth chapter.

The fifth chapter was accordingly read, as follows:—

ARTICLE 1. There shall be annually elected a Lieutenant-Governor of the Commonwealth of Massachusetts, who shall be qualified in the same manner with the governor; and the day and manner of his election, the qualifications of the voters, the return of the votes, and the declaration of the election, shall be the same as in the election of a governor.

[And the lieutenant-governor shall hold his office for one year next following the first Wednesday of January, and until another is chosen and qualified in his stead.]

ART. 2. The governor, and in his absence, the lieutenant-governor, shall be president of the Council, but shall have no vote in Council; and the lieutenant-governor shall always be a member of the Council, except when the chair of the governor shall be vacant.

ART. 3. Whenever, by reason of sickness or absence from the Commonwealth, or otherwise, the governor shall be unable to perform his official duties, the lieutenant-governor, for the time being, shall have and exercise all the powers and authorities, and perform all the duties of governor; and whenever the chair of the governor shall be vacant, by reason of his resignation, death, or removal from office, the lieutenant-governor shall be governor of the Commonwealth.

No amendment being proposed to the fifth chapter, the Secretary read the sixth chapter, as follows:—

ARTICLE 1. There shall be a Council for advising the governor in the executive part of the government, to consist of eight persons besides the lieutenant-governor, whom the governor for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together; and the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the land.

[ART. 2. Eight councillors shall be annually chosen by the people; and for that purpose the State shall be divided by the General Court into eight districts, each district to consist of five contiguous senatorial districts, and entitled to elect one councillor, who shall hold his office for one year next following the first Wednesday in January, and until a successor is chosen and qualified in his stead.]

ART. 3. No person shall be elected a councillor who has not been an inhabitant of this Commonwealth for the term of five years immediately preceding his election.

[ART. 4. The day and manner of the election of councillors, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of senators; and the person having the highest number of votes shall be declared to be elected.]

ART. 5. No councillor, during the time for which he is elected, shall be appointed on any commission or to any place and receive compensation therefor.]

ART. 6. The councillors, in the civil arrangements of the Commonwealth, shall have rank next after the lieutenant-governor.

ART. 7. The resolutions and advice of the Council shall be recorded in a register, and signed by the members present; and any member of the Council may insert his opinion contrary to the resolution of the majority. This record shall always be subject to public examination, and may be called for by either House of the Legislature.

ART. 8. Whenever the office of the governor and lieutenant-governor shall be vacant, by reason of death, absence, or otherwise, then the Council, or the major part of them, shall, during such vacancy, have full power and authority, to do, and execute all and every such acts, matters and things, as the governor or the lieutenant-governor might or could, by virtue of this Constitution, do or execute, if they, or either of them, were personally present.

Mr. WILSON, of Natick. It seems to me that there is an omission in the second article. It provides that eight councillors shall be annually chosen by the people, and for that purpose the State shall be divided by the general court into eight districts, each district to consist of five contiguous senatorial districts, and entitled to elect one councillor, &c. It seems to me that there should be a provision in addition, and I will move to add, after the word "court," the following words: "holden next after the adoption of this Constitution, and next after each decennial census thereafter," so that it will read:—

ART. 2. Eight councillors shall be annually chosen by the people; and for that purpose the State shall be divided by the General Court holden next after the adoption of this Constitution, and next after each decennial census thereafter, into eight districts, each district to consist of five contiguous senatorial districts, and entitled to elect one councillor, who shall hold his office for one year next following the first Wednesday in January, and until a successor is chosen and qualified in his stead.

By the adoption of this amendment it will be in the power of the legislature to change the councillor districts whenever they see fit.

The PRESIDENT. The amendment is not in order. It is an amendment of substance and not of form.

Mr. HALE, of Boston. I will ask if, in the engrossed form, the orthography of this edition will be followed? If so, I move to amend it so that the word "councillor," wherever it occurs, shall be spelled as in the original Constitution. It is here spelled with a c instead of an s.

Mr. HALLETT, for Wilbraham. As one of the Committee, I will say that this was a subject of very grave consideration before the Committee. If the gentleman will consult the original orthography, I think he will find that the word is spelled with a c. It appears to be the proper word, too; they are not counsellors at law or barristers—they are simply councillors, who surround the governor.

Mr. HALE. Undoubtedly it is in the power of the Convention to coin a word; but the word councillor, in the English language, is always spelled with an "s." I therefore move that "councillor" be stricken out, and "counsellor" inserted in its stead.

Mr. OLIVER, of Lawrence. It strikes me that it would not be correct to have it spelled in that way. These gentlemen are members of the Council, and they sit in council together. They are not members of a counsel, and therefore they are not counsellors. I think there is excellent authority to sustain this mode of spelling the

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word; and if I am not greatly mistaken, it was so spelled in the original draft of the Constitution of this Commonwealth. That is the way that the Privy Council of England is spelled, almost universally.

Mr. JENKS, of Boston. I have always looked upon this orthography of the word "councillor," as a matter of affectation, and I do not think it is worth while for us to continue to use this now fangled word which has been manufactured within a few years. I think "counsellor" is the proper word, and in my opinion that is the way in which it was originally spelled. I am in favor of the amendment, for I think it is a mere matter of affectation to spell it "councillor."

Mr. BIRD, of Walpole. This is not, perhaps, a very vital matter, but I am of opinion, that as long as we have taken it up, it may be as well to have it settled correctly, and I believe that "counsellor" is the real way in which this word should be spelled. If you say that it should be spelled "councillor" as derived from "council," I will admit, that a word may be coined, and of course, when a new word is coined, there is no particular rule by which it can be decided that one mode of spelling is right and another is wrong. I hold, that "counsellor" is derived from "counsel," which means to give advice; and as these men are appointed for the purpose of giving advice to the governor, they should be termed counsellors. It is not a very important matter, and it may have been rather an inadvertence of the printers or the copyist, than an intentional mode of spelling the word.

Mr. HALLETT, for Wilbraham. Not at all. This subject was considered by the Committee, and the question was decided by them; so they are responsible for the orthography. I will add that in the original charter, it is spelled "councillor" in some places, and in others it is spelled "counsellor." These men are not counsellors—they are not kings' attorneys, but they are councillors as distinctive from the legal profession.

The question being taken, the amendment was not agreed to.

No further amendment being proposed to the sixth chapter, the Secretary read the seventh chapter, as follows:—

[ARTICLE 1. The secretary, treasurer, auditor and attorney-general, shall be chosen by the people, annually on the Tuesday next after the first Monday in November; and they shall hold their offices, respectively, for one year next following the first Wednesday in the succeeding January, and until their successors are chosen and qualified in their stead.

The day and manner of their election, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of governor.]

ART. 2. No man shall be eligible as treasurer, more than five years successively.

ART. 3. The records of the Commonwealth shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable; and he shall attend the governor and Council, the Senate and House of Representatives, in person, or by his deputies, as they shall respectively require.

[ART. 4. Judges of probate, registers of probate, sheriffs, clerks of the courts, commissioners of insolvency, district-attorneys, registers of deeds, county treasurers, and county commissioners, shall be elected triennially by the people of their respective counties and districts, on the Tuesday next after the first Monday in November, and shall hold their offices, respectively, for three years

next following the first Wednesday in the succeeding January, and until their respective successors are chosen and qualified in their stead.

The manner of their election, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of senators; and the person having the highest number of votes shall be elected.]

Mr. DENTON, of Chelsea, moved, that after the words "county commissioners," in the fourth line of article four, the words "except for the county of Suffolk" be inserted.

Mr. HALLETT. Upon an examination of that subject, I have no question that there is no change at all affected by this Constitution. The city treasurer of Boston is chosen under the existing law. This only requires that when there shall be a county treasurer, he shall be chosen as provided for in the Constitution.

Mr. DENTON. I speak of county commissioners. A portion of Suffolk County has been set off from the county of Middlesex, and as I understand, the chairman of the Committee which reported these resolves was unaware that there had been a division. The mayor and aldermen are county commissioners of the city of Boston, which is a portion of the county of Suffolk. The three remaining towns are attached to the county of Middlesex. I understand that the chairman of the Committee thinks there is a doubt, if action is taken upon the resolution as presented to the Convention, whether it would not put Chelsea and North Chelsea precisely where they were before, separate from the county of Middlesex.

The PRESIDENT. The Chair thinks the amendment one of substance and not one of form.

Mr. BUTLER, of Lowell. Lest there should be trouble so far as that matter is concerned, I call the attention of the Convention to the language of the article. It says that "county treasurers and county commissioners shall be elected triennially by the people of their respective counties and districts," &c. Now the legislature have set off Chelsea and North Chelsea each to Middlesex, and they, with the county of Middlesex, make a district for the purpose of choosing commissioners. So that I do not see the trouble which is suggested by the gentleman from Chelsea, that it can only be the people of a county who elect a commissioner. The language is, "chosen in their respective districts."

Mr. LORD, of Salem. I had the idea when the matter was under consideration, that the county of Suffolk was excepted; and, if in reality the county of Suffolk was excepted, they ought to be excepted in this provision. I do not know that I am right, but I think that county commissioners, so far as Boston was concerned, were excepted upon the motion of the gentleman who represents Wilbraham, (Mr. Hallett). Now, it seems to me that if they were, they ought to be here, because I do not agree at all to the construction which is now given to this clause by the gentleman for Wilbraham, that until the office of county commissioner shall be created for the county of Suffolk, it does not devolve upon the people to choose one. I think if the duties of that office are performed by another tribunal, that tribunal must be elected precisely in the same manner as is provided for the election of county commissioners, otherwise it will be competent for the legislature to alter the Constitution, simply by changing the name of the officer, and putting

upon him the duties imposed upon the county commissioners. Suppose that instead of there being county commissioners, the legislature should create a body of county selectmen, and place upon them the precise duties which now belong to county commissioners. Now, having imposed the duties of county commissioners upon the selectmen of the county, those duties being the same as those of county commissioners, it seems to me that the Constitution would require that they shall be elected in the mode pointed out in the Constitution for the election of county commissioners, and that their appointment could not be given to the governor, because, if otherwise, every officer that you have made elective by the people can be appointed by the governor, simply by the legislature changing the name of the officer, and imposing upon him the same duties as the other officer. If the construction which I give to it is the true one, then the mayor and aldermen of the city of Boston must be elected for the term of three years, unless an exception is made in their favor, which was made in the Committee of the Whole, when the subject was under consideration. I think the exception was made there, though I have no distinct recollection about it. I wish to stand upon the action of the Convention, whatever it is.

Mr. BOUTWELL, for Berlin. I have a certified copy of the proceedings of the Convention, but the exception was not made.

Mr. LORD. I knew the action of the Convention was reversed as to county treasurer, but as to county commissioners I did not know.

Mr. BOUTWELL. As some gentlemen desire that the title of this seventh chapter should be made more explicit, I move to amend it, so that it shall read: "Secretary, Treasurer, Attorney-General, Auditor, District-Attorneys, and County Officers."

The question was taken, and the motion was agreed to.

The Secretary then proceeded to read the next chapter, being chapter eight, entitled "Judiciary Power," which is as follows:—

[ARTICLE 1. The judicial power of the Commonwealth shall be vested in a Supreme Judicial Court, and such other courts as the legislature may from time to time establish.]

ART. 2. The tenure that all commission officers shall by law have in their offices, shall be expressed in their respective commissions.

All judicial officers, duly appointed, commissioned and sworn, shall hold their offices for the term of ten years, excepting such concerning whom there is different provision made in this Constitution. And upon the expiration of such term they may be reappointed; and all judicial officers for whose appointment a different provision is not made in this Constitution, shall be nominated and appointed by the Governor, by and with the advice and consent of the Council, and they may be removed by the Governor, with consent of the Council, upon the address of both Houses of the Legislature.

[ART. 3. The present justices of the Supreme Judicial Court shall hold their offices according to their respective commissions; and the present justices of the Court of Common Pleas shall hold their offices by the same tenure, while the law establishing the said Court of Common Pleas shall continue. All nominations of judicial officers, whose term of office is by this Constitution limited to ten years, shall be publicly announced at least seven days before their appointment; and no person who shall have been commissioned after the tenth day of August, in the year one thousand

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eight hundred and fifty-three, shall hold by any longer tenure of office than the term of ten years.

ART. 4. Neither the Governor and Council, nor the two branches of the Legislature, or either of them, shall hereafter propose questions to justices of the Supreme Judicial Court, and require their opinions thereon.]

ART. 5. The judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require; and the Legislature shall from time to time, hereafter, appoint such times and places; until which appointments, the said courts shall be held at the times and places which the respective judges shall direct.

[ART. 6. Justices of the peace, justices of the peace and quorum, justices of the peace throughout the Commonwealth, and commissioners to qualify civil officers, may be appointed by the governor and Council for a term of seven years; and upon the expiration of any commission, the same may be renewed; and those now in office shall continue therein according to the tenure of their respective commissions: *provided*, that the jurisdiction of the justices named in this article, shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

ART. 7. Trial justices shall be elected by the legal voters of the several towns and cities, where, at the time of such election there is no Police Court established by law, who shall hold their offices for a term of three years, and have the same jurisdiction, powers, and duties, as are now exercised by justices of the peace, or such as may hereafter be established by law. Every city or town, authorized as herein provided, shall elect a trial justice, and may elect one additional for each two thousand inhabitants therein, according to the next preceding decennial census: *provided*, however, that any trial justice who shall remove from the city or town in which he was elected shall thereby vacate his office.

ART. 8. Justices and clerks of the Police Courts of the several cities and towns of the Commonwealth shall be elected by the legal voters thereof, respectively, for a term of three years.]

Mr. CHOATE, of Boston. I beg to offer an amendment, which I have drawn with some little care, and extended, therefore, into several parts, though constituting an entire amendment altogether, for the purpose merely of transferring the change proposed to be made by the Convention in the matter of judicial tenure of office, from the body of the Constitution, where it must be voted for along with everything else, for the purpose, I say, of transferring that subject, into that part of the amendments proposed to be submitted separately to the people, so that it may be separately acted upon by the people, and by the individual voter.

As I understood the learned chairman, (Mr. Boutwell,) this morning, to suggest, that he should himself favor the separate submission of everything to the individual voter—which, it can be shown, may be practicably and properly done—I anticipate his support. I have paid some little attention to the details of this motion, and I count upon his coöperation. I propose, then, without sending the amendments to the Chair at present, to strike out, as follows: In the first place, strike out article thirty of the Bill of Rights, which is:—

ART. 30. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to

be tried by judges as free, impartial, and independent, as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices *by tenures established by the Constitution*, and should have honorable salaries, *which shall not be diminished during their continuance in office*.

Then strike out of article two, in this chapter eight, the following:—

All judicial officers, duly appointed, commissioned and sworn, shall hold their offices *for the term of ten years*, excepting such concerning whom there is different provision made in this Constitution. And upon the expiration of such term they may be reappointed.

Strike out all of article three, as follows:—

ART. 3. The present justices of the Supreme Judicial Court shall hold their offices according to their respective commissions; and the present justices of the Court of Common Pleas shall hold their offices by the same tenure, while the law establishing the said Court of Common Pleas shall continue. All nominations of judicial officers, whose term of office is by this Constitution limited to ten years, shall be publicly announced at least seven days before their appointment: and no person who shall have been commissioned after the tenth day of August, in the year one thousand eight hundred and fifty-three, shall hold by any longer tenure of office than the term of ten years.

The effect will be to remove from this portion of the Constitution which the Committee have numbered "one," everything which applies to a change in the judicial tenure, and nothing else. It will take that bodily from the position in which it now stands.

I then respectfully propose that you shall insert, on page forty of this printed Report of the Committee, under heads "nine," "ten," "eleven," and "twelve," the following, constituting one distinct provision and proposition, and those will be exactly what will have been removed, by the first branch of my proposed amendment, from number "one," that is to say, having struck out what I have indicated, then insert, as the ninth, tenth, eleventh, and twelfth paragraphs, what I will have the honor to read. They are nothing, but in their very terms, the provisions which the proposition to strike out, will have struck out. Supposing, then, that part of the amendment to have been adopted, and that nothing remains in number "one," upon the subject of the judicial tenure, then the following propositions will cover that ground exactly in the language of the Committee, and embrace what the Convention has done.

Ninth. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices *for the term of ten years*, excepting such concerning whom there is different provision made in this Constitution. And upon the expiration of any such term, they may be reappointed.

If this proposition be ratified and adopted, it shall be in addition to the chapter on the judiciary power.

Tenth. The present justices of the Supreme Judicial Court shall hold their offices according to their respective commissions; and the present justices of the Court of Common Pleas shall hold their offices by the same tenure, while the law establishing the said Court of Common Pleas shall continue. All nominations of judicial offi-

cers, whose term of office is by this Constitution limited to ten years, shall be publicly announced at least seven days before their appointment: and no person who shall have been commissioned after the tenth day of August, in the year one thousand eight hundred and fifty-three, shall hold by any longer tenure of office than the term of ten years.

If this proposition be ratified and adopted, it shall be in addition to the chapter on the judiciary power.

Eleventh. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent, as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices *by tenures established by the Constitution*, and should have honorable salaries, *which shall not be diminished during their continuance in office*.

If this proposition is ratified and adopted, it shall be in addition to the Declaration of Rights.

Twelfth. That all tenure of judicial office which shall not be changed by the Constitution, shall remain as heretofore.

This last proposition is indispensable, to meet a difficulty suggested by my friend for Manchester, (Mr. Dana,) in consultation with him, for it may happen that number "one" of the proposed amendments, may be adopted. If number "one" should be rejected, and this particular amendment should be rejected also, there might be a Constitution left without any tenure of office.

It is a part of this scheme of amendments, Mr. President, that the provisions respecting the limitation of judicial tenure, as proposed to be numbered progressively, nine, ten, eleven, and twelve, are to be considered as distinct propositions, to be adopted in the whole or rejected in the whole, as the people think proper. Now, having indicated what will unquestionably be the judicial effect of this amendment, I do not intend to detain the Convention with but a word in its favor. It simply, fairly, and in good faith, without modifying in the least degree the substantial action of this Convention, enables every voter in Massachusetts to express his own opinion, directly, upon so substantial, so distinct and important a proposition as to change the judicial tenure, uncoerced by its connection with any other subject—to the intent that every voter shall exercise his own reason and free will upon a subject distinct from every other branch of the entire subject committed to him—a proposition so reasonable, that, unless it is attended with the technical difficulty indicated this morning, by the honorable chairman of the Committee, would meet with universal approbation. It should be borne in mind—and it strikes me that it is a principle which should govern us—that we had to perform a distinct branch of duty. We were to express, and procure to be adopted—if we could—by this Convention, our own opinions concerning amendments to the Constitution. That duty we have been engaged in arduously for ninety days, and we have done it. We have conferred upon it, we have voted upon it, we have accomplished it, and we have completely and in good faith, finished that branch of our duties, the ex-

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pression of our own opinions touching amendments to the Constitution. The other piece of work submitted to us, and to which we have now arrived, is exactly to enable the people to do their part of the great concurrent work, in amending the Constitution, in the best practicable manner, on their part. And I apprehend that nobody can feel any desire whatever, to give it such a direction before the people, as shall lay them under coercion to adopt our views whether they like them or not. We should all feel, and should all cooperate to bring the matter before them in such a shape that they will express their own views exactly, without coercion, from any of its connections.

I hope, therefore, that unless my friend for Manchester, (Mr. Dana,) who has, I believe, been engaged more particularly with the consideration of the details of this part of the general subject, and with the composition of the amendments which are to be presented, should indicate some greater difficulties than I yet imagine exist, this particular amendment may be separately considered. The present is not the time to say a single word on the merits of the question, nor is it necessary. In regard to that, the Convention has already formed its opinion; but, I would suggest that this change in the nature of the judicial tenure, is a matter wholly new to everybody in the Commonwealth—that it is an innovation on our ancient usages that was not extensively canvassed before the Convention met—that it is a matter of vast importance to the whole community—and that it is easily separated from the rest of the Constitution.

Mr. HALLETT, for Wilbraham. I rise for the purpose of suggesting to the gentleman from Boston, the inquiry whether the thirtieth article of the Bill of Rights may not be left standing as it is; because, as it is there, it is entirely in the alternative, and is to be adapted either to the old or the new Constitution.

Mr. CHOATE. Suppose, for instance, that the whole of this resolve, which you call number one—embracing the great bulk of the Constitution—should be rejected by the people, then there is no such article there. No such article remains, and the old article in the old Constitution, commissioning the judges for good behavior, and this amendment would also remain, commissioning them under a ten years' tenure.

Mr. HALLETT. Then you might reject the whole of the first, and part of the last. I say to the gentleman from Boston, that I will go with him upon this point, if it is possible to make this provision a separate question, so that the remainder of the Constitution remains entire. I am not able to say whether the Constitution will bear that separation; but, as I have said before, if it can be submitted to the people without marring the symmetry of the instrument as a whole, whether it is adopted or rejected, I will go with the gentleman for his proposition.

Mr. DANA, for Manchester. Having been somewhat appealed to by the learned attorney-general, I feel bound to speak to the subject matter which he has brought before the Convention. It is certainly true, that the amendment we have adopted altering the tenure of the office of supreme judges from a life tenure to a tenure of only ten years duration, is a material change in the Constitution. I trust that some of the members of this body will remember that I was not in favor

of this change, and if it were to go as a separate proposition before the people, I should vote against it. As one of the Committee of Revision, I was in the hope that we should be able to put all these propositions separately to the people. But, after a more careful examination of the matter, I came to the conclusion that we could not put any of them as separate propositions, except such as were entirely new and independent. The gentleman for Wilbraham thought we could; but he afterwards changed his opinion. I gave early notice of this effect. During the debate on the subject of the judiciary, I said to the Convention that if these changes in the judicial tenure were made, they would have to be submitted to the people with all the rest of the propositions, as a unit. I gave that as a reason against adopting a change on which no public opinion had been expressed. I have not been able since then, to change my opinion. The learned attorney-general has brought before us a proposition that will do it, if anything human can. I have tried, myself, to invent or discover a mode by which it could be done; and doubtless the learned attorney-general has gone far beyond me in his plan; but I confess that I do not see the way clear yet. He proposes to divide all that relates to the judicial tenure embraced in the chapter on the judiciary, from the rest of the Constitution, and to present it as a separate resolution, to be called number nine. This embraces four distinct sections or articles. The first, relates to the ten years' tenure; the second, to the tenure of the present judges; the third, is the thirtieth article of the Bill of Rights; and the last, is a new proposition, which I suppose the Chair will be obliged to rule out of order, at this time.

Now, the principle upon which we have gone, and which the chairman of the Committee has so clearly illustrated, is this: that the Constitution of 1780 has thirteen amendments, many of them amendments upon amendments, rendering the construction of the Constitution extremely difficult. We wish to have a symmetrical instrument, so that every officer in the Commonwealth may find everything he wants to find, under its proper caption, without being obliged to hunt over the Constitution of 1780, and all the amendments from that day to this, to find what he ought to be able to find in a moment. We wish to secure this result. For this purpose, the new Constitution must go entire to the people.

It was truly said by the chairman of the Committee, that number "one" must contain all that is necessary for the working of the government. Now, the learned attorney-general will admit that the judicial tenure is one of the essential provisions of every Constitution. Yet he proposes to strike out from proposition number one, all the provisions relating to the judicial tenure, so that if number one alone is accepted, and nine, ten, eleven, and twelve are rejected, we shall have a Constitution without any provision for a judicial tenure. With a Constitution so defective, it might be left to the legislature, to regulate the judicial tenure; but, would he be willing to leave to the legislature the power to regulate the tenure of the judges? I think not. If we did not do that, then we must go back to the Constitution of 1780 for our judicial tenure, reviving it, by construction. Which of these courses would be followed, I cannot guess; but put it at the best, and suppose the old Constitution to revive.

The result would be, that all the old Constitution would be revived, for there is no power short of the people which can say to what portion of the Constitution of 1780 we shall go to find which relates to the judicial tenure. The whole Constitution would therefore be printed and kept alive. Now, I submit to the gentleman whether it would be worth while to send out a Constitution without a provision for a judicial tenure, and then to say to the people, when they want to know the tenure of the judges, "Look to the Constitution of 1780, and if that is not the proper place to look for it, then leave the matter to the legislature?" I cannot think that this will be done. If the people accept that part of the Constitution which we call number one, and reject nine, ten, eleven, and twelve, then we have no provision in regard to a judicial tenure. The question then would be, whether that tenure should be left to the legislature, or whether we are to grope for it in the Constitution of 1780, with its amendments. In that Constitution, the judicial tenure is mentioned in two or three places; and the difficulty would be that that Constitution would necessarily, so far, be in existence, if that supposition be a correct one. If it is not, then it would necessarily be left to the legislature, and that objection, to my mind, would be fatal.

But there are other objections. Suppose that the Constitution of 1853—which for convenience we call number one—should be rejected, and the twelve resolutions should be accepted; what kind of a Constitution would you have? It would declare in the most solemn manner, the life tenure of the judges to be essential to their impartiality, and then, in the thirty-second article it would present the contradictory provision that they should only hold them for ten years. That would be an inconsistency, from which I should think the good taste of the gentleman would lead him to shrink.

Moreover, if the first proposition is rejected, and this proposition is accepted, then the ninth proposition would be inconsistent with the Bill of Rights; the one saying that the office should be held for life, and the other for ten years. The tenth proposition would say that the present judges should hold their offices according to their commissions. That would be right, undoubtedly. I think there is no objection to that. The eleventh article would insert a provision which would be inconsistent with the Bill of Rights, as I have mentioned. If I could see my way clear, in the amendment of the gentleman from Boston, I would certainly go for it; but at present, I must confess that everything in regard to it presents nothing but darkness and difficulty to my mind. And if we, who have studied the subject, find it complicated and difficult of adjustment, how will it strike the voters at the polls?

Mr. LORD, of Salem. I believe that the difficulty of the delegate who represents Manchester, arises from not considering that it is necessary to do something to make an amendment to the third and fourth resolutions, which will become necessary in consequence of the adoption of these articles as put separately; and if he will consider for one moment, he will see that there is no difficulty whatever in the proposition which the very distinguished gentleman from Boston submits. In the first place, he will perceive that when the people vote, they will either accept both, reject

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both, or accept one and reject the other, or reject one and accept the other. There are, then, four different ways in which the people can act upon them.

Mr. DANA, (in his seat). The people may accept part, and reject part.

Mr. LORD. No, Sir; the four go together, as one proposition, being all one system. If, therefore, it can be made clear that whatever action the people may take, it will leave a perfectly sound Constitution throughout, with a sound judiciary system, then the gentleman for Manchester will find his whole end answered. I submit, Sir, that it will be proper to add this provision to the resolution: If number one is adopted and ratified by the people, and nine, ten, eleven, and twelve are rejected, then number twenty-nine in the Bill of Rights of the present Constitution shall be considered as number thirty in the Bill of Rights of the new Constitution. With this suggestion, let us see how it will operate in either alternative: If the people accept both propositions, then the gentleman for Manchester himself will be satisfied that it will be a perfect system. If the people reject them both, there will be no difficulty; because, having rejected them both, the old Constitution will stand just as it does now. We see, then, that if either both are accepted or both rejected, there is no trouble. Now, suppose they accept number one as the new Constitution, and reject these four propositions, nine, ten, eleven and twelve; what will be the state of things then? You will have your judiciary power. You will have article one, which says that "the judicial power of the Commonwealth shall be vested in a supreme judicial court, and such other courts as the legislature may from time to time establish." You will have article two, which says that "the tenure that all commission officers shall by law have in their offices, shall be expressed in their respective commissions." Then what else will you have? You will have the old twenty-ninth article of the Bill of Rights restored as the thirtieth article of the Bill of Rights of this Constitution, declaring a judicial tenure for life, or during good behavior. You will therefore have a perfect Constitution, harmonious and consistent, if the people accept this, and reject the other. But suppose they reject number one, and accept the other, what will you have in that case? Then, of course, having rejected the new Constitution, the old Constitution stands as the Constitution of the Commonwealth; but, having accepted an amendment which is, to some extent, inconsistent with that, as every amendment is supposed to be, that amendment stands just exactly as other amendments stand, which have changed the old Constitution in some particular respects. To my mind it is perfectly clear, that if you adopt this provision and put into the resolve the words which I have now suggested, the Constitution will be a perfect system, no matter what action the people may take with regard to the adoption or rejection of these amendments. I submit to the discriminating mind of the gentleman who represents Manchester, that there can be no difficulty whatever.

Mr. BOUTWELL, for Berlin. This proposition is so very complicated, that gentlemen for a considerable time may disagree as to what its effect is; and what I have to say is rather in the way of suggestion. If the proposition of the

gentleman from Boston shall be entertained by the Convention, and his numbers nine, ten, eleven and twelve, shall be submitted to the people, we also submit number one, which stands in place of the old Constitution. If, then, numbers nine, ten, eleven and twelve, are rejected, the result is, that your thirtieth article of the Bill of Rights is gone altogether. But suppose we submit number one to the people, without the second clause of article second, article third of the chapter on the judiciary power in the present Constitution passes away; and if the proposition of the gentleman from Boston is rejected, that passes away, and then what will you have? You declare in the Constitution that the judicial power of the Commonwealth shall be vested in a supreme judicial court, and such other courts as the legislature may from time to time establish; but you have no provision how your judges shall be appointed, so far as I can see at this moment. Are they to be elected by the people in that case? I presume that would be a question for the legislature to determine; and thus, instead of settling the mode of election by the people in the Constitution, you leave it for legislative action. And you have stricken out the provision in the third article of the proposed Constitution, which declares that the judges may be removed by the governor, with the consent of the council, upon the address of both branches of the legislature; so that according to this, whether the proposition of the gentleman from Boston be adopted or rejected by the people, as the former Constitution will have passed away, you will have a Constitution without any power whatever to remove a judge by the address of both branches of the legislature. I make these remarks by way of suggestion, in order to show the complicated nature of the proposition of the gentleman from Boston. I cannot tell how I should regard it if we had time to give it a deliberate examination; but it seems to me so complicated that it cannot probably be fully comprehended by this Convention to-day.

Mr. SCHOULER, of Boston. I would like to ask the gentleman for Berlin a question. If we strike out all with regard to the judiciary, according to the proposition of the gentleman from Boston, (Mr. Choate,) and if the people should adopt the Constitution in this form, and at the same time reject the propositions of my distinguished colleague, I want to know whether that part of the old Constitution which relates to the judiciary, would not stand as a part of the new Constitution?

Mr. BOUTWELL. That would not stand unless this Convention should make that exception in proposition number one, because it is expressly declared that proposition number one shall take the place of the existing Constitution of the Commonwealth. But if the idea that exists in the mind of the gentleman from Boston, should be the idea of this Convention, then what have you? You have now a Constitution without proper provisions for the existence and working of the judiciary power, and in order to remedy that evil, what do you do? You bring back into life again the Constitution of 1780 and all its amendments; and what the judiciary power is, as provided in that Constitution, no man can tell, unless he has the whole instrument with all the amendments and provisions before him. For my part, I cannot see how this proposition can be

submitted in the manner proposed by my friend from Boston, without working infinite evil in some one of these ways which I have suggested, if not in other ways which may be seen when it shall be more fully examined.

Mr. WHITNEY, of Boylston. The system of the gentleman from Boston may be very beautiful—I have no doubt it is—but it is too complicated for this time. We have no opportunity to examine it and to understand it; and I hope, therefore, that his amendment will not be adopted.

Mr. CHOATE, of Boston. A single word, Mr. President. This is to some extent an expression of opinion against opinion; and when I shall have repeated the expression of my own, in entire concurrence with that of my friend from Salem, availing myself of his very clear and lucid exposition of the matter, I shall have said all that I have to say on the present occasion. As I understand the chairman of the Committee and my friend for Manchester, there is but one single contingency in which any difficulty can be apprehended. Let us see what that difficulty is, and in one single word, what the answer to it is. The difficulty which is expected, is, that resolution number one may be adopted by the people, and these amendments may be rejected; and thereupon they suppose that the people will have repealed and abrogated the old Constitution, and will have made a new Constitution, in which they will have made no provision at all for the tenure of judicial offices. Let me repeat it, in order that we may see whether the answer to this difficulty is not entirely satisfactory. By the adoption of resolution number one, the old Constitution will have ceased to be, because the proposition numbered one becomes the Constitution of the Commonwealth, and displaces the other, of course. The amendments which I now offer as numbers nine, ten and eleven, however, being rejected, and the Convention having first stricken from number one those three provisions which prescribe the judicial tenure of ten years, the difficulty which they fear is, that they shall be left with judicial offices having no tenure whatever prescribed. Now, I respectfully submit, that there are three several answers to this difficulty, to which I imagine that every legal mind and sober understanding will entirely assent. In the first place, we are to suppose that the people will do nothing at all capricious in regard to what we are about to submit to them; and therefore I reason upon the supposition that article number twelve will also be adopted and become a part of the new Constitution. That article provides that all tenures of judicial offices which are not changed by the Constitution, shall remain as heretofore. Very well; then you have got a new Constitution as contained in proposition number one; but you have made no change in the tenure of judicial offices, because that part of number one which undertook to make a change, has been stricken out of number one and placed in the appendix. You will have a new Constitution, abolishing the old one, it is true; but the new Constitution makes no change in the tenure of judicial offices, and therefore by the force of my own amendment, all these tenures being unchanged, remain as heretofore. In order, then, to know what is the existing tenure of judicial offices, it will not be necessary to go back to trace the history of the past two hundred years, for the provisions of the present Constitution on that

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subject are well understood, and no change will take place.

Mr. BOUTWELL, for Berlin. It may be that I do not understand the proposition of the gentleman; but my point is this: If proposition number one is accepted, it becomes the Constitution of the State; but if the propositions of the gentleman from Boston are rejected, that one which provides for a judicial tenure is rejected with the rest.

Mr. CHOATE. In the first place, I do not apprehend anything like capricious action upon the part of the people of this Commonwealth. I presume them to be, in the main, intelligent, and I presume them to act thus. If they make a new Constitution which establishes no change whatever in the judicial tenure, and which intentionally omits to change the judicial tenure, and if, at the same time, they reject the separate proposition which does make that change, they will of course desire that the tenure shall remain as it is, and will adopt my amendment, numbered twelve.

The second answer I submit on the suggestion which I adopt very cheerfully from my friend from Salem, (Mr. Lord); and that is, that in a certain contingency, which is contemplated by the honorable chairman of the Committee, article number twenty-nine, in the present Bill of Rights shall be revived and considered as article thirty in the Bill of Rights of the new Constitution. Then you will have not only your new Constitution, as contained in proposition number one, making in itself no change in the judicial tenure, but you will also have the twenty-ninth article of the old Bill of Rights, adopted by the same popular act, and declaring that the judges of the supreme judicial court shall hold their offices during good behavior. Thus, in either mode, unless you suppose the conduct of the people will be capricious, unsystematic, and unintelligent in the last degree, the difficulty suggested by the gentleman will be obviated.

But there is a third reason upon which I may very well stand, in point of fact. The effect of such a state of things as the gentleman has hypothesized, will be exactly this—that the existing Constitution will not have been changed at all in the matter of judicial tenures; and when you become satisfied of that fact, it follows, as a principle of universal jurisprudence, that the old Constitution, so far as it is unchanged by what you do, remains entirely unaffected, and in full force. I remember very well, that that principle was advanced, and I listened to an argument of great learning and power based upon it, in the Convention in the State of New York. The question was there raised, what would be the state of things if the new Constitution should not completely abrogate the old, but become part and parcel of it. And I understood the doctrine to have been—the argument was conducted by Mr. Wheaton—that, as a matter of course, if, on collating the new work with the old one, you should find that you have not changed the old Constitution or law—whether it be Constitution, statute, or treaty, or whatever it may be—it remains entirely unaffected. So it does seem to me that the contingency which the ingenuity of gentlemen have discovered, can never happen, and therefore is not a ground of rational objection.

Mr. DANA, for Manchester. I wish to get at

a full understanding of this question, so that we may know what we accept or reject. I ask the gentleman whether I understand him as saying that he intends to put the four propositions out to the people as one, to stand or fall together?

Mr. CHOATE. All together.

Mr. DANA. Then I do not understand the remark as to the possible capriciousness of the people in rejecting one part or the other. I understood the gentleman to adopt the suggestion of the gentleman from Salem, (Mr. Lord). We put to the people this ninth proposition to say "yes," or "no" to. If they say "yes," they are accepted, if "no," they are rejected. Well, then, we propose to say here, in Convention, by force of resolves, that if the people reject that proposition, that rejection shall thereby transfer the thirtieth article of the old Bill of Rights, into our new Constitution. I ask the gentleman whether he apprehends that we have any right, by force of resolution merely, to transfer an article from the Bill of Rights of 1780, to the Constitution of 1853? You say to the people, will you accept or reject proposition "ten?" They answer, "no." Can we say, then, by resolution here, that their negative shall operate to transfer article thirtieth of the Bill of Rights from the Constitution of 1780, to the Constitution of 1853? I put it to those gentlemen as a legal question, whether it can be done?

Mr. LORD, of Salem. I suppose it is not quite unimportant in what sort of form this matter goes out. In my judgment, the people are quite as anxious to have it put into a proper shape, as they are for us to go home; and they are anxious for the last, we all know. Now, Sir, the suggestion which I make in reply to the question put by the gentleman who represents Manchester, is this: He asks if we have the power to say, if the people reject propositions nine, ten, eleven, and twelve, that the twenty-ninth article of the Bill of Rights of the old Constitution shall be called, and shall form the thirtieth article in the new Constitution? Well, Sir, I think the form is pretty unimportant; what I am after, is substance. Numbers nine, ten, eleven, and twelve, are amendments to an article of the Bill of Rights of the old Constitution. The twenty-ninth article of the old Constitution says, for certain reasons, which it recites, that judges shall hold their offices during good behavior. The amendment says, that for these very same reasons, they shall hold their offices according to the tenure of the Constitution. Now we say, it is competent for us to submit to the people the question "will you amend that article?" If you adopt it, you amend that article; if you do not, it stands; and the mere fact that we designate the article in which it shall stand, is an unimportant matter. The whole question which we submit to the people, being, will you amend it; if you do amend it, then it stands amended; if you do not amend it, then the article which we propose to amend, shall still remain a part of the Constitution, unamended, and unaltered. I can see no difficulty in this matter. I think it would be proper to say, that if number "one" is adopted, then the present Constitution is abrogated, but if it is not adopted, then the present Constitution shall stand. I think that is proper, and I think it is just as proper to say if the twenty-ninth article of the Bill of Rights is amended, it shall stand amended, but if the peo-

ple reject it, then the twenty-ninth article shall stand unamended, and unaltered. I see no difficulty whatever, and I hope gentlemen who are anxious to have this question submitted to the people as an independent one, will overlook the nice technicalities in form, where there is no objection to the substance.

Mr. HALLETT, for Wilbraham. As I am desirous to satisfy every gentleman as to the mode of submitting these provisions to the people, I ask them to look at the different systems upon which the old Constitution and the proposed Constitution have been formed. Now, I said on a former occasion, that it is easy for any gentleman to sit down and take these amendments, and by classifying them under as many chapters as there are in the old Constitution, and putting in every matter into the chapter to which it belongs, form the chapters in place of the old ones. Now you can do that, but in order to carry out that mode, you must sacrifice a great deal of system. Just look at the effect. In the old Constitution are six chapters and thirteen amendments. There are sections in each chapter, and those sections are divided and subdivided into articles. If you follow the old system you will have a jumbled up Constitution, one exceedingly difficult to be cited, for every-body knows that in citing the Constitution to the court, they are frequently involved in extreme difficulty to make themselves understood by the court as to their citation. Now here is an improvement. Every gentleman who has ever looked to an analysis will see that it is an improvement, by taking this new Constitution and making fourteen chapters of it, and subdividing each chapter into articles, and embracing in each chapter the whole subject matter of that chapter. It is a scientific classification, according to all rules, to comprise subjects into chapters and articles. If you desire to have that, you must have the great body of the Constitution presented together. Now I confess that when I began to make these amendments, I was desirous to put them in that form, chapter for chapter, and yet, as I said before, it can be done only at the expense of symmetry. At the same time, however, I yield, though not without doubt of difficulty, to the suggestion of the attorney-general, (Mr. Choate,) so far as to place the subject of the judiciary before the people as a separate question, because it is a distinct subject, though not entirely satisfied as to the manner in which it is brought forward, or that the adoption of it in that particular form will not involve us in difficulties.

These are the reasons why I shall vote for the proposition of the gentleman from Boston, (Mr. Choate,) while at the same time my convictions are, that we should take as much of this Constitution as a whole as we practically can.

The question was then taken upon the motion of Mr. Choate, to strike out the different portions of number "one" as hereinbefore stated, and to insert them among the separate propositions to be submitted to the people as distinct questions, and it was decided in the negative—ayes, 72; noes, 168.

So the motion was lost.

Mr. BOUTWELL, for Berlin. In consequence of a change of the resolution by the Committee immediately before the last edition of the Report went to the press, an omission has been made which leaves a matter in doubt which ought to be rendered certain. I therefore move to insert after

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the word "officers" in the following clause of the second article of this chapter, "and all judicial officers may be removed by the governor, with consent of the council, upon the address of both houses of the legislature," the words "for whose appointments different provision is not made in this Constitution, shall be appointed by the governor, by and with the advice and consent of the council, and they".

Mr. LORD, of Salem. I desire to ask the chairman of the Committee whether he understands that these limited justices, those who have power to do certain things, but not to try causes, are judicial officers who are to be removed?

Mr. BOUTWELL. I do.

Mr. LORD. Then I submit that this amendment of the Constitution which the Convention has not voted upon, that the provision of the Constitution in relation to the removal of officers upon the address of the two houses, applies in its terms only to those officers who are appointed during good behavior, while another mode is prescribed by the Constitution for getting rid of justices. Now this article makes justices removable by the governor and council, when they were not removable by the governor and council upon the address to the two houses, under the former Constitution. That is an amendment which is not in the Constitution, and I submit that in order to make this amendment conform to the present action of the Convention, it is necessary to insert after the words "judicial officers" the words "except justices," so that it shall read, "and all judicial officers except justices may be removed by the governor, with consent of the council, upon the address of both houses of the legislature." The clause as it now stands, changes the Constitution without the action of the Convention.

Mr. BOUTWELL. The point suggested by the gentleman from Salem, was considered in Committee, if I understand it; and it arose from this fact, that the first article of the third chapter of the existing Constitution leaves the question as to the power of the governor and council in some doubt in this regard. That article reads thus:—

"The tenure that all commission officers shall, by law, have in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this Constitution: *provided, nevertheless, the Governor, with consent of the Council, may remove them upon the address of both houses of the legislature.*"

The difficulty about this provision is, that it is a matter of some doubt whether it includes justices of the peace, or excludes them. If it includes them, then they may be removed by the governor as well as other judicial officers. The Committee intended to declare that they might be removed, because they thought such was the design of the Convention. It is, however, for the Convention to say whether justices of the peace shall be removable or not.

Mr. LORD, of Salem. The question before the Convention now is: "Did the old Constitution provide for the removal of justices of the peace?" In the old Constitution we find in the paragraph which the gentleman from Berlin has just quoted, that

"All judicial officers duly appointed, commis-

sioned and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this Constitution: *provided, nevertheless, the Governor with consent of the Council, may remove them upon the address of both houses of the legislature.*"

Remove whom? Those officers whose term of office continued during good behavior.

Now here are justices of the peace who are not otherwise provided for; and then the section goes on to say that all commissions shall expire and become void in seven years. I contend that, taking these two articles together, it was not competent for the governor and council to remove them upon the address of both houses of the legislature; and the reason was, that their tenure was limited. This matter was once before a committee of the legislature with a case before them in which they were all of opinion that there should be a removal, but the legislature laid the report upon the table, and took no action upon it.

Now it seems to me that, taking these provisions together, justices of the peace were not designed to be removed. I therefore move to amend the article by inserting, after the words "judicial officers," the words "except justices of the peace." That clause will then read, "and all judicial officers except justices of the peace, may be removed by the governor, with consent of the council, upon the address of both houses of the legislature."

Mr. WATERS, of Millbury. I hope that this stumbling-block which has always been in the old Constitution, will not be retained. There have been three constructions given to this article referred to by the gentleman from Salem, by men of extreme legal ability; and whenever you have attempted to remove a justice of the peace, this obscurity has been brought up and the respondent has escaped. When the Constitution of 1820 was adopted, Judge Story referred to the difficulty in the third article, and with that provision it has been impossible to remove justices of the peace under the old Constitution. Cases of gross malfeasance have been proved, and yet, in consequence of the obscurity of this article, it is impossible to remove a justice of the peace. Why, Sir, I would sooner undertake to draw a woodchuck from his burrow, ten feet under ground, with a corkscrew, [laughter,] than attempt to remove a justice of the peace under the existing Constitution, no matter how corrupt he may be. It cannot be done, Sir.

Now, it seems to me, that the Committee having that matter under consideration, have removed that obscurity; and I regard it as one of the most important improvements made in this Constitution. I therefore hope that the article will be retained, as they have reported it. To attempt to remove a justice of the peace involves a great expense; you cannot try a justice of the peace short of two thousand dollars; and I trust, therefore, that this evil may be remedied, and I think the article as it stands does furnish that remedy.

Mr. HATHAWAY, of Freetown. I have my doubts as to whether a justice of the peace is a judicial officer. The court of a justice of the peace never was a court of record. Now, what are justices of the peace, under the Constitution, as we propose to make them? Their authority is exceedingly limited. Instead of making them officers capable of holding courts of record, we

make them merely ministerial officers. Trial justices may, perhaps, be regarded as a different class, holding courts of record; but if justices of the peace are forever prohibited from issuing warrants, how can it be that those persons are judiciary officers who cannot try any cases, civil or criminal? It seems to me—unless there is a great mistake somewhere—that it is wholly unnecessary to make the exception of justices of the peace.

Mr. LORD, of Salem. In order to save labor and the time of the Convention, I would suggest that instead of the words "justices of the peace," the words "justices of police courts," should be used.

Mr. HATHAWAY. There is no doubt about their being judicial officers.

Mr. LORD. I offer this amendment because the Convention has already determined another mode for removing them, and there was no such mode for removing them in the old Constitution, any way. If the Convention inserts these words, it will leave the old Constitution, in that respect, as it is.

Mr. HUBBARD, of Boston. If I understand the question, the gentleman for Berlin proposes that justices of the peace may be removable by the governor and council, on address, as in other cases?

Mr. LORD. In order to avoid farther dispute and trouble in regard to this matter, I will withdraw the amendment.

The eighth chapter was then finally passed.

The Secretary then proceeded to read the ninth chapter, relating to the qualifications of voters, and elections—designating the persons entitled to vote; the mode of voting; ballots to be in sealed envelopes; the day of elections; by whom meetings to be called; the officers who are to be elected by a majority of votes; provisions in case of no election by the people; provisions in regard to the election of city and town officers; officers who may be elected by a plurality vote; and provisions in cases of failure to elect. It is as follows:—

ARTICLE 1. Every male citizen, twenty-one years of age and upwards, (excepting paupers and persons under guardianship,) who shall have resided within the Commonwealth one year, and within the town or district, in which he may claim a right to vote, six calendar months next preceding any election of any national officer, or any officer required by this Constitution to be elected by the people, shall have a right to vote in such election; and no other person shall have such right.

[ART. 2. All ballots required by law to be given at any national, state, county, district, or city election, including elections for representatives and trial justices, justices and clerks of police courts, shall be deposited in sealed envelopes of uniform size and appearance, to be furnished by the Commonwealth.]

ART. 3. Lists of the names of qualified voters shall be used at all elections required by this Constitution. They shall be made out and used in such manner as shall be by law provided. The presiding officers at such elections shall receive the votes of all persons whose names are borne on such lists, and shall not be held answerable for refusing the votes of any persons whose names are not borne thereon.

ART. 4. All meetings for the choice of national, state, county, or district officers, including representatives, trial justices, clerks and justices of police courts, by the people, shall be held on the Tuesday next after the first Monday in November, annually; and they shall be called by the mayor and aldermen of the cities, and the select-

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men of the towns, and warned in due course of law. The manner of calling and holding public meetings in cities, for the election of officers under this Constitution, and the manner of returning the votes given at such meetings, shall be as now prescribed, or as shall hereafter be prescribed by the Legislature.

ART. 5. A majority of all the votes given shall be necessary to the election of governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general, of the Commonwealth, until otherwise provided by law, but no such law providing that such officers, or either of them, or representatives to the General Court, shall be elected by plurality, instead of a majority of votes given, shall take effect until one year after its passage; and if at any time after any such law shall have taken effect, it shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in the absence of any such law, if at any election of either of the above-named officers, except the representatives to the General Court, no person shall have a majority of the votes given, the House of Representatives shall elect two out of three persons then eligible, who had the highest number of votes, if so many shall have been voted for, and return the persons so elected to the Senate, from whom the Senate shall choose one who shall be the officer thus to be elected.

ART. 6. A majority of votes shall be required in all elections of representatives to the General Court, until otherwise provided by law.

ART. 7. In the election of all city or town officers, such rule of election shall govern as the Legislature may by law prescribe.

ART. 8. In all elections of councillors and senators, and in all elections of county or district officers, the person having the highest number of votes shall be elected.

ART. 9. Whenever, in any election where the person having the highest number of votes may be elected, there is a failure of election because two persons have an equal number of votes, subsequent trials may be had at such times as may be prescribed by the Legislature.]

Mr. PARKER, of Cambridge. The Report of the Committee appointed to revise and put the amendments into form, was distributed this morning, and it is very evident that sufficient time has not been given for an examination of that Report, so that we can compare it with the resolutions which were committed to the Committee, and with the present Constitution. I am, therefore, of the opinion that the work of this Convention cannot be finished to-night in a proper manner. For the purpose of having an opportunity to make that examination, I move that the Convention do now adjourn.

The question being taken, on a division, there were—ayes, 51; noes, 133—so the Convention refused to adjourn.

Mr. BOUTWELL, for Berlin. In order to make it conform to the resolution referred to the Committee, which includes state as well as national officers, I move that the word "state" be inserted after the word "any," so that it will read:—

Every male citizen, of twenty-one years of age and upwards, (excepting paupers and persons under guardianship,) who shall have resided within the Commonwealth one year, and within the town or district, in which he may claim a right to vote, six calendar months next preceding any election of any national officer, or any state officer required by this Constitution to be elected by the people, shall have a right to vote in such election; and no other person shall have such right.

The question being taken upon the amendment, it was agreed to.

Mr. WATERS, of Millbury. It seems to me that there is a little obscurity as to the manner of electing trial justices. If they are county officers, they are to be elected by a plurality vote, while if they are town officers, they are to be elected by a majority vote. I think this obscurity ought to be remedied, as it may lead to a practical difficulty; and I would suggest to the chairman, whether it should not be remedied now, by deciding whether these officers should be elected by a plurality vote or a majority vote. I move to add the words "including trial justices" after the word "officers," in the eighth article, so that it will read as follows:—

ART. 8. In all elections of councillors and senators, and in all elections of county or district officers, including trial justices, the person having the highest number of votes shall be elected.

The PRESIDENT. That is an amendment of substance, and not of form.

Mr. WATERS. I believe the Convention have decided that trial justices are county officers.

The PRESIDENT. As it is an amendment of substance, it is not, therefore, admissible.

Mr. HALLETT, for Wilbraham. I wish to move a reconsideration of the vote which has just been taken, by which the word "state" was inserted between "any" and "officer." I understand that the construction with regard to national and state officers, out of which this provision grew, was somewhat doubtful. If the word "state" is put in there, so that it will read "the election of any national officer or any state officer," you declare in your Constitution, that when a man has no right to vote for national or state officers, therefore he has no right to vote for county and district officers. I cannot think that the Convention intend to put any such construction as that upon it. I move to reconsider that vote, for the purpose of either striking out the word "state" or adding "or other," which will amount to the same thing. I do not know how you can give a voter any more power than the Constitution gives him.

Mr. LORD, of Salem. I understand that that amendment was made for the purpose of putting the Constitution into the form in which we have already voted that we want it; and, it seems to me, that if we now change that, it is a change of substance, and not a change of form.

The PRESIDENT. The Chair admitted the amendment, on the ground that it was to re-establish the original construction.

Mr. HALLETT. Is the motion to reconsider, out of order?

The PRESIDENT. The amendment was admitted in order that the article might stand in accordance with the terms of the resolution which the Convention acted upon.

Mr. HALLETT. That is the question. I say it stands as the Convention passed upon the subject, without the word "state," and the introduction of that word changes the meaning.

The PRESIDENT. The Chair will entertain the motion to reconsider.

Mr. HUBBARD, of Boston. I am very confident that the article, as placed in the Constitution, conforms to the resolve which was passed by the Convention. The amendment that was made with regard to the qualification of voters, had reference to article number nine of the Constitution, which prescribes the qualifications of elec-

tors of governor, lieutenant-governor, senators and representatives, and an attempt was made to extend it to all classes of elections, when the ground was taken that the Constitution provided for those classes of officers, but the legislature, by statute, provided for the qualification of electors at town meetings, and that it should be left to them to act upon those elections hereafter. I am certain that it corresponds to the resolve, as it was adopted by the Convention.

Mr. BUTLER, of Lowell. I cannot have any doubt in my own mind, that the introduction of the word "state" there, is meant to designate them as contradistinguished from national officers. When I say state officers, I mean officers who act under the authority of the State; and when I say national officers, I mean those officers who act under the authority of the general government. The two terms are merely used in contradistinction to each other. I think that the legislature, or the judges of the supreme court, whenever they are called upon to construe it, would consider it to apply to electors in all elections. I am not in favor, therefore, of the motion to reconsider. I doubt the propriety of the construction of the gentleman for Wilbraham. The provision is, that any man "shall have a right to vote in such election;" that is all. What election is that? Of course it must be State elections; and what can you elect at State elections? Every officer in the Commonwealth of Massachusetts, in my judgment, I am content with it, Sir, as it is. I am not very strongly in favor of having a tax qualification for voting for anything under Heaven; and I insist that no man shall have such qualification, but what is put in in conformity with the resolve as it was passed. I have no doubt as to the construction of that resolution, and I hope the motion to reconsider will not prevail.

Mr. HALLETT. The assurances of gentlemen, that they have no doubt about the construction, does not relieve my difficulty; I wish to place it beyond the possibility of doubt, and to make it certain. The proposition which was adopted by the Convention was, the proposition that no tax qualification should be required to qualify any person to vote for state or national officers. It struck out, consequently, that provision contained in the ninth article of the old Constitution, which declared that every male citizen, of twenty-one years of age and upwards, —excepting paupers and persons under guardianship—who shall have resided within the Commonwealth one year, &c., and who shall have paid a tax, &c., in the town in which he shall claim the right to vote, shall have a right to vote for governor, lieutenant-governor, senators and representatives. Now, you say that persons without paying taxes, if they have the residence, shall have the right to vote for any national or any state officer; and, thereby, you say that they shall not vote for town representatives, because town representatives are not state officers; and I do not wish to go before the supreme court of this Commonwealth, upon the construction whether a representative of a town is a state officer, or an officer of the town. The only position upon which you stand here, in maintaining town representation, is, that the representative is an officer of the town, and not an officer of the state. If he comes here, and helps to make laws which govern the whole State, he is not an officer of the

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Commonwealth of Massachusetts, but he is an officer acting for the town that elects him—he is a deputy of that town. With that construction, no person has a right to vote for a town representative unless he pays a tax. For this reason, I want the word “state” stricken out, and I should like to have the word “other” inserted, so that it will read “any national officer, or any other officer required by this Constitution,” &c.

The PRESIDENT. It is not competent to strike out the word “state,” inasmuch as that word was in the original resolution; the gentleman may make any proposition to change the form which does not change the substance.

Mr. HALLETT. If that cannot be done, I should like to add the words “or other” between “state” and “offices,” so that it will read, “any national officer, or any state or other officer,” &c.

The PRESIDENT. That is an amendment of substance.

Mr. HALLETT. I think not, Sir. Then I ask general consent to put the proposition in this form; it certainly can do no injury, and it may prevent much confusion hereafter.

The PRESIDENT. If no objection is made, the gentleman can make the modification.

Mr. ASPINWALL, of Brookline. I object, Mr. President.

Mr. MILLER, of Wareham. I wish to state a difficulty which I have in my own mind. In the ninth article you provide for subsequent trials where there is a failure of election, because two persons have an equal number of votes; but in the choice of senators and councillors the return is to be made seventeen days before the first Wednesday in January. Now, if it should so happen that any two candidates for the office of senator in any district voted for have an equal number of votes there would be no chance that another election could be had before the meeting of the legislature, and certain districts might thereby be deprived of their senators. I make no motion; but merely name this for the consideration of the Convention.

No farther amendment being proposed, the Secretary proceeded to read chapter ten, as follows:—

ARTICLE 1. The following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of the Commonwealth, before he shall enter upon the duties of his office, to wit:—

“I, A. B., do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof; and that I will faithfully and impartially discharge and perform all the duties incumbent on me as [here insert the office], according to the best of my abilities and understanding, agreeably to the Constitution and laws of the Commonwealth. So help me God.”

[Provided, that when any person, chosen or appointed as aforesaid, shall be conscientiously scrupulous of taking and subscribing an oath, and shall for that reason decline taking the above oath, he shall make and subscribe his affirmation in the foregoing form, omitting the word “swear,” and substituting the word “affirm;” and omitting the words “So help me God,” and subjoining instead thereof the words “And this I do under the pains and penalties of perjury.”]

And the said oaths or affirmations shall be taken and subscribed, by the governor and lieutenant-governor before the president of the Senate, in presence of the two Houses in convention; and by councillors before the president of the Senate and in presence of the Senate; and by the sena-

tors and representatives before the governor and council for the time being; and by the residue of the officers aforesaid before such persons, and in such manner, as shall from time to time be prescribed by law.

ART. 2. No governor, lieutenant-governor, or judge of the Supreme Judicial Court or Court of Common Pleas, shall hold any other office under the authority of this Commonwealth, except such as by this Constitution they are admitted to hold, saving that the judges of the said courts may hold the offices of justices of the peace through the State; nor shall they hold any other office, or receive any pension or salary from any other State, or government, or power whatever, except that they may be appointed to take depositions, or acknowledgments of deeds, or other legal instruments, by the authority of other States or countries.

[No person shall hold or exercise at the same time more than one of the following offices, to wit: the office of governor, lieutenant-governor, senator, representative, judge of the Supreme Judicial Court, or Court of Common Pleas, secretary of the Commonwealth, attorney-general, treasurer, auditor, councillor, judge of probate, register of probate, register of deeds, sheriff or his deputy, clerk of the Supreme Judicial Court, or Court of Common Pleas, clerk of the Senate or House of Representatives; and any person holding either of the above offices shall be deemed to have vacated the same by accepting a seat in the congress of the United States, or any office under the authority of the United States, the office of postmaster excepted. And no person shall be capable of holding at the same time more than two offices, which are held by appointment of the governor, or governor and Council, or the Senate, or the House of Representatives, military offices, and the offices of justices of the peace, justices of the peace and quorum, notaries public, and commissioners to qualify civil officers, excepted.]

ART. 3. And no person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance under the government of this Commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption, in obtaining an election or appointment.

* ART. 4. All commissions shall be in the name of the Commonwealth of Massachusetts, signed by the governor, and attested by the secretary or his deputy, and have the great seal of the Commonwealth affixed thereto.

ART. 5. All writs, issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts; they shall be under the seal of the court from whence they issue, and be signed by the clerk of such court.

ART. 6. All the laws, which have heretofore been adopted, used, and approved in the Province, Colony, State or Commonwealth of Massachusetts, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature; such parts only excepted as are repugnant to the rights and liberties contained in this Constitution.

No amendment being offered to chapter ten, the Secretary then read chapter eleven, as follows:—

ARTICLE 1. The governor shall be the commander-in-chief of the army and navy of the Commonwealth, and of the Militia thereof, excepting when these forces shall be actually in the service of the United States; and shall have power to call out any part of the military force to aid in the execution of the laws, to suppress insurrection, and to repel invasion.

[ART. 2. All citizens of this Commonwealth liable to military service, except such as may by law be exempted, shall be enrolled in the militia, and held to perform such military duty as by law may be required.]

ART. 3. The militia may be divided into convenient divisions, brigades, regiments, squadrons, battalions, and companies; and officers with ap-

propriate rank and titles may be elected to command the same. And the discipline of the militia shall be made to conform, as nearly as practicable, to the discipline of the army of the United States.

ART. 4. The governor shall appoint an adjutant-general, a quartermaster-general, and such other general staff-officers as shall be designated by law; who shall be commissioned by him for the term of one year, and until their successors shall be commissioned and qualified. And the adjutant-general and quartermaster-general shall have salaries fixed by law, which shall be in full for all services rendered by them in their several offices.

ART. 5. The major-generals shall be elected by the votes of the brigadier-generals and field-officers of the brigades, regiments, squadrons, and battalions of the respective divisions.

ART. 6. The brigadier-generals shall be elected by the votes of the field-officers of the regiments, squadrons, and battalions, and captains of companies, of the respective brigades.

ART. 7. The field-officers of regiments, squadrons, and battalions, shall be elected by the votes of the captains and subalterns of companies of the respective regiments, squadrons, and battalions.

ART. 8. The captains and subalterns shall be elected by the members of the respective companies.

ART. 9. All elections of military officers shall be by a majority of the written votes of those present and voting, and no person, within the description of a voter as hereinbefore specified, shall be disqualified by reason of his being a minor.

ART. 10. The Legislature shall prescribe the time and manner of convening the electors hereinbefore named, of conducting the elections, and of certifying to the governor the names of the officers elected.

ART. 11. The several officers elected shall be forthwith commissioned by the governor for the term of three years from the dates of their respective commissions, and until their successors shall be commissioned and qualified.

ART. 12. If the electors of the several officers before named shall refuse or neglect to make an election, for the space of three months after legal notice of a meeting for that purpose, the governor shall appoint and commission for three years a suitable person to fill the vacant office, with the advice of the Council if the vacancy be that of a major-general, or with the advice of the major-general of the division in which the appointment is to be made, if the vacancy be of an inferior grade.

ART. 13. Major-generals, brigadier-generals, and commanders of regiments, squadrons, and battalions, shall severally appoint such staff-officers as shall be designated by law in their respective commands.

ART. 14. All non-commissioned officers, whether of staff or company, and all musicians, shall be appointed in such manner as may be prescribed by law.

ART. 15. All officers of the militia may be removed from office by sentence of court-martial, or by such other modes as may be prescribed by law.]

Mr. OLIVER, of Lawrence. This chapter being one of those things which are put into the omnibus to sweeten it, according to the idea of my friend from Salem, (Mr. Lord,) and as I am very desirous to vote for it just as it is, I move to take it out from number “one,” and put it among the propositions which are proposed to be sent out to the people separately, as number “nine.”

The PRESIDENT. It is not competent at this stage to move to strike out the whole chapter.

Mr. BUTLER, of Lowell. As in my judgment, it is best that we never shall adjourn this

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Convention but once, and then without day, and in order that we may finish our work without feeling that we have not had supper, I move that we take a recess for one hour, until eight o'clock.

The motion was agreed to, and the Convention accordingly took a recess until eight o'clock.

EVENING SESSION.

The Convention reassembled at eight o'clock.

No amendment being proposed to chapter eleven, chapter twelve—in regard to the University of Cambridge, the school fund, and the encouragement of literature—was read, and finally passed without amendment, as follows:—

ARTICLE 1. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of God, been initiated into those arts and sciences which qualified them for public employments, both in church and state; and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the Christian religion, and the great benefit of this, and the other United States of America—it is declared, that the PRESIDENT AND FELLOWS OF HARVARD COLLEGE, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy; and the same are hereby ratified and confirmed unto them, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever. *But the Legislature shall always have full power and authority, as may be judged needful for the advancement of learning, to grant any farther powers to the President and Fellows of Harvard College, or to alter, limit, annul, or restrain, any of the powers now vested in them: provided, the obligation of contracts shall not be impaired; and shall have the like power and authority over all corporate franchises hereafter granted, for the purposes of education, in this Commonwealth.*

ART. 2. And whereas there have been, at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New England, or to the President and Fellows of Harvard College, or to the said College by some other description, under several charters successively; it is declared, that all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the President and Fellows of Harvard College, and to their successors, in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, deviser or devisors.

ART. 3. And whereas by an Act of the General Court of the Colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the governor and deputy-governor, for the time being, and all the magistrates of that jurisdiction, were, with the president, and a number of the clergy in the said Act described, constituted the overseers of Harvard College; and it being necessary, in this new constitution of government, to ascertain who shall be deemed successors to the said governor, deputy-governor, and magistrates; it is declared that the governor, lieutenant-governor, Council and Senate of this Commonwealth are, and shall be deemed, their successors; who, with the president of Harvard College, for the time being, together with the ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said Act, shall be, and hereby are, vested with all the

powers and authority belonging, or in any way appertaining, to the overseers of Harvard College: *provided, that nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said University, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts Bay.*

[ART. 4. It shall be the duty of the Legislature, as soon as may be, to provide for the enlargement of the School Fund of the Commonwealth, until it shall amount to a sum not less than two millions of dollars; and the said fund shall be preserved inviolate, and the income thereof shall be annually appropriated for the aid and improvement of the common schools of the State, and for no other purpose.]

ART. 5. Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the University at Cambridge, public schools, and grammar schools in the towns; to encourage private societies, and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.

Chapter thirteen, containing miscellaneous provisions, was next read by the Secretary, as follows:—

ARTICLE 1. A census of the inhabitants of each city and town in the Commonwealth, on the first day of May in the year 1855, and on the first day of May of each tenth year thereafter, shall be taken and returned into the secretary's office, on or before the last day of the June following the said first day of May in each of said years; and while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth taken anew once in every ten years at least, and as much oftener as the General Court shall order.

[ART. 2. Persons holding office by election or appointment, when this Constitution takes effect, shall continue to discharge the duties thereof until their term of office shall expire, or officers authorized to perform their duties, or any part thereof, shall be elected and qualified, pursuant to the provisions of this Constitution; when all powers not reserved to them by the provisions of this Constitution shall cease: *provided, however, that justices of the peace, justices of the peace and of the quorum, and commissioners of insolvency, shall be authorized to finish and complete all proceedings pending before them at the time, when their powers and duties shall cease, or be altered as aforesaid. All laws in force when this Constitution goes into effect, not inconsistent therewith, shall continue in force until amended or repealed.*

ART. 3. The Legislature shall provide, from time to time, the mode in which commissions or certificates of election shall be issued to all officers elected pursuant to the Constitution, except in cases where provision is made therein.

ART. 4. The governor, by and with the consent of the Council, may at any time, for incapacity, misconduct or maladministration in their

offices, remove from office, clerks of courts, commissioners of insolvency, judges and registers of probate, district-attorneys, registers of deeds, county treasurers, county commissioners, sheriffs, trial justices, and justices of police courts: *provided, that the cause of their removal be entered upon the records of the Council, and a copy thereof be furnished to the party to be removed, and a reasonable opportunity be given him for defence. And the governor may at any time, if the public exigency demand it, either before or after such entry and notice, suspend any of said officers, and appoint substitutes, who shall hold office until the final action upon the question of removal.*

ART. 5. Whenever a vacancy shall occur in any elective office, provided for in this Constitution, except that of governor, lieutenant-governor, councillor, senator, member of the House of Representatives, and town and city officers, the governor for the time being, by and with the advice and consent of the Council, may appoint some suitable person to fill such vacancy, until the next annual election, when the same shall be filled by a new election, in the manner to be provided by law: *provided, however, trial justices shall not be deemed to be town officers for this purpose.*

ART. 6. All elections provided to be had under this amended Constitution shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, one thousand eight hundred and fifty-four.

ART. 7. This Constitution shall go into operation on the first Monday in February, in the year one thousand eight hundred and fifty-four.

ART. 8. The terms of all elective officers, not otherwise provided for in this Constitution, shall commence on the first Wednesday in January next after their election.]

ART. 9. In order to remove all doubt of the meaning of the word "inhabitant," in this Constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this State, in that town, district, or plantation, where he dwelleth, or hath his home.

ART. 10. This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this Commonwealth, in all future editions of the said laws.

MR. BOUTWELL, for Berlin, moved to amend the first article in the third line, by striking out the figures 1855, and substituting therefor the words "one thousand eight hundred and fifty-five."

The amendment was agreed to.

MR. HILLARD, of Boston, moved a verbal amendment to the fifth article in the last clause, by inserting the word "that" after the word "however," so as to make the clause read:—

Provided, however, That trial justices shall not be deemed to be town officers for this purpose.

The amendment was adopted.

MR. BOUTWELL moved to strike out the word "amended" in the second line of the sixth article as being surplusage, the article as it stood reading:—

All elections provided to be had under this amended Constitution, &c.

The motion to strike out the word "amended," was agreed to.

MR. CHAPIN, of Worcester, moved to amend the fourth article in the seventh line by inserting after the word "justices" the words "and clerks," so as to make it read:—

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ART. 4. The Governor, by and with the consent of the Council, may at any time, for incapacity, misconduct or maladministration in their offices, remove from office, clerks of courts, commissioners of insolvency, judges and registers of probate, district-attorneys, registers of deeds, county treasurers, county commissioners, sheriffs, trial justices and justices and clerks of police courts, &c.

Mr. HATHAWAY thought the amendment unnecessary, as clerks of "police" courts were certainly "clerks of courts."

Mr. CHAPIN regarded the term "clerks of courts," as heretofore used, as applying to clerks of higher courts, and not to police courts.

The amendment was agreed to.

Mr. MASON, of Fitchburg, moved to amend the sixth article in the fourth line by inserting after the word "November" the words "in the year," so as to make the article read:—

ART. 6. All elections provided to be had under this Constitution shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, in the year one thousand eight hundred and fifty-four.

The amendment was agreed to; and

The thirteenth chapter was then finally passed.

The Secretary then proceeded to read the fourteenth and last chapter of the Revised Constitution, providing for future revisions and amendments of the Constitution of Massachusetts, as follows:—

[ARTICLE 1. A Convention to revise or amend this Constitution may be called and held in the following manner: At the general election in the year one thousand eight hundred and seventy-three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question, "Shall there be a Convention to revise the Constitution?" which votes shall be received, counted, recorded, and declared, in the same manner as in the election of Governor; and a copy of the record thereof shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same, and shall officially publish the number of yeas and nays given upon said question, in each town and city, and if a majority of said votes shall be in the affirmative, it shall be deemed and taken to be the will of the people that a Convention shall meet accordingly; and, thereafter, on the first Monday of March ensuing, meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts, in the Commonwealth, in the manner and number then provided by law for the largest number of representatives which the towns, cities, and districts shall then be entitled to elect in any year of that decennial period. And such delegates shall meet in Convention at the State House, on the first Wednesday of May next ensuing, and when organized, shall have all the powers necessary to execute the purpose for which such Convention was called; and may establish the compensation of its officers and members, and the expense of its session, for which the Governor, with the advice and consent of the Council, shall draw his warrant on the treasury. And if such alterations and amendments, as shall be proposed by the Convention, shall be adopted by the people voting thereon in such manner as the Convention shall direct, the Constitution shall be deemed and taken to be altered or amended accordingly. And it shall be the duty of the proper officers, and persons in authority, to perform all acts necessary to carry into effect the foregoing provisions.

ART. 2. Whenever towns or cities containing not less than one-third of the qualified voters of the Commonwealth, shall at any meeting for the election of State officers, request that a Conven-

tion be called to revise the Constitution, it shall be the duty of the legislature, at its next session, to pass an Act for the calling of the same, and to submit the question to the qualified voters of the Commonwealth, whether a Convention shall be called accordingly: *provided*, that nothing herein contained shall impair the power of the Legislature to take action for calling a Convention, without such request, as heretofore practised in this Commonwealth.]

ART. 3. If, at any time hereafter, any specific and particular amendment or amendments to the Constitution be proposed in the General Court, and agreed to by a majority of the senators and two-thirds of the members of the House of Representatives, present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two Houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published; and if, in the General Court next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two-thirds of the members of the House of Representatives, present and voting thereon; then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters, voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the Constitution of this Commonwealth.

[ART. 4. The Legislature which shall be chosen at the general election on the Tuesday next after the first Monday in November, in the year one thousand eight hundred and fifty-five, shall divide the State into forty single districts for the choice of senators, such districts to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each; and shall also divide the State into single or double districts, to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each, for the choice of not less than two hundred and forty, nor more than three hundred and twenty representatives; with proper provisions for districting the Commonwealth as aforesaid, in the year one thousand eight hundred and sixty-six, and every tenth year thereafter; and with all other provisions necessary for carrying such system of districts into operation; and shall submit the same to the people at the general election to be held in the year one thousand eight hundred and fifty-six, for their ratification; and if the same shall be ratified and adopted by the people, it shall become a part of this Constitution in place of the provisions contained in this Constitution for the apportionment of senators and representatives.]

Mr. MORTON, of Taunton. I should be glad, Mr. President, even at this late hour of our deliberations, to gain, if I could, the attention of the Convention for a few moments. I certainly shall occupy but very little time, because there are reasons which will necessarily limit me.

Thus far, I have avoided intruding myself upon the Convention in regard to this important and most objectionable measure, except in offering a merely verbal amendment. I had the honor, Mr. President, to be a member of the Committee appointed to revise and prepare the amendments of the Constitution to be submitted to the people of the Commonwealth. It gives me great pleasure—though I take little credit to myself—to say that I think that that Committee deserves great credit for their ingenuity and industry in arranging these amendments. The Committee in their plan of submitting them to the people, have thought proper to form them into groups—some of them in very large masses, and others in small portions, or rather to form

one group comprehending all the most important amendments, and nine-tenths of the whole, and to submit each of the minor ones separately. Some days ago I prepared a resolution, the object of which was to give this Committee instructions on this subject; but the pressure of other matters prevented me from offering it to the Convention, and the Committee assumed the authority to arrange the proposed amendments without any action of the Convention; and under these circumstances, I beg leave to offer a very few suggestions in relation to the scheme of the Committee, and to the manner in which I think these amendments should be presented to the people.

Sir, I think that it is our duty as a Convention, in executing the trust which has been confided to us, to prepare these amendments in such manner as to give the people the best possible opportunity of acting upon them freely and understandingly, and without any embarrassment or constraint. This can only be done by allowing them to vote separately upon many different points. I had supposed, until recently, that we were all agreed that the several distinct propositions should be submitted to the people singly; and it did not enter my mind that the mass of them were to be put together and acted upon by the people jointly, so as to deprive them of the opportunity of approving of some propositions and disapproving of others. The Committee, however, have seen fit to decide otherwise, and have formed the major part of these amendments into one large group, in regard to which I will say a few words. At this time it is not possible to enter into a full argument of a question involving so many important considerations; I think that it would have been more wise and safe to have followed the example which was set us more than thirty years ago, and to have submitted these several propositions to the people, who could have acted upon them separately, without restraint on the one hand or temptation on the other. It appears to me that we have adopted a course which trenches upon the rights of the people, in putting these propositions altogether, for by adopting this mode, we prevent the people from acting distinctly on each amendment. You say to them imperatively and authoritatively: "Take this whole group, and either reject the whole or accept the whole. We, in our wisdom, have devised a perfect scheme. We will not endanger its harmony by permitting you to reject any of its parts. We have one object in forming the whole scheme, which you are bound to believe is for your good. It must be adopted as we have devised it. You must not be allowed to mar the symmetry of the plan, or defeat its object by altering or rejecting any of its members."

Sir, it is altogether likely that many of the people, like myself, will find in this scheme some propositions which they would wish to adopt, and others which they would wish to reject. But no such liberty is here permitted to them; and I ask if this is not transcending our delegated authority, and exercising arbitrary and dictatorial power? What right have we to bind up the whole people in this way? Do we not forget that the people must make the Constitution, and that we are only instruments to prepare and lay before them such propositions as they may wish to express their pleasure upon? Do we not pervert the purpose of our appointment, when we undertake to devise plans to arrest from the peo-

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ple their inherent right to judge of the proposals which their agents have formed, by their directions? Do we not assume to act as masters, when we are only servants? It may be that some of the propositions are so connected and dependent on each other, that you cannot separate them. For instance, the amendments in relation to the Council and the Senate, are dependent, and therefore indivisible. You cannot separate them, because the Council Districts are based upon the Senatorial Districts, and should the senatorial basis be rejected, the provision for the Council would be impracticable. I think, therefore, the union of these two provisions unobjectionable. But, the amendment in regard to the House of Representatives, the most important and the most obnoxious one in the whole list, stands on entirely different ground. And no substantial reason can be assigned for connecting all sorts of propositions, except those of doubtful popularity.

I am aware of the ingenious reasons which the members of the Committee have offered in regard to this point. Gentlemen so correct, and perhaps I might say, so fastidious in their tastes, so ambitious of elegance of composition, and so proud of harmony of diction, might well say they thought that, by grouping these questions together they could put them in more symmetrical form, and make them look more elegant on paper. But let me ask, gentlemen, which is of the most importance—the beauty of the phraseology, or the value of the principle? I will not discuss this matter farther; but I had supposed that we should have had the fullest and fairest scope of testing, at the polls, the estimation in which the people hold all these amendments; and that they might have said, separately, whether they were for senatorial districts, or against them; for the election of officers by the people, or their appointment by the legislature or executive; for the election of representatives by towns, or by equal districts; for the abolition of a poll tax, or against it; for the adoption of the secret ballot, or against it; and so on through the whole category, without having other matters connected with these questions. By presenting these questions altogether, you coerce the people on the one hand, or offer a bribe to them on the other. You say to them, in effect: "If you will take this bitter thing, you shall have also this sweet thing;" or it may operate upon them in the way of constraint, inasmuch as you say: "If you do not accept this which you dislike, you shall not have that which you do like." This, I contend, is an infringement of the rights of the people. It is equivalent to saying to a religious man: "You shall have a church, if you will take an assignation house along side of it, but you shall not have the one without the other;" or to an educational man: "You may have a school, provided you are content to have a gambling house next door to it." Now, Sir, if the people view this matter as I do, they will say, indignantly, No! let the church go; let the school go; if we cannot have what is righteous and just, without taking what is unrighteous and unjust, we spurn them both. We will not be compelled to take things which are so offensive to us, in order that we may obtain other things which we desire.

But I will hasten on with these suggestions, and come to some points which are more practical, and which will, perhaps, stand a little better chance of gaining attention.

I fear, Sir, that we have somewhat forgotten the mission upon which we were sent to this house; that we have been acting together in the exercise of unrestrained power, till we have forgotten the source of our authority, and have not sufficiently borne in mind the wishes and rights of those who stand behind us, to act upon the propositions which we may submit to them. I fear that, while we profess democracy, and a love for the people, we have acted on an opposite principle. Distrust of the people is stamped on almost every act. Look at what was said in regard to the State credit. It was avowed, by some of the majority—I do not remember whom—that the people could not be trusted with power in regard to this matter. And what was the result? They were divested of the power to decide where the credit of the State might be loaned or given away. What! Not trust the people with the management of their own money, and their own credit! And, Sir, it has been just so in regard to every other act. No principle, however sound and just, is fully carried out. So it was in regard to the secret ballot. We all wanted it in some elections, but a majority were not willing to apply it to all, and the people were not allowed to determine for themselves whether they would have it extended to any, or in what cases they would adopt it. Just so, likewise, was it in regard to the plurality question. You would not let the people decide the question, for or against it, as they might choose. And in regard to the subject of representation, the most important subject which was submitted to us, we have not only disregarded the well known wishes of the people for a reduction of the House, but refused to allow them to decide between the town and district system.

Sir, from the beginning, while we have continually heard professions of love for the people, and a desire to be governed by their wishes, our acts have shown a want of confidence in them, and a disregard of their wishes and interests. This has made itself manifest, not only in our acts and votes, but has occasionally peeped out of our speeches. Those from whom we have heard most of the sodality of mankind and the brotherhood of the whole human family, have now and then given us an inkling of their feelings by comparing large classes of our inhabitants "to the cattle in the farmer's field, and the birds that fly over them;" nay, to that cunning, thievish, carrion bird, the "crow." I would not quote the hasty expressions of an individual, especially a frank, sincere, and high-minded one, did they not, in my mind, indicate the feelings and sentiments of a class who, from their ability, their eloquence, and their other distinguished qualities, seem to have a controlling influence over the deliberations of this Convention.

Mr. EAMES, of Washington. I rise to a point of order. If the gentleman is going to move an amendment, I would like to have it read, that I may be looking it over.

Mr. MORTON. If the gentleman from Washington will try to repress his wishes for a few moments, he shall be gratified with the proposition; or, if he cannot restrain his curiosity, I will gratify him now.

Mr. EAMES. The fifteen minutes allowed the gentleman from Taunton will expire directly, and I would like to know what the amendment is, before the time expires.

Mr. MORTON. The gentleman will soon be gratified.

I wanted, Sir, to say a word in relation to the ground which several of the Committee have taken upon this subject. They have told us that their main desire, in putting the amendments together in this shape, was to preserve the symmetry and harmony of the instrument, and the beauty and orderly arrangement of the pamphlet to be published. I am afraid that gentlemen deceive themselves as to the real cause which has induced them to adopt this course. I am bound to believe the gentlemen are sincere in their professions, and honestly believe that they are governed by the causes which they assign. But if they will look at the matter a little more disinterestedly, they will perceive how very difficult it will be to make outsiders believe it, and to prevent them from judging that, in order to carry some favorite but objectionable scheme, all the popular measures have been connected with it, to induce the people to vote for it, and thus to give it the force of a popular adoption, when it may be that a majority of them are opposed to it. They may possibly adopt the language of one of the Committee, on another occasion, and say: "The lion's skin is not big enough—not half big enough, to conceal that other animal, which I will not name. His ears are in full view."

Now, Sir, for my amendment. I move that the fourth article of the chapter now under consideration, be transferred to the amendments which are to be passed upon separately; that it stand and go out to the people as a separate proposition.

The fourth article is as follows:—

ART. 4. The legislature which shall be chosen at the general election on the Tuesday next after the first Monday in November, in the year one thousand eight hundred and fifty-five, shall divide the State into forty single districts for the choice of Senators, such districts to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each; and shall also divide the State in single or double districts, to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each, for the choice of not less than two hundred and forty, nor more than three hundred and twenty representatives; with proper provisions for districting the Commonwealth as aforesaid, in the year one thousand eight hundred and sixty-six, and every tenth year thereafter; and with all other provisions necessary for carrying such system of districts into operation; and shall submit the same to the people at the general election to be held in the year one thousand eight hundred and fifty-six, for their ratification; and if the same shall be ratified and adopted by the people, it shall become a part of this Constitution in place of the provisions contained in this Constitution for the apportionment of Senators and Representatives.

I suppose that gentlemen understand what I mean. But I was about to say that I do not question the motives of the Committee, but this motion, it seems to me, will test their sincerity. Unless other reasons than those assigned influence their minds, they cannot hesitate to vote for this motion, for it comes perfectly within all the reasons given and all the rules laid down for the classification which they have made. In the first place, this is entirely new matter—a new proposition standing entirely by itself, having no precedents in the old Constitution.

In the next place, it is entirely unconnected in

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any way with any other part of the old Constitution, or the amendments; and if you were to strike it all out, every other portion would be perfect without it, just as it is if adopted; it in no way interferes with the rest of the instrument either with or without amendments. It does not in any degree stand in the way of the adoption or rejection of any or all the other amendments. If the whole are adopted, this is perfectly consistent with them all. If any parts are adopted, this still stands perfectly consistent with them, be they whichever they may. So if all be rejected, this stands in perfect consistency with the old Constitution. I therefore can see no reason why it should be retained in its position in this chapter, rather than stand by itself. It proposes a new method of amending or altering our Constitution; and if it is adopted, then, whatever legislature may be in power, might go on and execute the provision. There can, therefore, be no possible reason why this should be retained in its present place; unless it be to have an influence upon other measures which gentlemen wish to get adopted without the approbation of the people. I will not impute any such motives to any member of the Convention.

It is well known that if the Constitution which you now propose should be adopted, it will introduce a different basis of representation, and will place the power to elect a majority of the House of Representatives into the hands of about one-third of the people. Now, I will inquire whether any gentleman wishes to prevent the adoption of this provision until this gross inequality be introduced into the House of Representatives? Are they afraid to trust anybody with the administration of this but the one-third House of Representatives? I would not do any one—certainly not one of the Committee—the injustice to suppose that they had any desire so unrighteous.

One word more in relation to the necessity of the adoption of this provision. We never can have an amendment of the House of Representatives without it. When the one-third get the power they never will surrender it. The amendments provide that under them no constitutional amendments can be proposed unless they are adopted in two successive years, by a vote of two-thirds of the House. It may, therefore, be safely assumed that you never will have an amendment of the House of Representatives made in this way; for one-sixth of the people of the State, and those the most interested portion, could always prevent any such amendment. One-third of the House of Representatives could prevent the amendment from passing, and that third might be chosen by only one-sixth part of the whole people of the Commonwealth. Under these circumstances, I will ask, do you desire to confine the execution of this provision to the action of so very small a number, especially when it is considered that it is upon the very subject of their own power, which men everywhere are so very reluctant to yield?

But I see, by the President's exceedingly kind intimation, that my time has expired, and so I will take my seat. There were a few words more that I would have been glad to have added, had time permitted.

Mr. WILLIAMS, of Taunton, asked for the yeas and nays on the motion of Mr. Morton; and the question being put, the result was—ayes, 37; noes, 189.

So the yeas and nays were not ordered.

Mr. WILSON obtained the consent of the Convention to correct two verbal mistakes in the article under consideration.

Mr. STETSON, of Braintree. I trust, Mr. President, that the Convention will separate this fourth article from chapter fourteen, and put it in among the miscellaneous amendments. I suppose—I did suppose, and I have supposed—that the people were to have the right to decide upon such amendments as might be made by us, so far as it could be done, by having the opportunity to vote upon them in a separate and distinct form. I did not expect that the doctors who have had the preparation of these amendments were to put them into the form of a bolus dose. I am generally willing to take such doses as the doctors prescribe, but if they give too large a dose, it sometimes makes a person sick, and he throws it all up; and it may be that the people will serve this Constitution in the same way. [Laughter.] But, for my own part, I prefer to take medicine in a homœopathic way, and I think we should do better to administer this new Constitution to the people in homœopathic doses. But if it is the pleasure of the Convention to send all these numerous alterations and changes and amendments out to the people, to be adopted or rejected together, and if the people sanction it and submit to it, I have nothing to say. Out of so many new provisions, however, I think we can well separate this, and put it as a separate proposition, as suggested by the gentleman from Taunton. I should like to have all these propositions acted upon by the people separately, so that every man could vote for what he liked and vote against every thing else; but I presume the Convention will decide otherwise, and the people will be obliged to take it as we give it to them. I trust that, upon sober reflection, however, the Convention will agree to the amendment of the gentleman from Taunton, and put this fourth article into the supplement.

Mr. BUTLER, of Lowell. I should be sorry to take up the time of the Convention at this late hour, but there are two or three things that have lately been said upon this amendment, that I cannot allow to pass, so far as I am concerned, without a word of reply. I had supposed, that after the very learned, able and experienced gentleman from Taunton had proposed the district system, in various ways—after he had called for it four times and had had the yeas and nays called upon it three several times, in various stages, that he would hardly have wished, at this hour of the night, to trouble us with it again. I have no doubt but that what he has done has been done in perfect good faith—I am bound to suppose that—but I will state what seems to be the result to which he has arrived. He professes to be a friend to the district system; he is anxious to have the district system adopted in this Commonwealth; but he has found that the district system is unpalatable to a very large majority of this Convention—I may say, to almost if not quite a hundred majority—and now, if he really wants the district system, when he finds it is so unpalatable, why does he object to let us put it in here and sweeten it with some other propositions before it goes out to the people? Why does he object to our sweetening it and sending it out to the people, telling them that they must take the bitter with the sweet? That is a very fair

comparison, I admit; for in every position in which we find ourselves in this world, we are bound to take the good and bad together.

Mr. MORTON. The gentleman entirely misunderstood me; and if he will allow me, I will state what I said. I stated, or meant to state, to the Convention, that the proposition, although it was not very palatable to me, yet it might be so to a good many people, and the putting it in there might induce some people to vote for the House of Representatives. While I am up, I wish to correct another statement of the gentleman, about calling for the yeas and nays. I believe I have not called for them this session.

Mr. BUTLER. I can say the same thing again. *Qui facit per alium, facit per se*. Perhaps the gentleman will not deny that he asked his colleague to call for them.

Mr. WILLIAMS. I will answer for myself, that I was not asked to call for them.

Mr. BUTLER. I spoke to one gentleman from Taunton, and not the other.

Mr. MORTON. I will answer then, that I did not say a word to that gentleman about it.

Mr. BUTLER. It was all accidental, then. The gentleman from Taunton went over there by accident, and his colleague called for the yeas and nays by accident! I am bound to believe it.

Mr. WILLIAMS. I want to know if the gentleman intends to impute prevarication to me.

Mr. BUTLER. Not the least in the world; what are you so anxious for? "Let the galled jade wince—my withers are unwrung!" What is the trouble? I will only say again that the yeas and nays upon these various propositions have been called for three several times. The gentleman from Taunton says we take the bitter with the sweet. I call it bitter, but perhaps it may be like the little book in the angel's hand, sweet in the mouth and bitter in the belly. I call this bitter, and I say, put the sweet with it. I ask the gentleman in all soberness,—I respect his grey hairs, for I am bound to respect them,—what part of this Constitution he feels it his duty to compare to an assignation house? He compares the district system to a church; but where is the assignation house? He compares some provisions to a school; but where is the gambling house in this Constitution? I submit, with great deference to the gentleman, for I am bound to defer to his experience; I am bound to defer to his taste; but I simply ask him whether it is either good taste or good logic, and I hope he will excuse me if I add, good manners, thus to characterize that which has met the approval of this Convention. I do not think he meant it; I think it was a slip of the tongue. If it had come from a young person of hot blood, after dinner, I should have known that it was a slip of the tongue; but I scarcely expected such a remark from an elderly gentleman of the character of the gentleman from Taunton. I will call attention to one other statement of that gentleman. He says that we never can get our Constitution amended, because it requires two-thirds of the House of Representatives. Why, Sir, this proposition requires, first, that the legislature should submit the district system. They cannot help it. They are bound, constitutionally, by a majority vote, to do it. They will be obliged to submit it in 1856.

Mr. MORTON, (interposing). I spoke of the ordinary provisions of the Constitution; I had no reference to this at all, except so far as the

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[August 1st.

provision goes that it shall require two-thirds. I am surprised that the gentleman should have got that idea from anything that I said.

Mr. BUTLER. I understand the state of the case to be this, they must vote in 1855 by a majority of the House of Representatives, and of the Senate—

Mr. MORTON, (in his seat). If you adopt this, I admit it.

Mr. BUTLER. If this is adopted. Now, Sir, he wants a district system, and we have put this in here where every gentleman who has spoken to-day thinks is the best chance of having it adopted, by putting the whole together. Now I ask what objection there can be to it. I will tell what I think will be the effect of his proposition, although of course I know he does not mean it. We all know that a district system must come, sooner or later. Every-body believes that the State has got to be districted for choosing representatives, either before or after this is adopted by the people, and I do not see any difference which it is. Now the friends of the Convention come forward and say to the people: "We are ready to give you a district system if you want it." I do not think they do; but if they do they shall have a chance at it. Why are not gentlemen ready to take it? I will tell you what, in my judgment, is thought to be the effect of it. I think some gentlemen—I do not refer to anybody in particular, and so I shall not run under your hammer, Mr. President—some gentlemen are afraid to have it go out as a well-framed, well-put-together proposition; they are afraid to have it, and why? Because then we can say to the people, not that we give them churches and assignment houses, and they must take both, or neither; we say to them: If you want a district system, and believe that you are ready for it, vote for your Constitution and you will get it; but if you do not, if you prefer the system which was sustained by this Convention by more than a hundred majority, you are at liberty to retain it and there is no harm done.

Now what is there wrong in that? Is anybody wronged, anybody troubled, anybody harmed. Every-body agrees that if you put out the proposition alone it does not stand quite so good a chance. Gentlemen who want the district system, why not march up and take it. I believe that if this is put into the Constitution it goes by forty thousand majority at least, in the Commonwealth. It spikes the guns of certain persons, and that is the trouble. Now they want to get this out alone. I believe, in their opposition to this proposition, that we have the last expiring trick of conservatism. The last. And as this proposition is voted down by the Convention, the last shot is fired, and we shall go out to the people as we have been here, in spite of now and then a man against us whom we expected to be for us, and who if he had not professed to be a friend of reform, would have had no more chance of getting here than he would of getting to Heaven, and that is putting it strong enough. [Laughter.]

Gentlemen will find that we are not of those who do not dare to trust the people. We say we trust you with anything, but we propose to send you a machine perfect in all its parts; not a hobbling machine, with this thing left out, and that thing left in, where they ought not to be; not such a thing as that, but a thing perfect in all its parts. That is the Constitution which we pro-

pose to send out to the people, and not such a concern as will enable some judge, a few years hence, to come forward and put it in a revised form, and claim a copy-right of it. I thank God that we are to have a Constitution which no judge, present or to come, can obtain a copy-right of, and which we cannot print until we get his permission. We have come up here to have a Constitution and get rid of a patent.

Mr. HILLARD, of Boston. The remarks of the gentleman from Taunton, (Mr. Morton,) have opened a pretty wide range of discussion and inquiry. It is far too late, and the Convention far too impatient to justify me in travelling far in any of those paths. But I beg leave to ask the attention of the Convention for a very few moments, to considerations suggested by what fell from his lips.

What is the work to which we have been addressing ourselves? and in what spirit should we have approached that work? We have been making a Constitution, the highest secular duty which can be devolved upon man under a free government. The relation of constitutional law to legislative enactments has been somewhat discussed in books,—it has been treated by writers upon political philosophy,—but the relation of constitutional law to the political parties into which the country has been divided, has, as yet, not attracted the attention of writers upon politics; and yet it is a most important and novel branch of political science, and one which, each day, is assuming a new importance.

What is a model Constitution, and what would be a model Convention for making a Constitution? It would be a Convention anterior to the formation of parties, in which every man might reasonably expect to find himself, at some future time in the minority, because the object of a Constitution is to protect the minority. Therefore the best Constitutions are those which have been framed at a time when no man could tell where the political changes of the future might place him. It is one of the many felicities of our own history that the great political parties of our country grew out of the Constitution of the United States, and that the Constitution of the United States did not grow out of the mere political parties of the country. It was a difficult task to make a Constitution in 1789, and I think it would be an impossible task to make one now. If we should succeed, it would not be so good an instrument as that which we now enjoy. The greater majority any political party has in a Convention, the more magnanimous they can afford to be to the minority. But if party politics, if political parties—and I make this as a general remark with no particular application to this Convention, for I would not utter a word of recrimination or reproach, not a word to jar upon the harmony of feeling with which we should break up—if political parties, instead of finding their vent in our primary assemblies, and in our legislatures, come to fight their battles in a Constitutional Convention, I have only to say that it is an element of peril in our institutions, never contemplated by their founders, and never considered by writers upon political science, because you see that the result will be that the more powerful a majority is, and the more that majority are actuated by party feelings, the more they depart from the true functions of a Constitutional Convention, which is to make a Constitution which shall protect the

minority. If, on the other hand, they come together with the assured purpose of oppressing the minority, and of strengthening the power which they hold in their own hands, so that the sceptre which they hold shall be transmitted in a lineal line of succession, I say they steer by a false star, and never can land upon a safe shore. I would be no prophet of evil, but here we are making arrangements for a Constitutional Convention every twenty years. In every State of the Union the Constitutions are renewed about once in a generation, and so far as experience has gone, each Convention that has been gathered together has had more of partisan feeling than its predecessor, and each succeeding Constitution has reflected more of the party spirit of the majority, and has more and more departed from its proper function, which is to protect the minority; and as a general rule, wherever there has been a change, the earlier Constitutions have been the best. Now I will make no charge. Let every man judge and speak for himself, but I put it to gentlemen who have had the responsibility of this Convention, and I ask them,—not here and now, in the glow and heat of our struggles and contentions, but when they go home and commune with their own hearts,—I ask them to question themselves if they have approached this high work in the high spirit in which they should have done, or whether the first impulse, the first motive and the first principle which has guided them, has not been one which, to say the least, ought to have been the last.

Now, on what ground was this Convention opposed, and voted against by those who did oppose and vote against it? For one, so far as I can judge from my own feelings, and from those with whom I am in the habit of acting, it was because it was a Convention which was wrung out of a party struggle, and that of necessity it must be a party Convention. And I ask gentlemen in the majority, in no unkind feeling, if there was not reason in those fears and apprehensions? I put it to some of the gentlemen who have been in the habit of acting in the majority, whether our apprehensions were wholly unreasonable? I would ask, if from the beginning to the end there has not been too much of this party element in our deliberations, and if the provisions of this Constitution, and especially the last and closing act of this eventful drama, have not been too much tinged by the ignoble desire of securing in the hands which now away the destinies of the Commonwealth, those destinies? I would ask gentlemen if they have elevated their minds to the proper point of view from which to contemplate their duties and responsibilities? if they have been actuated by the single wish to provide that which was best for the people, best for the Commonwealth, best for the generation which is to come, and to put it forward to the people in such a manner as shall secure their deliberate action upon it, or whether they have been actuated by that other class of motives which I will no longer dwell upon. I put it to them, and let them find the answer in the silence of their own hearts.

Mr. BOUTWELL, for Berlin. I have no desire to dwell long upon some topics which have been introduced by the gentleman from Taunton, (Mr. Morton,) and by the gentleman from Boston (Mr. Hillard). This Convention, under an Act of the legislature, sustained by the people,

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REVISED CONSTITUTION. — BOUTWELL — WILKINSON — DANA.

[August 1st.]

assembled to revise the Constitution of this Commonwealth. I understand the gentleman from Taunton, and the gentleman from Boston, to protest against the conclusion of the business for which this assembly have convened, and coupled with that protest, they proceed, if not to impugn the motives of the gentlemen upon the other side, at least to approach to the very nearest point of imputation. Not for the purpose of thus arraigning each other have we assembled, and for my part, I desire not that the last moments of this Convention should be embittered by considerations of such a nature. I trust, Sir, unless I have deceived myself, I have read lectures to no man upon this floor. I came not here for that purpose, but to do my duty as a delegate of the people, acknowledging no responsibility to any associates here, but for the obligations which social life and the courtesies of our natures demand. To the people alone, are we responsible. That responsibility, I for one, take; its consequences I shall never shun. The majority of this Convention, as was their duty, have taken the responsibility; and if they go before the people and cannot defend their proceedings, they fall. If they can defend their proceedings here, whatever gentlemen upon this floor may say, their conduct will be sustained, and their proceedings will stand.

I desire, Sir, that instead of arraigning each other, we proceed to the conscientious discharge of the duties before us, that he who desires not to take the responsibilities of these last moments of this Convention, upon that record, shall escape the responsibility; but let him, in justice to his fellows, allow them to take the responsibility if they choose to do it. For one, I take what belongs to me.

It was for the purpose of expressing the opinions which I have, that I arose at this time. For one, I desire to enter into no criminations or recriminations. I have no doubt that errors have been committed by the majority. We do not claim to have been perfect here. Errors may have been committed by the minority, and it may be that the shield of public charity is as necessary for them as for us.

The question was then taken upon the motion offered by the gentleman from Taunton, (Mr. Morton,) and there were, on a division—ayes, 53; noes, 169.

So the motion did not prevail.

The question then recurring upon the final passage of the resolve numbered "one"—

Mr. WILKINSON, of Dedham, said: I suppose it may be proper now to offer an amendment, but which, in the present state of excitement in the House, I do not wish to take up the time of the Convention in discussing. It seems to me that the proposition should be distinctly passed upon by this Convention, whether the people shall have the right to pass upon these amendments separately. We have had a standing rule during the sitting of this Convention, by which any person might ask for a division of the question when susceptible of division, and we have voted upon these several propositions separately, and I am desirous to submit to the consideration of this Convention the propriety of allowing the people to do what we have done in this Convention. I would therefore move that the Report be recommitted to the Committee with instructions to report the several amendments

agreed upon by this Convention, in such form, and with such reference to parts of the existing Constitution proposed to be altered or annulled, that each of said amendments may be separately submitted to the people for their adoption or rejection.

The PRESIDENT. The Chair would state that the motion is applicable only to the resolve numbered "one;" but it can be applied to each proposition as it comes up. The propositions were susceptible of division, and under a rule of the Convention the Chair must state the questions separately.

Mr. DANA, for Manchester. Before that question is put, I move to amend the first resolve so as to make it conform, in that part which refers to chapter eight, to the language of that title as we have amended it.

The question was taken and the motion was agreed to, and the resolve was amended accordingly.

The question recurring upon the motion of Mr. Wilkinson—

Mr. WILKINSON called for the yeas and nays upon it.

The yeas and nays were ordered, one-fifth of the persons voting having voted therefor, there being, on a division—ayes, 51; noes, 181.

The yeas and nays were then called upon the motion offered by Mr. Wilkinson, and there were—yeas, 73; nays, 170—as follows:—

YEAS.

Adams, Benjamin P.	Ladd, John S.
Aldrich, P. Emory	Lawton, Job G., Jr.
Aspinwall, William	Lincoln, Fred. W., Jr.
Barrows, Joseph	Livermore, Isaac
Beach, Erasmus D.	Lothrop, Samuel K.
Beebe, James M.	Marvin, Theophilus R.
Bigelow, Jacob	Miller, Seth, Jr.
Bradbury, Ebenezer	Morey, George
Brewster, Osmyn	Morton, Marcus
Bullock, Rufus	Oliver, Henry K.
Carter, Timothy W.	Orcutt, Nathan
Choate, Rufus	Paige, James W.
Cogswell, Nathaniel	Parker, Adolphus G.
Cole, Lansing J.	Parker, Samuel D.
Cook, Charles E.	Perkins, Daniel A.
Crockett, George W.	Plunkett, William C.
Crosby, Leander	Pomroy, Jeramian
Davis, Solomon	Preston, Jonathan
Dennison, Hiram S.	Read, James
Ely, Homer	Reed, Sampson
Eustis, William T.	Sargent, John
Farwell, A. G.	Sherman, Charles
Gilbert, Wanton C.	Sleeper, John S.
Giles, Joel	Souther, John
Hale, Nathan	Stetson, Caleb
Hammond, A. B.	Stevens, Charles G.
Hathaway, Elnathan P.	Thompson, Charles
Hawkes, Stephen E.	Tileston, Edmund P.
Hayward, George	Weeks, Cyrus
Hillard, George S.	Wetmore, Thomas
Hinsdale, William	White, Benjamin
Houghton, Samuel	Wilder, Joel
Hunt, William	Wilkinson, Ezra
Jenkins, John	Williams, Henry
Jenks, Samuel H.	Wilson, Milo
Kellogg, Giles C.	Wood, Nathaniel
Knight, Joseph	

NAYS.

Adams, Shubael P.	Bancroft, Alpheus
Allen, James B.	Barrett, Marcus
Allen, Joel C.	Bates, Moses, Jr.
Alley, John B.	Beal, John
Allis, Josiah	Bird, Francis W.
Alvord, D. W.	Bishop, Henry W.
Baker, Hillel	Booth, William S.
Ball, George S.	Boutwell, George S.

Boutwell, Sewell	Kendall, Isaac
Breed, Hiram N.	Knight, Hiram
Bronson, Asa	Knowlton, J. S. C.
Brown, Adolphus F.	Knowlton, William H.
Brown, Hammond	Knox, Albert
Brown, Hiram C.	Ladd, Gardner P.
Brownell, Frederick	Langdon, Wilber C.
Brownell, Joseph	Leland, Alden
Bryant, Patrick	Little, Otis
Buck, Asahel	Marble, William P.
Bullen, Amos H.	Mason, Charles
Burlingame, Anson	Merritt, Simeon
Butler, Benjamin F.	Monroe, James L.
Caruthers, William	Morton, Elbridge G.
Case, Isaac	Morton, Marcus, Jr.
Chandler, Amariah	Morton, William S.
Chapin, Chester W.	Nash, Hiram
Chapin, Daniel E.	Nayson, Jonathan
Chapin, Henry	Nute, Andrew T.
Childs, Josiah	Osgood, Charles
Clark, Salah	Packer, E. Wing
Clarke, Alpheus B.	Paine, Benjamin
Cole, Sumner	Paine, Henry
Crane, George B.	Parris, Jonathan
Crittenden, Simeon	Partridge, John
Cross, Joseph W.	Penniman, John
Cushman, Henry W.	Perkins, Noah C.
Cushman, Thomas	Phinney, Sylvanus B.
Dana, Richard H., Jr.	Pierce, Henry
Davis, Isaac	Pool, James M.
Davis, Robert T.	Powers, Peter
Dean, Silas	Putnam, John A.
Deming, Elijah S.	Rantoul, Robert
Denton, Augustus	Rawson, Silas
Dunham, Bradish	Rice, David
Durgin, John M.	Richards, Luther
Eames, Philip	Richardson, Daniel
Earle, John M.	Richardson, Nathan
Easland, Peter	Richardson, Samuel H.
Eaton, Calvin D.	Ring, Elkanah, Jr.
Edwards, Elisha	Rogers, John
Fay, Sullivan	Ross, David S.
Fellows, James K.	Royce, James C.
Fisk, Lyman	Sanderson, Amasa
Foster, Aaron	Sanderson, Chester
Foster, Abram	Schouler, William
Fowle, Samuel	Sherill, John
Freeman, James M.	Sikes, Chester
French, Charles A.	Simmons, Perez
French, Rodney	Simonds, John W.
French, Samuel	Smith, Matthew
Frothingham, R'd, Jr.	Sprague, Melzar
Gardner, Johnson	Spooner, Samuel W.
Gates, Elbridge	Stevens, Granville
Gilbert, Washington	Stiles, Gideon
Giles, Charles G.	Strong, Alfred L.
Gooding, Leonard	Taft, Arnold
Graves, John W.	Tilton, Abraham
Green, Jabez	Tyler, William
Greene, William B.	Underwood, Orison
Griswold, Josiah W.	Vinton, George A.
Griswold, Whiting	Wallace, Frederick T.
Hadley, Samuel P.	Wallis, Freeland
Hall, Charles B.	Walker, Amasa
Hallett, B. F.	Waters, Asa H.
Hapgood, Seth	Weston, Gershom B.
Harmon, Phineas	Whitney, Daniel S.
Haskins, William	Whitney, James S.
Heath, Ezra, 2d	Wilbur, Daniel
Hewes, William H.	Williams, J. B.
Hobart, Henry	Wilson, Henry
Hood, George	Wilson, Willard
Howard, Martin	Winn, Jonathan B.
Hoyt, Henry K.	Winslow, Levi M.
Hurlbut, Moses C.	Wood, Charles C.
Ide, Abijah M., Jr.	Wood, Ona
Jacobs, John	Wright, Ezekiel

ABSENT.

Abbott, Alfred A.	Austin, George
Abbott, Josiah G.	Ayres, Samuel
Allen, Charles	Ballard, Alvah
Allen, Parsons	Banks, Nathaniel P., Jr.
Andrews, Robert	Bartlett, Russel
Appleton, William	Bartlett, Sidney
Atwood, David C.	Bates, Eliakim A.

Monday.] REVISED CONSTITUTION.—OLIVER—SCHOULER—SARGENT—MASON—HALLETT—BOUTWELL. [August 1st.

Bell, Luther V.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Bradford, William J. A.
Braman, Milton P.
Brinley, Francis
Briggs, George N.
Brown, Alpheus R.
Brown, Artemas
Bumpus, Cephas C.
Cady, Henry
Churchill, J. McKean
Clark, Henry
Clark, Ransom
Clarke, Stillman
Cleverly, William
Coggin, Jacob
Conkey, Ithamar
Coolidge, Henry F.
Copeland, Benjamin F.
Cressy, Oliver S.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilbur
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, John
Dawes, Henry L.
Day, Gilman
Dehon, William
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Duncan, Samuel
Easton, James, 2d
Eaton, Lilley
Edwards, Samuel
Ely, Joseph M.
Fiske, Emery
Fitch, Ezekiel W.
Fowler, Samuel P.
French, Charles H.
Gale, Luther
Gardner, Henry J.
Gooch, Daniel W.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Greenleaf, Simon
Hale, Artemas
Hapgood, Lyman W.
Haskell, George
Hayden, Isaac
Hazewell, Charles C.
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James
Heywood, Levi
Hobart, Aaron
Hobbs, Edwin
Holder, Nathaniel
Hooper, Foster
Hopkinson, Thomas
Howland, Abraham H.
Hubbard, William J.
Hunt, Charles E.
Huntington, Asahel
Huntington, Charles P.
Huntington, George H.
Hurlburt, Samuel A.
Hyde, Benjamin D.
Jackson, Samuel
James, William

Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Kinsman, Henry W.
Knight, Jefferson
Knowlton, Charles L.
Kuhn, George H.
Lawrence, Luther
Lincoln, Abishai
Littlefield, Tristram
Loomis, E. Justin
Lord, Otis P.
Loud, Samuel P.
Lowell, John A.
Marcy, Laban
Marvin, Abijah P.
Meador, Reuben
Mixer, Samuel
Moore, James M.
Morris, Joseph B.
Newman, Charles
Nichols, William
Norton, Alfred
Noyes, Daniel
Ober, Joseph E.
Orne, Benjamin S.
Park, John G.
Parker, Joel
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Jesse
Perkins, Jonathan C.
PHELPS, Charles
Prince, F. O.
Putnam, George
Rockwell, Julius
Rockwood, Joseph M.
Sampson, George R.
Sheldon, Luther
Stacy, Eben H.
Stevens, Joseph L., Jr.
Stevens, William
Stevenson, J. Thomas
Storror, Charles S.
Stutson, William
Sumner, Charles
Sumner, Increase
Swain, Alanson
Taber, Isaac C.
Talbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Tilton, Horatio W.
Tower, Ephraim
Train, Charles R.
Turner, David
Turner, David P.
Tyler, John S.
Upham, Charles W.
Upton, George B.
Viles, Joel
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Wheeler, William F.
White, George
Wilbur, Joseph
Wilkins, John H.
Wood, William H.
Woods, Josiah B.

Absent and not voting, 176.

So the motion was not agreed to.

Mr. OLIVER, of Lawrence. I do not suppose that any proposition which I could make,

considering the condition which I occupy as one of the minority, will meet with any particular favor at the hands of the Convention, and yet I will venture to make one more motion. I have not any idea that any of the alkalies which have gone into the Constitution to neutralize the acids, will be removed; but I should like to take out that bantling of mine and let it ride alone; therefore I move that chapter eleven, in relation to the militia, be taken out from the *omnium-gatherum*, and made a separate proposition, number nine, so that it may be acted upon by the people separately.

Mr. SCHOULER, of Boston. I am sorry to see the gentleman from Lawrence making that motion at this late hour. I think that what is in the present Constitution in relation to the militia, is better than this bantling of the gentleman from Lawrence; and I said so when the matter was under discussion. But, inasmuch as it is in there, and inasmuch as the gentleman wants to get rid of it, I hope he will allow it to remain there. [Laughter.] Therefore, I am in favor of keeping it where it is. It is not so bad as I thought it was at first, and probably that is the reason that he wants to get it out.

Mr. SARGENT, of Cambridge. I hope the motion will succeed. I do not think much of this military law. It makes no provisions for Sergeants, and therefore, I hope it will be put by itself. [Laughter.]

The question was then taken on the motion of Mr. Oliver, and it was decided in the negative.

Mr. MASON, of Fitchburg. I find that in the latter part of article first, chapter second, there is the word "be" before the word "chosen" which seems to be superfluous. The clause now reads as follows:—

Each district shall be entitled to elect one senator, who shall have been an inhabitant of this Commonwealth for five years immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is to be chosen.

I move to strike out the word "be."

The question was taken and the motion was agreed to.

Mr. MASON. I also move to insert the words "to be" before the word "entitled" in article two, chapter six, which is as follows:—

ART. 2. Eight councillors shall be annually chosen by the people; and for that purpose the State shall be divided by the General Court into eight districts, each district to consist of five contiguous senatorial districts, and entitled to elect one councillor, who shall hold his office for one year next following the first Wednesday in January, and until a successor is chosen and qualified in his stead.

Mr. HALLETT. In my judgment the amendment weakens rather than strengthens the language. It now declares that they are entitled, and the amendment says they are *to be* entitled. When? That language was well considered, is in conformity to the old Constitution, and is good Saxon English.

Mr. MASON. I withdraw the amendment.

The PRESIDENT. The question recurs upon the final passage of proposition numbered "one."

Mr. BOUTWELL. This being the final disposition of that proposition, I ask the yeas and nays upon its passage.

The yeas and nays were ordered.

The roll was then called and there were—yeas, 173; nays, 68—as follows:—

YEAS.

Allen, James B.
Allen, Joel C.
Alley, John B.
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Ball, George S.
Bancroft, Alpheus
Barrett, Marcus
Bates, Moses, Jr.
Beach, Erasmus D.
Beal, John
Bird, Francis W.
Bishop, Henry W.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Bullen, Amos H.
Burlingame, Anson
Butler, Benjamin F.
Carruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Chester W.
Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Clark, Ransom
Clark, Salah
Clarke, Alpheus B.
Cole, Lansing J.
Cole, Sumner
Crane, George B.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Henry W.
Dana, Richard H., Jr.
Davis, Isaac
Davis, Robert T.
Dean, Silas
Denton, Augustus
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Eaton, Calvin D.
Edwards, Elisha
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Frothingham, R., Jr.
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hall, Charles B.
Hallett, B. F.

Hapgood, Seth
Harmon, Phineas
Hathaway, Elnathan P.
Hawkes, Stephen E.
Hayden, Isaac
Heath, Ezra, 2d
Hewes, William H.
Hobart, Henry
Hood, George
Howland, Abraham H.
Hoyt, Henry K.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jacobs, John
Kendall, Isaac
Knight, Hiram
Knight, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Lawton, Job G., Jr.
Leland, Alden
Little, Otis
Marble, William P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Nute, Andrew T.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Penniman, John
Perkins, Daniel A.
Perkins, Noah C.
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Powers, Peter
Putnam, John A.
Rantoul, Robert
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rogers, John
Ross, David S.
Royce, James C.
Sanderson, Amasa
Sherrill, John
Simmons, Perez
Simonds, John W.
Smith, Matthew
Spooner, Samuel W.
Stevens, Granville
Stiles, Gideon
Strong, Alfred L.
Taft, Arnold
Tilton, Abraham
Tyler, William
Underwood, Orison
Vinton, George A.
Wallace, Frederick, T.
Wallis, Freeland
Walker, Amasa
Waters, Asa H.
Weston, Gershom B.
White, George
Whitney, Daniel S.

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Whitney, James S.
Wilbur, Daniel
Williams, J. B.
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.

Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wright, Ezekiel

NAYS.

Adams, Benjamin P.
Aldrich, P. Emory
Apsinwall, William
Barrows, Joseph
Bartlett, Russel
Beebe, James M.
Bigelow, Jacob
Bradbury, Ebenezer
Brewster, Osymn
Carter, Timothy W.
Choate, Rufus
Crockett, George W.
Crosby, Leander
Davis, Solomon
Denison, Hiram S.
Ely, Homer
Farwell, A. G.
Gilbert, Wanton C.
Giles, Joel
Hale, Nathan
Hammond, A. B.
Hayward, George
Hillard, George S.
Hinsdale, William
Houghton, Samuel
Hunt, William
Hurlburt, Samuel A.
Jenkins, John
Jenks, Samuel H.

Kellogg, Giles C.
Ladd, John S.
Lincoln, Frederic W., Jr.
Livermore, Isaac
Lothrop, Samuel K.
Marvin, Theophilus R.
Miller, Seth, Jr.
Morey, George
Morton, Marcus
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Parker, Adolphus G.
Plunkett, William C.
Preston, Jonathan
Read, James
Reed, Sampson
Sargent, John
Sikes, Chester
Sleeper, John S.
Souther, John
Stevens, Charles G.
Tileston, Edmund P.
Weeks, Cyrus
White, Benjamin
Wildner, Joel
Wilkinson, Ezra
Williams, Henry
Wilson, Milo

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Allen, Parsons
Andrews, Robert
Appleton, William
Atwood, David C.
Ayres, Samuel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Sidney
Bates, Eliakim A.
Bell, Luther V.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Bradford, William J. A.
Braman, Milton P.
Brimley, Francis
Briggs, George N.
Brown, Alpheus R.
Brown, Artemas
Buck, Asahel
Bullock, Rufus
Bumpus, Cephas C.
Cady, Henry
Churchill, J. McKeon
Clark, Henry
Clarke, Stillman
Cleverly, William
Coggin, Jacob
Cogswell, Nathaniel
Conkey, Ithamar
Cook, Charles E.
Coolidge, Henry F.
Copeland, Benjamin F.
Cressy, Oliver S.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Cushman, Thomas
Cutler, Simeon N.

Davis, Charles G.
Davis, Ebenezer
Davis, John
Dawes, Henry L.
Day, Gilman
Dehon, William
Deming, Elijah S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Duncan, Samuel
Easton, James, 2d
Eaton, Lilley
Edwards, Samuel
Ely, Joseph M.
Eustis, William T.
Fiske, Emery
Fitch, Ezekiel W.
Fowler, Samuel P.
French, Charles H.
Gale, Luther
Gardner, Henry J.
Gooch, Daniel W.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Greenleaf, Simon
Hale, Artemas
Hapgood, Lyman W.
Haskell, George
Haskins, William
Hazewell, C. C.
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James
Heywood, Levi
Hobart, Aaron
Hobbs, Edwin
Holder, Nathaniel
Hooper, Foster
Hopkinson, Thomas
Howard, Martin
Hubbard, William J.
Hunt, Charles E.
Huntington, Asahel

Huntington, Charles P.
Huntington, George H.
Jackson, Samuel
James, William
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Kinsman, Henry W.
Knight, Jefferson
Knowlton, Charles L.
Kuhn, George H.
Lawrence, Luther
Lincoln, Abishai
Littlefield, Tristram
Loomis, E. Justin
Lord, Otis P.
Loud, Samuel P.
Lowell, John A.
Marcy, Laban
Marvin, Abijah P.
Meader, Reuben
Mixer, Samuel
Moore, James M.
Morss, Joseph B.
Newman, Charles
Nichols, William
Norton, Alfred
Noyes, Daniel
Ober, Joseph E.
Orne, Benjamin S.
Park, John G.
Parker, Joel
Parker, Samuel D.
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Jesse
Perkins, Jonathan C.
Phelps, Charles
Pomroy, Jeremiah
Prince, F. O.
Putnam, George

Rawson, Silas
Rockwell, Julius
Rockwood, Joseph M.
Sampson, George R.
Sanderson, Chester
Schouler, William
Sheldon, Luther
Sherman, Charles
Sprague, Melzar
Stacy, Eben H.
Stetson, Caleb
Stevens, Joseph L., Jr.
Stevens, William
Stevenson, J. Thomas
Storrow, Charles S.
Stutson, William
Summer, Increase
Surhner, Charles
Swain, Alanson
Taber, Isaac C.
Tabbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Horatio W.
Tower, Ephraim
Train, C. R.
Turner, David
Turner, David P.
Tyler, John S.
Upham, Charles W.
Upton, George B.
Viles, Joel
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Wetmore, Thomas
Wheeler, William F.
Wilbur, Joseph
Wilkins, John H.
Wood, William H.
Woods, Josiah B.

Absent, and not voting, 188.

So proposition numbered "one" was passed.

Pending the call—

Mr. COLE, of Cheshire, asked the indulgence of the Convention to explain the reasons for the vote which he gave.

[Many voices. "No!" "No!" "No!"]

The PRESIDENT decided that leave could be granted only by unanimous consent.

The first proposition having thus been disposed of, the Secretary read the second proposition and the provision of the Constitution to which it referred, as follows:—

II. The provision respecting the granting of the writ of Habeas Corpus, as a proposition, numbered "two."

If this proposition be ratified and adopted, it shall be an addition to the provision respecting the Habeas Corpus.

The following is the provision referred to:—

The writ of *habeas corpus* shall be granted as of right in all cases in which a discretion is not especially conferred upon the court by the legislature; but the legislature may prescribe forms of proceeding preliminary to the obtaining of the writ.

The question was taken upon the final passage of the second proposition, and there were, upon a division—ayes, 169; noes, 17.

So the proposition was passed.

The third proposition was next read, as follows:—

III. The provision respecting the rights of juries in criminal trials, as a proposition, numbered "three."

If this proposition be ratified and adopted, it shall be an addition to the article in the Declaration of Rights, respecting the rights of persons charged with crimes.

The following is the provision referred to:—

In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict, of guilty or not guilty, to determine the law and the facts of the case, but it shall be the duty of the court to superintend the course of the trials, to decide upon the admission and rejection of evidence, and upon all questions of law raised during the trials, and upon all collateral and incidental proceedings; and also to allow bills of exceptions. And the court may grant a new trial in case of conviction.

The question being upon the passage of the third proposition it was put, and there were—ayes, 149; noes, 66.

So the proposition was passed.

The fourth proposition was then read, as follows:—

IV. The provision respecting claims against the Commonwealth, as a proposition, numbered "four."

If this proposition be ratified and adopted, it shall be an addition to Article XI., of the Declaration of Rights.

Proposition numbered "four," is as follows:—

Every person having a claim against the Commonwealth, ought to have a judicial remedy therefor.

The question was then taken upon the passage of the fourth proposition, and there were—ayes, 183; noes, 6.

So the proposition was passed.

The fifth proposition was then read, as follows:—

V. The provision respecting imprisonment for debt, as a proposition, numbered "five."

If this proposition be adopted, it shall be an addition to the Article in the Declaration of Rights, respecting excessive bail and fines.

The provision referred to, is as follows:—

"No person shall be imprisoned for any debt hereafter contracted, unless in cases of fraud.

The question was taken upon the passage of the fifth proposition, and there were—ayes, 163; noes, 16.

So the proposition was passed.

The sixth proposition was then read, as follows:—

VI. The provision respecting sectarian schools, as a proposition, numbered "six."

If this proposition be ratified and adopted, it shall be an addition to Article IV. of Chapter XII., entitled, "The University at Cambridge, The School Fund, and The Encouragement of Literature." If proposition numbered "one" shall not be adopted, it shall be added as an amendment to the Constitution.

The provision referred to, is as follows:—

All moneys raised by taxation in the towns and cities, for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to and expended in no other schools than

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those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect, for the maintenance, exclusively, of its own schools.

Mr. DANA. Before the question is taken upon the passage of the sixth proposition, I move to amend it by striking out the word "it" in the last clause, and inserting in lieu thereof, the words, "number six."

The question was taken, and the motion was agreed to.

Mr. HALLETT. I ask for the yeas and nays upon the passage of the sixth proposition.

The yeas and nays were not ordered, one-fifth of those voting, not voting therefor.

The question was then taken upon the passage of the sixth proposition, and there were, upon a division—ayes, 159; noes, 24.

So the proposition was passed.

The PRESIDENT. The next proposition is in the following words:—

VII. The Legislature shall not create corporations by special act, when the object of the incorporation is attainable by general laws.

This proposition was adopted, without debate, on a division—ayes, 169; noes, 16.

The PRESIDENT. The next business before the Convention is the eighth proposition.

The Secretary read the following, previous to reading the proposition:—

VIII. The provision respecting Banks and Banking, as a proposition, numbered "eight."

If the propositions numbered "seven" and "eight" be ratified and confirmed, they shall be added as separate articles, or if either of them be ratified and confirmed, as an article in Chapter XIII., entitled "Miscellaneous Provisions."

If proposition numbered "one" be not ratified and confirmed, they shall be added as amendments to the Constitution."

The eighth proposition was then read, as follows:—

The Legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any chartered bank; but corporations may be formed for such purposes, or the capital stock of chartered banks may be increased, under general laws.

The Legislature shall provide by law for the registry of all notes or bills authorized by general laws to be issued or put in circulation as money; and shall require ample security for the redemption of such notes, in specie.

The proposition was adopted, on a division—ayes, 153; noes, 36.

The question next recurred upon the second resolution, which was read, as follows:—

Resolved, That at the meetings for the election of Governor, Senators, and Representatives to the General Court, to be holden on the second Monday of November, in the year one thousand eight hundred and fifty-three, the qualified voters of the several towns and cities shall vote by ballot upon each of the propositions aforesaid, for or against the same, which ballots shall be inclosed within sealed envelopes, according to the provisions of an Act of this Commonwealth, passed on the twenty-second day of May, in the year eighteen hundred and fifty-one, and an Act passed the twentieth day of May, in the year eighteen hundred and fifty-two, and no ballots not so inclosed shall be received. And said votes shall be received, sorted, counted, declared, and recorded,

in open meeting, in the same manner as is by law provided in reference to votes for governor, and a true copy of the record of said votes, attested by the selectmen and town clerk of each of the several towns, and the mayor and aldermen and city clerk of each of the several cities, shall be sealed up by said selectmen and mayor and aldermen, and directed to the Secretary of the Commonwealth, with a superscription expressing the purport of the contents thereof, and delivered to the sheriff of the county within fifteen days after said meetings, to be by him transmitted to the secretary's office, on or before the third Monday of December next; or, the said selectmen and mayor and aldermen shall themselves transmit the same to the secretary's office, on or before the day last aforesaid.

The resolve was agreed to.

The question next recurred upon the third resolution, which was read, as follows:—

Resolved, That the Secretary shall deliver said copies, so transmitted to him, to a Committee of this Convention, consisting of

who shall assemble at the State House, on the third Monday of December next, and open the same, and examine and count the votes so returned; and if it shall appear that either of said propositions has been adopted by a majority of votes, then the proposition so adopted shall become and be either the whole or a portion of the Constitution of this Commonwealth, as hereinbefore provided, and the said Committee shall promulgate the results of said votes upon each of said propositions, by causing the same to be published in those newspapers in which the laws are now published; and shall also notify the Governor and Legislature, as soon as may be, of the said results; and the Governor shall forthwith make public proclamation of the fact of the adoption of either or all of said propositions, as the whole or as parts of the Constitution of this Commonwealth.

Mr. DANA moved to amend the resolution, by providing that the blank be filled with the name of the President of the Convention, and the names of twenty other persons, whom he should nominate.

"The amendment was agreed to, and the question recurring on the passage of the resolve, as amended,

The resolve was passed.

The question then recurred upon the fourth resolution, which was read, as follows:—

Resolved, That each of said propositions shall be considered as a whole by itself, to be adopted in the whole, or rejected in the whole. And every voter may vote on each proposition, by its appropriate number, without specifying in his ballot any reference to the subject of the proposition, and by writing opposite to the number of each proposition, the word Yes or No; but the vote on all of the propositions shall be written or printed on one ballot, in substance as follows:—

Constitutional Propositions.

Proposition No. I., . . .	Yes or No.
Proposition No. II., . . .	Yes or No.
Proposition No. III., . . .	Yes or No.
And to Proposition No. VIII.,	Yes or No.

Mr. FROTHINGHAM, of Charlestown. I have an amendment to propose to this resolve; and without questioning the eminent ability which has marked the course of the Committee in reference to preparing their Report and doing full justice to it, I yet think there may be an amendment here which will perhaps relieve the voters of considerable trouble at the polls. The proposition as it now stands, states that

Every voter may vote on each proposition by

its appropriate number, without specifying in his ballot any reference to the subject of the proposition, and by writing opposite to the number of each proposition the word Yes or No; but the vote on all of the propositions shall be written or printed on one ballot, in substance as follows:—

Constitutional Propositions.

Proposition No. I., . . .	Yes or No.
Proposition No. II., . . .	Yes or No.
Proposition No. III., . . .	Yes or No.
And to Proposition No. VIII.,	Yes or No.

Now, it seems to me that the ballot ought to specify each proposition. These pamphlets which we shall send out will, in all probability, be lost before the people come to the polls; and when they are there the inquiry will be: "What does number one mean? what does number two mean? or what does number three mean?" throughout the whole propositions. And then again the object is to prepare the ballot; and, after all, the ballot will not be specific. With these few remarks, I submit the following amendment, which is to strike out all after the word "whole," in the second line, and insert the following:—

Indicating on his ballot the subject of the proposition, and writing or printing the word Yes or No opposite to each proposition.

Mr. KNOWLTON, of Worcester. As a member of the Committee on Revision, I give the amendment of the gentleman from Charlestown my support. I think it is plainer than the proposition of the Committee, and I hope it will be adopted.

Mr. DANA, for Manchester. I was about to suggest, when I yielded the floor to the gentleman for Wilbraham, that it seems to me the proposition of the gentleman from Charlestown is a very proper one, and better than that which we had submitted; because, if the propositions were only designated by numbers, a mistake in those numbers, either from accident or design, would frustrate the intentions of the voters; but if we have both the number and the indication of the subject, there could be scarcely a possibility of mistake. The amendment was submitted by the gentleman from Charlestown to the chairman of the Committee, and to some other members, before he offered it, and I believe it met with general approbation. Perhaps it would be more grammatical to say "in" than to say "and." When a man votes, I do not suppose that any inquiry will be made as to whether he wrote his ballot, or whether his wife wrote it for him at home, or whether it was printed.

Mr. HALLETT, for Wilbraham. It is just as easy to express it in language that every-body will understand, as it is to express it in doubtful language. If the word "in" will perfect the language, I move to substitute "in" instead of "and," so that it shall read: "indicating on his ballot the subject of the proposition in writing or printing, opposite each proposition."

Mr. EARLE, of Worcester. It appears to me, that it is very well as it is; and in answer to the objection which has been raised by the gentleman for Manchester and the gentleman for Wilbraham, I can say that I do not suppose there will be any difficulty about this matter. It is not presumed that the voters are going to the polls, and to sit down and write their ballots when they vote. Unquestionably these propositions will all be

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printed—one set with yeas and another set with nays opposite to each proposition; and then each voter could select that which corresponds the nearest to the way he wishes to vote, and alter it to suit himself. If he votes “yes” on the majority of the propositions, and there are two or three which he does not like, he can take his pencil and mark “no” opposite to them, erasing the word “yes.” I am in favor of the amendment as it now stands; I think there will be no difficulty arising from it.

Mr. JENKS, of Boston. This seems to me to be merely a verbal dispute. It stands very well as the gentleman for Wilbraham proposes it, and it is much more plain and explicit. I presume the meaning is, that each voter shall state by a written or printed declaration; and perhaps that would be a good form in which to express it, instead of saying that he shall either write or print it.

Mr. HALLETT. I should be sorry to have this go out in a wrong form; and I will farther suggest that the word “stating” be substituted for “indicating,” so that it will read as follows:

And every voter shall vote on each proposition by its appropriate number, stating on his ballot the subject of the proposition, in writing or printing, and the word yes or no opposite to each proposition.

The question being then taken on the amendment to the amendment, it was agreed to; and the amendment, as amended, was then adopted.

The resolve, as amended, was then agreed to.

The question was then stated on agreeing to the fifth resolve:—

Resolved, That a printed copy of these resolutions, with the several constitutional propositions annexed, shall be attested by the Secretaries of the Convention, and transmitted by them, as soon as may be, to the selectmen of each town, and the mayor and aldermen of each city, in the Commonwealth, whose duty it shall be to insert a proper article in reference to the voting upon said propositions, in the warrant calling the meetings aforesaid, on the second Monday of November next.

Mr. BOUTWELL moved to amend by inserting after the words “attested by,” the words “the President and,” so that it would read “shall be attested by the President and Secretaries of the Convention,” &c.

The amendment was agreed to.

Mr. STETSON, of Braintree. I should like to ask the chairman of the Committee, if it is intended that the same plan shall be pursued in the printing of the Constitution, which is pursued in the printing of these copies that have been distributed here. A part of this Constitution is set in open type, a part in close type, and a part in Italics. What I want is this: that in order that the people may understand what part of the Constitution is new and what part is old, it should be printed with all that is new inserted in Italics, and the old part in Roman. In that case, when it goes out to the people, they will not have to study and compare in order to find out what changes the Convention have made. I move that the Committee who have this matter in charge, direct all the new portion to be printed in Italics.

Mr. BUTLER, of Lowell. I wish to inform the gentleman from Braintree, that the new parts are already differently printed from the old, so that they can be very well distinguished. How-

ever that may be, I had supposed that it was no part of the duty of the Committee on Revision to superintend the printing.

Mr. MARVIN, of Boston. I think some plan should be adopted to carry out the view of the gentleman from Braintree—either that which he has suggested, or, perhaps it may be well to have the new portions of the Constitution enclosed in brackets, as is frequently done in such cases. Every man who knows anything about printing, will agree with me in the opinion, that three-quarters of the men in the Commonwealth would not readily discern the difference between solid and leaded matter—I speak as a practical printer. I think there should be some obvious distinction to the eye between what is new and what is old.

Mr. EARLE. These suggestions may all be very well, but I think we had better leave this to be attended to by the Committee, and not take any action on it now.

Mr. BUTLER. I beg leave to make a single suggestion farther. I think those gentlemen who have been instructing us so long, how much the people are to be trusted, and throwing brickbats at us for not trusting them, are putting themselves to unnecessary trouble in inserting brackets and Italics in order that the people may know what this Convention have been doing. I have no fear but that the people can find out where the changes are, without having them put in Italics. I believe in the people enough for that.

The question being taken, the resolve was agreed to.

Mr. MARVIN. I move to instruct the Committee, whose duty it is to provide for printing the resolutions, that the several propositions annexed, which are new portions of the Constitution, be printed in brackets.

Mr. STETSON. I trust that this Convention will adopt the motion of the gentleman from Boston, for this reason. I will venture to say that no member of this Convention can tell in two hours, what part of this revised Constitution is old and what part is new; and I believe, that without any orders, the Committee who have had this Constitution under revision, have made some changes in regard to matters which have never been under consideration by this Convention at all. I think the people have a right to know what portion of the Constitution which is sent out to them for their sanction is new and what portion is not; and they never will know if they have it printed in the way that this is.

Mr. WHITNEY, of Boylston, (interposing). I understood the gentleman to say, that no member could find out in two hours what was new and what was old. I wish to inquire if he is going to make a statement to occupy that length of time, in order that we can try the experiment. [Laughter.]

Mr. STETSON. I can assure the gentleman in the gallery that he has never seen me asleep in this Convention, and he probably will not. I take it, Mr. President, that the people have a right to know precisely what alterations have been made in the Constitution which we send out to them, before they vote for its adoption. I think, therefore, that it is no more than proper, in sending out a proposition of so much importance as a new Constitution, that the people should know how to distinguish between that which is new and that which is old. I trust, Mr. President, that this Convention will pass the resolution

of the gentleman from Boston, unless they mean to deceive the people by putting a proposition before them which they know that they cannot understand. I do not want to throw bricks at a man's head, or brick dust into his eyes so that he cannot see. All that I ask is that the proposition may go forth to the people in such a shape and manner that they can understand it. I think that if it should be printed in the form in which this has been printed for us here, there is not one man in ten that could tell what he was voting on—whether a particular proposition was a part of the old Constitution or whether it was something new. I believe that the people of Massachusetts are as well enlightened, and understand their rights as well as the people of any other State in this Union. There is not a State which has a more enlightened constituency than we have in this Commonwealth; but, Sir, I believe, notwithstanding that they are so intelligent they would be apt to get puzzled with this document, printed in this way; for it requires a very astute man to understand all that is new and all that is old in this Constitution.

Mr. DANA, for Manchester. It is proposed, as I understand it, that all the new parts of the Constitution submitted to the people, shall be printed in brackets to distinguish them from the old Constitution. Now there will be one great difficulty in that. Some amendments are merely in the way of transposing words, some where the same substance remains with very little variation of form. The Committee found it necessary to adopt three modes of printing—common type, leaded type, and brackets. I do not believe it possible that by mere brackets amendments can be sufficiently distinguished so as not to mislead the people.

Another difficulty. If it shall be issued in the form of brackets, we shall be held responsible for their accuracy, for the people will rely upon them. I should not like to trust to the accuracy with which any person could do that work. It would be a matter of difference of opinion what should be placed in brackets, and how. I do not think the gentleman from Braintree, (Mr. Stetson,) really thinks the people have an inalienable right to brackets. Will he permit me to ask him whether it would not suit him to have a part in crochets? [Laughter.]

Mr. KNOWLTON, of Worcester. I think the proposition is susceptible of improvement. I therefore move to strike out all after the word “brackets,” and insert in lieu thereof the words “in such form as to distinguish, as far as possible, the amendments from the text of the Constitution.”

Mr. MARVIN, of Boston. I accept the amendment. I take it that if the main amendments, that is those which are entire paragraphs, are put in brackets, and the less important alterations are put in Italics, the amendments would be perfectly obvious to every-body. I trust that the Committee will take that course.

The question was then taken upon the motion of Mr. Marvin, as modified by the motion of Mr. Knowlton, and it was decided in the affirmative.

Mr. HATHAWAY, of Freetown. I desire to call the attention of the Committee which reported these resolutions, to the proposition made here in reference to article second, chapter first, which is as follows:—

ART. 2. The political year shall begin on the

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REVISED CONSTITUTION.—BOUTWELL—LIVERMORE.

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first Wednesday in January; and the General Court shall assemble every year on the said first Wednesday in January, and shall be dissolved on the day next preceding the first Wednesday in January following, without any proclamation or other act of the governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the governor.

The last paragraph of that article was passed over for the purpose of giving the Committee time to make an examination of that matter, and giving an answer to the inquiry which was made in reference to it, and that was, whether the Convention had passed upon that very proposition, and agreed to have it stricken out. I should like to know whether the Committee have satisfied themselves in reference to that matter? Can the Committee answer now, whether the Convention have acted upon it, and whether they have struck it out or retained it?

Mr. BOUTWELL, for Berlin. The Convention had not passed upon it. It stands as it ever has in the articles of amendment to the old Constitution. It was struck out of the original Constitution of 1780, but, by a provision inserted with great care in the amendments, and which annulled a part of the article with which this provision was connected, and this provision was preserved, and has not been acted upon by the Convention. There is nothing upon the record which shows that it has been acted upon.

Mr. LIVERMORE, of Cambridge. A part of the same words were struck out by a Report of the Committee on the Frame of Government, or at least they left out that part of it. The Report was to substitute something for the article as it then stood, and the part relating to the governor having the power to call the legislature together, was not stricken out. But the whole has been inserted into this article, after the old article had been amended, by striking out a part, and a new article substituted for it. It was left out, but the Revising Committee found it in another part of the Constitution, and put it in here.

The PRESIDENT. It can only be reached by a motion to reconsider.

Mr. LIVERMORE. I shall not make a motion in regard to it.

Mr. BOUTWELL. The Committee on the Frame of Government made no reference whatever to that provision in the Constitution in which this clause was found. No reference whatever.

The PRESIDENT. It appears that no amendment has been made in reference to this matter.

Mr. BOUTWELL. The Committee on the subject of Revising the Amendments to the Constitution, were also charged with the matter of preparing an Address to the people of the Commonwealth; and, with the consent of the Chair, and of the Convention, I will read the Address which the Committee has instructed me to report.

The Convention of Delegates, assembled by your authority, and directed to revise the Constitution of the Commonwealth, has now closed its labors; and it seeks only to commend and commit the result to your consideration and final judgment. The necessity for the Convention was great, and its labors have been arduous and protracted. As your delegates, we have sought for the principles of freedom in the ancient institutions of the State; but we have thought it wise also to accept the teachings and experience of nearly a century of independent existence. It has

then been our purpose to unite in one system of organic law the principles of American republican institutions, and the experiences of other free States, all contemplated in the light derived from the history and usages of Massachusetts.

And first of all, we think it proper to present for your consideration a complete system of organic law. The present Constitution was adopted in 1780, and there have since been added thirteen important amendments. By these amendments, much of the original text is already annulled, and it is only by a careful and critical analysis and comparison that the existing provisions can be determined. This ought not to be. Constitutional laws should be plain, that they may be impartially interpreted and faithfully executed—"that every man may at all times find his security in them." We have not, then, thought it wise, or even proper, to preserve, as a part of the Constitution, provisions which have long since been annulled; nor do we feel justified in proposing new specific amendments whose adoption will render the fundamental law of the Commonwealth more difficult to be understood and less certain in its requirements.

We have, therefore, taken what remains unchanged of the Constitution of 1780, and the subsequent amendments, preserving the original language wherever it appeared practicable, as the basis of a new Constitution, and incorporated therewith such of the resolutions of this Convention as are necessary to give to the whole, at once, a comprehensive and concise character. This has been our purpose; and if our view of duty is correct, we are entirely justified in submitting so much of our work as will give to the people of Massachusetts a complete system of organic law, as one proposition, for your adoption and ratification. It is undoubtedly true, that when amendments are specific and not numerous, they should be separately submitted to the judgment of the people; but this mode becomes impracticable in the formation of a new government, or the thorough revision of an old one. Our attention has been necessarily directed to every provision of the Constitution, and but one chapter is preserved in its original form. It only remained for us either to submit our work, to be added to the old Constitution as specific amendments, with the conviction that their ratification would render your form of government more complicated than it now is, or else to embody all of the old and new that appears necessary to the safe and harmonious action of the system, and present it as "the Constitution of Massachusetts."

This we now do, and we invite you to consider that, while government is essential to the safety and happiness of each individual, it must necessarily happen that it cannot be in every part alike acceptable to all. "We may not expect," said the founders of the Commonwealth, "to agree in a perfect system of government; this is not the lot of mankind. The great end of government is to promote the supreme good of human society." We commend the new Constitution to you, not as being perfect, but as greatly to be preferred to the existing frame of government. It declares the rights and liberties essential to the freedom of the people; it contains, as we believe, a framework arranged according to reason and correct analogies, and it embodies all the fundamental provisions necessary to a just administration of every department of the government.

You will naturally examine with care the character of the changes we have proposed. We have thought it necessary to make a provision for the purpose of limiting the sessions of the General Court to one hundred days, and to require that the pay of its members shall be fixed by standing laws.

At present the members of the Senate are chosen by the several counties which elect from one to six senators, upon a general ticket. We have provided for the division of the State into forty districts, of equal population, and each entitled to elect one senator.

The basis of the House of Representatives has been a subject of careful and anxious deliberation. Differences of opinion existed among us; but a majority of more than one hundred members determined to preserve the system of town representation, under which Massachusetts has existed so long and prospered so well. We have, then, based the House of Representatives upon the municipal institutions of the State, having reference, so far as practicable, to their relative population. By the proposed system, towns containing less than one thousand inhabitants are entitled to elect a representative for the year when the valuation of estates is settled, and one in addition, annually, for five years out of every decennial period. Towns having a population of one thousand and not more than four thousand inhabitants, are entitled to elect a representative every year; towns of more than four thousand and less than eight thousand, will elect two representatives; towns of eight thousand and less than twelve thousand, will elect three representatives, while towns and cities of twelve thousand inhabitants, will elect four representatives, and one additional representative for each addition of four thousand to their population. We do not claim that this system, separately considered, is precisely equal; but if it is in some degree favorable to the rural districts, the loss sustained by the large towns and cities is in a fair measure compensated by the manifest advantages accorded to them in the constitution of the Council and the Senate. The inequality of representation between particular towns, when tested solely by population, may in some cases apparently be great; but when the rights of different interests and different sections of the Commonwealth are considered in connection with the whole system of elective government, the basis of the House cannot be deemed unequal or unjust. The Senate and Council are based upon population rather than voters, by which the inhabitants of the cities and large towns have influence in these two important departments of the government quite disproportionate to their just elective power.

No human government can attain to theoretic accuracy; and in a state where pursuits, habits, and interests are various, it certainly is not the part of wisdom to place unlimited power in the hands of any. We invite you to consider that the Governor represents the voters of the State; that the Council and Senate represent population, without any reference to voters, and as a consequence, that these two departments of the government will eventually be in the control of the cities and chief towns; and finally, that we have sought only to secure to the several districts and to the agricultural and mechanical population and interests a reasonable share of power in one branch of the Legislature. This influence gives to this portion of the people power to assent to, but never to dictate, the policy of the government. The Convention of 1780 declared that "an exact representation would be impracticable even in a system of government arising from the state of nature, and much more so in a State already divided into nearly three hundred corporations." We have encountered the same difficulty, and hope that we have overcome it in our day as well as they overcame it in their day.

But our deliberations have not been confined to the proposed system. Many of your delegates are of opinion that the State should be divided into districts for the election of representatives, according to the number of voters in each. In this opinion a large majority of the Convention do not concur; but we think it our duty first to interpret the people's will, and then to give a fair opportunity for its expression upon all questions of importance whenever such a course is practicable. We have, therefore, made a constitutional provision that the Legislature of 1856, under the census to be taken in 1855, shall present a district system, which may be then substituted for the one recommended by the Convention, if, in the judgment of the whole people, it is wise to make the change.

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We have also provided that the cities and large towns shall be so districted for the choice of representatives that no district shall be entitled to elect more than three members. In the judgment of the Convention the election of many officers on a single general ticket is not compatible with the freedom and purity of the representative system.

The property qualification of the Governor and Lieutenant-Governor has been abolished.

The Council has been made elective by the people in single districts, and the records of that body are hereafter to be subject to public examination.

We have provided that the Attorney-General, the Secretary of the Commonwealth, the Auditor and the Treasurer, officers now appointed by the Governor, or chosen by the Legislature, shall hereafter be elected annually by the people; and that the Judges of Probate, Registers of Probate, Sheriffs, Clerks of the Courts, Commissioners of Insolvency, and District-Attorneys, officers now appointed by the Executive or the Courts, shall also be elected by the people for terms of three years.

We have also provided that the Justices of the Supreme Judicial Court and of the Court of Common Pleas, hereafter appointed, shall hold their offices for the term of ten years. In a free government, the people should be relieved in a reasonable time, and by the ordinary course of affairs, from the weight of incompetent or unfaithful public servants. Under the present Constitution a Judge can only be removed by the difficult and unpleasant process of impeachment, or of address. Such remedies will be resorted to only in the most aggravated cases. Under the proposed system we have no apprehension but that faithful and competent Judges will be retained in the public service; while those whose places can be better filled with other men, will retire to private life without violence or ungracious circumstances, and scarcely with observation.

It is proposed that Justices of the Peace shall be divided into two classes. Those whose duties are chiefly ministerial, will be, as heretofore, appointed by the Governor and Council; while those intrusted with judicial authority are to be elected by the people and to hold by a tenure of three years.

Under the original Constitution, voters and public officers were required to possess property qualifications. These have heretofore been removed in part, and we now recommend the entire abolition of the property qualification in the voter for all national and all state officers mentioned in the Constitution. The obligations of citizens to contribute to the public expenses by assessment of taxes are not in any degree changed.

Provision is also made for the secrecy of the ballot. By the ballot the citizen at the same time declares his opinion on public affairs, and asserts his equality with every other citizen.

Freedom of opinion, and freedom in the expression of opinion, are individual rights, to be limited or controlled only by a public necessity. We see no public necessity which ought to deprive the citizen of these rights, and we have therefore made provision for their protection.

We also provide, absolutely, that in many elections, persons having the highest number of votes shall be chosen. This rule has been applied principally to the elections in counties and districts, where the trouble of frequent trials is great. The Governor, Lieutenant-Governor, Secretary of the Commonwealth, Attorney-General, Treasurer, Auditor, Representatives to the General Court, and town officers, are exceptions to the rule. In case of a failure to elect either of the first six named, the election is referred to the General Court; while subsequent trials may be had for the choice of Representatives and municipal officers. We have, therefore, as we think, retained the majority rule where its application will be least burdensome to the people. At the

same time we have provided that the Legislature may substitute the plurality rule whenever the public will shall demand it, with a condition that no act for that purpose shall take effect until one year after its passage. Thus we have given an opportunity to test the wisdom of the plurality system, by experience, and power to apply it to every popular election in the Commonwealth, whenever the deliberate judgment of the people shall require it.

The various provisions relating to the militia have been revised, some important changes have been made, and that department of the government will rest more firmly than ever on a constitutional basis.

Changes are proposed concerning the University at Cambridge, and the General Court is instructed to take means for the enlargement of the school fund, until it shall amount to a sum not less than two millions of dollars.

Although the Constitution has always asserted, in the strongest terms, the right of the people, at all times, to alter, reform, or totally change their frame of government, yet it has been contended by some, that the operation and effect of the specific provisions for amendments, contained therein, have been such as practically to impair or render doubtful this great right. We have, therefore, thought it wise, while we recognize and retain the modes of exercising the right practised hitherto in this Commonwealth, to introduce additional provisions, to meet possible future exigencies, and to enable the people, without controversy, to hold periodical Conventions that shall not be subject to, or restricted by, any previous or subsequent act of the Legislature.

Trusting that you will examine with care the proceedings of the Convention, and the result to which it has come, we deem it unnecessary to explain several less prominent changes proposed in the Constitution of the Commonwealth.

We also submit seven distinct amendments, which are presented separately for your ratification. Some of them are new, and all of them are independent of the frame-work of the government, and may either be adopted or rejected without disturbing the system or harmony of the Constitution. They have all, however, been sustained by decisive majorities of your delegates, and embrace important essential principles in popular government. The formation or the revision of a popular constitution is an epoch in the history of a free people.

We are sensible of the magnitude of the trust which you have confided to us, but it is not more important than the just decision of the question which we submit to you. We have no doubt that your decision will secure a result beneficial to Massachusetts, and, under Divine Providence, will render more and more illustrious our ancient Commonwealth.

The question was then taken upon adopting the Address, and it was agreed to without a division.

Mr. HALLETT, for Wilbraham. I move that the Address which has been read and accepted by the Convention, be signed by the President and Secretary of the Convention, and published.

Mr. BUTLER, of Lowell. Will the gentleman for Wilbraham allow me to suggest an amendment to his motion. In addition to the printing, I suggest that the same number be printed as we have ordered of the Revised Constitution, and that it be circulated among the people—that is 100,000 copies—and bound with them.

Mr. HALLETT. I presume the Address, under that resolution, would be published in connection with the Constitution.

Mr. BIRD, of Walpole. I will read an order which I have drawn up, which covers that matter, and also another matter:—

Ordered, That the Resolves contained in document No. 128, and the Address to the People, signed by the President and the Secretary, be printed in connection with copies of the Revised Constitution ordered to be printed for distribution; and that 35,000 additional copies of said Constitution, with the Resolves and Address, be printed for distribution in accordance with orders already adopted.

The latter clause of the order is a distinct subject, and it is for this reason, that since the passage of the resolve ordering the printing of 100,000 copies, we learn that last winter the legislature ordered the printing of 100,000 copies of the old Constitution, and it was found by them, after distributing the 100,000 copies, they were 35,000 copies short, and they were obliged to order that number of copies more, costing about as much as the original edition of 100,000 copies. It was thought best, therefore, to order that the same number of the new Constitution should be printed. It will be cheaper to do so now than hereafter.

Mr. WEEKS, of Harwich. Where did the gentleman get his information.

Mr. BIRD. From the printer, the sergeant-at-arms, and others.

Mr. WEEKS. I had the honor to offer the resolution myself, and it provided for 30,000 copies.

Mr. BIRD. Then there were 130,000 copies, in all, ordered.

The PRESIDENT. The Chair would suggest that the question can be first taken upon signing the Address, and then upon the other matter.

Mr. HALLETT, for Wilbraham. I so modify my motion.

The question was then taken upon Mr. Hallett's motion, and it was agreed to.

The question was then taken upon the motion offered by Mr. Bird, and it was decided in the affirmative.

So the motion was agreed to.

Pay Roll.

Mr. CUSHMAN, of Bernardston. I now move that the resolve for the payment of members be taken from the table and acted upon.

The question was taken, and the motion was agreed to.

The Report of the Committee on the Pay Roll was then taken up, and read by the Secretary, as follows:—

COMMONWEALTH OF MASSACHUSETTS.

In Convention, August 1, 1853.

The Committee on the Pay Roll, in compliance with an order of the Convention, directing them to make up the pay roll, have attended to that duty, in accordance with a resolve passed on the 28th day of June last, and report the sum herewith, amounting to \$114,092, and also report the accompanying order.

For the Committee,

ISAAC LIVERMORE, *Chairman*.

Ordered, That the Pay Roll of the Convention, as reported by the Committee, in accordance with the resolve of the 28th of June last, and the order of July 29th, be transmitted by the Secretary, to the Auditor of Accounts, and that he be requested to obtain from the Governor a warrant upon the treasury of the Commonwealth, to authorize the payment thereof, and notify the Convention when the warrant has been drawn.

Monday,] DISTRIBUTION OF DOCUMENTS. — WALKER — LIVERMORE — BATES — LELAND — EARLE — ADAMS. [August 1st.

Mr. GREENE, of Brookfield. At the proper time I should like to hear the pay roll read. It must prove an interesting document.

The question was taken upon the acceptance and adoption of the Report of the Committee, and it was decided in the affirmative.

Distribution of Documents.

Mr. WALKER, of North Brookfield. I move that the Report of the Special Committee on the distribution of documents, be taken up at the present time.

Mr. GREENE. Before that matter is gone into, I should like to hear the pay roll read. But if the Convention does not want to hear it, I will not urge the matter.

The PRESIDENT. The Chair is of opinion that it would not be in order to do so at this time.

Mr. LIVERMORE, from Cambridge. I would suggest the course indicated by the gentleman from Worcester, (Mr. Earle,) that it be read by its title. [Laughter.]

The question was then taken on Mr. Walker's motion, and it was agreed to.

The Secretary then read the Report, as follows:—

1. *Resolved*, That White & Potter be instructed to deliver, without additional charge, the remaining numbers of the quarto edition of the Journal of Debates, at such places in Boston, as the members shall respectively order.

2. *Resolved*, That each member of this Convention be furnished with one copy of the Journal of the Debates, of the octavo edition, additionally to the one heretofore ordered.

3. *Resolved*, That the Messenger be directed to deliver, without additional cost, the copies of the Debates aforesaid, together with the Journal of the Convention, heretofore ordered, with the completed file of the documents belonging to each member, at such place in Boston as the members shall respectively order. And also to send, in the usual manner, the copies of the Journal and Debates to the towns, cities, and public bodies, as ordered by the Convention, and also to send to each town or city, its quota, in proportion to population, of copies of the New Constitution, heretofore ordered to be published.

The PRESIDENT. To that Report the gentleman from Worcester, (Mr. Earle,) moves to add the following words: "That no member shall be entitled to more than three copies."

Mr. BATES, of Plymouth. Before the Convention in this stage of its session pass a vote to give each member of the Convention three copies, amounting to fifteen or eighteen dollars to each member, I hope they will stop and look at it. Besides that, it enjoins upon these persons to do certain work, without pay hereafter. I suppose by the Act calling this Convention, the Convention is to provide its own expenses. They have no more authority to order this Messenger to do any work without pay, than we have to order the Governor to do so.

Mr. WALKER, of North Brookfield. It has been my misfortune on several occasions, while acting as chairman of a Committee, to present reports, with some of the propositions of which I did not agree. That is the case in the present instance. The Report was almost unanimously adopted in Committee, though I dissented from the second resolve which provides that three copies of the octavo edition shall be furnished to members in addition to what they already have. I presume that the resolve introduced at

the beginning of the session by the gentleman from Cambridge, was a mistake, because under the resolve, it would have required nine thousand copies of the Debates to supply all the members, if they had elected to take as many as they were entitled to under that order. That being the case, we are brought into the condition in which we now are, with one hundred members of this Convention without a copy of the quarto edition, and this second resolve says that all alike shall receive three copies of the quarto edition. That did not strike me as just. It seemed to me that those who had taken more of the other, should have but one copy of the quarto form. I think the operation of that second resolve would not look well under the circumstances which surround the case, and therefore, I hope the amendment will prevail. Otherwise, the Report is correct in every respect, in my judgment.

In regard to the duties which we impose upon the Messenger, I will say that we waited upon him upon the subject, and he consented to perform all those duties. The duties must be performed by somebody, or else the documents will not be distributed.

Mr. LELAND, of Holliston. When this subject was under discussion on a former occasion, the gentleman from Worcester, (Mr. Earle,) said that I had received twenty-one copies.

Mr. EARLE, of Worcester. I rise to call the gentleman to order for misstating what I said. I made no such statement.

Mr. LELAND. I do not know what point of order there is in that. All I can say is, that I understood the gentleman to say, at the time referred to, that I had received twenty-one copies, and that I now wanted three copies more. I did say that I thought it but fair that if one member was to receive three copies of the bound Reports, it was but fair that all should receive them.

Mr. BATES, of Plymouth. The Convention, by two several orders, have directed what should be done with every copy. If the Convention passes this resolve, they must direct the Committee what to do, and make all needful provisions to enable them to do it.

Mr. EARLE. My proposition does not enlarge the distribution, but restricts it. By an order of the Convention, the members were entitled to receive a certain number of copies of these Reports. Three-fourths of the members have received them, while the other fourth have not got any, and it is imperative upon the Secretary to furnish them. This amendment proposes to limit the distribution to three copies to each member, including the one copy which all the members are to receive. So that the members will get but two copies as an offset to the twenty-one copies the other members have already got. If they have not got them they have got their equivalent in newspapers. It appears to me that there is nothing but what is perfectly fair in this proposition. I did not suppose that there was a man in the Convention who would raise a voice against it.

Mr. BATES. I move that when the question is taken it be taken by yeas and nays.

Mr. ALVORD, for Montague. I move that the whole subject be indefinitely postponed.

Mr. BIRD, of Walpole. Gentlemen ought to remember that there is a great deal more to do than the mere distribution of these Reports. But I believe that both the Messenger and the State printer agree to do this work without any extra

pay, and I think, therefore, that no question ought to be raised on that head.

Mr. ALVORD. I listened attentively to the reading of the resolves, and I understood them merely to refer to the distribution of the Reports. If the Messenger is willing to do this work without any extra pay, I can have no possible objection.

Mr. UNDERWOOD. I am not well pleased, either with the Report of the Committee or the amendment. If I understood the latter, it proposes to give three copies of the bound Reports to each member.

Mr. EARLE. Only to those who have not already got any copies.

Mr. ADAMS, of Lowell. I understand that at an early period of the session many members of the Convention availed themselves of the privilege of the order presented by the gentleman from Cambridge, and passed by the Convention, of taking two, three, or half a dozen copies. I understood the proposition of the gentleman from Worcester to be that those who had received three or six copies of the quarto form, were not to receive any of the octavo. I understand that the Debates as circulated in the quarto form, without binding, are to cost \$1.50 per copy, and that the bound octavo volumes will cost \$5 per copy, and that those who have not subscribed for the quarto copies will be entitled to \$15 worth of the octavo.

Mr. EARLE. The statement that has just been made is calculated to deceive. In fact there is no truth in it. [Loud cries of "Order, Order."] I do not mean to say that the statement is not true, as the gentleman made it, [laughter,] but that in point of fact, there is no truth in it. [Cries of "Order, Order."] The State printers have stated the matter to me thus: The whole amount of type setting they have charged, in making up their account, upon the octavo form, and have charged nothing for composition upon the quarto. That makes the octavo form nominally cost a good deal more. If there is any difference it is in favor of the octavo form. But there is no difference about it. The composition is the same and the press work is the same.

Now I understand that even if this order is adopted, the State will still have fifteen hundred volumes, or more, left at the disposal of the legislature. That body will probably place them at the disposal of the governor and council, who, again, will probably distribute them amongst their friends.

[Loud cries of "Question, Question."]

Mr. DAVIS, of Worcester. By this order, if it is amended as proposed by my colleague, and adopted by the Convention, every member will receive one copy of the bound Reports, and no one can receive more than three copies.

Mr. UNDERWOOD. I would like to know how you are going to get back the copies from those who have got their twenty copies?

Mr. EARLE. The order relates only to the octavo edition.

The question was then taken on the amendment, and it was rejected, on a division—ayes, 107; noes, 67.

Mr. BATES, of Plymouth. I wish simply to state one fact in this connection. Each member has voted himself one copy already, of the octavo edition—that is upon the journal—and now it is proposed to give each member two copies more, as the motion is that the number shall not exceed

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DISTRIBUTION OF DOCUMENTS, &c. — EARLE — HALLETT — CARRUTHERS — PAIGE — BIRD.

[August 1st.]

three copies; so that if this passes, each member will have voted himself three copies, or six volumes, amounting to fifteen dollars in value, which will be rung from one end of Massachusetts to the other.

Mr. EARLE. If there is any apprehension that members by that vote are depriving themselves of one copy, it is very easy to add the words, "under this order."

Mr. HALLETT, for Wilbraham. Is the question susceptible of division?

The PRESIDENT. The Chair is of opinion that the question on the several resolves may be taken separately.

Mr. HALLETT. Then I call for a division. I want that part which relates to voting three copies, put separately. We have each got one copy, and I think we ought to be satisfied with that.

Mr. CARRUTHERS, of Salisbury. I wish to ask a question, in order to obtain a little information about this matter. If a delegate has subscribed for, and received his twenty-one newspapers, he is to have three copies of the Reports, as I understand it; but if he has only subscribed for fifteen newspapers, and has made up the remainder with documents, is he not to have any extra? I want to have that matter plainly understood, whether we are going to vote three copies to those who have had their twenty-one newspapers, and are not to vote any copies to those who have had no newspapers.

Mr. PAIGE, of Boston. As I am one of those who have not subscribed for newspapers, I may perhaps vote on this subject with as good grace as anybody. I understand that we have already voted one copy to each member—that each member should have one copy of the octavo edition, and that should be the end of it, whether he had received newspapers or not. If a man has had twenty-one copies already, which he has taken in the place of newspapers, he had a right so to do; and I see no difficulty in putting the proposition fairly. We have already voted to give each member one copy in the octavo form—my proposition is to give each member one more, so that each member shall have two copies, whether he has had newspapers or not. We cannot go back and undo what has already been done.

Mr. CHAPIN, of Worcester. I like the amendment which has been offered by the gentleman from Boston. Some persons were not quite so keenly anxious as others for these Reports, and subscribed for newspapers, while others thought that they would take these instead of newspapers. Some members were "green" enough not to see this until after they had subscribed for their newspapers; and those who were sharper than the rest of us, will of course have the profit of it.

Mr. EARLE. I have not made the motion which I did, because I cared about having a copy of this work in addition to the copy to which I am already entitled; but I did so simply to see if the Convention would do an act of justice. I wanted to see if those members who had received their copies of the work under a vote of this Convention, would now allow those who were entitled under the same vote to other copies but who could not obtain them, to have partial justice done to them—whether they would not be willing to furnish the Secretary with the means of carrying out in part, their own vote. If they

are not disposed to do that, I, for one, shall vote against the amendment proposed by the gentleman from Boston; for that, instead of doing justice, is giving to those who have not received anything, only just as much as it gives to those who have already received from ten to twenty copies.

Mr. OLIVER, of Lawrence, moved the previous question, which was ordered.

The question being taken on the amendment of Mr. Paige, it was agreed to; and the question was then stated on ordering the resolves to a second reading, as amended.

Mr. EARLE asked for a division of the question; and the question being put on ordering the first and third resolves to a second reading, it was agreed to.

The question then recurred on ordering the second resolve to a second reading; which resolve provided that each member of the Convention should be furnished with an additional copy of the octavo edition.

Mr. BOUTWELL, for Berlin, moved that the resolve lie upon the table, which was not agreed to.

The question then being taken, the resolve was ordered to a second reading.

Rights of Colored Citizens.

Mr. STETSON, of Braintree, moved a reconsideration of the vote by which the Convention ordered the protest of William C. Nell and others to be entered upon the journal of the Convention.

The PRESIDENT. The motion lies over until to-morrow, under the rule. [Laughter.]

Mr. STETSON. I move a suspension of the rule.

Mr. HALLETT, for Wilbraham. I rise to a question of privilege, in regard to this matter. I should not, on my own account or interest have called up the subject which the gentleman from Braintree has moved to reconsider; but it being presented, I think it my duty to refer to this protest, because I suppose that it was intended to bear upon myself, and others much more distinguished gentlemen than myself—

Mr. BIRD, of Walpole. Mr. President, I rise to a question of order. The point which I make is, that the gentleman must state his question of privilege, before he speaks upon it.

Mr. HALLETT. That is just what I am doing. The Convention have ordered to be entered upon the journal of this body, a statement in the form of a protest, which places some of the members of the Convention in a false position, and attributes language to them which they did not utter. I take it that that is a question of privilege.

Mr. BIRD. I ask for the ruling of the Chair upon that point.

Mr. HALLETT. Certain statements were made upon this floor in debate with regard to the admission of colored persons into the militia of the United States, and I find that in a protest which has been received and acted on while I was absent, there is a statement manifestly, though not by name, attributed to me, which I never made. The Convention, I presume, without understanding the matter at the moment, by a party vote, ordered that statement to go upon its records. It is wholly immaterial to me whether the Convention choose to persist in that course or

not, as respects myself; but before the question is decided, I want it fully understood that the protest which they have ordered to be entered upon their journal contains intimations against two of the members of this body; I want the Convention also to know what they are charged with as a body, in that protest, so that they may knowingly decide whether they are ready to cause to be placed upon their records a statement that they have done an act which is unconstitutional, and also that in their opinion, a law of the United States is unconstitutional. That protest farther says, among other things, that a member of this Convention, in a speech made to this Convention, declared that if a colored person were to be elected governor of Massachusetts, the United States would interpose to prevent his acting as commander-in-chief of the Commonwealth. Now, Sir, no such thing was said by any member, and I do not want that class of our fellow-citizens, who very honestly, I dare say, make this protest, and whose rights I respect as much as any body, to labor under a misapprehension on that subject, for I have no doubt they were misled by some false report. I said all that was directly said upon that topic except the similar opinion given by the member from Boston, (Mr. Choate,) and what I did say was precisely this—

Mr. BIRD, (interposing). Mr. President: This discussion is entirely out of place at this time, for the gentleman from Wilbraham is not alluded to by name, or in any way that would lead any one to suppose he was alluded to at all, in that document.

The PRESIDENT. The Chair will take the liberty to state that as this is the last day of the session, and the motion for reconsideration must be entertained now or it never can be entertained, the Chair will admit the motion without putting the question on a suspension of the rules. The question is, therefore, upon the motion of the gentleman from Braintree that the vote of the Convention be reconsidered, by which the petition of William C. Nell and others was ordered to be entered upon the journal.

Mr. BUTLER. Upon the motion of reconsideration I move the previous question.

Mr. HALLETT. I hope the gentleman will have the courtesy to withdraw that motion and allow me to finish my statement.

Mr. BUTLER. I certainly will.

Mr. HALLETT. The language attributed in that petition to a member of this Convention, although it was not what I said, yet evidently could be attributed to no one but me, because that was the line of argument which I used, although the statement which I made was entirely different. It was in reply to a question of the gentleman from Natick, who now occupies the chair, (Mr. Wilson,) when the resolutions in relation to the militia were under discussion, as to what would be the powers of the governor of this Commonwealth under the Constitution of the United States, if the person who should be elected governor of this Commonwealth should happen to be a person of color; and my exact language, as reported at the time, I now quote.

What I said in answer to that question was:—

"That while the Commonwealth of Massachusetts by her Constitution makes no distinction of color in the choice of governor, yet the Constitution of the United States gives the power to congress to declare what shall constitute the militia;

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CLOSING REMARKS, &c. — HALLETT — BIRD — WILSON — LOTHROP — EAMES — HILLARD.

[August 1st.

and in the exercise of that power congress has said that it shall be *white* citizens. Consequently although a colored citizen might be the governor of the Commonwealth of Massachusetts, and by virtue of that office, commander-in-chief, yet he can never be enrolled as a soldier in the militia or be an officer of the militia of the United States; and if, under such circumstances, the governor should be a colored man, you must find some one else to command the militia, if you mean to conform to the supreme law of the land for organizing and disciplining the militia."

Now, Sir, that was what I said, and it is entirely different from the language attributed in the protest. It rests simply upon this ground: The Constitution has given to Congress power to say who shall constitute the militia, and they have said that male white citizens shall constitute that body. But Congress has made no such distinction as to the army or the navy, and a colored person may be commander-in-chief of the army, or a commodore in the navy. But congress, in the full exercise of constitutional power, has declared that white citizens alone shall belong to the militia, and, therefore, this Convention has no power to compose the militia of such persons; and hence, a protest against the Convention for not doing what it has no power to do, is simply an absurdity to enter upon the records.

Mr. DAVIS, of Fall River. I would inquire whether, upon a question of privilege, the main question can be argued?

Mr. HALLETT. I was making a privileged explanation, and, if the gentleman had preserved his politeness for a few minutes longer, he would have saved himself the trouble of this interruption. I am aware of the state of feeling existing with some members in this Convention, upon this subject of color, but I desire to stand right in every matter touching the Union of the States, and to place myself upon constitutional ground; and if the Convention see fit to place me falsely upon their record, and put what is an untruth there, with them the responsibility will rest, and discredit does not attach to me.

Mr. BIRD. I move the previous question.

The previous question was ordered.

The question first recurred upon the motion to reconsider the vote, by which the protest was ordered to be placed upon the records of the Convention, and, being put, it was decided in the affirmative; there being, on a division—ayes, 91; noes, 57.

The question then being upon the motion to enter the protest upon the journal of the Convention—

Mr. BIRD moved to lay the protest upon the table, which motion was agreed to.

So it was laid upon the table.

The PRESIDENT here announced the Committee heretofore ordered to examine and count the return of votes on the several Constitutional Propositions, to consist of the following gentlemen:—

Messrs. Boutwell, for Berlin,
Dana, " Manchester,
Giles, of Boston,
Morton, " Andover,
Upham, " Salem,
Butler, " Lowell,
Wilson, " Natick,
Griswold, for Erving,
Frothingham, of Charlestown,

Wood, of Middleborough,
Willard, " Boston,
Aspinwall, " Brookline,
Chapin, " Springfield,
Sleeper, " Roxbury,
Allen, " Worcester,
French, " New Bedford,
Oliver, " Lawrence,
Eames, " Washington,
Phinney, for Chatham, and
White, of Quincy.

Mr. WILSON. I would inquire of the Chair if there is any more business before the Convention?

The PRESIDENT. The Chair is not aware of any unfinished business.

Closing Remarks.

Mr. LOTHROP, of Boston. I should like to inquire if the Chair has been notified of a vote passed by the Convention on Saturday last, presenting to him the thanks of this body for the manner in which he has discharged the duties of the Chair?

I hope, Mr. President, we shall not separate without a few words from some gentleman and from the Chair, suitable and appropriate to the close of the highly important duties in which we have been engaged. I, for one, Sir, may take this occasion to say, perhaps, that I regretted that the subject upon which we acted on Saturday last, was brought forward at that precise time. I think it would have been much better, more appropriate, and more interesting to all of us, if it had been deferred until we approached the closing hours of the session, and of our official connection as members of this Convention. It may not be improper for me, also to say, that for one, I regretted the precise phraseology of that vote. Gentlemen know very well that I am no party politician. I am here with political opinions and convictions more in harmony with one party than another; and to those convictions I have aimed to be true, and presume we all have had a similar aim. But I am also here, with those views, feelings and relations, which my profession disposes me to cherish towards all men of all parties. I know not that I am competent to judge of this matter, but it does seem to me that men of all parties here, should be ready to give a hearty, full, and generous response to a vote of thanks to our presiding officer. It does seem to me that we, all of us, owe to him that expression of feeling. I have never before been a member of a deliberative assembly, and am not, therefore, able to judge by comparison and contrast, but I presume every man here, to whatever political party he belongs, and however large his legislative experience, and, although he may, occasionally have differed from or disliked the rulings of the Chair, will yet—when he considers all the difficulties of the position—the duties, always arduous and often delicate that devolve upon it—be disposed to admit that the distinguished gentleman who has filled the Chair, has presided over the deliberations of this assembly with eminent ability, with great impartiality, with a patient courtesy, and constant and assiduous fidelity. This is very strongly my own impression, and I think that we owe it very much to him, that we have been able to conduct our discussions and complete our business with so much harmony—with the introduction of so

little that was personal, improper or unparliamentary.

I hope, Sir, to hear on the part of other gentlemen, an expression of similar sentiments, and I hope that the Chair will be disposed to say to us some kind, appropriate and touching words before we depart from these halls for the last time, that we may all go to our homes feeling kindly disposed to each other, inspired with a loftier patriotism and a deeper interest in the good old Commonwealth of Massachusetts, which we have all been here endeavoring to serve, according to our honest convictions and to the best of our ability, and whose glory and prosperity we would have ever increasing and perpetual.

Mr. EAMES, of Washington. I can say for one, that I have been much gratified with the manner in which the Chair has conducted and managed the business of this Convention. This is the second Convention for revising the Constitution of which I have had the honor of being a member, and I can say for one, that I have felt much gratified at the unanimity of feeling which has generally pervaded our deliberations.

I was much pleased with the remarks which fell from the gentleman from Pittsfield, (Mr. Briggs,) on Saturday last, and I can say that my feelings correspond with the sentiments which he then expressed. It is not any way likely, according to the course of human events, that we shall all meet again. There are only six of us who were members of the Convention of 1820, and it is seldom that any of us meet in two Conventions to amend the organic law. I had the impression that in the Convention of 1820 there was but one individual who had been a member of the Convention of 1780. But I have been told that there were two. The Hon. John Quincy Adams was one. For one, I can say, I part with my associates here in perfect friendship, and shall ever meet them hereafter with the same feeling.

Mr. HILLARD, of Boston. I certainly respond most cordially and sincerely to all that has fallen from my valued friend from Boston, (Mr. Lothrop,) and, indeed, were I to express my full sense of the ability with which the duties of the Chair have been performed, and of the obligations we are under to the President, I should—that gentleman being present—consider myself as passing beyond the limits of decorum and good taste. I can only say, in recalling the conduct and bearing of the gentleman who has presided over our deliberations, I cannot bring to my thoughts any person in the Convention or out of it, whom we could have substituted for him, and been gainers in the exchange. In looking back upon our discussions, we have a right to say that they have been characterized by a more than common degree of decorum and propriety, considering the nature of the topics and the zeal of the speakers. Of course it is impossible, in collision of strong convictions and strong feelings, that occasional sparks of excitement should not have flashed forth. But I submit, that in comparison with similar bodies, we may look back with satisfaction and pride at the course of our debates, and especially at the harmonious feelings with which our deliberations are brought to a close.

To those who have had experience in such bodies, I need not say how much we are indebted to the spirit which has presided over us, to the spirit of mingled firmness, tact, and moderation,

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that has overshadowed us from the beginning; and I, for one, am ready to make acknowledgment in the fullest and amplest terms.

Mr. HALLETT, of Wilbraham. I think we cannot separate without reflecting with some degree of interest and intenseness, upon that very important relation which has existed between you, Sir, as the presiding officer of this body, and ourselves, individually, as its members. Sir, while all the people of this earth—consisting now of some nine hundred millions of souls—are under different forms of government, which have existed from time immemorial, this spot upon God's earth, the United States of America, composed of twenty-three or twenty-four millions of people, is the only place, and this the only people, in which such a Convention as this could assemble for such a purpose as that for which it was called. Now, that in the simple exercise of the peaceful right of citizens, as delegates of the people of the Commonwealth, we have come here unmolested and quietly to frame a constitutional government to be submitted to the people, upon which they are to say "yes" or "no," and which, if they say "yes," is to take the place of the old government, by as easy a transition as takes place in ordinary affairs, and that this can be done and that we are the agents, is certainly a thing that can never pass from our minds. It is a link that should bind us together as brethren while we live. Let us never forget, if we should hereafter be brought in any conflict with each other, that here, in this Convention, we stood together, delegates of the people, with this great power of proposing a form of government for their adoption.

Sir, that the proceedings of this Convention have been conducted so harmoniously, and that its results have thus far been so successful and satisfactory, and will terminate, as I think, so usefully to the Commonwealth, has been, in a great measure, owing to the manner in which you have exercised the authority with which the Convention invested you. I am sure that every heart will feel, and every voice will respond to the resolution of thanks for the manner in which you have presided over us.

Mr. MARVIN, of Boston. Before any remarks are made by the President, I hope that some gentleman will close our session with prayer. I feel that we are all indebted to the kind providence of Almighty God, for having preserved us, with one exception, in life and health. We began by imploring the blessing of God; let us close our labors by rendering him thanks, and giving him praise.

Mr. WILSON, of Natick. The hours of this Convention are numbered. Our duties here are performed. To the people we have committed the results of our deliberations and labors. After ninety days of toil together, we are about to part, to meet not again in this world of vicissitude and death. In this closing hour it is proper for us to turn our thoughts to that Being who has preserved us. I move that the

Convention invite the Rev. Dr. Lothrop to close our session with prayer.

The PRESIDENT. The Chair will assume the consent of the Convention, and invites the Rev. Mr. Lothrop to perform that duty.

Mr. LOTHROP then took the President's desk, and offered the following

Prayer.

Almighty God! We began our labors by invoking Thy blessing; we would close them by again invoking that blessing, by lifting up devout and grateful hearts to Thee, the God of our fathers, and thanking Thee for all Thy mercies in past generations, and for all Thy goodness to us, here present, in preserving our lives, and in enabling us to attend faithfully to the duties that have devolved upon us. We thank Thee, O God, for all the harmony and good feeling, for all the mutual respect and kindness that have prevailed through our deliberations. We thank Thee that, guided and sustained by Thy good providence, we have now been enabled to bring these deliberations to a close; and we would commend ourselves, and the great work on which we have been engaged, and all the high and important interests of this ancient and honorable Commonwealth, to Thy divine disposal, to Thy protection and care, and to Thy parental providence. May we, O God—may all the people of the Commonwealth—continue to adore, and reverence, and love, and serve Thee, the God of our fathers, and so walk in the ways of virtue, of uprightness, of all Christian grace and godliness, that we may continue to be a name and a praise among the communities of the earth—that the blessing of the Lord our God may be upon us, even as it was upon our fathers. May Thy peace abide in all our hearts, Thy blessing be upon all our families, Thy goodness and favor attend us, now and forever. We ask these mercies through Him who loved us, and gave Himself for us, to whom be glory, in His church, forever.

Mr. WALKER, of North Brookfield, moved that the Convention do now adjourn *sine die*.

The motion was agreed to.

President's Address.

The PRESIDENT. Gentlemen of the Convention. Availing myself of the privilege usually afforded those who stand in the position I now occupy, before I speak that word which severs our official relations with each other, and with the Commonwealth, I return you my sincere thanks for the generous kindness with which you have received the limited measure of fidelity and capacity I have been able to bring to the discharge of my duties.

There are many reasons why this generosity should be grateful to me. But none is stronger than that which arises from the high character of the assembly to whose indulgence I am so large a debtor. For patient investigation, assiduous, unremitting, and conscientious devotion to laborious duties, in a most oppressive season, I be-

lieve no representative assembly ever surpassed that whose labors are now about to close. It is not for me to distrust the wisdom of the counsels by which you have been guided. I am impressed with the conviction that your labors will be approved; that the results you have reached will be ratified by the people of the Commonwealth. The moment that fortune has assigned you for their submission to the people you represent, is auspicious. Although the silent dial before us indicates a brief moment beyond, yet we have not closed the day which is the anniversary of the embarkation of the Pilgrim Fathers; of the inauguration of that series of sublime events that has resulted in the consummation of constitutional liberty, and permanent popular governments.

Whatever destiny may be in store for our republic—whether it be amid the convulsions of distant empires, to sway the sceptre of earth's seas, or with an expansive power hitherto unknown, to absorb and consolidate in a single state, of limited powers, the territory of continents, or to achieve a nobler triumph in the domain of industry, science and art—I trust that Massachusetts, true to the instincts of her nature, as colony or commonwealth, may still stand at the head of the column of progressive States; her Constitution without fault, and her people without fear.

I am sure I do not misinterpret the feelings of your hearts, in saying that we cannot separate without chastening our anticipated joys by recalling the memory of one, whose seat to-night is vacant, whose life was distinguished by the virtues which adorn human nature, but who in health and high hopes has been swept from among us by the hand of death. We cannot separate without a tear of sympathy and consolation for the happy family by this bereavement made desolate; nor yet without a consciousness that the loss which is ours, is the gain of our brother who is gone; that it is for us to mourn for the living only, and not for the dead. We cannot separate without grateful and fervent acknowledgments for the Divine goodness that has preserved so many of us from suffering, sickness, and death.

But the delays of the day's session, the tediousness of the parting act and word, have already detained you too long from the invigorating ocean air, and the sweet and pure breeze of inland and highland; from the loved sights and sounds of home; the congratulations of friends, and the applause of satisfied constituencies, that must revive your exhausted energies, and enable you to recall, without pain, the laborious and anxious days we have passed together; joys that might almost renew a life under the hand of death. No act or word of mine shall add to the unwelcome detention. Health, happiness, honor, to you all, gentlemen. Your kindness is engraven on my heart, where, every day, I will turn the leaf to read it.

It remains for me but to announce that the Convention of 1853 is adjourned, without day.

APPENDIX.

Commonwealth of Massachusetts.

In the Year of our Lord One Thousand Eight Hundred and Fifty-Two.

AN ACT

RELATING TO THE CALLING A CONVENTION OF DELEGATES OF THE PEOPLE, FOR THE PURPOSE OF
REVISING THE CONSTITUTION.

Be it Enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:—

SECTION 1. The inhabitants of the several cities, towns, districts, and places within this Commonwealth, qualified to vote for senators or representatives in the general court, shall, on the second Monday of November next, at the meetings to be then held in the several cities and towns in the Commonwealth, for the choice of governor, lieutenant-governor, senators and representatives in the general court, an article for this purpose being inserted in the warrants calling said meetings, give in their votes by ballot on this question: "Is it expedient that delegates should be chosen to meet in convention for the purpose of revising or altering the constitution of government of this Commonwealth?" And the vote upon said question shall be in open meeting, and the votes in the several cities and towns in the Commonwealth shall be received, sorted, counted, declared, and transmitted to the Secretary of the Commonwealth, in the same manner as the votes for governor, lieutenant-governor, and senators are now received, sorted, counted, declared and transmitted by the constitution and laws of the Commonwealth; and all returns not thus made shall be rejected in the counting. And the Governor and Council shall open and examine the returns, made as aforesaid, and count the votes given on the said question; and the governor shall, by public proclamation, to be made on or before the first Wednesday in January next, make known the result, by declaring the number appearing in favor of choosing delegates for the purpose aforesaid, and the number of votes appearing against the same; and if it shall appear that a majority of the votes given in and returned as aforesaid are in favor of choosing delegates as aforesaid, the same shall be deemed and taken to be the will of the people of the Commonwealth, that a Convention should meet accordingly; and in case of such majority, the governor shall call upon the people to elect delegates to meet in Convention, in the manner hereinafter provided.

SECT. 2. If it shall be declared by the said proclamation, that the majority of votes, as afore-

said, is in favor of choosing delegates, as above-mentioned, the inhabitants of the several cities and towns within the Commonwealth, now entitled any one year to send one or more representatives to the general court, shall, on the first Monday of March, in the year one thousand eight hundred and fifty-three, assemble in their several meetings, to be duly notified by warrant from the selectmen of the several towns and the mayor and aldermen of the several cities, and shall elect one or more delegates, not exceeding the number of representatives to which each town or city was entitled last year, it being the year in which the valuation of estates in the Commonwealth was settled, to meet delegates from other towns and cities in Convention, for the purposes hereinafter expressed. And at such meetings of the inhabitants, every person entitled to vote for representatives in the general court, shall have a right to vote in the choice of delegates, and the same officers, in the several cities and towns in the Commonwealth, shall preside at such elections, as now preside in the choice of representatives to the general court; and the votes for said delegates shall be received, sorted, counted, declared, recorded, and copies thereof delivered to the delegates chosen, in the same manner as is now provided for in the case of representatives to the general court. And all laws now in force, regulating the duty and conduct of town and city officers, sheriffs, magistrates, and electors, in the election of governor, lieutenant-governor, senators and representatives, shall, as far as applicable, apply, and be in full force and operation, as to all meetings holden, and elections and returns made, under this act, or which by this act are required to be holden or made, and upon the like forfeitures and penalties.

SECT. 3. The persons so elected delegates shall meet in Convention in the State House, in Boston, on the first Wednesday in May, in the year one thousand eight hundred and fifty-three; and they shall be the judges of the returns and elections of their own members, and may adjourn

from time to time; and one hundred of the persons elected shall constitute a quorum for the transaction of business; and they shall proceed, as soon as may be, to organize themselves in Convention, by choosing a president and such other officers as they may deem expedient, and by establishing proper rules of proceeding; and when organized, they may take into consideration the propriety and expediency of revising the present Constitution of government of this Commonwealth, or the propriety and expediency of making any, and if any, what alterations or amendments, in the present Constitution of government of this Commonwealth. And such alterations or amendments, when made and adopted by the said Convention, shall be submitted to the people for their ratification and adoption, in such manner as the said Convention shall direct; and if ratified by the people in the manner directed by the said Convention, the Constitution shall be deemed and taken to be altered or amended accordingly; and if not so ratified, the present Constitution shall be and remain the Constitution of Government of this Commonwealth.

SECT. 4. The said Convention shall establish the pay or compensation of its officers and members, and the expense of its session; and his excellency the governor, by and with the advice and consent of the Council, is authorized to draw his warrant on the treasury therefor.

SECT. 5. The Secretary of the Commonwealth is hereby directed forthwith, after the passage thereof, to transmit printed copies of this Act to the selectmen of each town, and the mayor and aldermen of each city within the Commonwealth; and whenever the governor shall issue his proclamation, calling upon the people to elect delegates, to meet in Convention as aforesaid, the said secretary shall also, immediately thereafter, transmit printed copies of said proclamation, attested by himself, to the selectmen of each town, and the mayor and aldermen of each city, in the Commonwealth.

[Approved, May 7, 1852.]

ABSTRACT OF VOTES.

ABSTRACT OF THE RETURNS OF VOTES

For and against calling a Convention to Revise the Constitution, under the Act of May 7, 1852.

ELECTION, NOVEMBER 8, 1852.

COUNTY OF SUFFOLK.				COUNTY OF MIDDLESEX—Con.				COUNTY OF WORCESTER—Con.			
TOWNS.	Whole No.	For.	Against.	TOWNS.	Whole No.	For.	Against.	TOWNS.	Whole No.	For.	Against.
Boston, . . .	9,974	3,458	6,456	Concord, . . .	270	164	106	Hardwick, . . .	318	185	133
Chelsea, . . .	790	420	370	Dracut, . . .	246	153	93	Harvard, . . .	273	180	93
North Chelsea, . . .	56	18	38	Dunstable, . . .	126	69	57	Holden, . . .	327	203	124
Winthrop, . . .	37	21	16	Framingham, . . .	554	199	355	Hubbardston, . . .	322	260	72
4 Towns, . . .	10,859	3,977	6,880	Groton, . . .	305	159	146	Lancaster, . . .	231	54	177
COUNTY OF ESSEX.				Holliston, . . .	324	213	111	Leicester, . . .	389	281	108
Amesbury, . . .	545	323	222	Hopkinton, . . .	381	291	90	Leominster, . . .	588	377	211
Andover, . . .	721	439	282	Lexington, . . .	261	101	160	Lunenburg, . . .	238	159	79
Beverly, . . .	885	490	395	Lincoln, . . .	105	44	61	Mendon, . . .	182	141	41
Boxford, . . .	173	34	139	Littleton, . . .	155	91	64	Millford, . . .	657	466	191
Bradford, . . .	218	127	91	Lowell, . . .	4,100	2,253	1,847	Millbury, . . .	412	294	118
Danvers, . . .	1,274	638	636	Malden, . . .	492	251	241	New Braintree, . . .	120	61	69
Essex, . . .	241	160	81	Marlborough, . . .	464	357	107	Northborough, . . .	298	184	114
Georgetown, . . .	353	194	159	Medford, . . .	594	298	296	Northbridge, . . .	272	150	122
Gloucester, . . .	708	395	313	Melrose, . . .	209	151	58	North Brookfield, . . .	319	249	70
Groveland, . . .	243	151	92	Natick, . . .	434	217	217	Oakham, . . .	145	102	43
Hamilton, . . .	164	94	70	Newton, . . .	581	245	336	Oxford, . . .	401	272	129
Haverhill, . . .	1,108	644	464	Pepperell, . . .	234	110	124	Paxton, . . .	161	126	35
Ipswich, . . .	424	251	173	Reading, . . .	557	281	276	Petersham, . . .	270	160	110
Lawrence, . . .	1,046	556	490	Sherborn, . . .	141	44	97	Phillipston, . . .	136	48	88
Lynn, . . .	1,834	1,006	828	Shirley, . . .	197	116	81	Princeton, . . .	227	141	86
Lynnfield, . . .	92	69	23	Somerville, . . .	380	174	206	Royalston, . . .	229	66	163
Manchester, . . .	219	157	62	South Reading, . . .	388	218	170	Rutland, . . .	172	132	40
Marblehead, . . .	596	397	199	Stoneham, . . .	388	276	112	Shrewsbury, . . .	320	229	91
Methuen, . . .	334	149	185	Stowe, . . .	139	82	57	Southborough, . . .	211	155	56
Middleton, . . .	126	94	32	Sudbury, . . .	215	136	79	Southbridge, . . .	411	261	150
Newbury, . . .	148	39	109	Tewksbury, . . .	156	62	94	Spencer, . . .	473	248	225
Newburyport, . . .	1,227	463	764	Townsend, . . .	281	190	91	Sterling, . . .	327	138	189
Rockport, . . .	387	245	142	Tyngsborough, . . .	91	50	41	Sturbridge, . . .	330	217	113
Rowley, . . .	165	22	133	Waltham, . . .	600	310	290	Sutton, . . .	360	298	62
Salem, . . .	1,806	686	1,120	Watertown, . . .	341	154	187	Templeton, . . .	368	236	132
Salisbury, . . .	338	206	132	Wayland, . . .	194	109	85	Upton, . . .	333	213	120
Saugus, . . .	251	191	60	West Cambridge, . . .	268	124	144	Uxbridge, . . .	322	211	111
Swampscott, . . .	99	86	13	Westford, . . .	235	130	105	Warren, . . .	256	140	116
Topsfield, . . .	139	67	132	Weston, . . .	152	76	76	Webster, . . .	336	200	136
Wenham, . . .	158	97	91	Wilmington, . . .	124	75	49	Westborough, . . .	367	215	152
West Newbury, . . .	235	107	128	Winchester, . . .	259	112	147	West Boylston, . . .	269	221	48
50 Towns, . . .	20,804	10,755	10,049	Woburn, . . .	568	427	141	West Brookfield, . . .	226	158	68
COUNTY OF MIDDLESEX.				COUNTY OF WORCESTER.				58 Towns, . . .	20,786	13,453	7,333
Acton, . . .	256	197	59	Ashburnham, . . .	338	220	118	COUNTY OF HAMPSHIRE.			
Ashby, . . .	330	92	138	Athol, . . .	370	217	153	Amherst, . . .	501	180	321
Ashland, . . .	185	83	102	Auburn, . . .	125	102	23	Belchertown, . . .	411	244	167
Bedford, . . .	166	135	31	Barre, . . .	535	253	282	Chesherfield, . . .	231	141	90
Billerica, . . .	283	144	145	Berlin, . . .	130	101	29	Cumington, . . .	272	138	134
Boxborough, . . .	72	44	28	Blackstone, . . .	332	242	90	Easthampton, . . .	205	93	112
Brighton, . . .	215	14	201	Bolton, . . .	218	117	101	Enfield, . . .	163	84	129
Burlington, . . .	77	66	11	Boylston, . . .	129	90	39	Goshen, . . .	121	27	94
Cambridge, . . .	1,659	551	1,108	Brookfield, . . .	307	235	72	Granby, . . .	155	28	127
Carlisle, . . .	103	72	31	Charlton, . . .	354	300	54	Greenwich, . . .	158	105	53
Charlestown, . . .	1,783	686	1,097	Clinton, . . .	364	184	180	Hatfield, . . .	194	83	111
Chelmsford, . . .	260	159	101	Dana, . . .	140	72	68	Hadley, . . .	321	57	264
				Douglas, . . .	335	214	121	Middlefield, . . .	107	44	63
				Dudley, . . .	214	157	57	Northampton, . . .	883	463	420
				Fitchburg, . . .	847	561	286	Norwich, . . .	150	93	57
				Gardner, . . .	285	199	86				
				Grafton, . . .	503	307	196				

ABSTRACT OF VOTES.

COUNTY OF HAMPSHIRE—CON.				COUNTY OF BERKSHIRE.				COUNTY OF BRISTOL—CON.			
TOWNS.	Whole No.	For.	Against.	TOWNS.	Whole No.	For.	Against.	TOWNS.	Whole No.	For.	Against.
Pelham, . . .	138	102	36	Adams, . . .	885	439	446	New Bedford, . .	1,934	873	1,061
Plainfield, . .	141	29	112	Alford, . . .	92	68	24	Norton, . . .	266	159	107
Prescott, . . .	108	45	63	Becket, . . .	185	87	98	Pawtucket, . . .	365	215	150
South Hadley, .	275	93	182	Cheshire, . . .	218	214	4	Raynham, . . .	206	139	67
Southampton, .	257	132	125	Clarksburg, . .	61	28	33	Rehoboth, . . .	282	185	97
Ware, . . .	522	266	256	Dalton, . . .	166	118	48	Seekonk, . . .	316	220	96
Westhampton, .	136	53	83	Egremont, . . .	233	113	120	Somerset, . . .	194	113	81
Williamsburg, .	311	185	126	Florida, . . .	78	46	32	Swansey, . . .	210	117	93
Worthington, .	213	94	119	Great Barrington,	—	—	—	Taunton, . . .	1,430	601	829
23 Towns, . .	5,973	2,729	3,244	Hancock, . . .	116	65	51	Westport, . . .	244	176	68
COUNTY OF HAMPDEN.				Hinsdale, . . .	164	38	126	19 Towns, . .	9,429	5,166	4,263
Blandford, . .	284	183	101	Lanesborough, .	237	127	110	COUNTY OF PLYMOUTH.			
Brimfield, . .	245	139	106	Lee, . . .	526	250	276	Abington, . . .	826	562	264
Chester, . . .	248	132	116	Lenox, . . .	279	169	110	Bridgewater, . .	458	206	252
Chicopee, . . .	824	367	467	Monterey, . . .	145	105	40	Carver, . . .	208	96	112
Granville, . . .	239	147	92	Mount Washington,	36	30	6	Duxbury, . . .	438	271	167
Holland, . . .	42	—	42	New Ashford, . .	43	30	13	East Bridgewater,	469	254	215
Holyoke, . . .	336	196	140	New Marlborough,	310	170	140	Halifax, . . .	134	81	53
Longmeadow, . .	188	77	111	Otis, . . .	192	109	83	Hanover, . . .	234	165	69
Ludlow, . . .	207	121	86	Peru, . . .	96	34	62	Hanson, . . .	73	39	34
Monson, . . .	374	202	172	Pittsfield, . . .	875	435	440	Hingham, . . .	609	233	376
Montgomery, . .	83	76	7	Richmond, . . .	117	97	20	Hull, . . .	17	2	15
Palmer, . . .	427	239	188	Sandisfield, . .	246	153	93	Kingston, . . .	239	132	107
Russell, . . .	92	76	16	Savoy, . . .	179	154	24	Marion, . . .	—	—	—
Southwick, . . .	212	153	59	Sheffield, . . .	348	198	150	Marshfield, . .	207	119	88
Springfield, . .	1,659	862	797	Stockbridge, . .	310	180	130	Middleborough,	715	437	278
Tolland, . . .	101	68	43	Tyringham, . . .	119	74	45	North Bridgewater,	771	395	376
Wales, . . .	82	47	35	Washington, . .	87	50	37	Pembroke, . . .	228	122	106
Westfield, . . .	772	512	260	West Stockbridge,	200	89	111	Plymouth, . . .	830	450	380
West Springfield,	473	197	276	Williamstown, .	398	232	166	Plympton, . . .	166	52	114
Wilbraham, . .	320	212	108	Windsor, . . .	177	104	73	Rochester, . . .	441	203	238
20 Towns, . .	7,208	3,986	3,222	31 Towns, . . .	7,117	4,006	3,111	Scituate, . . .	242	173	69
COUNTY OF FRANKLIN.				COUNTY OF NORFOLK.				South Scituate,	244	101	143
Ashfield, . . .	271	162	109	Bellingham, . . .	168	138	30	Wareham, . . .	391	127	264
Barnardston, . .	212	118	94	Braintree, . . .	434	176	258	West Bridgewater,	281	148	133
Buckland, . . .	224	147	77	Brookline, . . .	290	87	203	23 Towns, . . .	8,221	4,368	3,853
Charlemont, . .	220	130	90	Canton, . . .	323	145	178	COUNTY OF BARNSTABLE.			
Coleraine, . . .	281	136	145	Cohasset, . . .	132	43	89	Barnstable, . . .	457	285	172
Conway, . . .	386	207	179	Dedham, . . .	607	278	329	Brewster, . . .	117	64	53
Deerfield, . . .	423	233	190	Dorchester, . .	961	468	493	Chatham, . . .	134	65	69
Erving, . . .	55	49	6	Dover, . . .	93	41	52	Dennis, . . .	184	73	91
Gill, . . .	124	62	62	Foxborough, . .	306	186	120	Eastham, . . .	71	40	31
Greenfield, . . .	520	266	264	Franklin, . . .	274	162	122	Falmouth, . . .	287	71	216
Hawley, . . .	129	62	67	Medfield, . . .	112	76	36	Harwich, . . .	120	37	83
Heath, . . .	127	75	52	Medway, . . .	380	230	150	Orleans, . . .	92	16	76
Leverett, . . .	170	116	54	Milton, . . .	228	133	115	Provincetown, .	231	123	108
Leyden, . . .	118	82	36	Needham, . . .	230	145	85	Sandwich, . . .	449	191	258
Monroe, . . .	42	32	10	Quincy, . . .	623	343	280	Truro, . . .	73	28	45
Montague, . . .	240	151	89	Randolph, . . .	601	242	359	Wellfleet, . . .	98	38	60
New Salem, . .	217	126	91	Roxbury, . . .	1,273	424	849	Yarmouth, . . .	220	82	188
Northfield, . .	297	190	107	Sharon, . . .	183	111	72	13 Towns, . . .	2,613	1,063	1,450
Orange, . . .	234	131	103	Stoughton, . . .	464	249	215	COUNTY OF NANTUCKET.			
Rowe, . . .	121	46	75	Walpole, . . .	300	161	139	Nantucket, . . .	683	348	335
Shelburne, . . .	241	102	139	Weymouth, . . .	810	469	351	COUNTY OF DUKES COUNTY.			
Shutesbury, . .	178	141	37	West Roxbury,	308	63	245	Chilmark, . . .	78	58	20
Sunderland, . .	202	95	107	Wrentham, . . .	360	219	141	Edgartown, . . .	250	108	142
Warwick, . . .	197	128	69	23 Towns, . . .	9,480	4,569	4,911	Tisbury, . . .	174	62	112
Wendell, . . .	143	106	37	COUNTY OF BRISTOL.				3 Towns, . . .	502	228	274
Whately, . . .	256	118	138	Attleborough, . .	673	388	285				
26 Towns, . .	5,628	3,201	2,427	Berkley, . . .	140	96	44				
				Dartmouth, . . .	526	281	245				
				Dighton, . . .	228	136	90				
				Easton, . . .	414	235	179				
				Fairhaven, . . .	602	335	267				
				Fall River, . . .	936	526	410				
				Freetown, . . .	185	136	49				
				Mansfield, . . .	280	235	45				

RECAPITULATION—CONSTITUTIONAL PROPOSITIONS.

RECAPITULATION OF THE VOTE FOR CALLING A CONVENTION.

COUNTIES.	Whole Number.	For.	Against.
Suffolk,	10,857	8,977	6,890
Essex,	16,327	8,567	7,760
Middlesex,	20,804	10,755	10,049
Worcester,	20,786	13,453	7,333
Hampshire,	5,973	2,729	3,244
Hampden,	7,208	3,986	3,222
Franklin,	5,628	3,201	2,427
Berkshire,	7,117	4,008	3,111
Norfolk,	9,480	4,569	4,911
Bristol,	9,429	5,166	4,263
Plymouth,	8,221	4,368	3,853
Barnstable,	2,513	1,063	1,450
Nantucket,	683	343	335
County of Dukes County,	502	228	274
14 Counties,	125,528	66,416	59,112

CONSTITUTIONAL PROPOSITIONS

*Adopted by the Convention of Delegates, assembled at Boston, on the first Wednesday of May, A. D. 1853, and submitted to the People for their Ratification, with an Address to the People of Massachusetts.**

The Convention presented the following Propositions, which were submitted to the People, November 14, 1853.

COMMONWEALTH OF MASSACHUSETTS.

In the Year One Thousand Eight Hundred and Fifty-Three.

RESOLVES.

In the Convention of the Delegates of the people assembled in Boston, on the first Wednesday of May, in the year 1853, for the purpose of revising and amending the Constitution of this Commonwealth.

Resolved, That the revised Constitution, proposed by said Convention, be submitted to the people of the Commonwealth for their ratification and adoption, in the manner following, viz. :—

I. The Preamble; A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts; The Frame of Government, with its Preamble and Chapters numbered One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, and Fourteen, entitled, respectively—General Court,—Senate,—House of Representatives,—Governor,—Lieutenant-Governor,—Council,—Secretary,—Treasurer, Attorney-General, Auditor, District-Attorney, and County Officers,—Judiciary Power,—Qualifications of Voters and Elections,—Oaths and Subscriptions,—Militia,—The University at Cambridge, the School Fund and the Encouragement of Literature,—Miscellaneous Provisions,—Revisions and Amendments of the Constitution—as a distinct Proposition, numbered “One.”

If this proposition, so submitted, shall be ratified and adopted by a majority of the legal voters

of the Commonwealth, present and voting thereon, at meetings duly called, then the same shall be the Constitution of the Commonwealth of Massachusetts.

II. The provision respecting the granting of the writ of Habeas Corpus, as a Proposition, numbered “Two.”

If this proposition be ratified and adopted, it shall be an addition to the provision respecting the Habeas Corpus.

III. The provision respecting the rights of juries in criminal trials, as a Proposition, numbered “Three.”

If this proposition be ratified and adopted, it shall be an addition to the article in the Declaration of Rights, respecting the rights of persons charged with crimes.

IV. The provision respecting claims against the Commonwealth, as a Proposition, numbered “Four.”

If this proposition be ratified and adopted, it shall be an addition to Article XI., of the Declaration of Rights.

V. The provision respecting imprisonment for debt, as a Proposition, numbered “Five.”

If this proposition be adopted, it shall be an addition to the Article in the Declaration of Rights, respecting excessive bail and fines.

VI. The provision respecting sectarian schools, as a Proposition, numbered “Six.”

If this proposition be ratified and adopted, it shall be an addition to Article IV. of Chapter XII., entitled, “The University at Cambridge, The School Fund, and The Encouragement of Literature.” If proposition numbered “One” shall not be adopted, the proposition numbered

“Six,” shall be added as an amendment to the Constitution.

VII. The provision respecting corporations, as a Proposition, numbered “Seven.”

VIII. The provision respecting banks and banking, as a Proposition, numbered “Eight.”

If the Propositions numbered “Seven” and “Eight” be ratified and confirmed, they shall be added as separate articles, or if either of them be ratified and confirmed, as an article in Chapter XIII., entitled “Miscellaneous Provisions.”

If Proposition numbered “One” be not ratified and confirmed, they shall be added as amendments to the Constitution.

Resolved, That at the meetings for the election of Governor, Senators, and Representatives to the General Court, to be held on the second Monday of November, in the year one thousand eight hundred and fifty-three, the qualified voters of the several towns and cities shall vote by ballot upon each of the propositions aforesaid, for or against the same, which ballots shall be inclosed within sealed envelopes, according to the provisions of an Act of this Commonwealth, passed on the twenty-second day of May, in the year eighteen hundred and fifty-one, and an Act passed the twentieth day of May, in the year eighteen hundred and fifty-two, and no ballots not so inclosed shall be received. And said votes shall be received, sorted, counted, declared, and recorded, in open meeting, in the same manner as is by law provided in reference to votes for governor, and a true copy of the record of said votes, attested by the selectmen and town clerk of each of the several towns, and the mayor and aldermen and city clerk of each of the several cities, shall be sealed up by said electmen and mayor and aldermen; and directed to the Secretary of the Commonwealth, with a superscription ex-

* Amendments adopted by the Convention, which stand as separate articles or paragraphs, are enclosed in brackets, to distinguish them from existing provisions of the Constitution. Where an amendment has been made, by adding words to an article or paragraph in the existing Constitution, the amendment is printed in *Italics*.

CONSTITUTIONAL PROPOSITIONS.

pressing the purport of the contents thereof, and delivered to the sheriff of the county within fifteen days after said meetings, to be by him transmitted to the secretary's office, on or before the third Monday of December next; or, the said selectmen and mayor and aldermen shall themselves transmit the same to the secretary's office, on or before the day last aforesaid.

Resolved, That the Secretary shall deliver said copies, so transmitted to him, to a Committee of this Convention, consisting of the President of the Convention, and twenty other members, to be by him designated, who shall assemble at the State House, on the third Monday of December next, and open the same, and examine and count the votes so returned; and if it shall appear that either of said propositions has been adopted by a majority of votes, then the proposition so adopted shall become and be either the whole or a portion of the Constitution of this Commonwealth, as hereinbefore provided, and the said Committee shall promulgate the results of said votes upon each of said propositions, by causing the same to be published in those newspapers in which the laws are now published; and shall also notify the Governor and Legislature, as soon as may be, of the said results; and the Governor shall forthwith make public proclamation of the fact of the adoption of either or all of said propositions, as the whole or as parts of the Constitution of this Commonwealth.

Resolved, That each of said propositions shall be considered as a whole by itself, to be adopted in the whole, or rejected in the whole. And every voter shall vote on each proposition, by its appropriate number, indicating upon his ballot the subject of the proposition, and expressing in writing or printing, opposite to each proposition, the word Yes or No; but the propositions shall all be written or printed on one ballot, in substance, as follows:—

CONSTITUTIONAL PROPOSITIONS.

- Shall Proposition NUMBER ONE, containing the *Preamble, Declaration of Rights and Frame of Government*, stand as the Constitution of the Commonwealth of Massachusetts? Yes or No.
- Shall Proposition NUMBER TWO, respecting the *Habeas Corpus*, stand as part of the Constitution? - - - - - Yes or No.
- Shall Proposition NUMBER THREE, respecting the *Rights of Juries*, stand as part of the Constitution? - - - - - Yes or No.
- Shall Proposition NUMBER FOUR, respecting *Claims against the Commonwealth*, stand as part of the Constitution? - - - - - Yes or No.
- Shall Proposition NUMBER FIVE, respecting *Imprisonment for Debt*, stand as part of the Constitution? - - - - - Yes or No.
- Shall Proposition NUMBER SIX, respecting *Secarian Schools*, stand as part of the Constitution? - - - - - Yes or No.
- Shall Proposition NUMBER SEVEN, respecting the *Creation of Corporations*, stand as part of the Constitution? - - - - - Yes or No.
- Shall Proposition NUMBER EIGHT, respecting the *Formation of Banks*, and requiring *Security for Bank Bills*, stand as part of the Constitution? - - - - - Yes or No.

Resolved, That a printed copy of these resolutions, with the several constitutional propositions annexed, shall be attested by the President and Secretaries of the Convention, and transmitted by them, as soon as may be, to the selectmen of each town, and the mayor and aldermen of each city, in the Commonwealth, whose duty it shall be to insert a proper article in reference to the voting upon said propositions, in the warrant calling the meetings aforesaid, on the second Monday of November next.

Proposition Number One.

CONSTITUTION,

Or Form of Government of the Commonwealth of Massachusetts.

PREAMBLE.

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquillity, their natural rights and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness.

The body politic is formed by a voluntary association of individuals; it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a Constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them, that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of his providence, an opportunity, deliberately and peaceably, without fraud, violence, or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new Constitution of civil government for ourselves and posterity; and devoutly imploring his direction in so interesting a design, do agree upon, ordain, and establish, the following *Declaration of Rights and Frame of Government*, as the CONSTITUTION of the COMMONWEALTH of MASSACHUSETTS.

A DECLARATION

Of the Rights of the Inhabitants of the Commonwealth of Massachusetts.

ARTICLE 1. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

ART. 2. It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

ART. 3. As the public worship of God, and instructions in piety, religion, and morality, promote the happiness and prosperity of a people, and the security of a republican government; therefore, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: And all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society a written notice declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made or entered into by such society: And all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the Commonwealth, shall be equally under the protection of the law; and

no subordination of any one sect or denomination to another shall ever be established by law.

ART. 4. The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in Congress assembled.

ART. 5. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

ART. 6. No man, nor corporation, nor association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man being born a magistrate, lawgiver, or judge, is absurd and unnatural.

ART. 7. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestible, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it.

ART. 8. In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods, and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

ART. 9. All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

ART. 10. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this Commonwealth are not controllable by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

ART. 11. Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

ART. 12. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed, in this Commonwealth, in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the Legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months.

ART. 13. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish

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evidence against himself: and every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself or his counsel, at his election: and no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. And the legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

ART. 14. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty and property of the citizen.

ART. 15. Every subject has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

ART. 16. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherwise used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the Legislature shall hereafter find it necessary to alter it.

ART. 17. The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth.

ART. 18. The people have a right to keep and to bear arms for the common defence: and, as in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the Legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

ART. 19. A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives; and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

ART. 20. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

ART. 21. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the Legislature, or by authority derived from it, to be exercised in such particular cases only as the Legislature shall expressly provide for.

ART. 22. The freedom of deliberation, speech and debate, in either House of the Legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

ART. 23. The Legislature ought frequently to assemble for the redress of grievances, for correct-

ing, strengthening, and confirming the laws, and for making new laws, as the common good may require.

ART. 24. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the Legislature.

ART. 25. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

ART. 26. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the Legislature.

ART. 27. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

ART. 28. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the Legislature.

ART. 29. No person can in any case be subjected to law martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the Legislature.

ART. 30. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent, as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices by *tenures established by the Constitution*, and should have honorable salaries, which shall not be diminished during their continuance in office.

ART. 31. In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial power, or either of them: the judicial shall never exercise the legislative and executive powers or either of them: to the end it may be a government of laws and not of men.

THE FRAME OF GOVERNMENT.

THE people inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign and independent body politic or state, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

CHAPTER I.

General Court.

ARTICLE I. The department of legislation shall be styled the General Court of Massachusetts. It shall consist of two branches, a Senate and a House of Representatives, each of which shall have a negative upon the other.

ART. 2. The political year shall begin on the first Wednesday in January; and the General Court shall assemble every year on the said first Wednesday in January, and shall be dissolved on the day next preceding the first Wednesday in January following, without any proclamation or other act of the governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the governor.

[ART. 3. The compensation of members of the General Court shall be established by standing laws; but no act increasing the compensation

shall apply to the General Court which passes such act; and no compensation shall be allowed for attendance of members at any one session for a longer time than one hundred days.]

ART. 4. No bill or resolve of the Senate or House of Representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revision; and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the Senate or House of Representatives, in whichever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve: but if, after such reconsideration, two-thirds of the said Senate or House of Representatives, *present*, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the Legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of a law: but, in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the Commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor, within five days after it shall have been presented to him, the same shall have the force of a law.

But if any bill or resolve shall be objected to and not approved by the governor, and if the General Court shall adjourn within five days after the same shall have been laid before the governor for his approbation, and thereby prevent his returning it, with his objections, as provided by the Constitution, such bill or resolve shall not become a law, nor have force as such.

ART. 5. The General Court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the Commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes and things, whatsoever, arising or happening within the Commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal or mixt; and for the awarding and making out of execution thereupon: to which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

[ART. 6. The General Court shall have power to make laws regulating marriage, divorce and alimony, but shall in no case decree a divorce, or hear and determine any causes touching the validity of the marriage contract.]

ART. 7. And further, full power and authority are hereby given and granted to the said General Court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide, by fixed laws, for the naming and settling all civil officers within the said Commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers and limits, of the several civil and military officers of this Commonwealth, and

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the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said Commonwealth; and also to impose, and levy, reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the governor of this Commonwealth for the time being, with the advice and consent of the Council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.]

ART. 8. The General Court shall have full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof such power, privileges and immunities, not repugnant to the Constitution, as the General Court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants in wards, or otherwise, for the election of officers under the Constitution, and the manner of returning the votes given at such meetings: *provided*, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose: *and provided, also*, that all by-laws, made by such municipal or city government, shall be subject, at all times, to be annulled by the General Court.

ART. 9. Each branch of the General Court shall have authority to punish, by imprisonment, every person, not one of its members, who shall be guilty of disrespect thereto, by any disorderly or contemptuous behavior, in its presence; or who, in the town or city where the General Court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members; or assault any of them for anything said or done in its session; or shall assault, or arrest, any witness, or other person, ordered to attend it, in his way in going, or returning; or who shall rescue any person arrested by its order: *provided*, that no imprisonment, on its warrant or order, for either of the above described offences, shall be for a term exceeding thirty days; and the governor and Council shall have the same authority to punish in like cases. And no member, during his going to, returning from, or attending, the General Court, shall be arrested, or held to bail, on *mesne process*.

ART. 10. Each branch of the General Court may try, and determine all cases where their rights and privileges are concerned, and which, by the Constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best.

ART. 11. Each branch shall be the final judge of the elections, returns, and qualifications, of its members, as pointed out in the Constitution; shall choose a presiding officer from among its members; appoint its other officers; and settle its rules and orders of proceeding; and shall have power to adjourn, *provided*, such adjournment shall not exceed three days at a time.

ART. 12. And whereas the elections appointed to be made by this Constitution, on the first Wednesday in January annually, by the two Houses of the Legislature, may not be completed on that day, the said elections may be adjourned from day to day until the same shall be completed.

[ART. 13. In all elections by the General Court, or either branch thereof, a majority of votes shall be required, and the members shall vote *visa voce*.]

ART. 14. The enacting style, in making and passing all acts, statutes and laws, shall be: **BE IT ENACTED BY THE GENERAL COURT OF MASSACHUSETTS.**

CHAPTER II.

Senate.

[ARTICLE 1. There shall be annually elected by the inhabitants of this Commonwealth, qualified as in this Constitution is provided, forty persons to be senators, for the year ensuing their election; and the Senate shall be the first branch of the General Court. For this purpose, the General Court, holden next after the adoption of this Constitution, and next after each decennial census thereafter, shall divide the Commonwealth into forty districts, composed of contiguous territory, and as nearly equal in population as may be: *provided*, that no town or ward of a city be divided therefor. Each district shall be entitled to elect one senator, who shall have an inhabitant of this Commonwealth for five years immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is chosen.]

ART. 2. There shall be a meeting on the *Tuesday next after the first Monday in November*, annually, forever, of the inhabitants of each town and city in this Commonwealth, to be called and warned in due course of law, at least seven days before the day of such meeting, for the purpose of electing senators; and at such meetings every qualified voter shall have a right to give in his vote for a senator for the district of which he is an inhabitant.

The selectmen of the several towns shall preside at the town meetings impartially; and shall receive the votes of all the inhabitants of such towns present and qualified to vote for a senator, and shall sort and count them in open town meeting, and in presence of the town clerk, who shall make a fair record, in presence of the selectmen, and, in open town meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the selectmen and the town clerk, and shall be sealed up, directed to the Secretary of the Commonwealth for the time being, with a superscription expressing the purport of the contents thereof, and delivered by the town clerk of said towns to the sheriff of the county in which such town lies, thirty days at least before the first Wednesday in January annually; or it shall be delivered into the Secretary's office seventeen days at least before the said first Wednesday in January; and the sheriff of each county shall deliver all such certificates, by him received, into the Secretary's office, seventeen days before the said first Wednesday in January.

And the inhabitants of plantations unincorporated, qualified as this Constitution provides, shall have the same privilege of voting for a senator, in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually on the same Tuesday next after the first Monday in November, at such place in the plantations respectively as the assessors thereof shall direct; which assessors shall have like authority for notifying the voters, collecting and returning the votes, as the selectmen and town clerks have in their several towns, by this Constitution. And all other persons living in places unincorporated, (qualified as aforesaid,) shall have the privilege of giving in their votes for a senator, in the town where the inhabitants of such unincorporated places shall be assessed, and be notified of the place of meeting by the selectmen of the said town for that purpose, accordingly.

[ART. 3. The Governor and Council shall, as soon as may be, examine the returned copies of

the record provided for in article second of this chapter, and ascertain who shall have received the largest number of votes in each of the several senatorial districts, and the person who has so received the largest number of votes in each of said districts shall be a senator for the following political year; and the governor shall cause each of said persons, so appearing to be elected, to be notified at least fourteen days before the first Wednesday in January of each year, to attend on that day, and take his seat accordingly.

ART. 4. Not less than twenty-one members shall constitute a quorum for doing business; but a less number may organize, adjourn from day to day, and compel the attendance of absent members.]

ART. 5. The Senate shall be a court with full authority to hear and determine all impeachments made by the House of Representatives against any officer or officers of the Commonwealth, for misconduct and maladministration in their offices; but, previous to the trial of every impeachment, the members of the Senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however, shall not extend farther than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this Commonwealth: but the party so convicted, shall be, nevertheless, liable to indictment, trial, judgment and punishment, according to the laws of the land.

CHAPTER III.

House of Representatives.

ARTICLE 1. There shall be, in the legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

ART. 2. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town containing [less than one thousand inhabitants, may elect one representative in the year when the valuation of estates shall be settled, and, in addition thereto, one representative five years in every ten years. Every town containing one thousand inhabitants and less than four thousand, may elect one representative. Every town containing four thousand inhabitants and less than eight thousand, may elect two representatives. Every town containing eight thousand inhabitants and less than twelve thousand, may elect three representatives. Every city or town containing twelve thousand inhabitants, may elect four representatives. Every city or town containing over twelve thousand inhabitants, may elect one additional representative for every four thousand inhabitants it shall contain over twelve thousand. Any two towns, each containing less than one thousand inhabitants, may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, form themselves into a representative district, to continue for the term of not less than two years; and such district shall have all the rights, in regard to representation, which belong to a town having one thousand inhabitants. And this apportionment shall be based upon the census of the year one thousand eight hundred and fifty, until a new census shall be taken.

ART. 3. The Senate at its first session after this Constitution shall have been adopted, and at its first session after the next State census shall have been taken, and at its first session next after each decennial State census thereafter, shall apportion the number of representatives to which each town and city shall be entitled, and shall cause the same to be seasonably published; and in all apportionments after the first, the numbers which shall entitle any town or city, to two, three, four, or more representatives, shall be increased or diminished in the same proportion as the

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population of the whole Commonwealth shall have increased or decreased since the last preceding apportionment.

ART. 4. No town hereafter incorporated, containing less than fifteen hundred inhabitants, shall be entitled to choose a representative.

ART. 5. Each city in this Commonwealth, shall be divided, by such means as the Legislature may provide, into districts of contiguous territory, as nearly equal in population as may be, for the election of representatives, which districts shall not be changed oftener than once in five years: *provided, however*, that no one district shall be entitled to elect more than three representatives.]

ART. 6. The members of the House of Representatives shall be chosen on the *Tuesday next after the first Monday in November*, annually; but meetings may be adjourned, if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no farther: but in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November.

ART. 7. The House of Representatives shall have power, from time to time, to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this Constitution.

ART. 8. Every member of the House of Representatives shall have been for one year, at least, next preceding his election, an inhabitant of the town he shall be chosen to represent.

ART. 9. The House of Representatives shall be the grand inquest of this Commonwealth; and all impeachments made by them shall be heard and tried by the Senate.

ART. 10. All money bills shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

ART. 11. Not less than one hundred members of the House of Representatives shall constitute a quorum for doing business.

CHAPTER IV. Governor.

ARTICLE 1. There shall be a supreme executive magistrate, who shall be styled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS.

ART. 2. The governor shall be a citizen of Massachusetts, and shall be chosen annually, by the inhabitants of the towns and cities of this Commonwealth, on the *Tuesday next after the first Monday in November*. He shall hold his office for one year next following the first Wednesday of January, and until another is chosen and qualified in his stead. *And no person shall be eligible to this office, unless, at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding.*

ART. 3. Those persons who shall be qualified to vote for senators and representatives, within the several towns of this Commonwealth, shall, at a meeting to be called for that purpose, on the *Tuesday next after the first Monday in November*, annually, give in their votes for a governor, to the selectmen, who shall preside at such meeting, and the town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the first Wednesday in January; and the sheriff shall transmit the same to the secretary's office seventeen days at least before the said first Wednesday in January; or the selectmen may cause returns of the same to be made to the office of the secretary of the Commonwealth seventeen days at

least before the said day; and the secretary shall lay the same before the Senate and the House of Representatives, on the first Wednesday in January, to be by them examined; and in case of an election, the choice shall be by them declared and published.

ART. 4. The governor shall have authority, from time to time, at his discretion, to assemble and call together the councillors of this Commonwealth for the time being; and the governor, with the said councillors, or five of them at least, shall, and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, agreeably to the Constitution and the laws of the land.

ART. 5. The governor, with advice of Council, shall have full power and authority, during the session of the General Court, to adjourn or prorogue the same to any time the two Houses shall desire; and in the recess of the said Court, to prorogue the same from time to time, not exceeding ninety days in any one recess; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same; and in case of any infectious distemper prevailing in the place where the said Court is next, at any time to convene, or any other cause happening, whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other, the most convenient place within the State.

ART. 6. In cases of disagreement between the two Houses, with regard to the necessity, expediency or time of adjournment, or prorogation, the governor, with advice of the Council, shall have a right to adjourn or prorogue the General Court, not exceeding ninety days, as he shall determine the public good shall require.

ART. 7. The power of pardoning offences, except such as persons may be convicted of before the Senate, by an impeachment of the House, shall be in the governor, by and with the advice of Council; but no charter of pardon, granted by the governor, with advice of the Council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

ART. 8. Notaries public shall be appointed by the governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor, with the consent of the Council, upon the address of both Houses of the General Court.

ART. 9. Coroners shall be nominated and appointed by the governor, by and with the advice and consent of the Council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

ART. 10. No moneys shall be issued out of the treasury of this Commonwealth and disposed of, (except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon,) but by warrant under the hand of the governor for the time being, with the advice and consent of the Council, for the necessary defence and support of the Commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the General Court.

ART. 11. All public boards, the commissary-general, all superintending officers of public magazines and stores, belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially and without requisition, and at other times, when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care, respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons; and the said

commanding officer shall exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbor or harbors, adjacent.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, despatches, and intelligences of a public nature, which shall be directed to them respectively.

ART. 12. As the public good requires that the governor should not be under the undue influence of any of the members of the General Court, by a dependence on them for his support—that he should, in all cases, act with freedom for the benefit of the public—that he should not have his attention necessarily diverted from that object to his private concerns—and that he should maintain the dignity of the Commonwealth in the character of its chief magistrate—it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: and it shall be among the first acts of the General Court, after the commencement of this Constitution, to establish such salary by law accordingly.

CHAPTER V. Lieutenant-Governor.

ARTICLE 1. There shall be annually elected a Lieutenant-Governor of the Commonwealth of Massachusetts, who shall be qualified in the same manner with the governor; and the day and manner of his election, the qualifications of the voters, the return of the votes, and the declaration of the election, shall be the same as in the election of a governor.

[And the lieutenant-governor shall hold his office for one year next following the first Wednesday of January, and until another is chosen and qualified in his stead.]

ART. 2. The governor, and in his absence, the lieutenant-governor, shall be president of the Council, but shall have no vote in Council; and the lieutenant-governor shall always be a member of the Council, except when the chair of the governor shall be vacant.

ART. 3. Whenever, by reason of sickness or absence from the Commonwealth, or otherwise, the governor shall be unable to perform his official duties, the lieutenant-governor, for the time being, shall have and exercise all the powers and authorities, and perform all the duties of governor; and whenever the chair of the governor shall be vacant, by reason of his resignation, death, or removal from office, the lieutenant-governor shall be governor of the Commonwealth.

CHAPTER VI. Council.

ARTICLE 1. There shall be a Council for advising the governor in the executive part of the government, to consist of eight persons besides the lieutenant-governor, whom the governor for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together; and the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the land.

[ART. 2. Eight councillors shall be annually chosen by the people; and for that purpose the State shall be divided by the General Court into eight districts, each district to consist of five contiguous senatorial districts; and entitled to elect one councillor, who shall hold his office for one year next following the first Wednesday in January, and until a successor is chosen and qualified in his stead.]

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ART. 3. No person shall be elected a councillor who has not been an inhabitant of this Commonwealth for the term of five years immediately preceding his election.

[ART. 4. The day and manner of the election of councillors, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of senators; and the person having the highest number of votes shall be declared to be elected.]

ART. 5. No councillor, during the time for which he is elected, shall be appointed on any commission or to any place and receive compensation therefor.]

ART. 6. The councillors, in the civil arrangements of the Commonwealth, shall have rank next after the lieutenant-governor.

ART. 7. The resolutions and advice of the Council shall be recorded in a register, and signed by the members present; and any member of the Council may insert his opinion contrary to the resolution of the majority. This record shall always be subject to public examination, and may be called for by either House of the Legislature.

ART. 8. Whenever the office of the governor and lieutenant-governor shall be vacant, by reason of death, absence, or otherwise, then the Council, or the major part of them, shall, during such vacancy, have full power and authority, to do, and execute all and every such acts, matters and things, as the governor or the lieutenant-governor might or could, by virtue of this Constitution, do or execute, if they, or either of them, were personally present.

CHAPTER VII.

Secretary, Treasurer, Attorney-General, Auditor, District-Attorney, and County Officers.

[ARTICLE 1. The secretary, treasurer, auditor and attorney-general, shall be chosen by the people, annually on the Tuesday next after the first Monday in November; and they shall hold their offices, respectively, for one year next following the first Wednesday in the succeeding January, and until their successors are chosen and qualified in their stead.]

The day and manner of their election, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of governor.]

ART. 2. No man shall be eligible as treasurer, more than five years successively.

ART. 3. The records of the Commonwealth shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable; and he shall attend the governor and Council, the Senate and House of Representatives, in person, or by his deputies, as they shall respectively require.

[ART. 4. Judges of probate, registers of probate, sheriffs, clerks of the courts, commissioners of insolvency, district-attorneys, registers of deeds, county treasurers, and county commissioners, shall be elected triennially by the people of their respective counties and districts, on the Tuesday next after the first Monday in November, and shall hold their offices, respectively, for three years next following the first Wednesday in the succeeding January, and until their respective successors are chosen and qualified in their stead.]

The manner of their election, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of senators; and the person having the highest number of votes shall be elected.]

CHAPTER VIII.

Judiciary Power.

[ARTICLE 1. The judicial power of the Commonwealth shall be vested in a Supreme Judicial

Court, and such other courts as the legislature may from time to time establish.]

ART. 2. The tenure that all commission officers shall by law have in their offices, shall be expressed in their respective commissions.

All judicial officers, duly appointed, commissioned and sworn, shall hold their offices for the term of ten years, excepting such concerning whom there is different provision made in this Constitution. And upon the expiration of such term they may be reappointed; and all judicial officers for whose appointment a different provision is not made in this Constitution, shall be nominated and appointed by the governor, by and with the advice and consent of the Council, and they may be removed by the governor, with consent of the Council, upon the address of both Houses of the Legislature.

[ART. 3. The present justices of the Supreme Judicial Court shall hold their offices according to their respective commissions; and the present justices of the Court of Common Pleas shall hold their offices by the same tenure, while the law establishing the said Court of Common Pleas shall continue. All nominations of judicial officers, whose term of office is by this Constitution limited to ten years, shall be publicly announced at least seven days before their appointment; and no person who shall have been commissioned after the tenth day of August, in the year one thousand eight hundred and fifty-three, shall hold by any longer tenure of office than the term of ten years.]

ART. 4. Neither the governor and Council, nor the two branches of the Legislature, or either of them, shall hereafter propose questions to justices of the Supreme Judicial Court, and require their opinions thereon.]

ART. 5. The judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require; and the Legislature shall from time to time, hereafter, appoint such times and places; until which appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

[ART. 6. Justices of the peace, justices of the peace and quorum, justices of the peace throughout the Commonwealth, and commissioners to qualify civil officers, may be appointed by the governor and Council for a term of seven years; and upon the expiration of any commission, the same may be renewed; and those now in office shall continue therein according to the tenure of their respective commissions: provided, that the jurisdiction of the justices named in this article, shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.]

ART. 7. Trial justices shall be elected by the legal voters of the several towns and cities, where, at the time of such election there is no Police Court established by law, who shall hold their offices for a term of three years, and have the same jurisdiction, powers, and duties, as are now exercised by justices of the peace, or such as may hereafter be established by law. Every city or town, authorized as herein provided, shall elect a trial justice, and may elect one additional for each two thousand inhabitants therein, according to the next preceding decennial census: provided, however, that any trial justice who shall remove from the city or town in which he was elected shall thereby vacate his office.

ART. 8. Justices and clerks of the Police Courts of the several cities and towns of the Commonwealth shall be elected by the legal voters thereof, respectively, for a term of three years.]

CHAPTER IX.

Qualifications of Voters, and Elections.

ARTICLE 1. Every male citizen, of twenty-one years of age and upwards, (excepting paupers and

persons under guardianship,) who shall have resided within the Commonwealth one year, and within the town or district, in which he may claim a right to vote, six calendar months next preceding any election of any national officer, or any State officer required by this Constitution to be elected by the people, shall have a right to vote in such election; and no other person shall have such right.

[ART. 2. All ballots required by law to be given at any national, state, county, district, or city election, including elections for representatives and trial justices, justices and clerks of Police Courts, shall be deposited in sealed envelopes of uniform size and appearance, to be furnished by the Commonwealth.]

ART. 3. Lists of the names of qualified voters shall be used at all elections required by this Constitution. They shall be made out and used in such manner as shall be by law provided. The presiding officers at such elections shall receive the votes of all persons whose names are borne on such lists, and shall not be held answerable for refusing the votes of any persons whose names are not borne thereon.

ART. 4. All meetings for the choice of national, state, county, or district officers, including representatives, trial justices, clerks and justices of Police Courts, by the people, shall be held on the Tuesday next after the first Monday in November, annually; and they shall be called by the mayor and aldermen of the cities, and the selectmen of the towns, and warned in due course of law. The manner of calling and holding public meetings in cities, for the election of officers under this Constitution, and the manner of returning the votes given at such meetings, shall be as now prescribed, or as shall hereafter be prescribed by the Legislature.

ART. 5. A majority of all the votes given shall be necessary to the election of governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general, of the Commonwealth, until otherwise provided by law, but no such law providing that such officers, or either of them, or representatives to the General Court, shall be elected by plurality, instead of a majority of votes given, shall take effect until one year after its passage; and if at any time after any such law shall have taken effect, it shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in the absence of any such law, if at any election of either of the above-named officers, except the representatives to the General Court, no person shall have a majority of the votes given, the House of Representatives shall elect two out of three persons then eligible, who had the highest number of votes, if so many shall have been voted for, and return the persons so elected to the Senate, from whom the Senate shall choose one who shall be the officer thus to be elected.

ART. 6. A majority of votes shall be required in all elections of representatives to the General Court, until otherwise provided by law.

ART. 7. In the election of all city or town officers, such rule of election shall govern as the Legislature may by law prescribe.

ART. 8. In all elections of councillors and senators, and in all elections of county or district officers, the person having the highest number of votes shall be elected.

ART. 9. Whenever, in any election where the person having the highest number of votes may be elected, there is a failure of election because two persons have an equal number of votes, subsequent trials may be had at such times as may be prescribed by the Legislature.]

CHAPTER X.

Oaths and Subscriptions; Incompatibility of and Exclusion from Offices; Continuation of Officers; Commissions; Writs; Confirmation of Laws.

ARTICLE 1. The following oath shall be taken and subscribed by every person chosen or ap-

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pointed to any office, civil or military, under the government of the Commonwealth, before he shall enter upon the duties of his office, to wit:—

"I, A. B., do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof; and that I will faithfully and impartially discharge and perform all the duties incumbent on me as [here insert the office], according to the best of my abilities and understanding, agreeably to the Constitution and laws of the Commonwealth. So help me God."

[*Provided*, that when any person, chosen or appointed as aforesaid, shall be conscientiously scrupulous of taking and subscribing an oath, and shall for that reason decline taking the above oath, he shall make and subscribe his affirmation in the foregoing form, omitting the word "swear," and substituting the word "affirm;" and omitting the words "So help me God," and substituting instead thereof the words "And this I do under the pains and penalties of perjury."]

And the said oaths or affirmations shall be taken and subscribed, by the governor and lieutenant-governor before the president of the Senate, in presence of the two Houses in convention; and by councillors before the president of the Senate and in presence of the Senate; and by the senators and representatives before the governor and Council for the time being; and by the residue of the officers aforesaid before such persons, and in such manner, as shall from time to time be prescribed by law.

ART. 2. No governor, lieutenant-governor, or judge of the Supreme Judicial Court or Court of Common Pleas, shall hold any other office under the authority of this Commonwealth, except such as by this Constitution they are admitted to hold, saving that the judges of the said courts may hold the offices of justices of the peace through the State; nor shall they hold any other office, or receive any pension or salary from any other State, or government, or power whatever, except that they may be appointed to take depositions, or acknowledgments of deeds, or other legal instruments, by the authority of other States or countries.

[No person shall hold or exercise at the same time more than one of the following offices, to wit: the office of governor, lieutenant-governor, senator, representative, judge of the Supreme Judicial Court, or Court of Common Pleas, secretary of the Commonwealth, attorney-general, treasurer, auditor, councillor, judge of probate, register of probate, register of deeds, sheriff or his deputy, clerk of the Supreme Judicial Court, or Court of Common Pleas, clerk of the Senate or House of Representatives; and any person holding either of the above offices shall be deemed to have vacated the same by accepting a seat in the congress of the United States, or any office under the authority of the United States, the office of postmaster excepted. And no person shall be capable of holding at the same time more than two offices, which are held by appointment of the governor, or governor and Council, or the Senate, or the House of Representatives, military offices, and the offices of justices of the peace, justices of the peace and quorum, notaries public, and commissioners to qualify civil officers, excepted.]

ART. 3. And no person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance under the government of this Commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption, in obtaining an election or appointment.

ART. 4. All commissions shall be in the name of the Commonwealth of Massachusetts, signed by the governor, and attested by the secretary or his deputy, and have the great seal of the Commonwealth affixed thereto.

ART. 5. All writs, issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts; they shall be under the seal of the court from

whence they issue, and be signed by the clerk of such court.

ART. 6. All the laws, which have heretofore been adopted, used, and approved in the Province, Colony, State or Commonwealth of Massachusetts, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature; such parts only excepted as are repugnant to the rights and liberties contained in this Constitution.

CHAPTER XI.

Militia.

ARTICLE 1. The governor shall be the commander-in-chief of the army and navy of the Commonwealth, and of the Militia thereof, excepting when these forces shall be actually in the service of the United States; and shall have power to call out any part of the military force to aid in the execution of the laws, to suppress insurrection, and to repel invasion.

[ART. 2. All citizens of this Commonwealth liable to military service, except such as may by law be exempted, shall be enrolled in the militia, and held to perform such military duty as by law may be required.]

ART. 3. The militia may be divided into convenient divisions, brigades, regiments, squadrons, battalions, and companies; and officers with appropriate rank and titles may be elected to command the same. And the discipline of the militia shall be made to conform, as nearly as practicable, to the discipline of the army of the United States.

ART. 4. The governor shall appoint an adjutant-general, a quartermaster-general, and such other general staff-officers as shall be designated by law; who shall be commissioned by him for the term of one year, and until their successors shall be commissioned and qualified. And the adjutant-general and quartermaster-general shall have salaries fixed by law, which shall be in full for all services rendered by them in their several offices.

ART. 5. The major-generals shall be elected by the votes of the brigadier-generals and field-officers of the brigades, regiments, squadrons, and battalions of the respective divisions.

ART. 6. The brigadier-generals shall be elected by the votes of the field-officers of the regiments, squadrons, and battalions, and captains of companies, of the respective brigades.

ART. 7. The field-officers of regiments, squadrons, and battalions; shall be elected by the votes of the captains and subalterns of companies of the respective regiments, squadrons, and battalions.

ART. 8. The captains and subalterns shall be elected by the members of the respective companies.

ART. 9. All elections of military officers shall be by a majority of the written votes of those present and voting, and no person, within the description of a voter as hereinbefore specified, shall be disqualified by reason of his being a minor.

ART. 10. The Legislature shall prescribe the time and manner of convening the electors hereinbefore named, of conducting the elections, and of certifying to the governor the names of the officers elected.

ART. 11. The several officers elected shall be forthwith commissioned by the governor for the term of three years from the dates of their respective commissions, and until their successors shall be commissioned and qualified.

ART. 12. If the electors of the several officers before named shall refuse or neglect to make an election, for the space of three months after legal notice of a meeting for that purpose, the governor shall appoint and commission for three years a suitable person to fill the vacant office, with the advice of the Council if the vacancy be that of a major-general, or with the advice of the major-general of the division in which the

appointment is to be made, if the vacancy be of an inferior grade.

ART. 13. Major-generals, brigadier-generals, and commanders of regiments, squadrons, and battalions, shall severally appoint such staff-officers as shall be designated by law in their respective commands.

ART. 14. All non-commissioned officers, whether of staff or company, and all musicians, shall be appointed in such manner as may be prescribed by law.

ART. 15. All officers of the militia may be removed from office by sentence of court-martial, or by such other modes as may be prescribed by law.]

CHAPTER XII.

The University at Cambridge; the School Fund; and the Encouragement of Literature.

ARTICLE 1. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences which qualified them for public employments, both in church and state; and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the Christian religion, and the great benefit of this, and the other United States of America—it is declared, that the President and Fellows of HARVARD COLLEGE, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy; and the same are hereby ratified and confirmed unto them, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

But the Legislature shall always have full power and authority, as may be judged needful for the advancement of learning, to grant any farther powers to the President and Fellows of Harvard College, or to alter, limit, annul, or restrain, any of the powers now vested in them: provided, the obligation of contracts shall not be impaired; and shall have the like power and authority over all corporate franchises hereafter granted, for the purposes of education, in this Commonwealth.

ART. 2. And whereas there have been, at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New England, or to the President and Fellows of Harvard College, or to the said College by some other description, under several charters successively; it is declared, that all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the President and Fellows of Harvard College, and to their successors, in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, deviser or devisors.

ART. 3. And whereas by an Act of the General Court of the Colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the governor and deputy-governor, for the time being, and all the magistrates of that jurisdiction, were, with the president, and a number of the clergy in the said Act described, constituted the overseers of Harvard College; and it being necessary, in this new constitution of government, to ascertain who shall be deemed successors to the said governor, deputy-governor, and magistrates; it is declared that the governor, lieutenant-governor, Council and Senate of this Commonwealth are, and shall be deemed, their successors; who, with the president of Harvard College, for the time being, together with the ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston,

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Roxbury, and Dorchester, mentioned in the said Act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining, to the overseers of Harvard College: *provided*, that nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said University, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts Bay.

[ART. 4. It shall be the duty of the Legislature, as soon as may be, to provide for the enlargement of the School Fund of the Commonwealth, until it shall amount to a sum not less than two millions of dollars; and the said fund shall be preserved inviolate, and the income thereof shall be annually appropriated for the aid and improvement of the common schools of the State, and for no other purpose.]

ART. 6. Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the University at Cambridge, public schools, and grammar schools in the towns; to encourage private societies, and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.

CHAPTER XIII.

Miscellaneous Provisions.

ARTICLE 1. A census of the inhabitants of each city and town in the Commonwealth, on the first day of May in the year one thousand eight hundred and fifty-five, and on the first day of May of each tenth year thereafter, shall be taken and returned into the secretary's office, on or before the last day of the June following the said first day of May in each of said years; and while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth taken anew once in every ten years at least, and as much oftener as the General Court shall order.

[ART. 2. Persons holding office by election or appointment, when this Constitution takes effect, shall continue to discharge the duties thereof until their term of office shall expire, or officers authorized to perform their duties, or any part thereof, shall be elected and qualified, pursuant to the provisions of this Constitution; when all powers not reserved to them by the provisions of this Constitution shall cease; *provided, however*, that justices of the peace, justices of the peace and of the quorum, and commissioners of insolvency, shall be authorized to finish and complete all proceedings pending before them at the time, when their powers and duties shall cease, or be altered as aforesaid. All laws in force when this Constitution goes into effect, not inconsistent therewith, shall continue in force until amended or repealed.

ART. 3. The Legislature shall provide, from time to time, the mode in which commissions or certificates of election shall be issued to all officers elected pursuant to the Constitution, except in cases where provision is made therein.

ART. 4. The governor, by and with the con-

sent of the Council, may at any time, for incapacity, misconduct or maladministration in their offices, remove from office, clerks of courts, commissioners of insolvency, judges and registers of probate, district attorneys, registers of deeds, county treasurers, county commissioners, sheriffs, trial justices, and justices and clerks of police courts: *provided*, that the cause of their removal be entered upon the records of the Council, and a copy thereof be furnished to the party to be removed, and a reasonable opportunity be given him for defence. And the governor may at any time, if the public exigency demand it, either before or after such entry and notice, suspend any of said officers, and appoint substitutes, who shall hold office until the final action upon the question of removal.

ART. 5. Whenever a vacancy shall occur in any elective office, provided for in this Constitution, except that of governor, lieutenant-governor, councillor, senator, member of the House of Representatives, and town and city officers, the governor for the time being, by and with the advice and consent of the Council, may appoint some suitable person to fill such vacancy, until the next annual election, when the same shall be filled by a new election, in the manner to be provided by law: *provided, however*, that trial justices shall not be deemed to be town officers for this purpose.

ART. 6. All elections provided to be had under this Constitution shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, in the year one thousand eight hundred and fifty-four.

ART. 7. This Constitution shall go into operation on the first Monday in February, in the year one thousand eight hundred and fifty-four.

ART. 8. The terms of all elective officers, not otherwise provided for in this Constitution, shall commence on the first Wednesday in January next after their election.]

ART. 9. In order to remove all doubt of the meaning of the word "inhabitant," in this Constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this State, in that town, district, or plantation, where he dwelleth, or hath his home.

ART. 10. This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this Commonwealth, in all future editions of the said laws.

CHAPTER XIV.

Revision and Amendments of the Constitution.

[ARTICLE 1. A Convention to revise or amend this Constitution may be called and held in the following manner: At the general election in the year one thousand eight hundred and seventy-three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question, "Shall there be a Convention to revise the Constitution?" which votes shall be received, counted, recorded, and declared, in the same manner as in the election of Governor; and a copy of the record thereof shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same, and shall officially publish the number of yeas and nays given upon said question, in each town and city, and if a majority of said votes shall be in the affirmative, it shall be deemed and taken to be the will of the people that a Convention shall meet accordingly; and, thereafter, on the first Monday of March ensuing, meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts, in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives which the towns, cities, and districts shall then be entitled to elect in any year of that decennial period. And such delegates shall meet in Convention at the State House, on

the first Wednesday of May next ensuing, and when organized, shall have all the powers necessary to execute the purpose for which such Convention was called; and may establish the compensation of its officers and members, and the expense of its session, for which the Governor, with the advice and consent of the Council, shall draw his warrant on the treasury. And if such alterations and amendments, as shall be proposed by the Convention, shall be adopted by the people voting thereon in such manner as the Convention shall direct, the Constitution shall be deemed and taken to be altered or amended accordingly. And it shall be the duty of the proper officers, and persons in authority, to perform all acts necessary to carry into effect the foregoing provisions.

ART. 2. Whenever towns or cities containing not less than one-third of the qualified voters of the Commonwealth, shall at any meeting for the election of State officers, request that a Convention be called to revise the Constitution, it shall be the duty of the legislature, at its next session, to pass an Act for the calling of the same, and submit the question to the qualified voters of the Commonwealth, whether a Convention shall be called accordingly: *provided*, that nothing herein contained shall impair the power of the Legislature to take action for calling a Convention, without such request, as heretofore practised in the Commonwealth.]

ART. 3. If, at any time hereafter, any specific and particular amendment or amendments to the Constitution be proposed in the General Court, and agreed to by a majority of the senators and two-thirds of the members of the House of Representatives, present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two Houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published; and if, in the General Court next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two-thirds of the members of the House of Representatives, present and voting thereon; then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters, voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the Constitution of this Commonwealth.

[ART. 4. The Legislature which shall be chosen at the general election on the Tuesday next after the first Monday in November, in the year one thousand eight hundred and fifty-five, shall divide the State into forty single districts for the choice of senators, such districts to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each; and shall also divide the State into single or double districts, to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each, for the choice of not less than two hundred and forty, nor more than three hundred and twenty representatives; with proper provisions for districting the Commonwealth as aforesaid, in the year one thousand eight hundred and sixty-six, and every tenth year thereafter; and with all other provisions necessary for carrying such system of districts into operation; and shall submit the same to the people at the general election to be held in the year one thousand eight hundred and fifty-six, for their ratification; and if the same shall be ratified and adopted by the people, it shall become a part of this Constitution in place of the provisions contained in this Constitution for the apportionment of senators and representatives.]

Proposition Number Two.

The writ of *habeas corpus* shall be granted as of right in all cases in which a discretion is not

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especially conferred upon the court by the Legislature; but the Legislature may prescribe forms of proceeding preliminary to the obtaining of the writ.

Proposition Number Three.

In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict, of guilty or not guilty, to determine the law and the facts of the case, but it shall be the duty of the court to superintend the course of the trials, to decide upon the admission and rejection of evidence, and upon all questions of law raised during the trials, and upon all collateral and incidental proceedings; and also to allow bills of exceptions. And the court may grant a new trial in case of conviction.

Proposition Number Four.

Every person having a claim against the Commonwealth, ought to have a judicial remedy therefor.

Proposition Number Five.

No person shall be imprisoned for any debt hereafter contracted, unless in cases of fraud.

Proposition Number Six.

All moneys raised by taxation in the towns and cities, for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to and expended in no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect, for the maintenance, exclusively, of its own schools.

Proposition Number Seven.

The Legislature shall not create corporations by special act when the object of the incorporation is attainable by general laws.

Proposition Number Eight.

The Legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any chartered bank; but corporations may be formed for such purposes, or the capital stock of chartered banks may be increased, under general laws.

The Legislature shall provide by law for the registry of all notes or bills authorized by general laws to be issued or put in circulation as money; and shall require ample security for the redemption of such notes in specie.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, August 1, 1853.

A true copy of the Resolutions adopted by the Convention and of the several Constitutional Propositions annexed. Attest:

N. P. BANKS, JR., President.

W. S. ROBINSON, }
JAS. T. ROBINSON, } Secretaries.

COMMONWEALTH OF MASSACHUSETTS.

In Convention, August 1, 1853.

The Committee which was directed to prepare an Address to the People of Massachusetts, ask leave to report the form of such Address.

For the Committee,

GEO. S. BOUTWELL, Chairman.

ADDRESS.

To the People of Massachusetts:—

The Convention of Delegates, assembled by your authority, and directed to revise the Constitution of the Commonwealth, has now closed its labors; and it seeks only to commend and commit the result to your consideration and final judgment. The necessity for the Convention was great, and its labors have been arduous and protracted. As your delegates, we have sought for the principles of freedom in the ancient institutions of the State; but we have thought it wise also to accept the teachings and experience of nearly a century of independent existence. It has then been our purpose to unite in one system of organic law the principles of American republican institutions, and the experiences of other free States, all contemplated in the light derived from the history and usages of Massachusetts.

And first of all, we think it proper to present for your consideration a complete system of organic law. The present Constitution was adopted in 1780, and there have since been added thirteen important amendments. By these amendments, much of the original text is already annulled, and it is only by a careful and critical analysis and comparison that the existing provisions can be determined. This ought not to be. Constitutional laws should be plain, that they may be impartially interpreted and faithfully executed—"that every man may at all times find his security in them." We have not, then, thought it wise, or even proper, to preserve, as a part of the Constitution, provisions which have long since been annulled; nor do we feel justified in proposing new specific amendments whose adoption will render the fundamental law of the Commonwealth more difficult to be understood and less certain in its requirements.

We have, therefore, taken what remains unchanged of the Constitution of 1780, and the subsequent amendments, preserving the original language wherever it appeared practicable, as the basis of a new Constitution, and incorporated therewith such of the resolutions of this Convention as are necessary to give to the whole, at once, a comprehensive and concise character. This has been our purpose; and if our view of duty is correct, we are entirely justified in submitting so much of our work as will give to the people of Massachusetts a complete system of organic law, as one proposition, for your adoption and ratification. It is undoubtedly true, that when amendments are specific and not numerous, they should be separately submitted to the judgment of the people; but this mode becomes impracticable in the formation of a new government, or the thorough revision of an old one. Our attention has been necessarily directed to every provision of the Constitution, and but one chapter is preserved in its original form. It only remained for us either to submit our work, to be added to the old Constitution as specific amendments, with the conviction that their ratification would render your form of government more complicated than it now is, or else to embody all of the old and the new that appears necessary to the safe and harmonious action of the system, and present it as *The Constitution of Massachusetts*.

This we now do, and we invite you to consider that, while government is essential to the safety and happiness of each individual, it must necessarily happen that it cannot be in every part alike acceptable to all. "We may not expect," said the founders of the Commonwealth, "to agree in

a perfect system of government; this is not the lot of mankind. The great end of government is to promote the supreme good of human society." We commend the new Constitution to you, not as being perfect, but as greatly to be preferred to the existing frame of government. It declares the rights and liberties essential to the freedom of the people; it contains, as we believe, a framework arranged according to reason and correct analysis, and it embodies all the fundamental provisions necessary to a just administration of every department of the government.

You will naturally examine with care the character of the changes we have proposed. We have thought it necessary to make a provision for the purpose of limiting the sessions of the General Court to one hundred days, and to require that the pay of its members shall be fixed by standing laws.

At present the members of the Senate are chosen by the several counties which elect from one to six senators, upon a general ticket. We have provided for the division of the State into forty districts, of equal population, and each entitled to elect one senator.

The basis of the House of Representatives has been a subject of careful and anxious deliberation. Differences of opinion existed among us; but a majority of more than one hundred members determined to preserve the system of town representation, under which Massachusetts has existed so long and prospered so well. We have, then, based the House of Representatives upon the municipal institutions of the State, having reference, so far as practicable, to their relative population. By the proposed system, towns containing less than one thousand inhabitants are entitled to elect a representative for the year when the valuation of estates is settled, and one in addition, annually, for five years out of every decennial period. Towns having a population of one thousand and not more than four thousand inhabitants, are entitled to elect a representative every year; towns of more than four thousand and less than eight thousand, will elect two representatives; towns of eight thousand and less than twelve thousand, will elect three representatives, while towns and cities of twelve thousand inhabitants, will elect four representatives, and one additional representative for each addition of four thousand to their population. We do not claim that this system, separately considered, is precisely equal; but if it is in some degree favorable to the rural districts, the loss sustained by the large towns and cities is in a fair measure compensated by the manifest advantages accorded to them in the constitution of the Council and the Senate. The inequality of representation between particular towns, when tested solely by population, may in some cases apparently be great; but when the rights of different interests and different sections of the Commonwealth are considered in connection with the whole system of elective government, the basis of the House cannot be deemed unequal or unjust. The Senate and Council are based upon population rather than voters, by which the inhabitants of the cities and large towns have influence in these two important departments of the government quite disproportionate to their just elective power.

No human government can attain to theoretic accuracy; and in a state where pursuits, habits, and interests are various, it certainly is not the part of wisdom to place unlimited power in the hands of any. We invite you to consider that the Governor represents the voters of the State; that the Council and Senate represent population, without any reference to voters, and as a consequence, that these two departments of the government will eventually be in the control of the cities and chief towns; and finally, that we have sought only to secure to the rural districts and to the agricultural and mechanical population and interests a reasonable share of power in one branch of the Legislature. This influence gives to this portion of the people power to assent to, but never to

ADDRESS TO THE PEOPLE.

dictate, the policy of the government. The Convention of 1780 declared that "an exact representation would be impracticable even in a system of government arising from the state of nature, and much more so in a State already divided into nearly three hundred corporations." We have encountered the same difficulty, and hope that we have overcome it in our day as well as they overcame it in their day.

But our deliberations have not been confined to the proposed system. Many of your delegates are of opinion that the State should be divided into districts for the election of representatives, according to the number of voters in each. In this opinion a large majority of the Convention do not concur; but we think it our duty first to interpret the people's will, and then to give a fair opportunity for its expression upon all questions of importance whenever such a course is practicable. We have, therefore, made a constitutional provision that the Legislature of 1856, under the census to be taken in 1855, shall present a district system, which may be then substituted for the one recommended by the Convention, if, in the judgment of the whole people, it is wise to make the change.

We have also provided that the cities and large towns shall be so districted for the choice of representatives that no district shall be entitled to elect more than three members. In the judgment of the Convention, the election of many officers on a single general ticket, is not compatible with the freedom and purity of the representative system.

The property qualification of the Governor and Lieutenant-Governor has been abolished.

The Council has been made elective by the people in single districts, and the records of that body are hereafter to be subject to public examination.

We have provided that the Attorney-General, the Secretary of the Commonwealth, the Auditor and the Treasurer, officers now appointed by the Governor, or chosen by the Legislature, shall hereafter be elected annually by the people; and that Judges of Probate, Registers of Probate, Sheriffs, Clerks of the Courts, Commissioners of Insolvency, and District-Attorneys, officers now appointed by the Executive or the Courts, shall also be elected by the people for terms of three years.

We have also provided that the Justices of the Supreme Judicial Court and of the Court of Common Pleas, hereafter appointed, shall hold their offices for the term of ten years. In a free government, the people should be relieved in a reasonable time, and by the ordinary course of affairs, from the weight of incompetent or unfaithful public servants. Under the present Constitution a Judge can only be removed by the difficult and unpleasant process of impeachment,

or of address. Such remedies will be resorted to only in the most aggravated cases. Under the proposed system we have no apprehension but that faithful and competent Judges will be retained in the public service; while those whose places can be better filled by other men, will retire to private life without violence or ungracious circumstances, and scarcely with observation.

It is proposed that Justices of the Peace shall be divided into two classes. Those whose duties are chiefly ministerial, will be, as heretofore, appointed by the Governor and Council; while those intrusted with judicial authority are to be elected by the people, and to hold by a tenure of three years.

Under the original Constitution, voters and public officers were required to possess property qualifications. These have heretofore been removed in part, and we now recommend the entire abolition of the property qualification in the voter for all national and all state officers mentioned in the Constitution. The obligations of citizens to contribute to the public expenses by assessment of taxes are not in any degree changed.

Provision is also made for the secrecy of the ballot. By the ballot the citizen at the same time declares his opinion on public affairs, and asserts his equality with every other citizen.

Freedom of opinion, and freedom in the expression of opinion, are individual rights, to be limited or controlled only by a public necessity. We see no public necessity which ought to deprive the citizen of these rights, and we have therefore made provision for their protection.

We also provide, absolutely, that in many elections, persons having the highest number of votes shall be chosen. This rule has been applied principally to the elections in counties and districts, where the trouble of frequent trials is great. The Governor, Lieutenant-Governor, Secretary of the Commonwealth, Attorney-General, Treasurer, Auditor, Representatives to the General Court, and town officers, are exceptions to the rule. In case of a failure to elect either of the first six named, the election is referred to the General Court; while subsequent trials may be had for the choice of Representatives and municipal officers. We have, therefore, as we think, retained the majority rule where its application will be least burdensome to the people. At the same time we have provided that the Legislature may substitute the plurality rule whenever the public will shall demand it, with a condition that no act for that purpose shall take effect until one year after its passage. Thus we have given an opportunity to test the wisdom of the plurality system, by experience, and power to apply it to every popular election in the Commonwealth, whenever the deliberate judgment of the people shall require it.

The various provisions relating to the militia have been revised, some important changes have been made, and that department of the government will rest more firmly than ever on a constitutional basis.

Changes are proposed concerning the University at Cambridge, and the General Court is instructed to provide means for the enlargement of the School Fund, until it shall amount to a no sums less than two millions of dollars.

Although the Constitution has always asserted, in the strongest terms, the right of the people, at all times, to alter, reform, or totally change their frame of government, yet it has been contended by some, that the operation and effect of the specific provisions for amendments, contained therein, have been such as practically to impair or render doubtful this great right. We have, therefore, thought it wise, while we recognize and retain the modes of exercising this right, practised hitherto in this Commonwealth, to introduce additional provisions, to meet possible future exigencies, and to enable the people, without controversy, to hold periodical Conventions that shall not be subject to, or restricted by, any previous or subsequent act of the Legislature.

Trusting that you will examine with care the proceedings of the Convention, and the result to which it has come, we deem it unnecessary to explain several less prominent changes proposed in the Constitution of the Commonwealth.

We also submit seven distinct amendments, which are presented separately for your ratification. Some of them are new, and all of them are independent of the frame-work of the government, and may either be adopted or rejected without disturbing the system or harmony of the Constitution. They have all, however, been sustained by decisive majorities of your delegates, and embrace important and essential principles in popular government. The formation or revision of a popular Constitution is an epoch in the history of a free people.

We are sensible of the magnitude of the trust which you have confided to us, but it is not more important than the just decision of the questions which we submit to you. We have no doubt that your decision will secure a result beneficial to Massachusetts, and, under Divine Providence, will render more and more illustrious our ancient Commonwealth.

In Convention, August 1, 1853.

Read and accepted.

N. P. BANKS, Jr., *President.*

WM. S. ROBINSON, }
JAMES T. ROBINSON, } *Secretaries.*

VOTE ON THE CONSTITUTIONAL PROPOSITIONS.

ABSTRACT

Of the Returns of Votes on the several Constitutional Propositions submitted to the People, Nov. 14, 1853, as declared by the Committee appointed by the Convention to examine same.

SUFFOLK COUNTY.

TOWNS.	No. 1.		No. 2.		No. 3.		No. 4.		No. 5.		No. 6.		No. 7.		No. 8.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
Boston, - - -	3,248	9,033	3,154	8,548	3,084	8,468	3,239	8,455	3,248	8,340	3,562	8,234	3,178	8,322	3,210	8,388
Chelsea, - - -	380	483	415	448	383	480	399	466	478	440	436	432	397	466	394	469
North Chelsea, - - -	14	62	14	62	14	62	14	62	16	60	15	61	14	62	15	61
Winthrop, - - -	31	10	30	11	31	10	32	9	32	9	38	2	30	11	31	10
4 Towns, - - -	3,673	9,588	3,613	9,069	3,512	9,020	3,684	8,992	3,774	8,849	4,051	8,729	3,619	8,861	3,650	8,928

COUNTY OF ESSEX.

Amesbury, - - -	255	255	257	252	255	254	258	251	264	241	278	230	258	251	257	251
Andover, - - -	341	381	342	381	329	391	345	377	349	373	352	370	344	378	343	380
Beverly, - - -	387	423	391	420	383	428	395	419	402	410	402	411	392	419	393	418
Boxford, - - -	25	110	37	108	25	110	27	108	26	109	27	108	25	110	25	110
Bradford, - - -	96	100	96	100	94	100	94	100	93	101	94	101	94	101	94	101
Danvers, - - -	519	719	523	719	510	728	524	715	529	709	529	709	520	709	520	719
Essex, - - -	137	85	137	85	136	86	137	85	138	84	138	84	137	85	137	85
Georgetown, - - -	188	143	188	142	185	145	187	143	187	143	188	142	188	143	186	143
Gloucester, - - -	444	392	442	394	441	395	444	392	454	382	449	387	446	391	452	385
Groveland, - - -	133	101	134	100	130	103	136	99	138	97	138	97	134	101	136	100
Hamilton, - - -	75	75	77	73	74	75	77	73	76	74	76	74	76	74	76	74
Haverhill, - - -	530	497	537	491	525	503	538	489	537	490	550	478	535	494	539	489
Ipswich, - - -	237	214	233	214	228	216	234	213	229	216	234	212	234	212	235	212
Lawrence, - - -	567	622	567	624	549	640	583	607	609	580	602	587	568	621	571	617
Lynn, - - -	1,173	975	1,180	966	1,147	987	1,188	960	1,213	930	1,180	961	1,183	966	1,194	952
Lynnfield, - - -	56	42	55	43	55	43	56	42	56	42	56	42	56	42	56	42
Manchester, - - -	100	82	101	81	93	88	101	80	101	82	102	79	100	81	99	81
Marblehead, - - -	504	333	495	332	487	339	497	329	498	327	500	330	501	329	500	330
Methuen, - - -	184	195	185	195	184	197	185	195	184	195	190	191	182	197	182	197
Middleton, - - -	78	44	76	44	73	47	76	45	75	45	76	44	73	47	73	47
Nahant, - - -	5	34	5	34	4	35	5	34	5	34	5	34	5	34	6	34
Newbury, - - -	67	103	67	102	67	102	67	102	67	102	66	102	66	102	66	102
Newburyport, - - -	400	848	405	844	426	855	407	841	454	837	469	825	450	841	452	840
Rockport, - - -	226	167	225	167	220	172	225	167	227	165	228	164	223	169	224	168
Rowley, - - -	68	97	68	98	67	97	68	97	68	97	68	96	68	97	68	97
Salem, - - -	581	1,446	576	1,440	580	1,454	583	1,433	598	1,418	596	1,420	577	1,436	583	1,430
Salisbury, - - -	186	148	188	146	183	151	191	144	191	143	194	141	187	147	188	147
Saugus, - - -	137	57	137	57	134	57	137	57	136	56	137	57	137	57	137	57
Swampscott, - - -	84	45	84	45	84	45	84	45	84	45	84	45	84	45	84	45
Topsfield, - - -	32	135	33	136	33	136	32	136	31	136	33	136	32	136	32	137
Wenham, - - -	90	100	90	99	90	99	90	99	90	99	90	99	90	99	90	99
West Newbury, - - -	93	131	93	129	84	131	94	129	94	129	96	128	95	128	97	128
32 Towns, - - -	7,998	9,099	8,024	9,061	7,875	9,209	8,065	9,006	8,203	8,891	8,227	8,884	8,060	9,042	8,095	9,017

COUNTY OF MIDDLESEX.

Acton, - - -	142	81	134	80	135	80	141	81	126	93	142	81	142	77	142	77
Ashby, - - -	105	124	104	125	101	127	104	125	104	125	105	124	104	125	103	126
Ashland, - - -	119	65	118	64	108	74	119	64	119	63	118	64	112	71	117	67
Bedford, - - -	121	43	121	42	115	46	122	41	123	41	123	41	121	42	121	42
Billerica, - - -	149	147	150	144	149	145	150	143	150	143	163	130	150	143	150	143
Boxborough, - - -	55	22	55	22	52	22	55	21	55	22	55	21	55	22	55	22
Brighton, - - -	20	267	22	266	20	267	21	266	21	266	27	260	20	268	21	267
Burlington, - - -	56	16	55	16	54	17	55	16	56	15	55	16	55	16	55	16

VOTE ON THE CONSTITUTIONAL PROPOSITIONS.

COUNTY OF MIDDLESEX—CONTINUED.

TOWNS.	No. 1.		No. 2.		No. 3.		No. 4.		No. 5.		No. 6.		No. 7.		No. 8.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
Cambridge, - - -	441	1,421	462	1,404	433	1,429	479	1,385	501	1,362	521	1,346	465	1,399	463	1,398
Carlisle, - - -	74	26	74	26	73	27	74	26	75	25	75	25	74	26	74	26
Charlestown, - -	791	1,317	809	1,298	795	1,310	831	1,278	869	1,238	877	1,231	822	1,284	818	1,287
Chelmsford, - - -	122	186	125	185	103	203	125	182	128	182	174	135	124	186	126	184
Concord, - - -	172	125	179	116	151	144	180	114	175	120	182	114	174	120	173	122
Dracut, - - -	128	110	129	109	126	111	130	108	127	110	132	106	131	107	131	107
Dunstable, - - -	57	55	57	55	57	55	57	55	57	55	57	55	57	55	57	55
Framingham, - -	207	353	211	349	194	363	215	348	200	347	224	335	213	345	213	344
Groton, - - -	207	167	208	166	207	166	207	166	208	166	211	163	207	167	207	167
Holliston, - - -	237	137	237	136	230	141	240	134	234	137	239	134	235	136	236	136
Hopkinton, - - -	254	89	254	89	247	94	254	89	256	88	251	93	254	89	254	89
Lexington, - - -	128	203	128	202	127	204	129	203	131	200	131	200	128	202	128	202
Lincoln, - - -	39	66	40	65	39	66	40	65	41	64	40	65	40	65	40	65
Littleton, - - -	95	75	96	75	94	77	97	74	99	72	100	70	96	74	97	73
Lowell, - - -	2,004	2,151	2,026	2,130	1,941	2,182	2,045	2,111	2,054	2,074	2,201	1,915	2,005	2,146	2,015	2,139
Malden, - - -	242	288	250	279	236	293	256	277	249	277	259	272	245	286	249	286
Marlborough, - -	261	120	264	117	254	126	266	115	262	118	266	114	264	116	264	116
Medford, - - -	338	351	339	352	334	356	342	349	346	346	355	345	340	351	341	347
Melrose, - - -	160	85	161	84	159	86	161	84	165	81	166	80	161	84	163	84
Natick, - - -	319	276	320	275	308	282	323	274	322	271	339	267	321	271	315	280
Newton, - - -	277	425	289	422	260	441	287	415	286	416	291	412	277	424	281	420
North Reading, -	41	113	41	113	38	115	41	113	41	113	41	113	41	113	41	113
Pepperell, - - -	150	126	150	126	150	129	153	127	152	127	152	126	151	127	152	127
Reading, - - -	185	228	188	224	182	230	185	227	192	223	190	224	188	226	188	226
Sherborn, - - -	42	110	42	109	29	119	41	110	41	110	43	109	40	111	42	110
Shirley, - - -	99	113	100	112	97	115	99	112	100	111	107	105	98	114	103	109
Somerville, - - -	172	316	171	316	172	316	173	315	171	316	174	314	172	315	173	315
South Reading, -	174	227	179	223	169	233	181	222	195	208	190	214	180	224	180	223
Stoneham, - - -	296	108	293	109	288	114	299	105	299	104	301	103	297	107	298	106
Stowe, - - -	102	75	102	74	94	80	102	74	103	73	104	72	103	74	102	74
Sudbury, - - -	130	98	128	98	127	98	132	96	130	97	134	94	131	96	131	96
Tewksbury, - - -	93	93	94	93	93	93	94	93	94	93	97	88	94	93	94	93
Townsend, - - -	159	84	159	84	157	84	159	84	158	84	158	84	159	84	159	84
Tyngsborough, -	77	66	77	66	76	66	77	66	76	66	77	66	77	66	76	66
Waltham, - - -	329	366	328	365	322	371	331	364	333	357	308	376	330	365	327	367
Watertown, - - -	104	275	107	272	94	275	108	274	106	275	116	266	108	272	108	272
Wayland, - - -	107	104	108	101	104	107	108	101	108	102	108	101	107	103	106	105
West Cambridge, -	96	236	100	232	90	244	106	227	111	223	113	221	97	235	99	236
Westford, - - -	137	112	136	112	130	115	135	112	135	113	138	110	136	112	137	111
Weston, - - -	73	91	74	89	73	90	73	89	74	89	75	89	75	89	75	89
Wilmington, - -	56	61	59	60	55	61	59	60	58	60	59	58	56	61	56	61
Winchester, - - -	123	152	127	149	119	156	131	145	138	136	138	138	124	152	124	152
Woburn, - - -	274	233	274	232	266	238	279	230	283	225	280	229	276	231	275	232
51 Towns, - - -	10,339	12,178	10,453	12,052	10,027	12,383	10,571	11,955	10,637	11,822	10,982	11,514	10,432	12,067	10,455	12,054

COUNTY OF WORCESTER.

Ashburnham, - -	203	146	203	146	201	146	203	146	203	144	203	146	202	146	202	146
Athol, - - -	168	161	169	160	167	162	169	159	164	165	170	159	169	160	169	161
Auburn, - - -	119	13	120	12	120	12	120	12	120	12	120	12	120	12	120	12
Barre, - - -	266	262	266	262	261	264	266	262	261	264	267	261	266	262	267	261
Berlin, - - -	100	46	100	46	100	46	100	46	99	46	100	46	100	46	100	46
Blackstone, - -	220	171	221	170	220	171	220	171	271	169	221	169	218	121	218	171
Bolton, - - -	91	95	92	95	89	97	91	94	91	94	92	94	91	93	91	93
Boylston, - - -	94	38	94	38	92	39	94	38	94	38	94	38	94	38	94	38
Brookfield, - -	219	79	216	78	213	78	216	78	222	72	223	68	216	76	218	74
Charlton, - - -	263	41	264	41	263	41	264	41	253	52	264	40	263	42	263	42
Clinton, - - -	136	228	137	226	134	230	136	228	135	228	138	225	135	229	134	229
Dana, - - -	83	47	83	47	72	58	85	45	79	51	86	44	84	46	84	46
Douglas, - - -	208	98	208	98	207	99	208	98	209	97	210	96	208	98	208	98
Dudley, - - -	138	68	141	64	127	76	141	63	142	64	144	62	148	66	142	63
Fitchburg, - - -	554	329	547	335	534	341	551	326	548	320	545	328	541	329	540	343
Gardner, - - -	214	81	216	80	216	80	216	80	216	80	216	80	215	81	215	81
Grafton, - - -	301	173	302	172	296	178	302	172	300	174	302	172	300	174	299	175
Hardwick, - - -	137	160	139	158	136	161	140	157	140	157	140	157	138	159	140	157

VOTE ON THE CONSTITUTIONAL PROPOSITIONS.

COUNTY OF WORCESTER—CONTINUED.

TOWNS.	No. 1.		No. 2.		No. 3.		No. 4.		No. 5.		No. 6.		No. 7.		No. 8.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
Harvard, - - -	143	83	143	83	132	84	143	83	140	84	144	81	142	83	142	84
Holden, - - -	180	126	181	126	180	126	181	126	179	127	181	126	179	127	179	127
Hubbardston, - - -	240	66	240	67	236	70	239	67	238	68	239	67	239	67	239	67
Lancaster, - - -	70	170	71	168	69	170	73	168	72	167	74	164	71	163	71	168
Leicester, - - -	229	126	232	123	231	123	233	123	231	123	231	124	232	123	233	123
Leominster, - - -	306	205	305	204	301	208	305	205	307	204	309	202	307	204	308	203
Lunenburg, - - -	135	80	134	80	133	81	135	80	136	79	135	79	134	80	134	81
Mendon, - - -	155	55	154	55	141	69	154	55	145	64	158	50	154	55	153	55
Millford, - - -	368	258	366	254	347	275	367	251	365	237	358	250	364	253	364	250
Millbury, - - -	246	160	249	156	247	159	249	156	247	160	250	156	249	158	249	158
New Braintree, - - -	62	56	62	56	60	58	62	55	61	56	62	55	60	57	60	57
Northborough, - - -	165	107	165	107	165	107	165	107	158	113	165	107	165	107	165	107
Northbridge, - - -	147	155	147	155	144	155	147	155	157	143	156	127	148	154	148	154
North Brookfield, - - -	228	105	229	104	222	111	227	106	226	107	229	104	228	105	226	107
Oakham, - - -	112	48	113	47	111	50	113	47	113	47	113	47	113	47	113	47
Oxford, - - -	293	119	295	116	284	127	296	116	295	117	296	116	292	119	293	119
Paxton, - - -	112	44	112	44	104	49	112	44	111	44	115	41	112	44	112	44
Petersham, - - -	175	108	176	108	172	111	176	108	177	107	176	108	176	108	176	108
Phillipston, - - -	36	98	35	98	35	98	35	98	35	98	35	98	35	98	35	98
Princeton, - - -	142	76	142	76	138	78	142	76	141	77	142	76	142	76	142	76
Royalston, - - -	87	171	88	170	83	175	88	170	87	172	89	169	87	171	87	171
Rutland, - - -	124	26	124	26	124	26	124	26	124	26	124	26	124	26	123	26
Shrewsbury, - - -	202	80	203	80	203	80	203	80	201	81	204	79	201	82	201	82
Southborough, - - -	97	51	97	51	91	57	98	51	97	51	98	50	97	51	96	52
Southbridge, - - -	301	121	305	120	300	124	311	115	284	139	327	101	303	120	302	120
Spencer, - - -	228	187	228	187	227	189	229	187	230	187	231	186	228	188	228	188
Sterling, - - -	152	186	153	183	147	191	153	183	155	183	154	184	150	187	151	187
Sturbridge, - - -	201	109	201	107	191	116	200	109	170	134	199	110	198	111	199	111
Sutton, - - -	300	74	300	73	294	75	296	73	299	74	300	73	300	73	300	73
Templeton, - - -	222	138	224	137	212	144	225	135	218	140	227	133	224	136	223	137
Upton, - - -	225	144	226	143	224	145	227	142	230	138	229	140	227	141	227	141
Uxbridge, - - -	200	140	198	139	200	140	201	138	201	138	203	136	199	139	199	139
Warren, - - -	143	109	143	109	143	110	143	109	143	109	143	108	143	109	143	109
Webster, - - -	188	112	191	109	189	111	194	106	195	104	203	95	190	110	189	111
Westborough, - - -	219	201	228	193	214	207	230	191	227	194	234	187	222	199	222	197
West Boylston, - - -	238	66	238	66	235	69	238	66	239	65	239	65	238	66	238	66
West Brookfield, - - -	149	93	150	92	148	93	149	92	148	92	149	92	149	93	150	92
Westminster, - - -	206	154	206	154	206	154	206	154	206	153	206	153	206	153	206	153
Winchendon, - - -	213	142	216	139	216	139	218	136	214	138	217	136	214	139	214	140
Worcester, - - -	2,182	939	2,203	917	2,162	947	2,212	908	2,191	921	2,219	898	2,184	928	2,187	924
58 Towns, - - -	12,935	7,724	12,994	7,450	12,609	7,880	13,021	7,611	12,940	7,697	13,098	7,496	12,934	7,633	12,931	7,688

COUNTY OF HAMPSHIRE.

Amherst, - - -	187	271	186	270	182	271	186	270	188	267	189	278	186	271	186	271
Belchertown, - - -	223	194	223	194	222	195	223	194	222	195	223	184	223	194	223	194
Chesterfield, - - -	120	83	120	83	120	83	120	83	120	83	120	83	120	83	120	83
Cummington, - - -	132	111	132	111	132	111	132	111	133	110	133	110	132	111	132	111
Easthampton, - - -	89	111	90	110	87	113	90	110	91	109	91	109	89	111	89	111
Enfield, - - -	40	147	38	147	38	147	38	147	39	146	40	147	38	147	38	147
Goshen, - - -	34	75	34	75	34	75	34	75	34	75	34	75	34	75	34	75
Granby, - - -	53	94	53	93	48	98	53	93	54	92	54	92	52	94	52	94
Greenwich, - - -	96	61	96	61	93	61	96	61	96	61	96	61	96	61	96	61
Hatfield, - - -	83	97	83	97	80	100	81	99	83	97	83	97	83	97	83	97
Hadley, - - -	59	246	59	246	58	247	59	246	59	244	59	246	59	246	59	246
Middlefield, - - -	55	60	53	62	52	63	53	62	53	62	53	62	53	62	52	61
Northampton, - - -	443	374	444	373	423	386	443	372	442	369	446	368	444	372	444	373
Norwich, - - -	77	47	77	47	77	47	77	47	75	48	78	46	77	47	77	47
Pelham, - - -	97	47	96	47	96	46	97	47	95	48	97	47	97	47	97	47
Plainfield, - - -	88	21	76	33	35	74	78	31	88	21	90	19	39	70	38	71
Prescott, - - -	47	56	47	56	47	56	47	56	47	56	52	51	47	56	47	56
South Hadley, - - -	99	177	98	176	97	176	99	175	99	175	99	175	99	175	99	175

VOTE ON THE CONSTITUTIONAL PROPOSITIONS.

COUNTY OF HAMPSHIRE—CONTINUED.

TOWNS.	No. 1.		No. 2.		No. 3.		No. 4.		No. 5.		No. 6.		No. 7.		No. 8.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
Southampton, - -	114	107	115	106	110	110	115	106	115	106	116	105	114	107	113	107
Ware, - - -	260	230	260	228	257	233	261	228	261	228	260	228	260	229	261	228
Westhampton, - -	50	74	50	74	47	74	50	74	50	74	50	74	50	74	50	74
Williamsburg, - -	157	125	158	124	156	126	157	125	158	124	157	125	156	126	154	127
Worthington, - -	95	127	95	127	94	128	95	127	94	128	96	126	94	128	95	127
23 Towns, - -	2,698	2,935	2,683	2,940	2,585	3,020	2,684	2,939	2,696	2,918	2,726	2,908	2,642	2,983	2,639	2,983

COUNTY OF HAMPDEN.

Blandford, - -	126	82	125	82	114	88	125	82	117	83	125	82	125	82	125	83
Brimford, - -	112	119	112	119	108	122	112	119	112	119	113	118	112	119	112	119
Chester, - -	84	120	84	117	81	120	84	117	84	117	84	117	84	120	84	120
Chicopee, - -	326	397	332	390	318	403	337	388	342	391	338	387	336	390	332	393
Granville, - -	140	97	140	97	140	97	140	97	140	97	140	97	140	97	140	97
Holland, - -	40	37	40	37	40	37	40	37	40	37	40	37	40	35	40	35
Holyoke, - -	195	174	195	173	190	178	197	172	195	173	197	170	197	172	199	171
Longmeadow, - -	96	45	93	48	78	62	93	48	94	47	95	46	91	51	91	50
Ludlow, - -	128	73	128	73	128	73	128	73	128	73	128	73	128	73	129	73
Monson, - -	169	177	169	177	167	179	169	177	169	176	171	175	169	177	169	177
Montgomery, - -	63	10	63	10	63	10	63	10	63	10	63	10	63	10	63	10
Palmer, - -	250	153	249	154	240	161	251	152	248	154	253	151	252	152	252	152
Russell, - -	82	13	81	14	81	14	81	14	81	14	82	13	81	14	81	14
Southwick, - -	131	61	130	61	130	61	131	61	131	61	131	61	131	61	131	60
Springfield, - -	933	805	940	801	927	803	945	795	944	793	948	786	942	796	947	791
Tolland, - -	81	2	79	4	74	8	78	4	79	4	79	4	79	4	79	4
Wales, - -	45	63	45	63	44	64	45	63	44	61	63	40	45	63	46	63
Westfield, - -	469	220	576	214	466	221	485	207	482	207	535	157	471	220	471	219
West Springfield, - -	173	220	174	219	173	219	174	219	172	219	173	220	173	220	173	219
Wilbraham, - -	149	110	150	109	149	110	150	109	149	110	150	109	149	110	149	110
20 Towns, - -	3,792	2,978	3,805	2,962	3,711	3,030	3,828	2,944	3,814	2,946	3,908	2,853	3,808	2,966	3,813	2,960

COUNTY OF FRANKLIN.

Ashfield, - -	171	115	171	114	162	121	171	114	171	113	171	114	171	115	171	115
Barnardston, - -	103	90	105	88	103	90	106	87	103	90	107	85	105	88	105	88
Buckland, - -	165	79	166	78	161	78	165	79	167	77	165	78	165	79	166	78
Charlemont, - -	121	92	121	92	121	92	121	92	121	92	121	92	121	92	121	92
Coleraine, - -	175	161	175	161	173	161	175	161	174	161	175	161	175	161	175	161
Conway, - -	206	189	208	187	205	189	208	187	208	187	209	187	207	188	207	188
Deerfield, - -	223	190	224	190	221	192	224	190	224	190	224	190	224	190	224	191
Erving, - -	52	12	52	12	52	12	52	12	51	12	52	12	52	12	53	12
Gill, - -	46	61	46	61	46	61	46	61	44	63	46	61	46	61	47	60
Greenfield, - -	255	263	259	259	255	263	259	260	262	258	259	260	257	262	256	262
Hawley, - -	52	80	51	80	41	87	51	80	50	80	51	80	51	80	51	80
Heath, - -	72	58	71	59	69	61	71	59	71	59	71	59	72	58	72	58
Leverett, - -	112	56	112	56	111	56	111	56	111	56	111	56	112	56	112	56
Leyden, - -	78	29	78	29	77	29	77	29	77	29	77	29	77	29	77	29
Monroe, - -	25	5	25	5	20	10	25	5	25	5	25	5	25	5	25	5
Montague, - -	159	108	139	108	139	108	139	108	138	109	141	106	139	108	141	106
New Salem, - -	116	111	116	111	116	111	116	111	116	111	119	108	117	111	116	111
Northfield, - -	170	98	169	97	169	97	169	97	168	99	169	97	169	97	169	98
Orange, - -	157	120	157	120	155	122	157	120	157	120	157	120	157	120	157	120
Rowe, - -	41	68	41	68	38	71	41	68	41	68	40	68	41	68	41	68
Shelburne, - -	107	155	107	155	92	162	107	155	105	155	108	153	107	155	103	159
Shutesbury, - -	104	46	103	46	100	49	104	45	103	47	104	45	105	45	103	46
Sunderland, - -	97	101	97	100	93	101	97	100	99	98	99	98	97	99	98	99
Warwick, - -	107	66	106	66	106	66	106	66	106	66	107	65	106	66	107	65
Wendell, - -	81	26	77	28	74	29	80	26	80	26	80	26	80	26	80	26
Whately, - -	138	135	138	135	136	136	138	135	139	133	138	135	136	136	136	136
26 Towns, - -	3,133	2,514	3,114	2,505	3,035	2,554	3,116	2,503	3,111	2,504	3,126	2,490	3,112	2,507	3,113	2,509

VOTE ON THE CONSTITUTIONAL PROPOSITIONS.

COUNTY OF BERKSHIRE.

TOWNS.	No. 1.		No. 2.		No. 3.		No. 4.		No. 5.		No. 6.		No. 7.		No. 8.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
Adams, - - -	352	420	352	420	349	422	351	421	350	422	359	418	352	420	352	420
Alford, - - -	63	22	63	21	61	21	63	21	63	21	64	20	63	21	63	21
Becket, - - -	100	91	101	90	101	91	100	91	101	90	101	90	100	91	101	90
Cheshire, - - -	202	13	200	15	196	19	202	13	199	16	201	14	202	13	202	13
Clarksburg, - - -	42	20	41	21	40	22	41	21	40	22	41	21	40	22	40	22
Dalton, - - -	84	73	84	73	84	73	84	73	75	82	84	73	84	73	84	73
Egremont, - - -	106	107	106	106	106	107	106	107	106	107	106	106	106	107	106	107
Florida, - - -	46	36	46	36	45	37	46	36	46	36	46	36	46	36	45	37
Great Barrington, - - -	163	236	163	236	162	237	163	236	163	236	165	234	163	236	163	235
Hancock, - - -	62	58	62	58	61	58	62	58	62	58	62	58	62	58	62	58
Hinsdale, - - -	68	95	61	102	53	110	64	99	59	104	64	99	64	99	65	98
Lanesborough, - - -	122	96	120	97	118	97	120	97	120	97	120	96	120	97	117	97
Lee, - - -	234	271	235	270	233	273	236	269	236	269	236	269	236	269	236	269
Lenox, - - -	128	116	128	116	126	116	128	116	127	116	127	114	128	116	128	116
Monterey, - - -	95	31	95	31	94	32	95	31	95	31	94	32	95	31	94	32
Mount Washington, - - -	26	3	29	-	29	-	29	-	28	1	29	-	29	-	29	-
New Ashford, - - -	31	7	30	7	31	7	31	7	31	7	31	7	31	7	31	7
New Marlborough, - - -	118	136	119	136	113	139	119	136	117	138	119	136	120	135	121	135
Otis, - - -	91	57	90	57	89	58	90	57	90	57	90	56	90	57	90	57
Peru, - - -	28	61	28	61	25	64	27	62	29	60	28	61	28	61	26	63
Pittsfield, - - -	440	469	444	464	435	470	451	442	442	462	449	458	443	465	442	466
Richmond, - - -	70	28	69	29	69	29	69	29	69	29	69	29	69	29	69	29
Sandisfield, - - -	141	69	138	69	138	69	138	69	139	65	139	65	140	65	140	65
Savoy, - - -	160	12	160	12	159	12	160	12	157	14	161	11	160	12	160	12
Sheffield, - - -	147	114	146	115	144	117	146	115	144	117	146	115	146	115	147	114
Stockbridge, - - -	164	114	165	113	164	114	166	113	164	113	166	113	165	113	165	113
Tyringham, - - -	68	30	66	29	66	29	66	29	66	29	66	29	66	29	66	29
Washington, - - -	52	32	45	39	45	39	49	35	44	40	48	36	45	39	45	39
West Stockbridge, - - -	59	99	57	96	53	100	57	96	57	96	57	96	57	96	56	95
Williamstown, - - -	240	175	240	175	240	175	240	175	240	175	240	175	240	175	240	176
Windsor, - - -	83	70	83	68	81	70	83	68	83	67	83	68	83	68	83	68
31 Towns, - - -	3,785	3,161	3,767	3,162	3,710	3,207	3,782	3,149	3,743	3,163	3,792	3,135	3,773	3,155	3,768	3,156

COUNTY OF NORFOLK.

Bellingham, - - -	136	42	135	44	131	48	136	42	137	41	136	42	136	42	136	42
Braintree, - - -	155	243	157	243	152	245	158	240	158	240	169	230	158	241	158	241
Brookline, - - -	75	269	73	272	57	287	78	267	79	266	80	265	73	272	74	271
Canton, - - -	154	201	160	198	155	202	162	195	160	196	163	192	157	196	154	198
Cohasset, - - -	50	101	50	100	50	101	56	96	61	96	55	96	50	101	50	101
Dedham, - - -	237	416	242	407	229	419	249	401	247	444	251	397	243	407	238	409
Dorchester, - - -	410	634	417	626	403	639	425	639	433	611	439	601	415	631	414	631
Dover, - - -	36	59	36	59	36	60	43	52	36	58	43	52	36	59	36	59
Foxborough, - - -	125	148	126	147	122	147	126	147	130	143	129	143	126	147	126	147
Franklin, - - -	155	148	157	145	146	155	159	144	151	152	159	144	157	146	158	145
Medfield, - - -	49	112	50	111	40	121	50	111	50	111	52	109	49	112	48	113
Medway, - - -	215	202	218	198	209	206	222	194	213	202	229	185	216	200	215	200
Milton, - - -	97	165	101	161	95	167	102	160	102	160	109	153	99	163	97	165
Needham, - - -	117	117	117	117	113	118	117	117	117	116	117	116	117	117	117	116
Quincy, - - -	238	358	239	357	230	364	239	356	250	345	256	338	237	358	234	359
Randolph, - - -	211	444	216	439	212	443	221	436	239	418	241	416	219	438	228	435
Roxbury, - - -	434	1,085	438	1,077	428	1,083	433	1,071	451	1,001	458	996	437	1,065	438	1,077
Sharon, - - -	114	111	113	111	114	111	117	108	116	109	115	109	112	110	112	111
Stoughton, - - -	309	264	312	254	300	260	316	259	324	244	340	231	313	258	299	262
Walpole, - - -	139	208	139	208	128	215	140	207	143	205	140	208	139	208	141	209
Weymouth, - - -	391	424	400	416	380	433	401	415	417	399	410	406	399	417	400	416
West Roxbury, - - -	66	373	70	370	66	374	68	372	72	368	79	361	68	372	68	372
Wrentham, - - -	174	262	175	262	170	266	176	261	175	263	178	260	176	262	176	261
23 Towns, - - -	4,087	6,386	4,141	6,322	3,966	6,464	4,194	6,290	4,261	6,188	4,348	6,050	4,132	6,322	4,117	6,340

VOTE ON THE CONSTITUTIONAL PROPOSITIONS.

COUNTY OF BRISTOL.

TOWNS.	No. 1.		No. 2.		No. 3.		No. 4.		No. 5.		No. 6.		No. 7.		No. 8.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
Attleborough, - -	367	339	344	358	327	376	370	338	341	363	350	359	368	340	368	339
Berkley, - - -	68	48	70	45	70	46	73	44	72	43	72	44	70	46	70	46
Dartmouth, - -	240	217	240	217	240	217	240	217	240	217	240	217	240	217	240	217
Dighton, - - -	103	106	104	105	102	107	103	105	103	105	105	104	103	105	103	106
Easton, - - -	224	200	226	198	223	201	224	200	230	193	233	191	224	201	225	200
Fairhaven, - - -	310	317	309	317	308	318	310	317	310	317	310	317	310	317	310	317
Fall River, - -	566	498	571	495	570	495	570	495	566	495	538	526	568	496	567	503
Freetown, - - -	57	64	57	64	56	65	58	63	56	65	58	63	58	63	58	63
Mansfield, - - -	203	35	201	32	200	35	202	32	201	32	191	43	202	33	199	34
New Bedford, - -	1,195	1,317	1,195	1,316	1,185	1,317	1,199	1,314	1,204	1,308	1,195	1,310	1,198	1,314	1,193	1,315
Norton, - - -	156	116	160	115	159	116	160	115	158	115	158	116	159	114	159	114
Pawtucket, - - -	179	184	179	184	178	185	179	184	178	184	181	183	179	183	179	183
Raynham, - - -	149	82	149	82	145	83	148	82	146	82	149	82	149	82	149	82
Rehoboth, - - -	147	137	147	137	148	136	147	137	147	137	148	136	147	137	147	137
Seekonk, - - -	141	87	141	87	127	100	141	87	137	90	143	85	141	87	141	87
Somerset, - - -	111	134	111	134	111	134	111	134	111	134	111	134	111	134	111	134
Swansey, - - -	93	112	93	112	92	112	93	112	93	112	93	112	93	112	93	112
Taunton, - - -	549	888	549	889	531	901	552	887	544	890	544	886	547	888	546	891
Westport, - - -	151	97	153	97	154	97	154	97	151	99	154	97	153	97	153	97
19 Towns, - - -	5,009	4,978	4,999	4,984	4,926	5,041	5,034	4,960	4,988	4,981	4,973	5,005	5,020	4,966	5,011	5,977

COUNTY OF PLYMOUTH.

Abington, - - -	525	344	533	337	522	346	534	332	544	322	543	325	530	338	530	337
Bridgewater, - - -	166	296	168	295	165	298	170	293	167	296	171	293	169	294	168	295
Carver, - - -	104	120	105	119	104	119	104	119	104	119	104	119	104	119	104	119
Duxbury, - - -	246	175	246	174	246	175	247	174	247	174	249	172	248	173	248	173
East Bridgewater, - - -	260	230	260	230	260	230	264	226	263	228	263	227	262	228	264	226
Halifax, - - -	73	70	70	72	70	72	70	71	72	68	71	70	70	70	70	71
Hanover, - - -	148	80	148	79	148	79	148	78	145	81	150	77	148	79	149	78
Hanson, - - -	132	50	133	51	128	54	131	49	133	51	132	52	133	49	134	49
Hingham, - - -	207	398	209	397	207	399	209	394	212	394	209	396	209	397	208	398
Hull, - - -	7	16	7	16	7	16	7	16	7	16	7	16	7	16	7	16
Kingston, - - -	123	165	124	164	121	166	135	153	129	160	135	154	136	153	136	153
Marshfield, - - -	146	93	146	93	145	94	146	93	144	95	146	93	146	93	146	93
Middleborough, - - -	361	315	360	315	361	316	363	313	362	314	363	314	361	315	362	315
North Bridgewater, - - -	391	407	393	401	389	405	394	401	394	399	396	399	392	403	392	405
Pembroke, - - -	119	109	119	109	119	109	119	109	119	109	120	108	119	109	119	109
Plymouth, - - -	412	419	420	410	414	415	423	403	432	398	425	405	419	412	419	411
Plympton, - - -	34	115	34	115	34	115	34	115	34	115	34	115	34	115	34	115
Rochester, - - -	135	251	135	250	126	259	135	250	136	249	146	239	136	248	135	249
Scituate, - - -	166	83	166	83	165	84	166	83	163	84	166	83	166	83	166	83
South Scituate, - - -	87	191	86	191	84	193	91	186	93	187	96	182	89	189	90	187
Wareham, - - -	101	244	100	243	99	242	100	243	100	242	101	242	101	242	101	243
West Bridgewater, - - -	131	156	121	127	128	154	122	152	136	148	136	147	129	154	129	154
22 Towns, - - -	4,074	4,327	4,083	4,271	4,042	4,340	4,117	4,253	4,136	4,249	4,163	4,229	4,008	4,279	4,111	4,279

COUNTY OF BARNSTABLE.

[illegible]

VOTE ON THE CONSTITUTIONAL PROPOSITIONS.

COUNTY OF BARNSTABLE—CONTINUED.

TOWNS.	No. 1.		No. 2.		No. 3.		No. 4.		No. 5.		No. 6.		No. 7.		No. 8.	
	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.	Yes.	No.
Orleans, - - -	54	73	54	73	54	73	54	73	54	73	54	73	54	73	54	73
Provincetown, - - -	124	132	125	131	123	133	124	131	125	131	125	131	124	132	124	132
Sandwich, - - -	157	264	158	265	158	265	158	265	158	265	159	264	158	265	158	264
Truro, - - -	84	41	85	40	85	40	85	40	85	40	85	40	84	41	84	41
Wellfleet, - - -	111	109	111	109	111	109	111	109	111	109	111	109	111	109	111	109
Yarmouth, - - -	35	148	35	148	35	148	35	147	35	147	35	147	35	147	35	147
13 Towns, - - -	1,294	1,650	1,298	1,601	1,295	1,604	1,300	1,598	1,298	1,601	1,301	1,598	1,297	1,602	1,296	1,601

COUNTY OF NANTUCKET.

Nantucket, - - -	273	394	273	393	272	395	273	394	275	392	275	392	273	394	274	393
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COUNTY OF DUKES COUNTY.

Chilmark, - - -	32	16	35	13	35	13	35	13	36	12	41	7	36	12	39	12
Edgartown, - - -	44	159	45	158	43	159	45	158	47	156	44	159	44	159	44	149
Tisbury, - - -	56	63	56	63	56	63	56	63	56	63	56	63	56	63	56	63
3 Towns, - - -	132	238	136	234	134	235	136	234	139	231	141	229	136	234	139	224

RECAPITULATION.

Suffolk County, - -	3,673	9,588	3,613	9,069	3,512	9,020	3,684	8,992	3,774	8,849	4,051	8,729	3,619	8,861	3,650	8,928
Essex " - -	7,998	9,099	8,024	9,061	7,875	9,209	8,065	9,006	8,203	8,891	8,227	8,884	8,060	9,042	8,095	9,017
Middlesex " - -	10,339	12,178	10,452	12,052	10,027	12,383	10,571	11,955	10,637	11,822	10,982	11,514	10,432	12,067	10,455	12,054
Worcester " - -	12,935	7,724	12,994	7,450	12,609	7,880	13,021	7,611	12,940	7,697	13,098	7,496	12,934	7,633	12,931	7,688
Hampshire " - -	2,698	2,935	2,683	2,940	2,585	3,020	2,684	2,939	2,696	2,918	2,726	2,908	2,642	2,983	2,639	2,983
Hampden " - -	3,792	2,978	3,805	2,962	3,711	3,030	3,828	2,944	3,814	2,946	3,908	2,853	3,808	2,966	3,813	2,960
Franklin " - -	3,133	2,514	3,114	2,505	3,035	2,554	3,116	2,503	3,111	2,504	3,126	2,490	3,112	2,507	3,113	2,509
Berkshire " - -	3,785	3,161	3,767	3,162	3,710	3,207	3,782	3,149	3,743	3,163	3,792	3,135	3,773	3,155	3,768	3,156
Norfolk " - -	4,087	6,386	4,141	6,322	3,966	6,464	4,194	6,290	4,261	6,188	4,348	6,050	4,132	6,322	4,117	6,340
Bristol " - -	5,009	4,978	4,999	4,984	4,926	5,041	5,034	4,960	4,988	4,981	4,973	5,005	5,020	4,966	5,011	4,977
Plymouth " - -	4,074	4,327	4,083	4,271	4,042	4,340	4,117	4,253	4,136	4,249	4,163	4,229	4,008	4,279	4,111	4,279
Barnstable " - -	1,294	1,650	1,298	1,601	1,295	1,604	1,300	1,598	1,298	1,601	1,301	1,598	1,297	1,602	1,296	1,601
Nantucket " - -	273	394	273	393	272	395	273	394	275	392	275	392	273	394	274	393
Dukes " - -	132	238	136	234	134	235	136	234	139	231	141	229	136	234	139	224
14 Counties, - -	63,222	68,150	63,382	67,006	61,699	68,382	63,805	66,828	64,015	66,432	65,111	65,512	63,246	67,011	63,412	67,109

ERRATA.

ERRATA.

Vol. I., page 276, in the Yeas and Nays on the Council, the name of George S. Boutwell should appear among the *Nays*, instead of the Yeas, he having voted *against* the proposition of the member for Manchester.

Vol. I., pages 404, 405, the list of Yeas and Nays relating to the Secretary, Treasurer, &c., were inserted before being revised by the official copy, which was corrected after the names were called. The following is correct:—

YEAS.

Adams, Shubael P.
Allen, Charles
Allis, Josiah
Alvord, D. W.
Baker, Hillel
Ballard, Alvah
Bancroft, Alpheus
Barrett, Marcus
Bates, Moses, Jr.
Beach, Erasmus D.
Beal, John
Bennett, Zephaniah
Bird, Francis W.
Bishop, Henry W.
Bliss, Gad O.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Bradford, William J. A.
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Hiram C.
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Burlingame, Anson
Carruthers, William
Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Churchill, J. McKean
Clarke, Stillman
Cleaverly, William
Coggin, Jacob
Cole, Lansing J.
Cole, Sumner
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Ebenezer
Davis, Isaac
Dean, Silas
Denton, Augustus
Dunham, Bradish
Durgin, John M.
Easton, James, 2d
Eaton, Calvin D.
Eaton, Lilley
Edwards, Elisha
Fellows, James K.
Fisk, Lyman
Fiske, Emory
Foster, Aaron
Foster, Abram

Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Samuel
Gale, Luther
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Gooding, Leonard
Gourgass, F. R.
Green, Jabez
Griswold, Josiah W.
Hadley, Samuel P.
Hall, Charles B.
Hallett, B. F.
Harmon, Phineas
Haskell, George
Hathaway, Elnathan P.
Hawkes, Stephen E.
Hayden, Isaac
Heath, Ezra, 2d
Hewes, James
Hewes, William H.
Hobart, Aaron
Hobart, Henry
Hobbs, Edwin
Holder, Nathaniel
Hood, George
Hooper, Foster
Howard, Martin
Huntington, Charles P.
Huntington, George H.
Hurlbut, Moses C.
Jacobs, John
Johnson, John
Kendall, Isaac
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Kuhn, George H.
Ladd, Gardner P.
Langdon, Wilber C.
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Loomis, E. Justin
Marble, William P.
Marvin, Abijah P.
Mason, Charles
Meador, Reuben
Merritt, Simeon
Moore, James M.
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.

Newman, Charles
Nichols, William
Nute, Andrew T.
Ober, Joseph E.
Oliver, Henry K.
Orne, Benjamin S.
Packer, E. Wing
Parker, Adolphus G.
Parris, Jonathan
Parsons, Samuel C.
Parsons, Thomas A.
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Pierce, Henry
Pool, James M.
Rantoul, Robert
Rawson, Silas
Read, James
Richardson, Daniel
Richardson, Samuel H.
Rockwood, Joseph M.
Rogers, John
Ross, David S.
Sanderson, Amasa
Sanderson, Chester
Schouler, William
Sheldon, Luther
Sherril, John
Simonds, John W.
Smith, Matthew
Souther, John

NAYS.

Aspinwall, William
Atwood, David C.
Barrows, Joseph
Bell, Luther V.
Bradbury, Ebenezer
Brinley, Francis
Briggs, George N.
Bullock, Rufus
Bumpus, Cephas C.
Cogswell, Nathaniel
Coledge, Henry F.
Crosby, Leander
Davis, Solomon
Eames, Philip
Eustis, William T.
Fowler, Samuel P.
Gilbert, Wanton C.
Gould, Robert
Goulding, Dalton
Hale, Artemas
Hammond, A. B.
Heard, Charles
Hersey, Henry
Hinsdale, William

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Adams, Benjamin P.
Aldrich, P. Emory
Allen, James B.
Allen, Joel C.
Allen, Parsons

Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stevens, Granville
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Sumner, Charles
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Tilton, Abraham
Tilton, Horatio W.
Turner, David
Turner, David P.
Tyler, William
Underwood, Orison
Viles, Joel
Wales, Bradford L.
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Weston, Gershom B.
White, Benjamin
White, George
Whitney, Daniel S.
Whitney, James S.
Wilbur, Joseph
Williams, Henry
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wright, Ezekiel

Bartlett, Russel
Bartlett, Sidney
Bates, Eliakim A.
Beebe, James M.
Bennett, William, Jr.
Bigelow, Edward B.
Bigelow, Jacob
Blagden, George W.
Bliss, William C.
Braman, Milton P.
Brewster, Osmyn
Brown, Artemas
Brown, Hammond
Brownell, Frederick
Bullen, Amos H.
Butler, Benjamin F.
Cady, Henry
Carter, Timothy W.
Case, Isaac
Chandler, Amariah
Chapin, Chester W.
Choate, Rufus
Clark, Henry
Clark, Ransom
Clark, Salah
Clarke, Alpheus B.
Conkey, Ithamar
Cook, Charles E.
Copeland, Benjamin F.
Crockett, George W.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilbur
Cushman, Henry W.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, John
Hapgood, Seth
Haskins, William
Hayward, George
Henry, Samuel
Heywood, Levi
Hillard, George S.
Howland, Abraham H.
Hoyt, Henry K.
Hubbard, William J.
Hunt, Charles E.
Huntington, Asahel
Hurlburt, Samuel A.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
James, William
Jenkin, John
Jenks, Samuel H.
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kinsman, Henry W.
Knight, Joseph
Lawrence, Luther
Little, Otis
Littlefield, Tristram
Lord, Otis P.
Lothrop, Samuel K.
Marcy, Leban
Marvin, Theophilus R.
Monroe, James L.
Morey, George
Morse, Joseph B.
Morton, William S.
Nash, Hiram
Nayson, Jonathan

Norton, Alfred
Osgood, Charles
Paige, James W.
Paine, Benjamin
Paine, Henry
Davis, Robert T.
Dawes, Henry L.
Day, Gilman
Dehon, William
Deming, Elijah S.
Dennison, Hiram S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Duncan, Samuel
Earle, John M.
Easland, Peter
Edwards, Samuel
Ely, Joseph M.
Ely, Homer
Farwell, A. G.
Fay, Sullivan
Fitch, Ezekiel W.
French, Charles H.
French, Rodney
Frothingham, R'd, Jr.
Gardner, Henry J.
Gardner, Johnson
Giles, Joel
Gooch, Daniel W.
Goulding, Jason
Graves, John W.
Gray, John C.
Greene, William B.
Greenleaf, Simon
Griswold, Whiting
Hale, Nathan
Hapgood, Lyman W.
Parker, Joel
Payson, Thomas E.
Peabody, George
Perkins, Jonathan C.
Phinney, Sylvanus B.
Plunkett, William C.
Pomroy, Jeremiah
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Putnam, John A.
Reed, Sampson
Rice, David
Richards, Luther
Richardson, Nathan
Ring, Elkanah, Jr.
Rockwell, Julius
Royce, James C.
Sampson, George R.
Sherman, Charles
Sikes, Chester
Simmons, Perez
Sleeper, John S.
Stetson, Caleb
Stevenson, J. Thomas
Storow, Charles S.
Strong, Alfred L.
Stutson, William
Sumner, Increase
Swain, Alanson
Taber, Isaac C.
Taft, Arnold
Talbot, Thomas
Taylor, Ralph

ERRATA.

Thompson, Charles
Tilston, Edmund P.
Tower, Ephraim
Train, Charles R.
Tyler, John S.
Upham, Charles W.
Upton, George B.
Vinton, George A.
Wallace, Frederick T.
Wallis, Freeland

Walker, Samuel
Warner, Marshal
Waters, Asa H.
Wetmore, Thomas
Wheeler, William F.
Wilbur, Daniel
Wilder, Joel
Wilkinson, Ezra
Williams, J. B.
Wood, William H.

Absent and not voting, 180.

Vol. II., page 373, 1st column, 16th line from the bottom, for "Mr. Otis, of Sumner," read *Mr. Sumner, for Otis.*

Vol. II., page 373, 2d column, 1st line, for "moderators" read *monitors.*

Vol. II., page 411, 1st column, 5th line from the bottom, for "Mr. Morton, of Tisbury," read *Mr. Norton, of Tisbury.*

Vol. II., page 429, 3d column, for "Mr. Huntington, of Northampton, moved to strike out the word 'seven,' in the fifth line, and insert in lieu thereof, the word 'ten,'" read—*Mr. Huntington, of Northampton, moved to strike out the word 'seven,' in the fifth line.*

Vol. II., page 593, 1st column, instead of a division upon the question of reconsidering the vote by which the resolves upon the subject of Elections by Plurality had finally passed, the Yeas and Nays were taken, and resulted—yeas, 137; nays, 48—as follows:—

YEAS.

Adams, Benjamin P.
Adams, Shubael P.
Aldrich, P. Emory
Allen, James B.
Allen, Parsons
Alvord, D. W.
Bancroft, Alpheus
Bates, Moses, Jr.
Beal, John
Bennett, Zephaniah
Bigelow, Jacob
Bird, Francis W.
Boutwell, George S.
Bradbury, Ebenezer
Breed, Hiram N.
Brinley, Francis
Briggs, George N.
Brown, Adolphus F.
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Bullock, Rufus
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Carruthers, William
Case, Isaac
Chapin, Chester W.
Childs, Josiah
Churchill, J. McKean
Clark, Salah
Clarke, Alpheus B.
Clevery, William
Cole, Lansing J.
Cushman, Thomas
Dana, Richard H., Jr.
Davis, Charles G.
Denning, Elijah S.
Duncan, Samuel

Dunham, Bradish
Eames, Philip
Earle, John M.
Eastland, Peter
Easton, James, 2d
Edwards, Elisha
Edwards, Samuel
Ely, Homer
Ely, Joseph M.
Fellows, James K.
Foster, Abram
Freeman, James M.
French, Charles A.
French, Rodney
Frothingham, R., Jr.
Gale, Luther
Gates, Elbridge
Gilbert, Wanton C.
Giles, Joel
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hale, Nathan
Hallett, B. F.
Hapgood, Lyman W.
Hagood, Seth
Harmon, Phineas
Hawkes, Stephen E.
Heath, Ezra, 2d
Hewes, James
Hillard, George S.
Hobart, Henry
Hood, George
Howland, Abraham H.
Hubbard, William J.
Hunt, William
Kellogg, Giles C.
Kendall, Isaac
Kingman, Joseph
Knight, Hiram
Knight, Joseph

Knowlton, Charles L.
Knowlton, J. S. C.
Langdon, Wilber C.
Little, Otis
Livermore, Isaac
Loomis, Justin E.
Lothrop, Samuel K.
Marvin, Abijah P.
Marvin, Theophilus R.
Mason, Charles
Merritt, Simeon
Morey, George
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Morton, William S.
Nayson, Jonathan
Nute, Andrew T.
Ober, Joseph E.
Oliver, Henry K.
Orcutt, Nathan
Osgood, Charles
Parker, Adolphus G.
Parker, Samuel D.
Parris, Jonathan
Partridge, John
Phinney, Silvanus B.
Pomroy, Jeremiah

Allen, Joel C.
Alley, John B.
Allis, Josiah
Baker, Hillel
Bartlett, Russel
Booth, William S.
Boutwell, Sewell
Buck, Asahel
Bumpus, Cephas C.
Clark, Ransom
Crittenden, Simeon
Dean, Silas
Denton, Augustus
Eaton, Calvin D.
Fay, Sullivan
French, Samuel
Gardner, Henry J.
Gilbert, Washington
Giles, Charles G.
Green, Jabez
Hale, Artemas
Haskins, William
Hathaway, Elnathan P.
Hinsdale, William

NAYS.

Hoyt, Henry K.
Jenkins, John
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawton, Job G., Jr.
Marcy, Laban
Miller, Seth, Jr.
Penniman, John
Perkins, Daniel A.
Pierce, Henry
Rawson, Silas
Rice, David
Royce, James C.
Scherill, John
Simonds, John W.
Stiles, Gideon
Thompson, Charles
Tilton, Horatio W.
Turner, David P.
Wallace, Frederick T.
Wallis, Freeland
Wilder, Joel
Winslow, Levi M.

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Allen, Charles
Andrews, Robert
Appleton, William
Aspinwall, William
Atwood, David C.
Austin, George
Ayres, Samuel
Ballard, Alvah
Ball, George S.
Banks, Nathaniel
Barrows, Joseph
Bartlett, Sidney
Barrett, John
Bates, Ephraim A.
Beach, Erasmus D.
Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Edward B.
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Bradford, William J. A.
Braman, Milton P.
Browster, Osymon

Johnson, Asa
Brewster, Alpheus R.
Brown, Artemas
Bullen, Amos H.
Carter, Timothy W.
Chandler, Amariah
Coffin, Daniel E.
Coffin, Henry
Coffin, Rufus
Clark, Henry
Clarke, Stillman
Coggins, Jacob
Coggins, Nathaniel
Coggins, Samuel
Coggins, William
Cook, Charles E.
Coggins, Henry F.
Coppeland, Benjamin F.
Crane, George B.
Cressy, Oliver S.
Crockett, George W.
Crosby, Leander
Cross, Joseph W.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Cushman, Henry W.

Cutler, Simeon N.
Davis, Ebenezer
Davis, Isaac
Davis, John
Davis, Robert T.
Davis, Solomon
Dawes, Henry L.
Day, Gilman
Dehon, William
Denison, Hiram S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Durgin, John M.
Eaton, Lilley
Eustis, William T.
Farwell, A. G.
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In the speech of Mr. Parker, of Cambridge, in the first volume :—

Page 75, 1st column, 43d line,
For—"whatever other law might have been,"
Read—*and whatever other law may have been.*

Page 76, 3d column, 7th and 8th lines from the bottom,
For—"that he regarded this Act of 1852, as the Constitution of this body,"
Read—*that regarding this Act of 1852 as a charter, it was a contract.*

Same page and column, 3d, 4th and 5th lines from the bottom,
For—"he regarded this Act of 1852, as the Constitution of this body, and that the legislature therefore had no power,"
Read—*regarding this Act of 1852 as the Constitution of this body, the legislature had no power.*

Page 77, 1st column, 7th, 8th and 9th lines,
For—"I understood them to be maintained by him as suggestions which had been made, and not as propositions of his own,"
Read—*I understood them to be maintained by him upon suggestions which had been made, and not founded upon propositions of his own.*

Same page and column, 25th and 26th lines,
For—"Then regarding it in that light, the conclusion was drawn,"
Read—*Then regarding it in the light of a charter the conclusion was drawn.*

Page 78, 3d column, 40th and 41st lines,
For—"But while arguing that it is a charter the gentleman forgets,"
Read—*But while arguing upon it as a charter the gentleman forgot.*

Same page and column, 44th line,
For—"without an incorporation,"
Read—*the act of incorporation.*

Same page and column, 57th and 58th lines,
For—"And now in relation to our Constitution; gentlemen say that the Act,"
Read—*And now in relation to it as a Constitution; the gentleman says that if the Act.*

In the next line strike out "and".

Page 78, 1st column, 26th line,
For—"I relate this anecdote to show the feeling which existed,"
Read—*This anecdote was related to show the feeling of importance which existed.*

And in the 29th line, read—*But the reply.*

Page 81, 3d column, 9th and 10th lines from the bottom,
For—"The response of the people has given a character to the law. It has affixed to it something beyond the law,"

Read—*Has the response of the people given a character to the law? Has it affixed to it something different from a law?*

Page 82, 1st column, last line,
For—"But let us admit that they have the power,"
Read—*But the people have the power.*

The reader will observe several other verbal errors in that speech more or less apparent, there having been no revision of it by the author.

In speeches of Mr. Hallett, for Wilbraham, in the first volume :—

Page 87, 2d column, 26th line,
Read—"The people have a right to make their [fundamental] laws."

Page 171, 3d column, 8th line from the bottom,
Strike out "Lord" before "Bacon."

Page 191, 1st column, 28th line,
For—"United States Constitution,"
Read—*State Constitution.*

Page 226, 3d column, 9th line,
For—"Rhode Island had a council,"
Read—*Maryland.*

Page 227, 3d column, 30th line from the bottom,
For—"The two boards separately,"
Read—*Separated.*

Page 257, 3d column, last line,
For—"line a leaf,"
Read—*live a leaf in history, &c.*

Page 262, 3d column, 25th line,
For—"Shone on, and shine on,"
Read—*Shone on and shone on.*

Page 294, 2d column, 20th line,
For—"the importation of these foreigners who come here to become citizens in a single year, add," &c.
Read—*the immigration of these foreigners who come here to become citizens :—in a single year adds more solid capital, &c.*

Page 473, 1st column, 2d line,
For—"doubt,"
Read—*doubts.*

Same page and column, 41st line,
Put a comma after "eighteen assistants."

Same page, 3d column, 10th line,
After "we hold," put a comma instead of a period.

Page 474, 1st column, 15th line,
For—"an,"
Read—*and.*

Same page and column, 17th line from the bottom,
Strike out "the".

Page 475, 1st column, 27th line,
For—"every,"
Read—*very.*

Page 476, 1st column, 13th line from the bottom,
For—"Woods,"
Read—*Wood.*

Same page, 2d column, 4th line,
For—"Woods,"
Read—*Wood.*

Same page and column, 7th line,
Strike out the comma after "upon."

Same page and column, 11th line,
Before "small towns," insert *yet the.*

Same page, 3d column, 28th line from the bottom,
For—"hereafter,"
Read—*hereafter.*

Page 478, 2d column, 13th line from the bottom,
For—"Hewitt,"
Read—*Whevell.*

Page 480, 2d column, 9th line,
Strike out "the" before *idellity.*

Same page, 3d column, 27th line,
For—"devour,"
Read—*protect.*

Page 473, 3d column, 16th line, add *no* before "danger."

In the speech of Mr. Hathaway, of Freetown, in the first volume :—

Page 41, 3d column, 13th line from the bottom,
For—"nothing," &c.
Read—*but little, if anything to do, &c.*

Page 42, 1st column, 6th line,
For—"I suppose that under this clause," &c.
Read—*I do not suppose, &c., and at the end of the sentence, after the word "vacancy," add, but would have the right to impose a fine.*

Same page and column, 15th and 16th lines,
After the word "represented" add, *before issuing a precept to such town to fill the vacancy.*

Same page and column, 18th and 19th lines,
After the word "resigned," add—*by the acceptance of an office incompatible with the office of a representative.*

Same page and column, 32d line,
Between the words "office which," insert the words, *the holding of.*

Same page and column, 39th and 40th lines,
For—"we have no power to do so, because,"
Read—*it does not follow that we have power to do it, as.*

Same page and column,
At the end of Mr. Hathaway's remarks, after the word "represented,"

Add—*in the formation of an organic law for the government of the people of which such town is a part.*

Mr. Hathaway's remarks are, in this matter, very imperfectly reported, probably from the cause of the difficulty of hearing in the Music Hall, where these remarks were made.

In the speech of Mr. Wilson, of Natick, in the second volume :—

Page 438, 1st column, 25th line,
For—"Governor Leonard,"
Read—*Governor Seward.*

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